

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE SUBSTITUTE NO. 2 FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 89**

**96TH GENERAL ASSEMBLY**

0385S.12T

2011

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**AN ACT**

To repeal sections 247.060, 253.090, 386.850, 444.773, 621.250, 643.020, 643.040, 643.050, 643.060, 643.079, 643.080, 643.130, 643.191, 643.225, 643.232, 643.237, 643.240, 643.242, 643.245, 643.250, 643.253, 643.260, 644.036, 644.051, 644.054, 644.071, 701.033, and 701.332, RSMo, and to enact in lieu thereof forty new sections relating to natural resources, with penalty provisions and an emergency clause for certain sections.

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

Section A. Sections 247.060, 253.090, 386.850, 444.773, 621.250, 643.020, 643.040, 2 643.050, 643.060, 643.079, 643.080, 643.130, 643.191, 643.225, 643.232, 643.237, 643.240, 3 643.242, 643.245, 643.250, 643.253, 643.260, 644.036, 644.051, 644.054, 644.071, 701.033, and 4 701.332, RSMo, are repealed and forty new sections enacted in lieu thereof, to be known as 5 sections 37.970, 67.4500, 67.4505, 67.4510, 67.4515, 67.4520, 192.1250, 247.060, 253.090, 6 442.014, 444.771, 444.773, 620.2300, 621.250, 640.018, 640.128, 640.850, 643.020, 643.040, 7 643.050, 643.060, 643.079, 643.080, 643.130, 643.191, 643.225, 643.232, 643.237, 643.240, 8 643.242, 643.245, 643.250, 644.036, 644.051, 644.054, 644.071, 644.145, 701.033, 701.058, and 9 1, to read as follows:

**37.970. 1. It shall be the policy of each state department to carry out its mission**  
2 **with full transparency to the public. Any data collected in the course of its duties shall be**  
3 **made available to the public in a timely fashion. Data, reports, and other information**  
4 **resulting from any activities conducted by the department in the course of its duties shall**  
5 **be easily accessible by any member of the public.**

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

6           **2. Each department shall broadly interpret any request for information under**  
7 **section 610.023:**

8           **(1) Even if such request for information does not use the words "sunshine request",**  
9 **"open records request", "public records request", or any such similar wording;**

10           **(2) Even if the communication is simply an inquiry as to the availability or existence**  
11 **of data or information; and**

12           **(3) Regardless of the format in which the communication is made, including**  
13 **electronic mail, facsimile, internet, postal mail, in person, telephone, or any other format.**

14           **3. Any failure by a department to release information shall, in addition to any other**  
15 **applicable violation of law, be considered a violation of the department's policy under this**  
16 **section and shall constitute a breach of the public's trust.**

17           **4. This section shall not be construed to limit or exceed the requirements of the**  
18 **provisions in chapter 610, nor shall this section require different treatment of a record**  
19 **considered closed or confidential under section 610.021 than what is required under that**  
20 **section.**

**67.4500. As used in sections 67.4500 to 67.4520, the following terms shall mean:**

2           **(1) "Authority", any county drinking water supply lake authority created by**  
3 **sections 67.4500 to 67.4520;**

4           **(2) "Conservation storage level", the target elevation established for a drinking**  
5 **water supply lake at the time of design and construction of such lake;**

6           **(3) "Costs", the sum total of all reasonable or necessary expenses incidental to the**  
7 **acquisition, construction, expansion, repair, alteration, and improvement of the project,**  
8 **including without limitation the following: the expense of studies and surveys; the cost of**  
9 **all lands, properties, rights, easements, and franchises acquired; land title and mortgage**  
10 **guaranty policies; architectural and engineering services; legal, organizational marketing,**  
11 **or other special services; provisions for working capital; reserves for principal and**  
12 **interest; and all other necessary and incidental expenses, including interest during**  
13 **construction on bonds issued to finance the project and for a period subsequent to the**  
14 **estimated date of completion of the project;**

15           **(4) "Project", recreation and tourist facilities and services, including, but not**  
16 **limited to, lakes, parks, recreation centers, restaurants, hunting and fishing reserves,**  
17 **historic sites and attractions, and any other facilities that the authority may desire to**  
18 **undertake, including the related infrastructure buildings and the usual and convenient**  
19 **facilities appertaining to any undertakings, and any extensions or improvements of any**  
20 **facilities, and the acquisition of any property necessary therefore, all as may be related to**  
21 **the development of a water supply source, recreational and tourist accommodations, and**  
22 **facilities;**

23           (5) "Water commission", a water commission owning a reservoir formed pursuant  
24 to sections 393.700 to 393.770;

25           (6) "Watershed", the area that contributes or may contribute to the surface water  
26 of any lake as determined by the authority.

**67.4505. 1.** There is hereby created within any county of the third classification  
2 with a township form of government and with more than seven thousand two hundred but  
3 fewer than seven thousand three hundred inhabitants a county drinking water supply lake  
4 authority, which shall be a body corporate and politic and a political subdivision of this  
5 state.

6           **2.** The authority may exercise the powers provided to it under section 67.4520 over  
7 the reservoir area encompassing any drinking water supply lake of one thousand five  
8 hundred acres or more, as measured at its conservation storage level, and within the lake's  
9 watershed.

10          **3.** It shall be the purpose of each authority to promote the general welfare and a  
11 safe drinking water supply through the construction, operation, and maintenance of a  
12 drinking water supply lake.

13          **4.** The income of the authority and all property at any time owned by the authority  
14 shall be exempt from all taxation or any assessments whatsoever to the state or of any  
15 political subdivision, municipality, or other governmental agency thereof.

16          **5.** No county in which an authority is organized shall be held liable in connection  
17 with the construction, operation, or maintenance of any project or program undertaken  
18 pursuant to sections 67.4500 to 67.4520, including any actions taken by the authority in  
19 connection with such project or program.

**67.4510.** A county drinking water supply lake authority shall consist of at least six  
2 but not more than thirty members, appointed as follows:

3           (1) Members of the water commission shall appoint all members to the authority,  
4 one-third of the initial members for a six-year term, one-third for a four-year term, and  
5 the remaining one-third for a two-year term, until a successor is appointed; provided that,  
6 if there is an odd number of members, the last person appointed shall serve a two-year  
7 term. Upon the expiration of each term, a successor shall be appointed for a six-year term;

8           (2) No person shall be appointed to serve on the authority unless he or she is a  
9 registered voter in the state for more than five years, a resident in the county where the  
10 water commission is located for more than five years, and over the age of twenty-five years.  
11 If any member moves outside such county, the seat shall be deemed vacant and a new  
12 member shall be appointed by the county commission to complete the unexpired term.

**67.4515. 1.** The water commission shall by resolution establish a date and time for  
2 the initial meeting of the authority.

3           **2. At the initial meeting, and annually thereafter, the authority shall elect one of its**  
4 **members as chairman and one as vice chairman, and appoint a secretary and a treasurer**  
5 **who may be a member of the authority. If not a member of the authority, the secretary or**  
6 **treasurer shall receive compensation that shall be fixed from time to time by action of the**  
7 **authority. The authority may appoint an executive director who shall not be a member of**  
8 **the authority and who shall serve at its pleasure. If an executive director is appointed, he**  
9 **or she shall receive such compensation as shall be fixed from time to time by action of the**  
10 **authority. The authority may designate the secretary to act in lieu of the executive**  
11 **director. The secretary shall keep a record of the proceedings of the authority and shall**  
12 **be the custodian of all books, documents, and papers filed with the authority, the minute**  
13 **books or journal thereof, and its official seal. The secretary may cause copies to be made**  
14 **of all minutes and other records and documents of the authority and may give certificates**  
15 **under the official seal of the authority to the effect that the copies are true and correct**  
16 **copies, and all persons dealing with the authority may rely on such certificates. The**  
17 **authority, by resolution duly adopted, shall fix the powers and duties of its executive**  
18 **director as it may from time to time deem proper and necessary.**

19           **3. Each member of the authority shall execute a surety bond in the penal sum of**  
20 **fifty thousand dollars or, in lieu thereof, the chairman of the authority shall execute a**  
21 **blanket bond covering each member and the employees or other officers of the authority,**  
22 **each surety bond to be conditioned upon the faithful performance of the duties of the office**  
23 **or offices covered, to be executed by a surety company authorized to transact business in**  
24 **the state as surety, and to be approved by the attorney general and filed in the office of the**  
25 **secretary of state. The cost of each such bond shall be paid by the authority.**

26           **4. No authority member shall participate in any deliberations or decisions**  
27 **concerning issues where the authority member has a direct financial interest in contracts,**  
28 **property, supplies, services, facilities, or equipment purchased, sold, or leased by the**  
29 **authority. Authority members shall additionally be subject to the limitations regarding the**  
30 **conduct of public officials as provided in chapter 105.**

**67.4520. 1. The authority may:**

- 2           **(1) Acquire, own, construct, lease, and maintain recreational or water quality**  
3 **projects;**
- 4           **(2) Acquire, own, lease, sell, or otherwise dispose of interests in and to real property**  
5 **and improvements situated thereon and in personal property necessary to fulfill the**  
6 **purposes of the authority;**
- 7           **(3) Contract and be contracted with, and to sue and be sued;**
- 8           **(4) Accept gifts, grants, loans, or contributions from the federal government, the**  
9 **state of Missouri, political subdivisions, municipalities, foundations, other public or private**  
10 **agencies, individuals, partnerships, or corporations;**

(5) Employ such managerial, engineering, legal, technical, clerical, accounting, advertising, stenographic, and other assistance as it may deem advisable. The authority may also contract with independent contractors for any of the foregoing assistance;

(6) Disburse funds for its lawful activities and fix salaries and wages of its employees;

(7) Fix rates, fees, and charges for the use of any projects and property owned, leased, operated, or managed by the authority;

(8) Adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted; however, said bylaws, rules, and regulations shall not exceed the powers granted to the authority by sections 67.4500 to 67.4520;

(9) Either jointly with a similar body, or separately, recommend to the proper departments of the government of the United States, or any state or subdivision thereof, or to any other body, the carrying out of any public improvement;

(10) Provide for membership in any official, industrial, commercial, or trade association, or any other organization concerned with such purposes, for receptions of officials or others as may contribute to the advancement of the authority and development therein, and for such other public relations activities as will promote the same, and such activities shall be considered a public purpose;

(11) Cooperate with municipalities and other political subdivisions as provided in chapter 70;

(12) Enter into any agreement with any other state, agency, authority, commission, municipality, person, corporation, or the United States, to effect any of the provisions contained in sections 67.4500 to 67.4520;

(13) Sell and supply water and construct, own, and operate infrastructure projects in areas within its jurisdiction, including but not limited to roads, bridges, water and sewer systems, and other infrastructure improvements;

(14) Issue revenue bonds in the same manner as provided under section 67.789; and

(15) Adopt tax increment financing within its boundaries in the same manner as provided under section 67.790.

2. The state or any political subdivision or municipal corporation thereof may in its discretion, with or without consideration, transfer or cause to be transferred to the authority or may place in its possession or control, by deed, lease, or other contract or agreement, either for a limited period or in fee, any property wherever situated.

3. The state or any political subdivision may appropriate, allocate, and expend such funds of the state or political subdivision for the benefit of the authority as are reasonable and necessary to carry out the provisions of sections 67.4500 to 67.4520.

48           **4. The authority shall have the authority to exercise all zoning and planning powers**  
49 **that are granted to cities, towns, and villages under chapter 89, except that the authority**  
50 **shall not exercise such powers inside the corporate limits of any city, town, or village which**  
51 **has adopted a city plan under the laws of this state before August 28, 2011.**

**192.1250. The department of health and senior services shall examine the feasibility**  
2 **of implementing a real-time water quality testing system for measuring the bacterial water**  
3 **quality at state-owned public beaches and shall issue a report of its findings to the general**  
4 **assembly by December 31, 2011.**

          247.060. 1. The management of the business and affairs of the district is hereby vested  
2 in a board of directors, who shall have all the powers conferred upon the district except as herein  
3 otherwise provided[, who shall serve without pay]. It shall be composed of five members, each  
4 of whom shall be a voter of the district and shall have resided in said district one whole year  
5 immediately prior to his election, **or if not a voter or resident of said district, shall have**  
6 **received service from the district at his or her primary place of residence one whole year**  
7 **immediately prior to his or her election.** A member shall be at least twenty-five years of age  
8 and shall not be delinquent in the payment of taxes at the time of his election. Except as  
9 provided in subsection 2 of this section, the term of office of a member of the board shall be  
10 three years. The remaining members of the board shall appoint a qualified person to fill any  
11 vacancy on the board. If no qualified person who lives in the subdistrict for which there is a  
12 vacancy is willing to serve on the board, the board may appoint an otherwise qualified person  
13 who lives in the district but not in the subdistrict in which the vacancy exists to fill such vacancy.

14           2. After notification by certified mail that he or she has two consecutive unexcused  
15 absences, any member of the board failing to attend the meetings of the board for three  
16 consecutive regular meetings, unless excused by the board for reasons satisfactory to the board,  
17 shall be deemed to have vacated the seat, and the secretary of the board shall certify that fact to  
18 the board. The vacancy shall be filled as other vacancies occurring in the board.

19           3. The initial members of the board shall be appointed by the circuit court and one shall  
20 serve until the immediately following first Tuesday after the first Monday in April, two shall  
21 serve until the first Tuesday after the first Monday in April on the second year following their  
22 appointment and the remaining appointees shall serve until the first Tuesday after the first  
23 Monday in April on the third year following their appointment. On the expiration of such terms  
24 and on the expiration of any subsequent term, elections shall be held as otherwise provided by  
25 law, and such elections shall be held in April pursuant to section 247.180.

26           4. In 2008, 2009, and 2010, directors elected in such years shall serve from the first  
27 Tuesday after the first Monday in June until the first Tuesday in April of the third year following  
28 the year of their election. All directors elected thereafter shall serve from the first Tuesday in  
29 April until the first Tuesday in April of the third year following the year of their election.

30           **5. Each member of the board may receive an attendance fee not to exceed one**  
31 **hundred dollars for attending each regularly called board meeting, or special meeting, but**  
32 **shall not be paid for attending more than two meetings in any calendar month, except that**  
33 **in a county of the first classification, a member shall not be paid for attending more than**  
34 **four meetings in any calendar month. However, no board member shall be paid more than**  
35 **one attendance fee if such member attends more than one board meeting in a calendar**  
36 **week. In addition, the president of the board of directors may receive fifty dollars for**  
37 **attending each regularly or specially called board meeting, but shall not be paid the**  
38 **additional fee for attending more than two meetings in any calendar month. Each member**  
39 **of the board shall be reimbursed for his or her actual expenditures in the performance of**  
40 **his or her duties on behalf of the district.**

41           **6. In no event, however, shall a board member receive any attendance fees or**  
42 **additional compensation authorized in subsection 5 of this section until after such board**  
43 **member has completed a minimum of six hours training regarding the responsibilities of**  
44 **the board and its members concerning the basics of water treatment and distribution,**  
45 **budgeting and rates, water utility planning, the funding of capital improvements, the**  
46 **understanding of water utility financial statements, the Missouri sunshine law, and this**  
47 **chapter.**

48           **7. The circuit court of the county having jurisdiction over the district shall have**  
49 **jurisdiction over the members of the board of directors to suspend any member from**  
50 **exercising his or her office, whensoever it appears that he or she has abused his or her trust**  
51 **or become disqualified; to remove any member upon proof or conviction of gross**  
52 **misconduct or disqualification for his or her office; or to restrain and prevent any**  
53 **alienation of property of the district by members, in cases where it is threatened, or there**  
54 **is good reason to apprehend that it is intended to be made in fraud of the rights and**  
55 **interests of the district.**

56           **8. The jurisdiction conferred by this section shall be exercised as in ordinary cases**  
57 **upon petition, filed by or at the instance of any member of the board, or at the instance of**  
58 **any ten voters residing in the district who join in the petition, verified by the affidavit of**  
59 **at least one of them. The petition shall be heard in a summary manner after ten days'**  
60 **notice in writing to the member or officer complained of. An appeal shall lie from the**  
61 **judgment of the circuit court as in other causes, and shall be speedily determined; but an**  
62 **appeal does not operate under any condition as a supersedeas of a judgment of suspension**  
63 **or removal from office.**

253.090. 1. All revenue derived from privileges, conveniences, contracts or otherwise,  
2 all moneys received by gifts, bequests or contributions or from county or municipal sources and  
3 all moneys received from the operation of concessions, projects or facilities and from resale  
4 items shall be paid into the state treasury to the credit of the "State Park Earnings Fund", which

5 is hereby created. In the event any state park or any part thereof is taken under the power of  
6 eminent domain by the federal government the moneys paid for the taking shall be deposited in  
7 the state park earnings fund. The fund shall be used solely for the payment of the expenditures  
8 of the department of natural resources in the administration of this law, except that in any fiscal  
9 year the department may expend a sum not to exceed fifty percent of the preceding fiscal year's  
10 deposits to the state park earnings fund for the purpose of:

- 11 (1) Paying the principal and interest of revenue bonds issued;
- 12 (2) Providing an interest and sinking fund;
- 13 (3) Providing a reasonable reserve fund;
- 14 (4) Providing a reasonable fund for depreciation; and
- 15 (5) Paying for feasibility reports necessary for the issuing of revenue bonds.

16 **2. Notwithstanding the provisions of section 33.080 to the contrary, any moneys**  
17 **remaining in the fund at the end of the biennium shall not revert to the credit of the**  
18 **general revenue fund.**

19 **3.** A good and sufficient bond conditioned upon the faithful performance of the contract  
20 and compliance with this law shall be required of all contractors.

21 [3.] **4.** Any person who contracts pursuant to this section with the state shall keep true  
22 and accurate records of his or her receipts and disbursements arising out of the performance of  
23 the contract and shall permit the department of natural resources and the state auditor to audit  
24 such records.

25 [4. All moneys remaining in the state park revolving fund on July 1, 2000, shall be  
26 transferred to the state park earnings fund.]

**442.014. 1. This act shall be known and may be cited as the "Private Landowner**  
2 **Protection Act".**

3 **2. As used in this section, unless the context otherwise requires, the following terms**  
4 **mean:**

5 (1) "Conservation easement", a nonpossessory interest of a holder in real property  
6 imposing limitations or affirmative obligations the purposes of which include retaining or  
7 protecting natural, scenic, or open-space values of real property, assuring its availability  
8 for agricultural, forest, recreational, or open-space use, protecting natural resources,  
9 maintaining or enhancing air or water quality, or preserving the historical, architectural,  
10 archaeological, or cultural aspects of real property;

11 (2) "Holder", any of the following:

12 (a) A governmental body empowered to hold an interest in real property under the  
13 laws of this state or the United States;

14 (b) A charitable corporation, charitable association, or charitable trust, the  
15 purposes, powers, or intent of which include retaining or protecting the natural, scenic, or  
16 open-space values of real property, assuring the availability of real property for



17 agricultural, forest, recreational, or open-space use, protecting natural resources,  
18 maintaining or enhancing air or water quality, or preserving the historical, architectural,  
19 archaeological, or cultural aspects of real property; or

20 (c) An individual or other private entity;

21 (3) "Third-party right of enforcement", a right expressly provided in a  
22 conservation easement to enforce any of its items granted to a designated governmental  
23 body, charitable corporation, charitable association, charitable trust, individual, or any  
24 other private entity which, although eligible to be a holder, is not a holder.

25 3. (1) Except as otherwise provided in this section, a conservation easement may  
26 be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise  
27 altered or affected in the same manner as other easements. No right or duty in favor of or  
28 against a holder and no right in favor of a person having a third-party right of  
29 enforcement arises under a conservation easement before its acceptance by the holder and  
30 a recordation of the acceptance. Except as provided in subdivision (2) of this subsection,  
31 a conservation easement is unlimited in duration unless the instrument creating it provides  
32 otherwise.

33 (2) An interest in real property in existence at the time a conservation easement is  
34 created is not impaired by it unless the owner of the interest is a party to the conservation  
35 easement or consents to it.

36 4. (1) An action affecting a conservation easement may be brought by an owner of  
37 an interest in real property burdened by the easement; a holder of the easement, a person  
38 having a third-party right of enforcement; or a person authorized by other law.

39 (2) This section does not affect the power of a court to modify or terminate a  
40 conservation easement in accordance with the principles of law and equity.

41 5. A conservation easement is valid even though:

42 (1) It is not appurtenant to an interest in real property;

43 (2) It can be or has been assigned to another holder;

44 (3) It is not of a character that has been recognized traditionally at common law;

45 (4) It imposes a negative burden that would prevent a landowner from performing  
46 acts on the land he or she would otherwise be privileged to perform absent the agreed-upon  
47 easement;

48 (5) It imposes affirmative obligations upon the owner of an interest in the burdened  
49 property or upon the holder;

50 (6) The benefit does not touch or concern real property; or

51 (7) There is no privity of estate or of contract.

52 6. Nothing in this section shall affect the ability of any public utility, municipal  
53 utility, joint municipal utility commission, rural electric cooperative, telephone cooperative,  
54 or public water supply district to acquire an easement, either through negotiation with an

55 owner of an interest in real property or by condemnation, to lay or construct plants or  
56 facilities for the transmission or distribution of electricity, natural gas, telecommunications  
57 service, water, or the carriage of sewage along or across a conservation easement.

58 **7. This section applies to any interest created after its effective date which complies**  
59 **with this section, whether designated as a conservation easement or as a covenant,**  
60 **equitable servitude, restriction, easement, or otherwise. This section applies to any interest**  
61 **created before its effective date if it would have been enforceable had it been created after**  
62 **its effective date unless retroactive application contravenes the constitution or laws of this**  
63 **state or the United States. This section does not alter the terms of any interest created**  
64 **before its effective date, or impose any additional burden or obligation on any grantor or**  
65 **grantee of such interest, or on their successors or assigns. This section does not invalidate**  
66 **any interest, whether designated as a conservation or preservation easement or as a**  
67 **covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under**  
68 **other laws of this state.**

**444.771. Notwithstanding any other provision of law to the contrary, the**  
2 **commission and the department shall not issue any permits under this chapter or under**  
3 **chapters 643 or 644 to any person whose mine plan boundary is within one thousand feet**  
4 **of any real property where an accredited school has been located for at least five years**  
5 **prior to such application for permits made under these provisions, except that the**  
6 **provisions of this section shall not apply to any request for an expansion to an existing**  
7 **mine or to any underground mining operation.**

444.773. 1. All applications for a permit shall be filed with the director, who shall  
2 promptly investigate the application and make a recommendation to the commission within four  
3 weeks after the public notice period provided in section 444.772 expires as to whether the permit  
4 should be issued or denied. If the director determines that the application has not fully complied  
5 with the provisions of section 444.772 or any rule or regulation promulgated pursuant to that  
6 section, the director shall recommend denial of the permit. The director shall consider any  
7 written comments when making his or her recommendation to the commission on the issuance  
8 or denial of the permit.

9 2. If the recommendation of the director is to deny the permit, a hearing as provided in  
10 sections 444.760 to 444.790, if requested by the applicant within fifteen days of the date of  
11 notice of recommendation of the director, shall be held by the commission.

12 3. If the recommendation of the director is for issuance of the permit, the director shall  
13 issue the permit without a public meeting or a hearing except that upon petition, received prior  
14 to the date of the notice of recommendation, from any person whose health, safety or livelihood  
15 will be unduly impaired by the issuance of this permit, a public meeting or a hearing may be  
16 held. If a public meeting is requested pursuant to this chapter and the applicant agrees, the  
17 director shall, within thirty days after the time for such request has passed, order that a public

18 meeting be held. The meeting shall be held in a reasonably convenient location for all interested  
19 parties. The applicant shall cooperate with the director in making all necessary arrangements for  
20 the public meeting. Within thirty days after the close of the public meeting, the director shall  
21 recommend to the commission approval or denial of the permit. If the public meeting does not  
22 resolve the concerns expressed by the public, any person whose health, safety or livelihood will  
23 be unduly impaired by the issuance of such permit may make a written request to the land  
24 reclamation commission for a formal public hearing. The land reclamation commission may  
25 grant a public hearing to formally resolve concerns of the public. Any public hearing before the  
26 commission shall address one or more of the factors set forth in this section.

27         4. In any **public** hearing [held pursuant to this section the burden of proof shall be on the  
28 applicant for a permit.] , if the commission finds, based on competent and substantial scientific  
29 evidence on the record, that an interested party's health, safety or livelihood will be unduly  
30 impaired by the issuance of the permit, the commission may deny such permit. If the  
31 commission finds, based on competent and substantial scientific evidence on the record, that the  
32 operator has demonstrated, during the five-year period immediately preceding the date of the  
33 permit application, a pattern of noncompliance at other locations in Missouri that suggests a  
34 reasonable likelihood of future acts of noncompliance, the commission may deny such permit.  
35 In determining whether a reasonable likelihood of noncompliance will exist in the future, the  
36 commission may look to past acts of noncompliance in Missouri, but only to the extent they  
37 suggest a reasonable likelihood of future acts of noncompliance. Such past acts of  
38 noncompliance in Missouri, in and of themselves, are an insufficient basis to suggest a  
39 reasonable likelihood of future acts of noncompliance. In addition, such past acts shall not be  
40 used as a basis to suggest a reasonable likelihood of future acts of noncompliance unless the  
41 noncompliance has caused or has the potential to cause, a risk to human health or to the  
42 environment, or has caused or has potential to cause pollution, or was knowingly committed, or  
43 is defined by the United States Environmental Protection Agency as other than minor. If a  
44 hearing petitioner or the commission demonstrates either present acts of noncompliance or a  
45 reasonable likelihood that the permit seeker or the operations of associated persons or  
46 corporations in Missouri will be in noncompliance in the future, such a showing will satisfy the  
47 noncompliance requirement in this subsection. In addition, such basis must be developed by  
48 multiple noncompliances of any environmental law administered by the Missouri department of  
49 natural resources at any single facility in Missouri that resulted in harm to the environment or  
50 impaired the health, safety or livelihood of persons outside the facility. For any permit seeker  
51 that has not been in business in Missouri for the past five years, the commission may review the  
52 record of noncompliance in any state where the applicant has conducted business during the past  
53 five years. Any decision of the commission made pursuant to a hearing held pursuant to this  
54 section is subject to judicial review as provided in chapter 536. No judicial review shall be  
55 available, however, until and unless all administrative remedies are exhausted.

**620.2300. 1. As used in this section, the following terms shall mean:**

2       **(1) "Department", the Missouri department of economic development;**

3       **(2) "Biomass facility", a biomass renewable energy facility or biomass fuel**  
4 **production facility that will not be a major source for air quality permitting purposes;**

5       **(3) "Commission", the Missouri public service commission;**

6       **(4) "County average wage", the average wages in each county as determined by the**  
7 **department for the most recently completed full calendar year. However, if the computed**  
8 **county average wage is above the statewide average wage, the statewide average wage shall**  
9 **be deemed the county average wage for such county for the purpose of determining**  
10 **eligibility. The department shall publish the county average wage for each county at least**  
11 **annually. Notwithstanding the provisions of this subdivision to the contrary, for any**  
12 **project that is relocating employees from a Missouri county with a higher county average**  
13 **wage, the company shall obtain the endorsement of the governing body of the community**  
14 **from which jobs are being relocated or the county average wage for their project shall be**  
15 **the county average wage for the county from which the employees are being relocated;**

16       **(5) "Full-time employee", an employee of the project facility that is scheduled to**  
17 **work an average of at least thirty-five hours per week for a twelve-month period, and one**  
18 **for which the employer offers health insurance and pays at least fifty percent of such**  
19 **insurance premiums;**

20       **(6) "Major source", the same meaning as is provided under 40 C.F.R. 70.2;**

21       **(7) "New job", the number of full-time employees located at the project facility that**  
22 **exceeds the project facility base employment less any decrease in the number of full-time**  
23 **employees at related facilities below the related facility base employment. An employee**  
24 **that spends less than fifty percent of the employee's work time at the project facility is still**  
25 **considered to be located at a facility if the employee receives his or her directions and**  
26 **control from that facility, is on the facility's payroll, one hundred percent of the employee's**  
27 **income from such employment is Missouri income, and the employee is paid at or above**  
28 **the state average wage;**

29       **(8) "Park", an area consisting of a parcel or tract of land, or any combination of**  
30 **parcels or contiguous land that meet all of the following requirements:**

31       **(a) The area consists of at least fifty contiguous acres;**

32       **(b) The property within the area is subject to remediation under a clean up**  
33 **program supervised by the Missouri department of natural resources or United States**  
34 **environmental protection agency;**

35       **(c) The area contains a manufacturing facility that is closed, undergoing closure,**  
36 **idle, underutilized, or curtailed and that at one time employed at least two hundred**  
37 **employees;**

38       **(d) The development plan for the area includes a biomass facility; and**

39 (e) Property located within the area will be used for the development of renewable  
40 energy and the demonstration of industrial on-site energy generation;

41 (9) "Project", a cleanfields renewable energy demonstration project located within  
42 a park that will result in the creation of at least fifty new jobs and the retention of at least  
43 fifty existing jobs;

44 (10) "Project application", an application submitted to the department, by an  
45 owner of all or a portion of a park, on a form provided by the department, requesting  
46 benefits provided under this section;

47 (11) "Project facility", a biomass facility at which the new jobs will be located. A  
48 project facility may include separate buildings that are located within fifty miles of each  
49 other or within the same county such that their purpose and operations are interrelated;

50 (12) "Project facility base employment", the greater of the number of full-time  
51 employees located at the project facility on the date of the project application or for the  
52 twelve-month period prior to the date of the project application, the average number of  
53 full-time employees located at the project facility. In the event the project facility has not  
54 been in operation for a full twelve-month period, the average number of full-time  
55 employees for the number of months the project facility has been in operation prior to the  
56 date of the project application.

57 2. The owner of a park seeking to establish a project shall submit a project  
58 application to the department for certification of such project. The department shall  
59 review all project applications received under this section and, in consultation with the  
60 department of natural resources, verify satisfaction of the requirements of this section. If  
61 the department approves a project application, the department shall forward such  
62 application and approval to the commission.

63 3. Notwithstanding provisions of section 393.1030 to the contrary, upon receipt of  
64 an application and approval from the department, the commission shall assign double  
65 credit to any electric power, renewable energy, renewable energy credits, or any successor  
66 credit generated from:

67 (1) Renewable energy resources purchased from the biomass facility located in the  
68 park by an electric power supplier;

69 (2) Electric power generated off-site by utilizing biomass fuel sold by the biomass  
70 facility located at the park; or

71 (3) Electric power generated off-site by renewable energy resources utilizing  
72 storage equipment manufactured at the park that increases the quantity of electricity  
73 delivered to the electric power supplier.

621.250. 1. All authority to hear appeals granted in chapters 260, 444, 640, 643, and  
2 644, and to the hazardous waste management commission in chapter 260, the land reclamation  
3 commission in chapter 444, the safe drinking water commission in chapter 640, the air

4 conservation commission in chapter 643, and the clean water commission in chapter 644 shall  
5 be transferred to the administrative hearing commission under this chapter. The authority to  
6 render final decisions after hearing on appeals heard by the administrative hearing commission  
7 shall remain with the commissions listed in this subsection. The [commissions listed in this  
8 subsection] **administrative hearing commission** may render **a recommended** final [decisions]  
9 **decision** after hearing or through stipulation, consent order, agreed settlement or by disposition  
10 in the nature of default judgment, judgment on the pleadings, or summary determination,  
11 consistent with **the requirements of this subsection and** the rules and procedures of the  
12 administrative hearing commission.

13         2. Except as otherwise provided by law, any person or entity who is a party to, or who  
14 is **aggrieved or adversely** affected by, any finding, order, decision, or assessment for which the  
15 authority to hear appeals was transferred to the administrative hearing commission in subsection  
16 1 of this section may file a notice of appeal with the administrative hearing commission within  
17 thirty days after any such finding, order, decision, or assessment is placed in the United States  
18 mail or within thirty days of any such finding, order, decision, or assessment being delivered,  
19 whichever is earlier. **Within sixty days after the date on which the notice of appeal is filed**  
20 the administrative hearing commission [may] **shall** hold hearings **and make a recommended**  
21 **decision based on those hearings** or [may] **shall** make a recommended [decisions] **decision**  
22 based on stipulation of the parties, consent order, agreed settlement or by disposition in the  
23 nature of default judgment, judgment on the pleadings, or summary determination, in accordance  
24 with **the requirements of this subsection and** the rules and procedures of the administrative  
25 hearing commission.

26         3. Any decision by the director of the department of natural resources that may be  
27 appealed [to the commissions listed] **as provided** in subsection 1 of this section [and] shall  
28 contain a notice of the right of appeal in substantially the following language: "If you were  
29 adversely affected by this decision, you may appeal to have the matter heard by the  
30 administrative hearing commission. To appeal, you must file a petition with the administrative  
31 hearing commission within thirty days after the date this decision was mailed or the date it was  
32 delivered, whichever date was earlier. If any such petition is sent by registered mail or certified  
33 mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than  
34 registered mail or certified mail, it will be deemed filed on the date it is received by the  
35 administrative hearing commission.". Within fifteen days after the administrative hearing  
36 commission renders its recommended decision, it shall transmit the record and a transcript of the  
37 proceedings, together with the administrative hearing commission's recommended decision to  
38 the commission having authority to issue a final decision. The **final** decision of the commission  
39 **shall be issued within ninety days of the date the notice of appeal is filed and** shall be based  
40 only on the facts and evidence in the hearing record. The commission may adopt the  
41 recommended decision as its final decision. The commission may change a finding of fact or

42 conclusion of law made by the administrative hearing commission, or may vacate or modify the  
43 recommended decision issued by the administrative hearing commission, only if the commission  
44 states in writing the specific reason for a change made under this subsection.

45 4. In the event the person filing the appeal prevails in any dispute under this section,  
46 interest shall be allowed upon any amount found to have been wrongfully collected or  
47 erroneously paid at the rate established by the director of the department of revenue under section  
48 32.065.

49 5. Appropriations shall be made from the respective funds of the various commissions  
50 to cover the administrative hearing commission's costs associated with these appeals.

51 6. In all matters heard by the administrative hearing commission under this section, the  
52 burden of proof shall comply with section 640.012. The hearings shall be conducted by the  
53 administrative hearing commission in accordance with the provisions of chapter 536 and its  
54 regulations promulgated thereunder.

55 7. No cause of action or appeal arising out of any finding, order, decision, or  
56 assessment of any of the commissions listed in subsection 1 of this section shall accrue in  
57 any court unless the party seeking to file such cause of action or appeal shall have filed a  
58 notice of appeal and received a final decision in accordance with the provisions of this  
59 section.

**640.018. 1. In any case where the department has not issued a permit or rendered  
2 a permit decision by the expiration of a statutorily-required time frame for any application  
3 for a permit under this chapter or chapters 260, 278, 319, 444, 643, or 644, the permit shall  
4 be issued as of the first day following the expiration of the required time frame, provided  
5 all necessary information has been submitted for the application and the department has  
6 been in possession of all such information for the duration of the required time frame.  
7 This subsection shall be considered in addition to, and not in lieu thereof, any other  
8 provision of law regarding consequences of failure by the department to issue a permit or  
9 permit decision by the expiration of a required time frame.**

10 **2. If engineering plans, specifications, and designs prepared by a registered  
11 professional engineer are submitted to the department of natural resources as a part of a  
12 permit application or permit modification, the permit application or permit modification  
13 shall include a statement that the plans, specifications, and designs were prepared in  
14 accordance with the applicable requirements and shall be sealed by the registered  
15 professional engineer in accordance with section 327.411, as applicable. The department  
16 shall use the complete, sealed engineering plans, specifications, and designs as submitted  
17 in addition to permit applications and other relevant information, documents, and  
18 materials in developing comments on the engineering submittals and in determining  
19 whether to issue or deny permits. The review of documents, plans, specifications, and**

20 designs sealed by a registered professional engineer for an applicant shall be conducted by  
21 a registered professional engineer or an engineering intern on behalf of the department.

22       **3. The department shall designate supervisory registered professional engineers for**  
23 **permitting purposes under this chapter and chapters 260, 278, 319, 444, 643, and 644. Any**  
24 **permit applicant receiving written comments on an engineering submittal may request a**  
25 **determination from the department's supervisory registered professional engineer as to a**  
26 **final disposition of the department's comments regarding engineering submittals in**  
27 **determining a decision on the permit. The department's supervisory engineer shall inform**  
28 **the permit applicant of a preliminary decision within fifteen days after the permit**  
29 **applicant's request for a determination and shall make a final determination within thirty**  
30 **days of such request.**

31       **4. Nothing in this section shall be construed to require plans or other submittals to**  
32 **the department pursuant to an application to come under a general permit or an**  
33 **application for a site specific permit to be prepared by a registered professional engineer,**  
34 **unless otherwise required under state or federal law.**

**640.128. If an entity that holds a permit issued under chapter 644 or under sections**  
2 **640.100 to 640.140 voluntarily reports to the department of natural resources the results**  
3 **of any water quality testing conducted by the entity, and such results indicate a potential**  
4 **risk to public health, the department shall immediately notify the local public health**  
5 **authority and the department of health and senior services.**

**640.850. The governor shall convene a committee of representatives of the**  
2 **departments of health and senior services, natural resources, economic development,**  
3 **agriculture, and conservation. The committee shall evaluate opportunities for**  
4 **consolidating services with the goal of improving efficiency and reducing cost while**  
5 **optimizing the benefits to the citizens of Missouri. As part of its evaluation, the committee**  
6 **shall specifically consider the transfer of the division of energy from the department of**  
7 **natural resources to the department of economic development and the consolidation of**  
8 **water quality laboratory testing under the department of health and senior services for**  
9 **purposes of meeting water testing requirements of the federal Safe Drinking Water Act**  
10 **and the Federal Water Pollution Control Act. The committee shall provide**  
11 **recommendations to the governor and general assembly no later than December 31, 2011.**

**643.020. When used in this chapter and in standards, rules and regulations promulgated**  
2 **under authority of this chapter, the following words and phrases mean:**

3       (1) "AHERA", Asbestos Hazard Emergency Response Act of 1986 (P.L. 99-519);

4       (2) "Abatement project designer", an individual who designs or plans AHERA asbestos  
5 abatement;

6       (3) "Air cleaning device", any method, process, or equipment which removes, reduces,  
7 or renders less obnoxious air contaminants discharged into ambient air;



8 (4) "Air contaminant", any particulate matter or any gas or vapor or any combination  
9 thereof;

10 (5) "Air contaminant source", any and all sources of air contaminants whether privately  
11 or publicly owned or operated;

12 (6) "Air pollution", the presence in the ambient air of one or more air contaminants in  
13 quantities, of characteristics and of a duration which directly and proximately cause or contribute  
14 to injury to human, plant, or animal life or health or to property or which unreasonably interferes  
15 with the enjoyment of life or use of property;

16 (7) "Ambient air", all space outside of buildings, stacks, or exterior ducts;

17 (8) "Area of the state", any geographical area designated by the commission;

18 (9) "Asbestos", the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite,  
19 tremolite and actinolite;

20 (10) "Asbestos abatement", the encapsulation, enclosure or removal of [asbestos  
21 containing] **asbestos-containing** materials in or from a building or air contaminant source, or  
22 preparation of friable [asbestos containing] **asbestos-containing** material prior to demolition;

23 (11) "Asbestos abatement contractor", any person who by agreement, contractual or  
24 otherwise, conducts asbestos abatement projects at a location other than his own place of  
25 business;

26 (12) "Asbestos abatement projects", an activity undertaken to encapsulate, enclose or  
27 remove [ten] **one hundred sixty** square feet or [sixteen] **two hundred sixty** linear feet or **thirty-**  
28 **five cubic feet** or more of [friable asbestos containing] **regulated asbestos-containing** materials  
29 from buildings and other air contaminant sources, or to demolish buildings and other air  
30 contaminant sources containing [ten] **one hundred sixty** square feet or [sixteen] **two hundred**  
31 **sixty** linear feet or **thirty-five cubic feet** or more of **regulated asbestos-containing materials**;

32 (13) "Asbestos abatement supervisor", an individual who directs, controls, or supervises  
33 others in asbestos abatement projects;

34 (14) "Asbestos abatement worker", an individual who engages in asbestos abatement  
35 projects;

36 (15) "Asbestos air sampling professional", an individual who by qualifications and  
37 experience is proficient in asbestos abatement air monitoring. The individual shall conduct,  
38 oversee or be responsible for air monitoring of asbestos abatement projects before, during and  
39 after the project has been completed;

40 (16) "Asbestos air sampling technician", an individual who has been trained by an air  
41 sampling professional to do air monitoring. Such individual conducts air monitoring of an  
42 asbestos abatement project before, during and after the project has been completed;

43 (17) "[Asbestos containing] **asbestos-containing** material", any material or product  
44 which contains more than one percent asbestos[, by weight];

45 (18) "Class A source", either a class A1, A2 or A3 source as defined in this section;

46 (19) "Class A1 source", any air contaminant source with the potential to emit equal to  
47 or greater than one hundred tons per year of an air contaminant;

48 (20) "Class A2 source", any air contaminant source, which is not a class A1 source, and  
49 with the potential, air cleaning devices not considered, to emit equal to or greater than one  
50 hundred tons per year of an air contaminant;

51 (21) "Class A3 source", any air contaminant source which emits or has the potential to  
52 emit, ten tons per year or more of any hazardous air pollutant or twenty-five tons of any  
53 combination of hazardous air pollutants, or as defined pursuant to section 112 of the federal  
54 Clean Air Act, as amended, 42 U.S.C. 7412;

55 (22) "Class B source", any air contaminant source with the potential, air cleaning devices  
56 not considered, to emit equal to or greater than the de minimis amounts of an air contaminant  
57 established by the commission, but not a class A source;

58 (23) "Commission", the air conservation commission of the state of Missouri created in  
59 section 643.040;

60 (24) "Competent person", as defined in the United States Occupational Safety and Health  
61 Administration's (OSHA) standard 29 CFR [1926.58] **1926.1101** (b). Such person shall also be  
62 a certified asbestos abatement supervisor;

63 (25) "Conference, conciliation and persuasion", a process of verbal or written  
64 communications consisting of meetings, reports, correspondence or telephone conferences  
65 between authorized representatives of the department and the alleged violator. The process shall,  
66 at a minimum, consist of one offer to meet with the alleged violator tendered by the department.  
67 During any such meeting, the department and the alleged violator shall negotiate in good faith  
68 to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

69 (26) "De minimis source", any air contaminant source with a potential to emit an air  
70 contaminant, air cleaning devices not considered, less than that established by the commission  
71 as de minimis for the air contaminant;

72 (27) "Department", the department of natural resources of the state of Missouri;

73 (28) "Director", the director of the department of natural resources;

74 (29) "Emergency asbestos project", an asbestos project that must be undertaken  
75 immediately to prevent imminent, severe, human exposure or to restore essential facility  
76 operation;

77 (30) "Emission", the discharge or release into the atmosphere of one or more air  
78 contaminants;

79 (31) "Emission control regulations", limitations on the emission of air contaminants into  
80 the ambient air;

81 (32) "Friable [asbestos containing] **asbestos-containing** material", any [asbestos  
82 containing material which is applied to ceilings, walls, structural members, piping, ductwork or  
83 any other part of a building or other air contaminant sources and which, when dry, may be

84 crumbled, pulverized or reduced to powder by hand pressure] **material containing more than**  
85 **one percent, as determined by either the method specified in appendix E, section 1**  
86 **Polarized Light Microscopy in 40 CFR Part 61, Subpart M or EPA/600/R-93/116 Method**  
87 **for the Determination of Asbestos in Bulk Building Materials, asbestos that, when dry, can**  
88 **be crumbled, pulverized or reduced to powder by hand pressure;**

89 **(33) "Grinding", to reduce to powder or small fragments and includes mechanical**  
90 **chipping or drilling;**

91 [(33)] **(34) "Inspector", an individual[, under AHERA,] who collects and assimilates**  
92 **information used to determine whether [asbestos containing] asbestos-containing material is**  
93 **present in a building or other air contaminant sources;**

94 [(34)] **(35) "Management planner", an individual, under AHERA, who devises and**  
95 **writes plans for asbestos abatement;**

96 [(35)] **(36) "Minor violation", a violation which possesses a small potential to harm the**  
97 **environment or human health or cause pollution, was not knowingly committed, and is not**  
98 **defined by the United States Environmental Protection Agency as other than minor;**

99 [(36)] **(37) "Nonattainment area", any area designated by the governor as a**  
100 **"nonattainment area" as defined in the federal Clean Air Act, as amended, 42 U.S.C. 7501;**

101 **(38) "Nonfriable asbestos-containing material", any material containing more than**  
102 **one percent asbestos as determined by either the method specified in appendix E, section**  
103 **1 Polarized Light Microscopy in 40 CFR Part 61, Subpart M or EPA/600/R-93/116 Method**  
104 **for the Determination of Asbestos in Bulk Building Materials, that, when dry, cannot be**  
105 **crumbled, pulverized or reduced to powder by hand pressure;**

106 [(37)] **(39) "Person", any individual, partnership, copartnership, firm, company, or public**  
107 **or private corporation, association, joint stock company, trust, estate, political subdivision, or any**  
108 **agency, board, department, or bureau of the state or federal government, or any other legal entity**  
109 **whatever which is recognized by law as the subject of rights and duties;**

110 [(38)] **(40) "Regulated asbestos-containing material" or "RACM":**

111 **(a) Friable asbestos-containing material;**

112 **(b) Category I nonfriable asbestos-containing material that will be or has been**  
113 **subjected to sanding, grinding, cutting, or abrading; or**

114 **(c) Category II nonfriable asbestos-containing material that has a high probability**  
115 **of becoming or has become crumbled, pulverized, or reduced to powder by the forces**  
116 **expected to act on the material in the course of demolition or renovation operations;**

117 **(41) "School district", seven-director districts, urban school districts, and**  
118 **metropolitan school districts, as defined in section 160.011;**

119 **(42) "Small business", for the purpose of sections 643.010 to [643.190] 643.355, a small**  
120 **business shall include any business regulated under this chapter, which is not a class A source**  
121 **and which employs less than one hundred people and emits less than fifty tons of any regulated**

122 pollutant per year and less than seventy-five tons of all regulated pollutants or as otherwise  
123 defined by the commission by rule.

643.040. 1. There is created hereby an air pollution control agency to be known as the  
2 "Air Conservation Commission of the State of Missouri", whose domicile for the purposes of  
3 sections 643.010 to [643.190] **643.355** is the department of natural resources of the state of  
4 Missouri. The commission shall consist of seven members appointed by the governor, with the  
5 advice and consent of the senate. No more than four of the members shall belong to the same  
6 political party and no two members shall be a resident of and domiciled in the same senatorial  
7 district. At the first meeting of the commission and at yearly intervals thereafter, the members  
8 shall select from among themselves a chairman and a vice chairman.

9 2. All members shall be representative of the general interest of the public and shall have  
10 an interest in and knowledge of air conservation and the effects and control of air contaminants.  
11 At least three of such members shall represent agricultural, industrial and labor interests,  
12 respectively. The governor shall not appoint any other person who has a substantial interest as  
13 defined in section 105.450 in any business entity regulated under this chapter or any business  
14 entity which would be regulated under this chapter if located in Missouri. The commission shall  
15 establish rules of procedure which specify when members shall exempt themselves from  
16 participating in discussions and from voting on issues before the commission due to potential  
17 conflict of interest.

18 3. The members' terms of office shall be four years and until their successors are selected  
19 and qualified, except that the terms of those first appointed shall be staggered to expire at  
20 intervals of one, two and three years after the date of appointment as designated by the governor  
21 at the time of appointment. There is no limitation of the number of terms any appointed member  
22 may serve. If a vacancy occurs the governor may appoint a member for the remaining portion  
23 of the unexpired term created by the vacancy. The governor may remove any appointed member  
24 for cause. The members of the commission shall be reimbursed for travel and other expenses  
25 actually and necessarily incurred in the performance of their duties.

26 4. The commission shall hold at least nine regular meetings each year and such  
27 additional regular meetings as the chairman deems desirable at a place and time to be fixed by  
28 the chairman. Special meetings may be called by three members of the commission upon  
29 delivery of written notice to each member of the commission. Reasonable written notice of all  
30 meetings shall be given to all members of the commission. Four members of the commission  
31 shall constitute a quorum. All powers and duties conferred upon members of the commission  
32 shall be exercised personally by the members and not by alternates or representatives. All  
33 actions of the commission shall be taken at meetings open to the public, except as provided in  
34 chapter 610. Any member absent from four regular commission meetings per calendar year for  
35 any cause whatsoever shall be deemed to have resigned and the vacancy shall be filled  
36 immediately in accordance with subsection 1 and subsection 3 of this section.

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

3 (1) Adopt, promulgate, amend and repeal rules and regulations consistent with the  
4 general intent and purposes of sections 643.010 to [643.190] **643.355**, chapter 536, and Titles  
5 V and VI of the federal Clean Air Act, as amended, 42 U.S.C. 7661, et seq., including but not  
6 limited to:

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

8 (b) Establishment of maximum quantities of air contaminants that may be emitted from  
9 any air contaminant source; and

10 (c) Regulations necessary to enforce the provisions of Title VI of the Clean Air Act, as  
11 amended, 42 U.S.C. 7671, et seq., regarding any Class I or Class II substances as defined therein;

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

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

19 (b) Require submission to the director for approval of plans and specifications for any  
20 article, machine, equipment, device, or other contrivance specified by regulation the use of which  
21 may cause or control the issuance of air contaminants; but any person responsible for complying  
22 with the standards established under sections 643.010 to [643.190] **643.355** shall determine,  
23 unless found by the director to be inadequate, the means, methods, processes, equipment and  
24 operation to meet the established standards;

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

29 (5) Enter such order or determination as may be necessary to effectuate the purposes of  
30 sections 643.010 to [643.190] **643.355**. In making its orders and determinations hereunder, the  
31 commission shall exercise a sound discretion in weighing the equities involved and the  
32 advantages and disadvantages to the person involved and to those affected by air contaminants  
33 emitted by such person as set out in section 643.030. If any small business, as defined by section  
34 643.020, requests information on what would constitute compliance with the requirements of  
35 sections 643.010 to [643.190] **643.355** or any order or determination of the department or  
36 commission, the department shall respond with written criteria to inform the small business of  
37 the actions necessary for compliance. No enforcement action shall be undertaken by the

38 department or commission until the small business has had a period of time, negotiated with the  
39 department, to achieve compliance;

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

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

45 (8) Develop such facts and make such investigations as are consistent with the purposes  
46 of sections 643.010 to [643.190] **643.355**, and, in connection therewith, to enter or authorize any  
47 representative of the department to enter at all reasonable times and upon reasonable notice in  
48 or upon any private or public property for the purpose of inspecting or investigating any  
49 condition which the commission or director shall have probable cause to believe to be an air  
50 contaminant source **or upon any private or public property having material information**  
51 **relevant to said air contaminant source**. The results of any such investigation shall be reduced  
52 to writing, and a copy thereof shall be furnished to the owner or operator of the property. No  
53 person shall refuse entry or access, requested for purposes of inspection under this provision, to  
54 an authorized representative of the department who presents appropriate credentials, nor obstruct  
55 or hamper the representative in carrying out the inspection. A suitably restricted search warrant,  
56 upon a showing of probable cause in writing and upon oath, shall be issued by any judge having  
57 jurisdiction to any such representative for the purpose of enabling him to make such inspection;  
58 (9) Secure necessary scientific, technical, administrative and operational services,  
59 including laboratory facilities, by contract or otherwise, with any educational institution,  
60 experiment station, or any board, department, or other agency of any political subdivision or state  
61 or the federal government;

62 (10) Classify and identify air contaminants; and

63 (11) Hold public hearings as required by sections 643.010 to [643.190] **643.355**.

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

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

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

70 (2) Encourage voluntary cooperation by persons or affected groups to achieve the  
71 purposes of sections 643.010 to [643.190] **643.355**;

72 (3) Encourage political subdivisions to handle air pollution problems within their  
73 respective jurisdictions to the extent possible and practicable and provide assistance to political  
74 subdivisions;

75 (4) Encourage and conduct studies, investigations and research;

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

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

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

81 4. Nothing contained in sections 643.010 to [643.190] **643.355** shall be deemed to grant  
82 to the commission or department any jurisdiction or authority with respect to air pollution  
83 existing solely within commercial and industrial plants, works, or shops or to affect any aspect  
84 of employer-employee relationships as to health and safety hazards.

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

643.060. In addition to any other powers vested by law, the director shall have the  
2 following powers and duties:

3 (1) Retain, employ, provide for, and compensate, within appropriations available  
4 therefor, such consultants, assistants, deputies, clerks, and other employees on a full- or part-time  
5 basis as may be necessary to carry out the provisions of sections 643.010 to [643.190] **643.355**  
6 and prescribe the times at which they shall be appointed and their powers and duties;

7 (2) Accept, receive and administer grants or other funds or gifts from public and private  
8 agencies including the federal government for the purpose of carrying out any of the functions  
9 of sections 643.010 to [643.190] **643.355**. The director shall apply for all available grants and  
10 funds authorized and distributed pursuant to Title XI of the federal Clean Air Act, as amended,  
11 29 U.S.C. 1662e, for training, assistance and payments to eligible individuals. The director shall  
12 report annually to the governor and the general assembly, the amount of revenue received under  
13 Title XI of the Clean Air Act and the distribution of such funds to eligible persons. Funds  
14 received by the director pursuant to this section shall be deposited with the state treasurer and  
15 held and disbursed by him in accordance with the appropriations of the general assembly. The  
16 director is authorized to enter into contracts as he may deem necessary for carrying out the  
17 provisions of sections 643.010 to [643.190] **643.355**;

18 (3) Budget and receive duly appropriated moneys for expenditures to carry out the  
19 provisions and purposes of sections 643.010 to [643.190] **643.355**;

20 (4) Administer and enforce sections 643.010 to [643.190] **643.355**, investigate  
21 complaints, issue orders and take all actions necessary to implement sections 643.010 to  
22 [643.190] **643.355**;

23 (5) Receive and act upon reports, plans, specifications and applications submitted under  
24 rules promulgated by the commission. Any person aggrieved by any action of the director under  
25 this provision shall be entitled to a hearing before the commission as provided in section  
26 643.080. The commission may sustain, reverse, or modify any action of the director taken under

27 this provision, or make such other order as the commission shall deem appropriate under the  
28 circumstances.

643.079. 1. Any air contaminant source required to obtain a permit issued under sections  
2 643.010 to [643.190] **643.355** shall pay annually beginning April 1, 1993, a fee as provided  
3 herein. For the first year the fee shall be twenty-five dollars per ton of each regulated air  
4 contaminant emitted. Thereafter, the fee shall be set every three years by the commission by rule  
5 and shall be at least twenty-five dollars per ton of regulated air contaminant emitted but not more  
6 than forty dollars per ton of regulated air contaminant emitted in the previous calendar year. If  
7 necessary, the commission may make annual adjustments to the fee by rule. The fee shall be set  
8 at an amount consistent with the need to fund the reasonable cost of administering sections  
9 643.010 to [643.190] **643.355**, taking into account other moneys received pursuant to sections  
10 643.010 to [643.190] **643.355**. For the purpose of determining the amount of air contaminant  
11 emissions on which the fees authorized under this section are assessed, a facility shall be  
12 considered one source under the definition of subsection 2 of section 643.078, except that a  
13 facility with multiple operating permits shall pay the emission fees authorized under this section  
14 separately for air contaminants emitted under each individual permit.

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

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

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

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

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

29 4. Each air contaminant source with a permit issued under sections 643.010 to [643.190]  
30 **643.355** shall pay the fee for the first four thousand tons of each regulated air contaminant  
31 emitted each year but no air contaminant source shall pay fees on total emissions of regulated  
32 air contaminants in excess of twelve thousand tons in any calendar year. A permitted air  
33 contaminant source which emitted less than one ton of all regulated pollutants shall pay a fee  
34 equal to the amount per ton set by the commission. An air contaminant source which pays  
35 emission fees to a holder of a certificate of authority issued pursuant to section 643.140 may  
36 deduct such fees from any amount due under this section. The fees imposed in this section shall



37 not be applied to carbon oxide emissions. The fees imposed in subsection 1 and this subsection  
38 shall not be applied to sulfur dioxide emissions from any Phase I affected unit subject to the  
39 requirements of Title IV, Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651,  
40 et seq., any sooner than January 1, 2000. The fees imposed on emissions from Phase I affected  
41 units shall be consistent with and shall not exceed the provisions of the federal Clean Air Act,  
42 as amended, and the regulations promulgated thereunder. Any such fee on emissions from any  
43 Phase I affected unit shall be reduced by the amount of the service fee paid by that Phase I  
44 affected unit pursuant to subsection 8 of this section in that year. Any fees that may be imposed  
45 on Phase I sources shall follow the procedures set forth in subsection 1 and this subsection and  
46 shall not be applied retroactively.

47         5. Moneys collected under this section shall be transmitted to the director of revenue for  
48 deposit in appropriate subaccounts of the natural resources protection fund created in section  
49 640.220. A subaccount shall be maintained for fees paid by air contaminant sources which are  
50 required to be permitted under Title V of the federal Clean Air Act, as amended, 42 U.S.C.  
51 Section 7661, et seq., and used, upon appropriation, to fund activities by the department to  
52 implement the operating permits program authorized by Title V of the federal Clean Air Act, as  
53 amended. Another subaccount shall be maintained for fees paid by air contaminant sources  
54 which are not required to be permitted under Title V of the federal Clean Air Act as amended,  
55 and used, upon appropriation, to fund other air pollution control program activities. Another  
56 subaccount shall be maintained for service fees paid under subsection 8 of this section by Phase  
57 I affected units which are subject to the requirements of Title IV, Section 404, of the federal  
58 Clean Air Act Amendments of 1990, as amended, 42 U.S.C. 7651, and used, upon appropriation,  
59 to fund air pollution control program activities. The provisions of section 33.080 to the contrary  
60 notwithstanding, moneys in the fund shall not revert to general revenue at the end of each  
61 biennium. Interest earned by moneys in the subaccounts shall be retained in the subaccounts.  
62 The per-ton fees established under subsection 1 of this section may be adjusted annually,  
63 consistent with the need to fund the reasonable costs of the program, but shall not be less than  
64 twenty-five dollars per ton of regulated air contaminant nor more than forty dollars per ton of  
65 regulated air contaminant. The first adjustment shall apply to moneys payable on April 1, 1994,  
66 and shall be based upon the general price level for the twelve-month period ending on August  
67 thirty-first of the previous calendar year.

68         6. The department may initiate a civil action in circuit court against any air contaminant  
69 source which has not remitted the appropriate fees within thirty days. In any judgment against  
70 the source, the department shall be awarded interest at a rate determined pursuant to section  
71 408.030 and reasonable attorney's fees. In any judgment against the department, the source shall  
72 be awarded reasonable attorney's fees.

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

75           8. Any Phase I affected unit which is subject to the requirements of Title IV, Section  
76 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, shall pay annually beginning  
77 April 1, 1993, and terminating December 31, 1999, a service fee for the previous calendar year  
78 as provided herein. For the first year, the service fee shall be twenty-five thousand dollars for  
79 each Phase I affected generating unit to help fund the administration of sections 643.010 to  
80 [643.190] **643.355**. Thereafter, the service fee shall be annually set by the commission by rule,  
81 following public hearing, based on an annual allocation prepared by the department showing the  
82 details of all costs and expenses upon which such fees are based consistent with the department's  
83 reasonable needs to administer and implement sections 643.010 to [643.190] **643.355** and to  
84 fulfill its responsibilities with respect to Phase I affected units, but such service fee shall not  
85 exceed twenty-five thousand dollars per generating unit. Any such Phase I affected unit which  
86 is located on one or more contiguous tracts of land with any Phase II generating unit that pays  
87 fees under subsection 1 or subsection 2 of this section shall be exempt from paying service fees  
88 under this subsection. A "contiguous tract of land" shall be defined to mean adjacent land,  
89 excluding public roads, highways and railroads, which is under the control of or owned by the  
90 permit holder and operated as a single enterprise.

91           9. The department of natural resources shall determine the fees due pursuant to this  
92 section by the state of Missouri and its departments, agencies and institutions, including two- and  
93 four-year institutions of higher education. The director of the department of natural resources  
94 shall forward the various totals due to the joint committee on capital improvements and the  
95 directors of the individual departments, agencies and institutions. The departments, as part of  
96 the budget process, shall annually request by specific line item appropriation funds to pay said  
97 fees and capital funding for projects determined to significantly improve air quality. If the  
98 general assembly fails to appropriate funds for emissions fees as specifically requested, the  
99 departments, agencies and institutions shall pay said fees from other sources of revenue or funds  
100 available. The state of Missouri and its departments, agencies and institutions may receive  
101 assistance from the small business technical assistance program established pursuant to section  
102 643.173.

643.080. 1. The director shall investigate alleged violations of sections 643.010 to  
2 [643.190] **643.355** or any rule promulgated hereunder or any term or condition of any permit and  
3 may cause to be made such other investigations as he shall deem advisable. The department  
4 shall assume the costs of investigation of alleged violations. The identity of the person who filed  
5 the complaint shall be made available consistent with chapter 610 and other provisions, as  
6 applicable.

7           2. If, in the opinion of the director, the investigation yields reasonable grounds to believe  
8 that a violation of [section 577.200] **sections 643.010 to 643.355** is occurring or has occurred,  
9 he shall refer such information to either or both the attorney general or the county prosecutor of  
10 the county where the violations are alleged to have occurred.

11           3. If, in the opinion of the director, the investigation discloses that a violation does exist  
12 which would not be a criminal violation, he may by conference, conciliation and persuasion  
13 endeavor to eliminate the violation.

14           4. In case of the failure by conference, conciliation and persuasion to correct or remedy  
15 any violation, the director may order abatement, suspend or revoke a permit, whichever action  
16 or actions the director deems appropriate. The director shall cause to have issued and served  
17 upon the person a written notice of such order together with a copy of the order, which shall  
18 specify the provisions of sections 643.010 to [643.190] **643.355** or the rule or the condition of  
19 the permit of which the person is alleged to be in violation, and a statement of the manner in, and  
20 the extent to which the person is alleged to be in violation. Service may be made upon any  
21 person within or without the state by registered mail, return receipt requested. Any person  
22 against whom the director issues an order may appeal the order to the commission within thirty  
23 days, and the appeal shall stay the enforcement of such order until final determination by the  
24 commission. The commission shall set a hearing on a day not less than thirty days after the date  
25 of the request. The commission may sustain, reverse, or modify the director's order, or make  
26 such other order as the commission deems appropriate under the circumstances. If any order  
27 issued by the director is not appealed within the time herein provided, the order becomes final  
28 and may be enforced as provided in section 643.151.

29           5. When the commission schedules a matter for hearing, the petitioner on appeal may  
30 appear at the hearing in person or by counsel, and may make oral argument, offer testimony and  
31 evidence or cross-examine witnesses.

32           6. After due consideration of the record, or upon default in appearance of the petitioner  
33 on the return day specified in the notice given as provided in subsection 4 of this section, the  
34 commission shall issue and enter the final order, or make such final determination as it shall  
35 deem appropriate under the circumstances, and it shall immediately notify the petitioner or  
36 respondent thereof in writing by certified or registered mail.

37           7. Any final order or determination or other final action by the commission shall be  
38 approved in writing by at least four members of the commission.

643.130. All final orders or determinations of the commission or the director hereunder  
2 shall be subject to judicial review pursuant to the provisions of sections 536.100 to 536.140,  
3 **except that, the provisions of section 536.110 notwithstanding, all actions seeking judicial**  
4 **review of any final determination of the commission or the director shall be filed in the**  
5 **court of appeals instead of in the circuit court.** No judicial review shall be available  
6 hereunder, however, unless and until all administrative remedies are exhausted.

643.191. 1. It is unlawful for any person to knowingly violate any applicable standard,  
2 limitation, permit condition or any fee or filing requirement promulgated pursuant to sections  
3 643.010 to [643.190] **643.355** or any rule promulgated thereunder. Any person violating the

4 provisions of this subsection shall, upon conviction thereof, be subject to a fine of not more than  
5 ten thousand dollars per day of violation or part thereof.

6 2. It is unlawful for any person to knowingly make a false statement, representation or  
7 certification in any form, in any notice or report required by a permit or to knowingly render  
8 inaccurate any monitoring device or method required to be maintained by the permitting  
9 authority under sections 643.010 to [643.190] **643.355**. Any person violating the provisions of  
10 this subsection shall, upon conviction thereof, be subject to a fine of not more than ten thousand  
11 dollars for each instance of violation.

643.225. 1. The provisions of sections 643.225 to 643.250 shall apply to all [asbestos  
2 abatement] projects **subject to 40 CFR Part 61, Subpart M as adopted by 10 CSR 10-6.080**.  
3 The commission shall promulgate rules and regulations it deems necessary to implement and  
4 administer the provisions of sections 643.225 to 643.250, including requirements, procedures  
5 and standards relating to asbestos projects, as well as the authority to require corrective measures  
6 to be taken in asbestos abatement, **renovation, or demolition** projects as are deemed necessary  
7 to protect public health and the environment. The director shall establish any examinations for  
8 certification required by this section and shall hold such examinations at times and places as  
9 determined by the director.

10 2. Except as otherwise provided in sections 643.225 to 643.250, no individual shall  
11 engage in an asbestos abatement project, inspection, management plan, abatement project design  
12 or asbestos air sampling unless the person has been issued a certificate by the director, or by the  
13 commission after appeal, for that purpose.

14 3. In any application made to the director to obtain such certification as an inspector,  
15 management planner, abatement project designer, supervisor, contractor or worker from the  
16 department, the applicant shall include his diploma providing proof of successful completion of  
17 either a state accredited or United States Environmental Protection Agency (EPA) accredited  
18 training course as described in section 643.228. In addition, an applicant for certification as a  
19 management planner shall first be certified as an inspector. All applicants for certification as an  
20 inspector, management planner, abatement project designer, supervisor, contractor or worker  
21 shall successfully pass a state examination on Missouri state asbestos statutes and rules relating  
22 to asbestos. Certification issued hereunder shall expire one year from its effective date.  
23 Individuals applying for state certification as an asbestos air sampling professional shall have the  
24 following credentials:

25 (1) A bachelor of science degree in industrial hygiene plus one year of experience in the  
26 field; or

27 (2) A master of science degree in industrial hygiene; or

28 (3) Certification as an industrial hygienist as designated by the American Board of  
29 Industrial Hygiene; or

30 (4) Three years of practical experience in the field of industrial hygiene, including  
31 significant asbestos air monitoring experience and the completion of a forty-hour asbestos course  
32 which includes air monitoring instruction (National Institute of Occupational Safety and Health  
33 582 course on air sampling or equivalent). In addition to these qualifications, the individual  
34 must also pass the state of Missouri asbestos examination. All asbestos air sampling technicians  
35 shall be trained and overseen by an asbestos air sampling professional and shall meet the  
36 requirements of training found in OSHA's 29 CFR [1926.58] **1926.1101**. Certification under this  
37 section as an [AHERA asbestos] abatement project designer does not qualify an individual as  
38 an architect, engineer or land surveyor, as defined in chapter 327.

39 4. An application fee of seventy-five dollars shall be assessed for each category, except  
40 asbestos abatement worker, to cover administrative costs incurred. An application fee of  
41 twenty-five dollars shall be assessed for each asbestos abatement worker to cover administrative  
42 costs incurred. A fee of twenty-five dollars shall be assessed per state examination.

43 5. In order to qualify for renewal of a certificate, an individual shall have successfully  
44 completed an annual refresher course from [an Environmental Protection Agency or] a state of  
45 Missouri accredited training program. For each discipline, the refresher course shall review and  
46 discuss current federal and state statute and rule developments, state-of-the-art procedures and  
47 key aspects of the initial training course, as determined by the state of Missouri. For all  
48 categories except inspectors, individuals shall complete a one-day annual refresher training  
49 course for recertification. Refresher courses for inspectors shall be at least a half-day in length.  
50 Management planners shall attend the inspector refresher course, plus an additional half-day on  
51 management planning. All refresher courses shall require an individual to successfully pass an  
52 examination upon completion of the course. In the case of significant changes in Missouri state  
53 asbestos statutes or rules, an individual shall also be required to take and successfully pass an  
54 updated Missouri state asbestos examination. An individual who has failed the Missouri state  
55 asbestos examination may retake it on the next scheduled examination date. If [his certification  
56 has lapsed for more than twenty-four months, he] **an individual has not successfully completed**  
57 **the annual refresher course within twelve months of the expiration of his or her**  
58 **certification, the individual** shall be required to retake the course in his **or her** specialty area  
59 **as** described in this section. Failure to comply with the requirements for renewal of certification  
60 in this section will result in decertification. In no event shall certification or recertification  
61 constitute permission to violate sections 643.225 to 643.250 or any standard or rule promulgated  
62 under sections 643.225 to 643.250.

63 6. A fee of five dollars shall be paid to the state for renewal of certificates to cover  
64 administrative costs.

65 [7. The provisions of subsections 2 through 6 of this section, section 643.228,  
66 subdivision (4) of subsection 1 of section 643.230, sections 643.232 and 643.235, subdivisions  
67 (1) to (3) of subsection 1 of section 643.237, and subsection 2 of section 643.237 shall not apply

68 to a person that is subject to requirements and applicable standards of the United States  
69 Environmental Protection Agency (EPA) and the United States Occupational Safety and Health  
70 Administration's (OSHA) 29 Code of Federal Regulations 1926.58 and which engages in  
71 asbestos abatement projects as part of normal operations in the facility solely at its own place or  
72 places of business. A person shall receive an exemption upon submitting to the director, on a  
73 form provided by the department, documentation of the training provided to their employees to  
74 meet the requirements of applicable OSHA and EPA rules and regulations and the type of  
75 asbestos abatement projects which constitute normal operations performed by the applicant. If  
76 the application does not meet the requirements of this subsection and the rules and regulations  
77 promulgated by the department, the applicant shall be notified, within one hundred eighty days  
78 of the receipt of the application, that his exemption has been revoked. An applicant may appeal  
79 the revocation of an exemption to the commission within thirty days of the notice of revocation.  
80 This exemption shall not apply to asbestos abatement contractors, to those persons who the  
81 commission by rule determines provide a service to the public in its place or places of business  
82 as the economic foundation of the facility, or to those persons subject to the requirements of the  
83 federal Asbestos Hazard Emergency Response Act of 1986 (P.L. 99-519). A representative of  
84 the department shall be permitted to attend, monitor and evaluate any training program provided  
85 by the exempted person. Such evaluations may be conducted without prior notice. Refusal to  
86 allow such an evaluation is sufficient grounds for loss of exemption status.

87 8. A fee of two hundred fifty dollars shall be submitted with the application for  
88 exemption. This is a one-time fee. Exempted persons shall submit to the director changes in  
89 curricula or other significant revisions to the training program as they occur.]

643.232. 1. All asbestos abatement contractors prior to engaging in asbestos abatement  
2 projects shall:

- 3 (1) Register with the department and reregister annually as provided by rule;
- 4 (2) Submit an application for registration on a form developed by the department;
- 5 (3) Use only those individuals that have been certified or trained in accordance with  
6 sections 643.225 to 643.250.

7 2. During asbestos abatement projects, all contractors shall:

- 8 (1) Comply with applicable United States Environmental Protection Agency regulations  
9 and guidelines, the standards for worker protection promulgated by the United States  
10 Occupational Safety and Health Administration in 29 CFR 1910.1001, 1910.1200 and [1926.58]  
11 **1926.1101**, the provisions of sections 643.225 to 643.250 and the rules and regulations  
12 promulgated thereunder. It is not intended that the director shall enforce OSHA requirements  
13 but shall have the authority to deny, revoke, or suspend registration on the basis of finding of  
14 violation by OSHA;

- 15 (2) Ensure that a competent person be on the asbestos abatement project site directing  
16 all aspects of the project during the hours that the project is being conducted.

17           3. A registration fee of one thousand dollars shall be paid by the person to the state prior  
18 to registration.

          643.237. 1. Any person undertaking an asbestos abatement project of a magnitude  
2 greater than or equal to one hundred sixty square feet [or] , two hundred sixty linear feet, **or**  
3 **thirty-five cubic feet or regulated demolition project** shall meet the following requirements:

4           (1) The person shall submit an application for asbestos abatement **or demolition** to the  
5 department for review at least [twenty] **ten working** days in advance. The application shall be  
6 in the form required by the department **and shall include a copy of an asbestos inspection**  
7 **survey which includes but is not limited to sample analysis results, quantities of asbestos**  
8 **materials identified, and documentation the inspection was conducted by a certified**  
9 **asbestos inspector**. Such application shall include the name and address of the applicant, a  
10 description of the proposed project and any other information as may be required by the  
11 commission and provide proof to the department that all employees engaged in an asbestos  
12 abatement project are in compliance with sections 643.225 and 643.228;

13           (2) Persons undertaking an asbestos abatement project shall notify the department within  
14 sixty days of the completion of the project in the form required by the department;

15           (3) Persons undertaking an emergency asbestos abatement project of this magnitude shall  
16 submit a notification to the department within twenty-four hours of the onset of the emergency.  
17 An application for permit to abate shall be submitted to the department within seven days of the  
18 onset of the emergency;

19           (4) A fee of one hundred dollars shall be paid for review of each **demolition or** asbestos  
20 abatement project notification of this magnitude;

21           (5) Any person undertaking an asbestos abatement **or demolition** project in the  
22 jurisdiction of an authorized local air pollution control agency shall be exempt from an  
23 application fee if the authorized local agency also imposes an application fee.

24           2. [Any person undertaking an asbestos abatement project of a magnitude less than one  
25 hundred sixty square feet or two hundred sixty linear feet, but greater than ten square feet or  
26 sixteen linear feet shall meet the following requirements:

27           (1) The person shall submit notification to the department for review at least twenty days  
28 in advance. The notification shall be in the form required by the department. Such notification  
29 shall include the name and address of the applicant, a description of the proposed project and any  
30 other information as may be required by the department and provide proof to the department that  
31 all employees engaged in an asbestos abatement project are in compliance with sections 643.225  
32 and 643.228. In addition, the person shall post for inspection, at the site, current certificates of  
33 all individuals engaged in the asbestos abatement project as well as proof of the person's current  
34 registration;

35           (2) Persons undertaking an asbestos abatement project shall notify the department within  
36 sixty days of the completion of the project in the form required by the department;

37 (3) Persons undertaking an emergency asbestos abatement project of this magnitude shall  
38 submit notification to the department within twenty-four hours of the onset of the emergency.

39 3.] Any person who submits an asbestos abatement **or demolition** project notification  
40 to the department shall submit actual project dates and times for his project. If the dates and  
41 times are revised on this project as submitted to the department, the person is responsible to  
42 notify the department at least twenty-four hours prior to the original starting date of the project  
43 by telephone and then followup with a written amendment stating the change in date and time.  
44 If the person does not comply with this procedure, he shall be held in violation of the notification  
45 requirements found in this section. This requirement does not change the reporting requirements  
46 for notification, post notification and emergency projects specified in this section.

643.240. 1. Before commencement of an asbestos abatement project, persons shall make  
2 all reasonable efforts to minimize the spread of friable asbestos-containing materials to  
3 uncontaminated areas.

4 2. Any asbestos-containing material that will be rendered friable during the process of  
5 removal, encapsulation, enclosure or demolition is subject to all applicable federal and state  
6 regulations.

7 3. Analysis of asbestos air samples shall be conducted according to the United States  
8 Occupational Safety and Health Administration's (OSHA) standards in 29 CFR [1926.58]  
9 **1926.1101 or the United States Environmental Protection Agency standards in 40 CFR Part**  
10 **763, Subpart E.**

643.242. 1. Asbestos abatement projects of a magnitude greater than or equal to [ten]  
2 **one hundred sixty** square feet or [sixteen] **two hundred sixty** linear feet **or thirty-five cubic**  
3 **feet or all regulated demolition projects** are subject to inspection.

4 2. The commission shall be authorized to assess a fee of not more than one hundred  
5 dollars for each on-site inspection of **an** asbestos abatement [projects] **or demolition project**.  
6 Such fees would not be assessed for more than three on-site inspections during the period an  
7 actual abatement project is in progress. Failure of the asbestos abatement contractor to notify  
8 the department of project postponement may result in the assessment of an inspection fee in the  
9 event of an on-site visit by the department.

10 3. Any person undertaking an asbestos abatement project **or regulated demolition**  
11 **project** in the jurisdiction of an authorized local air pollution control agency shall be exempt  
12 from an inspection fee if the authorized local agency also imposes an inspection fee.

643.245. 1. All moneys received pursuant to sections 643.225 to [643.250] **643.245** and  
2 any other moneys so designated shall be placed in the state treasury and credited to the "Natural  
3 Resources Protection Fund -- Air Pollution Asbestos Fee Subaccount", which is hereby created.  
4 Such moneys received pursuant to sections 643.225 to [643.250] **643.245** shall, subject to  
5 appropriation, be used solely for the purpose of administering this chapter. Any unexpended



6 balance in such fund at the end of any appropriation period shall not be transferred to the general  
7 revenue fund of the state treasury and shall be exempt from the provisions of section 33.080.

8         2. The state treasurer, with the approval of the board of fund commissioners, is  
9 authorized to deposit all of the moneys in any of the qualified state depositories. All such  
10 deposits shall be secured in such manner and shall be made upon such terms and conditions as  
11 are now and may hereafter be approved by law relative to state deposits. Any interest received  
12 on such deposits shall be credited to the natural resources protection fund -- air pollution  
13 asbestos fee subaccount.

643.250. 1. Any authorized representative of the department may enter at all reasonable  
2 times, in or upon public or private property for purposes required under sections 643.225 to  
3 643.250. **In addition to any other remedy provided by law**, refusal to allow such entry shall  
4 be grounds for revocation of registration or injunctive relief.

5         2. Any person who knowingly violates sections 643.225 to 643.250, or any rule  
6 promulgated thereunder, shall, upon conviction, be punished by a fine of not less than  
7 twenty-five hundred dollars nor more than twenty-five thousand dollars per day of violation, or  
8 by imprisonment for not more than one year, or both. Second and successive convictions of any  
9 person shall be punished by a fine of not more than fifty thousand dollars per day of violation,  
10 or by imprisonment for not more than two years, or both.

11         3. Any person who violates any provision of sections 643.225 to 643.250 may, in  
12 addition to any other penalty provided by law, incur a civil penalty in an amount not to exceed  
13 ten thousand dollars for each day of violation. The civil penalty shall be in an amount to  
14 constitute an actual and substantial economic deterrent to the violation for which the civil penalty  
15 is assessed. [Any civil penalty paid shall be placed in the natural resources protection fund -- air  
16 pollution asbestos fee subaccount.]

17         4. Notwithstanding the existence or pursuit of any other remedy provided by sections  
18 643.225 to 643.250, the commission may maintain, in the manner provided by chapter 536, an  
19 action in the name of the state of Missouri for injunction or other process against any person to  
20 restrain or prevent any violation of the provisions of sections 643.225 to 643.250.

644.036. 1. No standard, rule or regulation or any amendment or repeal thereof shall be  
2 adopted except after a public hearing to be held after thirty days' prior notice by advertisement  
3 of the date, time and place of the hearing and opportunity given to the public to be heard. Notice  
4 of the hearings and copies of the proposed standard, rule or regulation or any amendment or  
5 repeal thereof shall also be given by regular mail, at least thirty days prior to the scheduled date  
6 of the hearing, to any person who has registered with the director for the purpose of receiving  
7 notice of such public hearings in accordance with the procedures prescribed by the commission  
8 at least forty-five days prior to the scheduled date of the hearing. However, this provision shall  
9 not preclude necessary changes during this thirty-day period.

10           2. At the hearing, opportunity to be heard by the commission with respect to the subject  
11 thereof shall be afforded any interested person upon written request to the commission, addressed  
12 to the director, not later than seven days prior to the hearing, and may be afforded to other  
13 persons if convenient. In addition, any interested persons, whether or not heard, may submit,  
14 within seven days subsequent to the hearings, a written statement of their views. The  
15 commission may solicit the views, in writing, of persons who may be affected by, or interested  
16 in, proposed rules and regulations, or standards. Any person heard or represented at the hearing  
17 or making written request for notice shall be given written notice of the action of the commission  
18 with respect to the subject thereof.

19           3. Any standard, rule or regulation or amendment or repeal thereof shall not be deemed  
20 adopted or in force and effect until it has been approved in writing by at least four members of  
21 the commission. A standard, rule or regulation or an amendment or repeal thereof shall not  
22 become effective until a certified copy thereof has been filed with the secretary of state as  
23 provided in chapter 536.

24           4. Unless prohibited by any federal water pollution control act, any standard, rule or  
25 regulation or any amendment or repeal thereof which is adopted by the commission may differ  
26 in its terms and provisions as between particular types and conditions of water quality standards  
27 or of water contaminants, as between particular classes of water contaminant sources, and as  
28 between particular waters of the state.

29           5. Any listing required by Section 303(d) of the federal Clean Water Act, as amended,  
30 33 U.S.C. 1251, et seq., to be sent to the U.S. Environmental Protection Agency for its approval  
31 that will result in any waters of the state being classified as impaired shall be adopted by the  
32 commission after a public hearing, or series of hearings, held in accordance with the following  
33 procedures. The department of natural resources shall publish in at least six regional  
34 newspapers, in advance, a notice by advertisement the availability of a proposed list of impaired  
35 waters of the state and such notice shall include at least ninety days' advance notice of the date,  
36 time, and place of the public hearing and opportunity given to the public to be heard. Notice of  
37 the hearings and copies of the proposed list of impaired waters also shall be posted on the  
38 department of natural resources' website and given by regular mail, at least ninety days prior to  
39 the scheduled date of the hearing, to any person who has registered with the director for the  
40 purpose of receiving notice of such public hearings. The proposed list of impaired waters shall  
41 identify the water segment, the uses to be made of such waters, the uses impaired, identify the  
42 pollutants causing or expected to cause violations of the applicable water quality standards, and  
43 provide a summary of the data relied upon to make the preliminary determination.  
44 Contemporaneous with the publication of the notice of public hearing, the department shall make  
45 available on its website all data and information it relied upon to prepare the proposed list of  
46 impaired waters, including a narrative explanation of how the department determined the water  
47 segment was impaired. At any time after the public notice and until seven days after the public

48 hearing, the department shall accept written comments on the proposed list of impaired waters.  
49 After the public hearing and after all written comments have been submitted, the department  
50 shall prepare a written response to all comments and a revised list of impaired waters. The  
51 commission shall adopt a list of impaired waters in a public meeting during which the public  
52 shall be afforded an opportunity to respond to the department's written response to comments and  
53 revised list of impaired waters. Notice of the meeting shall include the date, time, and place of  
54 the public meeting and shall provide notice that the commission will give interested persons the  
55 opportunity to respond to the department's revised list of impaired waters and written responses  
56 to comments. At its discretion, the commission may extend public comment periods or hold  
57 additional public hearings on the proposed and revised lists of impaired waters. The commission  
58 shall not vote to add to the list of impaired waters any waters not recommended by the  
59 department in the proposed or revised lists of impaired waters without granting the public at least  
60 thirty additional days to comment on the proposed addition. The list of impaired waters adopted  
61 by the commission shall not be deemed to be a rule as defined by section 536.010. The listing  
62 of any water segment on the list of impaired waters adopted by the commission shall be subject  
63 to judicial review by any adversely affected party under section 536.150. [The provisions in this  
64 subsection shall expire on August 28, 2010.]

644.051. 1. It is unlawful for any person:

2 (1) To cause pollution of any waters of the state or to place or cause or permit to be  
3 placed any water contaminant in a location where it is reasonably certain to cause pollution of  
4 any waters of the state;

5 (2) To discharge any water contaminants into any waters of the state which reduce the  
6 quality of such waters below the water quality standards established by the commission;

7 (3) To violate any pretreatment and toxic material control regulations, or to discharge  
8 any water contaminants into any waters of the state which exceed effluent regulations or permit  
9 provisions as established by the commission or required by any federal water pollution control  
10 act;

11 (4) To discharge any radiological, chemical, or biological warfare agent or high-level  
12 radioactive waste into the waters of the state.

13 2. It shall be unlawful for any person to build, erect, alter, replace, operate, use or  
14 maintain any water contaminant or point source in this state that is subject to standards, rules or  
15 regulations promulgated pursuant to the provisions of sections 644.006 to 644.141 unless such  
16 person holds a permit from the commission, subject to such exceptions as the commission may  
17 prescribe by rule or regulation. However, no permit shall be required of any person for any  
18 emission into publicly owned treatment facilities or into publicly owned sewer systems tributary  
19 to publicly owned treatment works.

20 3. Every proposed water contaminant or point source which, when constructed or  
21 installed or established, will be subject to any federal water pollution control act or sections

22 644.006 to 644.141 or regulations promulgated pursuant to the provisions of such act shall make  
23 application to the director for a permit at least thirty days prior to the initiation of construction  
24 or installation or establishment. Every water contaminant or point source in existence when  
25 regulations or sections 644.006 to 644.141 become effective shall make application to the  
26 director for a permit within sixty days after the regulations or sections 644.006 to 644.141  
27 become effective, whichever shall be earlier. The director shall promptly investigate each  
28 application, which investigation shall include such hearings and notice, and consideration of such  
29 comments and recommendations as required by sections 644.006 to 644.141 and any federal  
30 water pollution control act. If the director determines that the source meets or will meet the  
31 requirements of sections 644.006 to 644.141 and the regulations promulgated pursuant thereto,  
32 the director shall issue a permit with such conditions as he or she deems necessary to ensure that  
33 the source will meet the requirements of sections 644.006 to 644.141 and any federal water  
34 pollution control act as it applies to sources in this state. If the director determines that the  
35 source does not meet or will not meet the requirements of either act and the regulations pursuant  
36 thereto, the director shall deny the permit pursuant to the applicable act and issue any notices  
37 required by sections 644.006 to 644.141 and any federal water pollution control act.

38 4. Before issuing a permit to build or enlarge a water contaminant or point source or  
39 reissuing any permit, the director shall issue such notices, conduct such hearings, and consider  
40 such factors, comments and recommendations as required by sections 644.006 to 644.141 or any  
41 federal water pollution control act. The director shall determine if any state or any provisions  
42 of any federal water pollution control act the state is required to enforce, any state or federal  
43 effluent limitations or regulations, water quality-related effluent limitations, national standards  
44 of performance, toxic and pretreatment standards, or water quality standards which apply to the  
45 source, or any such standards in the vicinity of the source, are being exceeded, and shall  
46 determine the impact on such water quality standards from the source. The director, in order to  
47 effectuate the purposes of sections 644.006 to 644.141, shall deny a permit if the source will  
48 violate any such acts, regulations, limitations or standards or will appreciably affect the water  
49 quality standards or the water quality standards are being substantially exceeded, unless the  
50 permit is issued with such conditions as to make the source comply with such requirements  
51 within an acceptable time schedule. Prior to the development or renewal of a general permit or  
52 permit by rule, for aquaculture, the director shall convene a meeting or meetings of permit  
53 holders and applicants to evaluate the impacts of permits and to discuss any terms and conditions  
54 that may be necessary to protect waters of the state. Following the discussions, the director shall  
55 finalize a draft permit that considers the comments of the meeting participants and post the draft  
56 permit on notice for public comment. The director shall concurrently post with the draft permit  
57 an explanation of the draft permit and shall identify types of facilities which are subject to the  
58 permit conditions. Affected public or applicants for new general permits, renewed general  
59 permits or permits by rule may request a hearing with respect to the new requirements in

60 accordance with this section. If a request for a hearing is received, the commission shall hold  
61 a hearing to receive comments on issues of significant technical merit and concerns related to  
62 the responsibilities of the Missouri clean water law. The commission shall conduct such  
63 hearings in accordance with this section. After consideration of such comments, a final action  
64 on the permit shall be rendered. The time between the date of the hearing request and the  
65 hearing itself shall not be counted as time elapsed pursuant to subdivision (1) of subsection 13  
66 of this section.

67 5. The director shall grant or deny the permit within sixty days after all requirements of  
68 the Federal Water Pollution Control Act concerning issuance of permits have been satisfied  
69 unless the application does not require any permit pursuant to any federal water pollution control  
70 act. The director or the commission may require the applicant to provide and maintain such  
71 facilities or to conduct such tests and monitor effluents as necessary to determine the nature,  
72 extent, quantity or degree of water contaminant discharged or released from the source, establish  
73 and maintain records and make reports regarding such determination.

74 6. The director shall promptly notify the applicant in writing of his or her action and if  
75 the permit is denied state the reasons therefor. The applicant may appeal to the commission from  
76 the denial of a permit or from any condition in any permit by filing notice of appeal with the  
77 commission within thirty days of the notice of denial or issuance of the permit. **After a final**  
78 **action is taken on a new or reissued general permit template, a potential applicant for the**  
79 **general permit who can demonstrate that he or she is or may be adversely affected by any**  
80 **permit term or condition may appeal the terms and conditions of the general permit**  
81 **template within thirty days of the department's issuance of the general permit template.**  
82 The commission shall set the matter for hearing not less than thirty days after the notice of appeal  
83 is filed. In no event shall a permit constitute permission to violate the law or any standard, rule  
84 or regulation promulgated pursuant thereto.

85 7. In any hearing held pursuant to this section **that involves a permit, license, or**  
86 **registration**, the burden of proof is on the [applicant for a permit] **party specified in section**  
87 **640.012.** Any decision of the commission made pursuant to a hearing held pursuant to this  
88 section is subject to judicial review as provided in section 644.071.

89 8. In any event, no permit issued pursuant to this section shall be issued if properly  
90 objected to by the federal government or any agency authorized to object pursuant to any federal  
91 water pollution control act unless the application does not require any permit pursuant to any  
92 federal water pollution control act.

93 9. **Permits may be modified, reissued, or terminated at the request of the permittee.**  
94 **All requests shall be in writing and shall contain facts or reasons supporting the request.**

95 10. Unless a site-specific permit is requested by the applicant, aquaculture facilities shall  
96 be governed by a general permit issued pursuant to this section with a fee not to exceed two  
97 hundred fifty dollars pursuant to subdivision (5) of subsection 6 of section 644.052. However,

98 any aquaculture facility which materially violates the conditions and requirements of such permit  
99 may be required to obtain a site-specific permit.

100 [10.] **11.** No manufacturing or processing plant or operating location shall be required  
101 to pay more than one operating fee. Operating permits shall be issued for a period not to exceed  
102 five years after date of issuance, except that general permits shall be issued for a five-year period,  
103 and also except that neither a construction nor an annual permit shall be required for a single  
104 residence's waste treatment facilities. Applications for renewal of an operating permit shall be  
105 filed at least one hundred eighty days prior to the expiration of the existing permit.

106 [11.] **12.** Every permit issued to municipal or any publicly owned treatment works or  
107 facility shall require the permittee to provide the clean water commission with adequate notice  
108 of any substantial new introductions of water contaminants or pollutants into such works or  
109 facility from any source for which such notice is required by sections 644.006 to 644.141 or any  
110 federal water pollution control act. Such permit shall also require the permittee to notify the  
111 clean water commission of any substantial change in volume or character of water contaminants  
112 or pollutants being introduced into its treatment works or facility by a source which was  
113 introducing water contaminants or pollutants into its works at the time of issuance of the permit.  
114 Notice must describe the quality and quantity of effluent being introduced or to be introduced  
115 into such works or facility by a source which was introducing water contaminants or pollutants  
116 into its works at the time of issuance of the permit. Notice must describe the quality and quantity  
117 of effluent being introduced or to be introduced into such works or facility and the anticipated  
118 impact of such introduction on the quality or quantity of effluent to be released from such works  
119 or facility into waters of the state.

120 [12.] **13.** The director or the commission may require the filing or posting of a bond as  
121 a condition for the issuance of permits for construction of temporary or future water treatment  
122 facilities or facilities that utilize innovative technology for wastewater treatment in an amount  
123 determined by the commission to be sufficient to ensure compliance with all provisions of  
124 sections 644.006 to 644.141, and any rules or regulations of the commission and any condition  
125 as to such construction in the permit. For the purposes of this section, "innovative technology  
126 for wastewater treatment" shall mean a completely new and generally unproven technology in  
127 the type or method of its application that bench testing or theory suggest has environmental,  
128 efficiency, and cost benefits beyond the standard technologies. No bond shall be required for  
129 designs approved by any federal agency or environmental regulatory agency of another state.  
130 The bond shall be signed by the applicant as principal, and by a corporate surety licensed to do  
131 business in the state of Missouri and approved by the commission. The bond shall remain in  
132 effect until the terms and conditions of the permit are met and the provisions of sections 644.006  
133 to 644.141 and rules and regulations promulgated pursuant thereto are complied with.

134 [13.] **14.** (1) The department shall issue or deny applications for construction and  
135 site-specific operating permits received after January 1, 2001, within one hundred eighty days

136 of the department's receipt of an application. For general construction and operating permit  
137 applications received after January 1, 2001, that do not require a public participation process, the  
138 department shall issue or deny the requested permits within sixty days of the department's receipt  
139 of an application.

140 (2) If the department fails to issue or deny with good cause a construction or operating  
141 permit application within the time frames established in subdivision (1) of this subsection, the  
142 department shall refund the full amount of the initial application fee within forty-five days of  
143 failure to meet the established time frame. If the department fails to refund the application fee  
144 within forty-five days, the refund amount shall accrue interest at a rate established pursuant to  
145 section 32.065.

146 (3) Permit fee disputes may be appealed to the commission within thirty days of the date  
147 established in subdivision (2) of this subsection. If the applicant prevails in a permit fee dispute  
148 appealed to the commission, the commission may order the director to refund the applicant's  
149 permit fee plus interest and reasonable attorney's fees as provided in sections 536.085 and  
150 536.087. A refund of the initial application or annual fee does not waive the applicant's  
151 responsibility to pay any annual fees due each year following issuance of a permit.

152 (4) No later than December 31, 2001, the commission shall promulgate regulations  
153 defining shorter review time periods than the time frames established in subdivision (1) of this  
154 subsection, when appropriate, for different classes of construction and operating permits. In no  
155 case shall commission regulations adopt permit review times that exceed the time frames  
156 established in subdivision (1) of this subsection. The department's failure to comply with the  
157 commission's permit review time periods shall result in a refund of said permit fees as set forth  
158 in subdivision (2) of this subsection. On a semiannual basis, the department shall submit to the  
159 commission a report which describes the different classes of permits and reports on the number  
160 of days it took the department to issue each permit from the date of receipt of the application and  
161 show averages for each different class of permits.

162 (5) During the department's technical review of the application, the department may  
163 request the applicant submit supplemental or additional information necessary for adequate  
164 permit review. The department's technical review letter shall contain a sufficient description of  
165 the type of additional information needed to comply with the application requirements.

166 (6) Nothing in this subsection shall be interpreted to mean that inaction on a permit  
167 application shall be grounds to violate any provisions of sections 644.006 to 644.141 or any rules  
168 promulgated pursuant to sections 644.006 to 644.141.

169 [14.] 15. The department shall respond to all requests for individual certification under  
170 Section 401 of the Federal Clean Water Act within the lesser of sixty days or the allowed  
171 response period established pursuant to applicable federal regulations without request for an  
172 extension period unless such extension is determined by the commission to be necessary to

173 evaluate significant impacts on water quality standards and the commission establishes a  
174 timetable for completion of such evaluation in a period of no more than one hundred eighty days.

175 [15.] **16.** All permit fees generated pursuant to this chapter shall not be used for the  
176 development or expansion of total maximum daily loads studies on either the Missouri or  
177 Mississippi rivers.

178 **17. The department shall implement permit shield provisions equivalent to the**  
179 **permit shield provisions implemented by the U.S. Environmental Protection Agency**  
180 **pursuant to the Clean Water Act Section 402(k), 33 U.S.C. 1342(k), and its implementing**  
181 **regulations, for permits issued pursuant to chapter 644.**

644.054. 1. Fees imposed in sections 644.052 and 644.053 shall, except for those fees  
2 imposed pursuant to subsection 4 and subsections 6 to 13 of section 644.052, become effective  
3 October 1, 1990, and shall expire [December 31, 2010] **September 1, 2013.** Fees imposed  
4 pursuant to subsection 4 and subsections 6 to 13 of section 644.052 shall become effective  
5 August 28, 2000, and shall expire on [December 31, 2010] **September 1, 2013.** The clean water  
6 commission shall promulgate rules and regulations on the procedures for billing and collection.  
7 All sums received through the payment of fees shall be placed in the state treasury and credited  
8 to an appropriate subaccount of the natural resources protection fund created in section 640.220.  
9 Moneys in the subaccount shall be expended, upon appropriation, solely for the administration  
10 of sections 644.006 to 644.141. Fees collected pursuant to subsection 10 of section 644.052 by  
11 a city, a public sewer district, a public water district or other publicly owned treatment works are  
12 state fees. Five percent of the fee revenue collected shall be retained by the city, public sewer  
13 district, public water district or other publicly owned treatment works as reimbursement of  
14 billing and collection expenses.

15 2. The commission may grant a variance pursuant to section 644.061 to reduce fees  
16 collected pursuant to section 644.052 for facilities that adopt systems or technologies that reduce  
17 the discharge of water contaminants substantially below the levels required by commission rules.

18 3. Fees imposed in subsections 2 to 6 of section 644.052 shall be due on the date of  
19 application and on each anniversary date of permit issuance thereafter until the permit is  
20 terminated.

21 **4. The director of the department of natural resources shall conduct a**  
22 **comprehensive review of the fee structure in sections 644.052 and 644.053. The review**  
23 **shall include stakeholder meetings in order to solicit stakeholder input. The director shall**  
24 **submit a report to the general assembly by December 31, 2012, which shall include its**  
25 **findings and a recommended plan for the fee structure. The plan shall also include time**  
26 **lines for permit issuance, provisions for expedited permits, and recommendations for any**  
27 **other improved services provided by the fee funding.**

644.071. 1. All final orders or determinations of the commission or the director made  
2 pursuant to the provisions of sections 644.006 to 644.141 are subject to judicial review pursuant



3 to the provisions of chapter 536, **except that, the provisions of section 536.110**  
4 **notwithstanding, all actions seeking judicial review of any final order or determination of**  
5 **the commission or the director shall be filed in the court of appeals instead of in the circuit**  
6 **court.** No judicial review shall be available, however, unless and until all administrative  
7 remedies are exhausted.

8 2. In any suit filed pursuant to section 536.050 concerning the validity of the  
9 commission's standards, rules and regulations, the court shall review the record made before the  
10 commission to determine the validity and reasonableness of such standards, rules, limitations,  
11 and regulations and may hear such additional evidence as it deems necessary.

**644.145. 1. When issuing permits under this chapter for discharges from combined**  
2 **or separate sanitary sewer systems or publicly-owned treatment works, or when enforcing**  
3 **provisions of this chapter or the Federal Water Pollution Control Act, 33 U.S.C. 1251 et**  
4 **seq. pertaining to any portion of a combined or separate sanitary sewer system or publicly-**  
5 **owned treatment works, the department of natural resources shall make a finding of**  
6 **affordability upon which to base such permits and decisions, to the extent allowable under**  
7 **this chapter and the Federal Water Pollution Control Act.**

8 2. When used in this chapter and in standards, rules and regulations promulgated  
9 pursuant to this chapter, the following words and phrases mean:

10 (1) "Affordability", with respect to payment of a utility bill, a measure of whether  
11 an individual customer or household can pay the bill without undue hardship or  
12 unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or  
13 household, taking into consideration the criteria described in subsection 3 of this section;

14 (2) "Financial capability", the financial capability of a community to make  
15 investments necessary to make water quality-related improvements.

16 3. The department of natural resources shall adopt procedures by which it will  
17 determine whether a permit or decision is affordable. Such determination shall be based  
18 upon reasonably available empirical data and shall include an assessment of the  
19 affordability of the permit or decision to any private or public person or entity affected by  
20 such permit. The determination shall be based upon the following criteria:

21 (1) A community's financial capability and ability to raise or secure necessary  
22 funding;

23 (2) Affordability of pollution control options for the individuals or households of  
24 the community;

25 (3) An evaluation of the overall costs and environmental benefits of the control  
26 technologies;

27 (4) An inclusion of ways to reduce economic impacts on distressed populations in  
28 the community, including but not limited to, low and fixed income populations. This  
29 requirement includes but is not limited to:

30 (a) Allowing adequate time in implementation schedules to mitigate potential  
31 adverse impacts on distressed populations resulting from the costs of the improvements  
32 and taking into consideration local community economic considerations; and

33 (b) Allowing for reasonable accommodations for regulated entities when inflexible  
34 standards and fines would impose a disproportionate financial hardship in light of the  
35 environmental benefits to be gained;

36 (5) An assessment of other community investments relating to environmental  
37 improvements;

38 (6) An assessment of factors set forth in the United States Environmental Protection  
39 Agency's guidance, including but not limited to the "Combined Sewer  
40 Overflow—Guidance for Financial Capability Assessment and Schedule Development"  
41 that may ease the cost burdens of implementing wet weather control plans, including but  
42 not limited to small system considerations, the attainability of water quality standards, and  
43 the development of wet weather standards; and

44 (7) An assessment of any other relevant local community economic condition.

45 4. Prescriptive formulas and measures used in determining financial capability,  
46 affordability, and thresholds for expenditure, such as median household income, should  
47 not be considered to be the only indicator of a community's ability to implement control  
48 technology and shall be viewed in the context of other economic conditions rather than as  
49 a threshold to be achieved.

50 5. If the department of natural resources fails to make a finding of affordability as  
51 indicated in this section, the proposed permit or decision shall be null, void and  
52 unenforceable.

53 6. The department of natural resources' findings under this section may be  
54 appealed to the commission pursuant to subsection 6 of section 644.051.

701.033. 1. The department shall have the power and duty to:

2 (1) Promulgate such rules and regulations as are necessary to carry out the provisions of  
3 sections 701.025 to 701.059;

4 (2) Cause investigations to be made when a violation of any provision of sections  
5 701.025 to 701.059 or the on-site sewage disposal rules promulgated under sections 701.025 to  
6 701.059 is reported to the department;

7 (3) Enter at reasonable times and determining probable cause that a violation exists,  
8 upon private or public property for the purpose of inspecting and investigating conditions  
9 relating to the administration and enforcement of sections 701.025 to 701.059 and the on-site  
10 sewage disposal rules promulgated under sections 701.025 to 701.059;

11 (4) Authorize the trial or experimental use of innovative systems for on-site sewage  
12 disposal, after consultation with the staff of the Missouri clean water commission, upon such  
13 conditions as the department may set;

14           **(5) Provide technical assistance and guidance to any other administrative authority**  
15 **in the state on the regulation and enforcement of standards for individual on-site sewage**  
16 **disposal systems, at the request of such other administrative authority, or when the**  
17 **department determines that such assistance or guidance is necessary to prevent a violation**  
18 **of sections 701.025 to 701.059.**

19           2. No rule or portion of a rule promulgated under the authority of sections 701.025 to  
20 701.059 shall become effective unless it has been promulgated pursuant to the provisions of  
21 section 536.024.

**701.058. The department of natural resources and the department of health and**  
2 **senior services shall jointly hold stakeholder meetings for the purpose of gathering data**  
3 **and information regarding permits and inspections for on-site sewage disposal systems.**  
4 **The departments shall evaluate the data and information obtained and present their**  
5 **findings and recommendations in a report to be submitted to the general assembly by**  
6 **December 31, 2011.**

**Section 1. Notwithstanding the provisions of section 1.140, RSMo, to the contrary,**  
2 **the provisions of sections 37.970, 67.4500, 67.4505, 67.4510, 67.4515, 67.4520, 192.1250,**  
3 **247.060, 253.090, 442.014, 444.771, 444.773, 621.250, 640.018, 640.128, 640.850, 643.020,**  
4 **643.040, 643.050, 643.060, 643.079, 643.080, 643.130, 643.191, 643.225, 643.232, 643.237,**  
5 **643.240, 643.242, 643.245, 643.250, 644.036, 644.051, 644.054, 644.071, 644.145, 701.033,**  
6 **701.058, and 1 of this act shall be nonseverable, and if any provision is for any reason held**  
7 **to be invalid, such decision shall invalidate all of the remaining provisions of sections**  
8 **37.970, 67.4500, 67.4505, 67.4510, 67.4515, 67.4520, 192.1250, 247.060, 253.090, 442.014,**  
9 **444.771, 444.773, 621.250, 640.018, 640.128, 640.850, 643.020, 643.040, 643.050, 643.060,**  
10 **643.079, 643.080, 643.130, 643.191, 643.225, 643.232, 643.237, 643.240, 643.242, 643.245,**  
11 **643.250, 644.036, 644.051, 644.054, 644.071, 644.145, 701.033, 701.058, and 1 of this act.**

          [386.850. The Missouri energy task force created by executive order  
2 05-46 shall reconvene at least one time per year for the purpose of reviewing  
3 progress made toward meeting the recommendations set forth in the task force's  
4 final report as issued under the executive order. The task force shall issue its  
5 findings in a status report to the governor and general assembly no later than  
6 December thirty-first of each year.]  
7

          [643.253. As used in sections 643.253 and 643.255, the following terms  
2 mean:

3           (1) "Asbestos", the asbestiform varieties of chrysotile, crocidolite,  
4 amosite, anthophyllite, tremolite and actinolite;

5           (2) "Asbestos abatement projects", an activity undertaken to encapsulate,  
6 enclose or remove ten square feet or sixteen linear feet or more of friable  
7 asbestos-containing materials from buildings and other air contaminant sources,  
8 or to demolish buildings and other air contaminant sources containing ten square  
9 feet or sixteen linear feet or more;

(3) "Friable asbestos-containing material", any material that contains more than one percent asbestos, by weight, which is applied to ceilings, walls, structural members, piping, ductwork or any other part of a building or other air contaminant sources and which, when dry, may be crumbled, pulverized or reduced to powder by hand pressure.]

[643.260. As used in sections 643.260 to 643.265, the following terms mean:

(1) "Asbestos", the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite;

(2) "Asbestos-containing material", any material which contains more than one percent of asbestos by weight;

(3) "Friable asbestos-containing material", any material that contains more than one percent asbestos, by weight, which is applied to ceilings, walls, structural members, piping, ductwork or any other part of a building or other air contaminant sources and which, when dry, may be crumbled, pulverized or reduced to powder by hand pressure;

(4) "Person", any individual, partnership, copartnership, firm, company, or public or private corporation, association, joint stock company, trust, the state, political subdivision, or any agency, board, department or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties;

(5) "School district", seven-director districts, urban school districts and metropolitan school districts, as defined in section 160.011.]

[701.332. For purposes of sections 643.225 to 643.250, the term "project" shall exclude any single-family owner-occupied dwellings and vacant public or privately owned residential structures of four dwelling units or less being demolished for the sole purpose of public health, safety or welfare. All vacant structures of four dwelling units or less located in any city not within a county shall be exempt from all geographical and time restrictions for the purpose of demolition pursuant to the National Emissions Standards for Asbestos. Excluded structures that are not located within a city not within a county shall be geographically dispersed. All excluded structures shall be demolished pursuant to a public safety determination by a local or state governmental agency and pose a threat to public safety.]

Section B. Because immediate action is necessary to maintain regulatory oversight by the state of Missouri, the repeal of sections 386.850, 643.253, 643.260, and 701.332, the repeal and reenactment of sections 253.090, 444.773, 643.130, 644.036, 644.051, 644.054, 644.071, and 701.033, and the enactment of sections 37.970, 67.4500, 67.4505, 67.4510, 67.4515, 67.4520, 192.1250, 444.771, 620.2300, 640.018, 640.128, 640.850, 644.145, 701.058, and 1 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal of sections 386.850, 643.253, 643.260, and 701.332, the repeal and reenactment

9 of sections 253.090, 444.773, 643.130, 644.036, 644.051, 644.054, 644.071, and 701.033, and  
10 the enactment of sections 37.970, 67.4500, 67.4505, 67.4510, 67.4515, 67.4520, 192.1250,  
11 444.771, 620.2300, 640.018, 640.128, 640.850, 644.145, 701.058, and 1 of this act shall be in  
12 full force and effect upon its passage and approval.

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