4213S.10C

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1277

AN ACT

To repeal sections 260.335, 260.342, 260.370, 260.375, 260.380, 260.475, 260.479, 444.762, 444.765, 444.767, 444.770, 444.787, and 621.015, RSMo, and to enact in lieu thereof fourteen new sections relating to environmental regulation, with an emergency clause.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 260.335, 260.342, 260.370, 260.375, 260.380, 260.475, 260.479, 444.762, 444.765, 444.767, 444.770, 444.787, and 621.015, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 260.335, 260.370, 260.375, 260.380, 260.475, 260.479, 444.762, 444.765, 444.767, 444.770, 444.787, 621.015, 621.250, and 640.013, to read as follows:

260.335. 1. For fiscal years 1992-1997, one million dollars from the solid waste management fund shall be made available, upon appropriation, to the department and the environmental improvement and energy resources authority to fund activities that promote the development and maintenance of markets for recovered materials, and beginning in fiscal year 1998, ten percent of the moneys in the solid waste management fund, <u>from August 28, 2004, to August 28, 2005,</u> not to exceed **[**one million**]** <u>eight hundred thousand</u> dollars, shall be made

available for such purposes. Up to [fifteen] nineteen percent of such moneys may be used, upon appropriation, to administer the management of household hazardous waste and agricultural hazardous waste from family farms and family farm corporations, as defined in section 350.010, RSMo, to provide for establishment of an education program and a plan for the collection of household hazardous waste on a statewide basis by January 1, 2000. After August 28, 2005, an amount not to exceed one million dollars shall be made available for such purposes. Up to fifteen percent of such moneys may be used, upon appropriation, to administer the management of household hazardous waste and agricultural hazardous waste from family farms and family farm corporations, as defined in section 350.010, RSMo, to provide for establishment of an education program and a plan for the collection of household hazardous waste on a statewide basis by January 1, 2000. The department and the authority shall establish a joint interagency agreement with the department of economic development to identify state priorities for market development and to develop the criteria to be used to judge proposed projects. Additional moneys may be appropriated in subsequent fiscal years if requested. The authority shall establish a procedure to measure the effectiveness of the grant program under this subsection and shall provide a report to the governor and general assembly by January fifteenth of each year regarding the effectiveness of the program.

2. All remaining [moneys in] revenues deposited into the fund each fiscal year after moneys have been made available for market development under subsection 1 of this section shall be

allocated as follows:

(1) From August 28, 2004, to August 28, 2005, up to [ten] forty-two percent of the [moneys] revenues shall be dedicated, upon appropriation, to the elimination of illegal solid waste disposal, to identify and prosecute persons disposing of solid waste illegally[;

(2) Up to fifteen percent of the moneys may, upon appropriation, be used], to conduct solid waste permitting activities, to administer grants and perform other duties imposed in sections [260.255] 260.200 to 260.345 and section 260.432. After August 28, 2005, up to twenty-five percent of the revenues shall be dedicated, upon appropriation, to the activities and duties authorized in this subdivision;

[(3)] (2) From August 28, 2004, to August 28, 2005, at least [fifty] fifty-eight percent of the [moneys] revenues shall be allocated through grants, upon appropriation, to participating cities, counties, and districts [through grants or loans]. After August 28, 2004, up to fifty percent of the revenues shall be allocated through grants, upon appropriation, to participating districts. Forty percent of the revenue generated within each region and allocable under this subdivision may be allocated to the district upon approval of the department for implementation of a solid waste management plan and district operations, and sixty percent of the revenue generated within each region and allocable under this subdivision shall be allocated to the cities and counties [within] of the district or to persons or entities providing solid waste management, waste reduction, recycling, and related services in these cities and counties. For the purposes

of this subdivision, revenue generated within each district shall be determined from the previous year's data. From August 28, 2004, to August 28, 2005, each district shall receive a minimum of [forty-five] seventy-five thousand dollars under this subdivision. After August 28, 2005, each district shall receive a minimum of forty-five thousand dollars under this subdivision. Each district receiving moneys under this subdivision shall expend such moneys pursuant to a solid waste management plan required under section 260.325, and only in the case that the district is in compliance with planning requirements established by the department, and shall submit, within ninety days of the end of the fiscal year, an audited report of the expenditure of all funds received under this subsection. Moneys shall be awarded based upon grant applications. Any moneys remaining in any fiscal year due to insufficient or inadequate applications may be reallocated pursuant to this subdivision [(4) of this subsection]. [Moneys received from a region without a district which are allocable under this subsection shall be accumulated through September 30, 1993, and may be allocated to any district which forms within the region before July 1, 1996, and to cities and counties within the district to further the purposes of sections 260.300 to 260.345. Moneys collected in and accumulated for a region without a district on June 30, 1996, shall be reallocated to existing districts after July 1, 1996, pursuant to this section;]

[(4) The] (3) From August 28, 2004, to August 28, 2005, any remaining moneys in the fund shall be used, upon appropriation, to provide grants [or loans] for statewide solid

waste management planning or research projects to any district, county or city of the state or to any other person or entity involved in waste reduction or recycling or for contracted services to further the purposes of section 260.225 and sections 260.255 to 260.345**[**. Solid waste management districts may apply annually to the department for a three-to-one matching grant of up to twenty thousand dollars per district per year to be used for the purpose of district operations**]**. After August 28, 2005, any remaining moneys in the fund shall be used, upon appropriation, to provide grants or loans for statewide solid waste management planning or research projects to any district, county, or city of the state or to any other person or entity involved in waste reduction or recycling or for contracted services to further the purposes of section 260.225 and sections 260.255 to 260.345. Solid waste management districts may apply annually to the department for a three-to-one matching grant of up to twenty thousand dollars per district per year to be used for the purpose of district operations;

[(5)**]** (4) Funds may be made available under this subsection for the administration and grants of the used motor oil program described in section 260.253;

[(6)**]** (5) The department and the environmental improvement and energy resources authority shall conduct sample audits of grants provided under this subsection.

3. The advisory board created in section 260.345 shall recommend criteria to be used to allocate grant moneys to districts, cities and counties. These criteria shall establish a priority for proposals which provide methods of solid waste

reduction and recycling. The department shall promulgate criteria for evaluating grants by rule and regulation. Projects of cities and counties located within a district which are funded by grants under this section shall conform to the district solid waste management plan.

4. Beginning July 1, 2004, a joint committee appointed by the speaker of the house of representatives and the president pro tem of the senate shall consider proposals for fees, restructuring the distribution of the fees between solid waste districts, grant recipients, and the department. The committee shall consider options for the distribution of the tipping fee to the solid waste districts and any other matters it deems appropriate. The committee shall prepare and submit a report including its recommendation for changes to the governor, the house of representatives, and the senate no later than December 31, 2004.

5. The funds awarded to the districts, counties and cities pursuant to this section shall be used for the purposes set forth in sections 260.300 to 260.345, and shall be used in addition to existing funds appropriated by counties and cities for solid waste management and shall not supplant county or city appropriated funds.

[5.**]** 6. The department, in conjunction with the solid waste advisory board, shall review the performance of all grant recipients to ensure that grant moneys were appropriately and effectively expended to further the purposes of the grant, as expressed in the recipient's grant application. The grant application shall contain specific goals and implementation

dates, and grant recipients shall be contractually obligated to fulfill same. The department may require the recipient to submit periodic reports and such other data as are necessary, both during the grant period and up to five years thereafter, to ensure compliance with this section. The department may audit the records of any recipient to ensure compliance with this section. Recipients of grants under sections 260.300 to 260.345 shall maintain such records as required by the department. If a grant recipient fails to maintain records or submit reports as required herein, refuses the department access to the records, or fails to meet the department's performance standards, the department may withhold subsequent grant payments, if any, and may compel the repayment of funds provided to the recipient pursuant to a grant. The department shall make available all of the unencumbered funds generated during prior fiscal years by the fees established under section 260.330 through grants or loans to solid waste management areas and processing facilities, municipalities, counties, districts, and other appropriate persons who demonstrate a need for assistance to comply with section 260.250. Such grants or loans shall be used for educational programs, transportation, low-interest or no-interest loans to purchase property for composting or other solid waste source reduction activities stated to facilitate compliance with section 260.250.

[6.**]** 7. The department shall provide for a security interest in any machinery or equipment purchased through grant moneys distributed pursuant to this section.

8. If the moneys are not transmitted to the department

within the time frame established by the rule promulgated, interest shall be imposed on the moneys due the department at the rate of ten percent per annum from the prescribed due date until payment is actually made. These interest amounts shall be deposited to the credit of the solid waste management fund.

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

2. The hazardous waste management commission shall, by rules and regulations, categorize hazardous waste by taking into account toxicity, persistence and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness and other hazardous characteristics. The commission shall by rules and regulations further establish within each category the wastes which may or may not be disposed of through alternative hazardous waste management technologies including, but not limited to, treatment

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

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

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

(1) From time to time adopt, amend or repeal, after due notice and public hearing, standards, rules and regulations to implement, enforce and carry out the provisions of sections 260.350 to 260.430 and any required of this state by any federal hazardous waste management act and as the commission may deem necessary to provide for the safe management of hazardous wastes to protect the health of humans and the environment. In implementing this subsection, the commission shall consider the variations within this state in climate, geology, population density, quantities and types of hazardous wastes generated, availability of hazardous waste facilities and such other factors as may be relevant to the safe management of hazardous wastes. Within two years after September 28, 1977, the commission shall adopt rules and regulations including the following:

(a) Rules and regulations establishing criteria and a listing for the determination of whether any waste or combination of wastes is hazardous for the purposes of sections 260.350 to 260.430, taking into account toxicity, persistence and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness and

other hazardous characteristics;

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

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

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

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

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

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

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

least once every five years thereafter;

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

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

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

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

5. Beginning July 1, 2004, a joint committee appointed by the speaker of the house of representatives and the president pro tem of the senate shall consider proposals for restructuring the fees paid by hazardous waste generators and hazardous waste facilities. The committee shall consider options for expanding the fee structure to more fairly apportion the cost of services provided among all those that benefit from those services. The committee shall prepare and submit a report including its recommendation for changes to the governor, the house of representatives, and the senate no later than December 31, 2004.

260.375. The department shall:

(1) Exercise general supervision of the administration and enforcement of sections 260.350 to 260.430 and all standards, rules and regulations, orders or license and permit terms and conditions adopted or issued pursuant to sections 260.350 to 260.430;

(2) Develop and implement programs to achieve goals and objectives set by the state hazardous waste management plan;

(3) Retain, employ, provide for and compensate, within appropriations available therefor, such consultants, assistants, deputies, clerks and other employees on a full- or part-time basis as may be necessary to carry out the provisions of sections 260.350 to 260.430 and prescribe the times at which they shall be appointed and their powers and duties;

(4) Budget and receive duly appropriated moneys for expenditures to carry out the provisions of sections 260.350 to 260.430;

(5) Accept, receive and administer grants or other funds or gifts from public and private agencies including the federal government for the purpose of carrying out any of the functions of sections 260.350 to 260.430. Funds received by the department pursuant to this section shall be deposited with the state treasurer and held and disbursed by him or her in accordance with the appropriations of the general assembly;

(6) Provide the commission all necessary support the commission may require to carry out its powers and duties including, but not limited to: keeping of records of all meetings; notification, at the direction of the chairman of the

commission, of the members of the commission of the time, place and purpose of each meeting by written notice; drafting, for consideration of the commission, a state hazardous waste management plan and standards, rules and regulations necessary to carry out the purposes of sections 260.350 to 260.430; and investigation of petitions for variances and complaints made to the commission and submission of recommendations thereto;

(7) Collect and maintain, and require any person to collect and maintain, such records and information of hazardous waste generation, storage, transportation, resource recovery, treatment and disposal in this state, including quantities and types imported and exported across the borders of this state and install, calibrate and maintain and require any person to install, calibrate and maintain such monitoring equipment or methods, and make reports consistent with the purposes of sections 260.350 to 260.430;

(8) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;

(9) Develop facts and make inspections and investigations, including gathering of samples and performing of tests and analyses, consistent with the purposes of sections 260.350 to 260.430, and in connection therewith, to enter or authorize any representative of the department to enter, at all reasonable times, in or upon any private or public property for any purpose required by sections 260.350 to 260.430 or any federal hazardous waste management act. Such entry may be for the purpose, without limitation, of developing or implementing standards, rules and

regulations, orders or license or permit terms and conditions, of inspecting or investigating any records required to be kept by sections 260.350 to 260.430 or any license or permit issued pursuant to sections 260.350 to 260.430 or any hazardous waste management practice which the department or commission believes violates sections 260.350 to 260.430, or any standard, rule or regulation, order or license or permit term or condition adopted or issued pursuant to sections 260.350 to 260.430, or otherwise endangers the health of humans or the environment, or the site of any suspected violation of sections 260.350 to 260.430, or any standard, rule or regulation, order, or license or permit term or condition adopted or issued pursuant to sections 260.350 to 260.430. The results of any such investigation shall be reduced to writing and shall be furnished to the owner or operator of the property. No person shall refuse entry or access requested for the purpose of inspection pursuant to this subdivision to an authorized representative of the department or commission who presents appropriate credentials, nor obstruct or hamper the representative in carrying out the inspection. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge or associate circuit judge having jurisdiction to any such representative for the purpose of enabling the representative to make such inspection;

(10) Require each hazardous waste generator located within this state and each hazardous waste generator located outside of this state before utilizing any hazardous waste facility in this state <u>except as provided in subdivision (11) of this section</u> to

file a registration report containing such information as the commission by regulation may specify relating to types and quantities of hazardous waste generated and methods of hazardous waste management, and to meet all other requirements placed upon hazardous waste generators by sections 260.350 to 260.430 and the standards, rules and regulations and orders adopted or issued pursuant to sections 260.350 to 260.430;

(11) Allow Missouri treatment, storage, and disposal facilities receiving hazardous waste from out-of-state generators to submit registration and reporting information to the department in a format prescribed by the department describing the types and quantities of hazardous waste received from the out-of-state generator;

(12) Require each hazardous waste transporter operating in this state to obtain a license and to meet all applicable requirements of sections 260.350 to 260.430 and the standards, rules and regulations, orders and license terms and conditions adopted or issued pursuant to sections 260.350 to 260.430;

[(12)**]** (13) Require each hazardous waste facility owner and operator to obtain a permit for each such facility and to meet all applicable requirements of sections 260.350 to 260.430 and the standards, rules and regulations, orders and permit terms and conditions adopted or issued pursuant to sections 260.350 to 260.430;

[(13)**]** (14) Issue, continue in effect, revoke, modify or deny in accordance with the standards, rules and regulations, hazardous waste transporter licenses and hazardous waste facility permits;

[(14)**]** (15) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of sections 260.350 to 260.430;

[(15)**]** (16) Enter such order or determination as may be necessary to effectuate the provisions of sections 260.350 to 260.430 and the standards, rules and regulations, and license and permit terms and conditions adopted or issued pursuant to sections 260.350 to 260.430;

[(16)**]** (17) Enter such order or cause to be instituted in a court of competent jurisdiction such legal proceedings as may be necessary in a situation of imminent hazard, as prescribed in section 260.420;

[(17)**]** (18) Settle or compromise as it may deem advantageous to the state, with the approval of the commission, any suit undertaken by the commission for recovery of any penalty or for compelling compliance with any provision of sections 260.350 to 260.430 or any standard, rule or regulation, order, or license or permit term or condition adopted or issued pursuant to sections 260.350 to 260.430;

[(18)**]** (19) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries in furtherance of the purposes of sections 260.350 to 260.430 and, upon request, consult with persons subject to sections 260.350 to 260.430 on the proper measures necessary to comply with the requirements of sections 260.350 to 260.430 and rules and regulations adopted pursuant to sections 260.350 to 260.430;

[(19)**]** (20) Encourage, coordinate, participate in or conduct studies, investigations, research and demonstrations relating to hazardous waste management as it may deem advisable and necessary for the discharge of its duties pursuant to sections 260.350 to 260.430;

[(20)**]** (21) Represent the state of Missouri in all matters pertaining to interstate hazardous waste management including the negotiation of interstate compacts or agreements;

[(21)**]** (22) Arrange for the establishment, staffing, operation and maintenance of collection stations, within appropriations or other funding available therefor, for householders, farmers and other exempted persons as provided in section 260.380;

[(22)**]** (23) Collect and disseminate information relating to hazardous waste management;

[(23)**]** (24) Conduct education and training programs on hazardous waste problems and management;

[(24)**]** (25) Encourage and facilitate public participation in the development, revision and implementation of the state hazardous waste program;

[(25)**]** (26) Encourage waste reduction, resource recovery, exchange and energy conservation in hazardous waste management;

[(26)**]** (27) Exercise all powers necessary to carry out the provisions of sections 260.350 to 260.430, assure that the state of Missouri complies with any federal hazardous waste management act and retains maximum control thereunder, and receives all desired federal grants, aid and other benefits;

[(27)**]** (28) Present to the public, at a public meeting, and

to the governor and the members of the general assembly, an annual report on the status of the state hazardous waste program;

[(28)**]** (29) Develop comprehensive plans and programs to aid in the establishment of hazardous waste disposal sites as needed within the various geographical areas of the state within a reasonable period of time;

[(29)**]** (30) Control, abate or clean up any hazardous waste placed into or on the land in a manner which endangers or is reasonably likely to endanger the health of humans or the environment and, in aid thereof, may cause to be filed by the attorney general or a prosecuting attorney, a suit seeking mandatory or prohibitory injunctive relief or such other relief as may be appropriate. The department shall also take such action as is necessary to recover all costs associated with the cleanup of any hazardous waste from the person responsible for the waste. All money received shall be deposited in the hazardous waste fund created in section 260.391;

[(30)**]** (31) Oversee any corrective action work undertaken pursuant to sections 260.350 to 260.430 and rules promulgated pursuant to sections 260.350 to 260.430 to investigate, monitor, or clean up releases of hazardous waste or hazardous constituents to the environment at hazardous waste facilities. The department shall review the technical and regulatory aspects of corrective action plans, reports, documents, and associated field activities, and attest to their accuracy and adequacy. Owners or operators of hazardous waste facilities performing corrective actions shall pay to the department all reasonable costs, as determined by the commission, incurred by the department pursuant

to this subdivision. All such funds remitted by owners or operators of hazardous waste facilities performing corrective actions shall be deposited in the hazardous waste fund created in section 260.391.

260.380. 1. After six months from the effective date of the standards, rules and regulations adopted by the commission pursuant to section 260.370, hazardous waste generators shall:

(1) Promptly file and maintain with the department, on registration forms it provides for this purpose, information on hazardous waste generation and management as specified by rules and regulations**[**, and the hazardous waste generator may provide such information in a single registration form for all hazardous waste generation sites owned or operated by the hazardous waste generator or may register each hazardous waste generation site separately for the purposes of subdivision (10) of this subsection**]**; except that generators located outside of Missouri shall not be required to register with the department if the Missouri treatment, storage, and disposal facilities provide this information in accordance with subdivision (11) of section 260.375. Missouri treatment, storage, or disposal facilities providing this information to the department for those out-of-state generators shall do so and shall pay the applicable initial registration fee within fifteen days of accepting any hazardous waste from those out-of-state generators. Hazardous waste generators shall pay a one hundred dollar registration fee upon initial registration, and a one hundred dollar registration renewal fee annually thereafter to maintain an active registration; except that in accordance with subdivision (11) of

section 260.375, Missouri treatment, storage, or disposal facilities receiving hazardous waste from out-of-state generators that elect to provide this service for the out-of-state generator shall pay this fee on behalf of those out-of-state generators. For annual renewal fee payments, Missouri treatment, storage, or disposal facilities that elect to provide this service to out-of-state generators shall notify the department annually of those generators at a time and in a manner prescribed by the department. Such fees shall be deposited in the hazardous waste fund created in section 260.391;

(2) Containerize and label all hazardous wastes as specified by standards, rules and regulations;

(3) Segregate all hazardous wastes from all nonhazardous wastes and from noncompatible wastes, materials and other potential hazards as specified by standards, rules and regulations;

(4) Provide safe storage and handling, including spill protection, as specified by standards, rules and regulations, for all hazardous wastes from the time of their generation to the time of their removal from the site of generation;

(5) Unless provided otherwise in the rules and regulations, utilize only a hazardous waste transporter holding a license pursuant to sections 260.350 to 260.430 for the removal of all hazardous wastes from the premises where they were generated;

(6) Unless provided otherwise in the rules and regulations, provide a separate manifest to the transporter for each load of hazardous waste transported from the premises where it was generated. The generator shall specify the destination of such

load on the manifest. The manner in which the manifest shall be completed, signed and filed with the department shall be in accordance with rules and regulations;

(7) Utilize for treatment, resource recovery, disposal or storage of all hazardous wastes, only a hazardous waste facility authorized to operate pursuant to sections 260.350 to 260.430 or the federal Resource Conservation and Recovery Act, or a state hazardous waste management program authorized pursuant to the federal Resource Conservation and Recovery Act, or any facility exempted from the permit required pursuant to section 260.395;

(8) Collect and maintain such records, perform such monitoring or analyses, and submit such reports on any hazardous waste generated, its transportation and final disposition, as specified in sections 260.350 to 260.430 and rules and regulations adopted pursuant to sections 260.350 to 260.430; except that generators located outside of Missouri shall not be required to complete this reporting if the information is provided by the Missouri treatment, storage, and disposal facilities in accordance with subdivision (11) of section 260.375;

(9) Make available to the department upon request samples of waste and all records relating to hazardous waste generation and management for inspection and copying and allow the department to make unhampered inspections at any reasonable time of hazardous waste generation and management facilities located on the generator's property and hazardous waste generation and management practices carried out on the generator's property;

(10) Pay annually, on or before January first of each year,

effective January 1, 1982, a fee to the state of Missouri to be placed in the hazardous waste fund to be used solely for the administrative costs of the program. The fee shall not exceed one dollar per ton of hazardous waste registered with the department as specified in subdivision (1) of this subsection for the twelve-month period ending June thirtieth of the previous year. The amount of the fee shall be established annually by the commission by rule or regulation. However, the fee shall not exceed ten thousand dollars per generator per year and no fee shall be imposed upon any generator who registers less than ten tons of hazardous waste annually with the department;

(a) All moneys payable pursuant to the provisions of this subdivision shall be promptly transmitted to the department of revenue, which shall deposit the same in the state treasury to the credit of the hazardous waste fund created in section 260.391;

(b) The hazardous waste management commission shall establish and submit to the department of revenue procedures relating to the collection of the fees authorized by this subdivision. Such procedures shall include, but not be limited to, necessary records identifying the quantities of hazardous waste registered, the form and submission of reports to accompany the payment of fees, the time and manner of payment of fees, which shall not be more often than quarterly.

2. Exempted from the requirements of this section are individual householders and farmers who generate only small quantities of hazardous waste and any person the commission determines generates only small quantities of hazardous waste on

an infrequent basis, except that:

(1) Householders, farmers and exempted persons shall manage all hazardous wastes they may generate in a manner so as not to adversely affect the health of humans, or pose a threat to the environment, or create a public nuisance; and

(2) The department may determine that a specific quantity of a specific hazardous waste requires special management. Upon such determination and after public notice by press release or advertisement thereof, including instructions for handling and delivery, generators exempted pursuant to this subsection shall deliver, but without a manifest or the requirement to use a licensed hazardous waste transporter, such waste to:

(a) Any storage, treatment or disposal site authorized to operate pursuant to sections 260.350 to 260.430 or the federal Resource Conservation and Recovery Act, or a state hazardous waste management program authorized pursuant to the federal Resource Conservation and Recovery Act which the department designates for this purpose; or

(b) A collection station or vehicle which the department may arrange for and designate for this purpose.

260.475. 1. Every hazardous waste generator shall pay, in addition to the fees imposed in section 260.380, a fee of twenty-five dollars per ton annually on all hazardous waste which is discharged, deposited, dumped or placed into or on the soil as a final action, and two dollars per ton on all other hazardous waste transported off site. No fee shall be imposed upon any hazardous waste generator who registers less than ten tons of hazardous waste annually pursuant to section 260.380, or upon:

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

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

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

(4) Cement kiln dust waste;

(5) Waste oil; or

(6) Hazardous waste that is:

(a) Reclaimed or reused for energy and materials;

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

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

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

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

3. **[**Sixty**]** Forty percent of all moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the hazardous waste remedial fund created in section 260.480. **[**Forty**]** Sixty percent of all moneys collected or received by the department pursuant to this section

shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the hazardous waste fund created pursuant to section 260.391. Following each annual reporting date, the state treasurer shall certify the amount deposited in the fund to the commission.

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

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

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

7. [No fee shall be collected pursuant to this section after January 1, 2005.] This fee shall expire June 30, 2006, except that the department shall levy and collect this fee for any hazardous waste generated prior to such date and reported to the department.

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

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

(1) For subdivision A waste, the fee shall be equal to 0.90785 times the amount of waste in short tons times the following sum: twenty-one dollars and eighty cents plus the

product of 7.9890 cents times the amount of waste in short tons, except that the fee for subdivision A waste shall not exceed eighty thousand dollars; and

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

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

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

4. Any hazardous waste generator registered with the department which discharges waste to a publicly owned treatment works having an approved pretreatment program as required by

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

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

6. The department may establish by rule and regulation categories of waste based upon waste characteristics pursuant to subsection 2 of section 260.370. When the commission adopts

hazardous waste categories, it shall establish and annually revise a fee schedule based upon waste characteristics. Each generator shall annually pay a fee, in lieu of the fee required in subsection 2 of this section, based upon the volume of waste produced annually within each hazard category.

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

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

9. Notwithstanding any other provision of law to the contrary, no tax based on the number of employees employed by a hazardous waste generator shall be collected. **[**No tax or fee shall be levied pursuant to this section after January 1, 2005.**]** This fee shall expire June 30, 2006, except that the department shall levy and collect this fee for any hazardous waste generated prior to such date and reported to the department.

444.762. It is hereby declared to be the policy of this

state to strike a balance between surface mining of minerals and reclamation of land subjected to surface disturbance by surface mining, as contemporaneously as possible, and for the conservation of land, and thereby to preserve natural resources, to encourage the planting of forests, to advance the seeding of grasses and legumes for grazing purposes and crops for harvest, to aid in the protection of wildlife and aquatic resources, to establish recreational, home and industrial sites, to protect and perpetuate the taxable value of property, and to protect and promote the health, safety and general welfare of the people of this state. Nothing in this policy shall be construed to declare the purpose of the Land Reclamation Act to be the regulation of the excavation of minerals or fill dirt for the purpose of construction of recreational, home, commercial, and industrial sites at the site of excavation as unrelated to surface mining or reclamation of land subsequent to the surface mining of minerals.

444.765. Wherever used or referred to in sections 444.760 to 444.790, unless a different meaning clearly appears from the context, the following terms mean:

(1) "Affected land", the pit area or area from which overburden shall have been removed, or upon which overburden has been deposited after September 28, 1971. When mining is conducted underground, affected land means any excavation or removal of overburden required to create access to mine openings, except that areas of disturbance encompassed by the actual underground openings for air shafts, portals, adits and haul roads in addition to disturbances within fifty feet of any openings for haul roads, portals or adits shall not be considered

affected land. Sites which exceed the excluded areas by more than one acre for underground mining operations shall obtain a permit for the total extent of affected lands with no exclusions as required under sections 444.760 to 444.790;

(2) "Beneficiation", the dressing or processing of minerals for the purpose of regulating the size of the desired produce, removing unwanted constituents, and improving the quality or purity of a desired product;

(3) "Commercial purpose", the purpose of extracting minerals for their value in sales to other persons or for incorporation into a product;

(4) "Commission", the land reclamation commission in the department of natural resources;

(5) "Construction", construction, erection, alteration, maintenance, or repair of any facility including but not limited to any building, structure, highway, road, bridge, viaduct, water or sewer line, pipeline or utility line, and demolition, excavation, land clearance, and moving of minerals or fill dirt in connection therewith;

[(3)**]** (6) "Director", the staff director of the land reclamation commission;

(7) "Excavation", any operation in which earth, minerals, or other material in or on the ground is moved, removed, or otherwise displaced for purposes of construction at the site of excavation by means of any tools, equipment, or explosives and includes but is not limited to, backfilling, grading, trenching, digging, ditching, drilling, well-drilling, auguring, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-

in, ripping, driving, demolition of structures, and the use of high-velocity air to disintegrate and suction to remove earth and other materials. For purposes of this section, excavation or removal of overburden for purposes of mining for a commercial purpose or for purposes of reclamation of land subjected to surface mining is not included in this definition. Neither shall excavations of sand and gravel by political subdivisions or private individuals be included in this definition;

(8) "Fill dirt", material removed from its natural location through mining or construction activity, which is a mixture of unconsolidated earthy material, which may include some minerals, and which is used to fill, raise, or level the surface of the ground at the site of disposition which may be at the site it was removed or on other property, and which is not processed to extract mineral components of the mixture. Backfill material for use in completing reclamation is not included in this definition;

(9) "Land improvement", work performed by or for a public or private owner or lessor of real property for purposes of improving the suitability of the property for construction at an undetermined future date where specific plans for construction do not currently exist;

[(4)**]** (10) "Mineral", a constituent of the earth in a solid state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form as a chemical, an energy source, or raw material for manufacturing or construction material. For the purposes of this section, this definition includes barite, tar sands, and oil shales, but does not include iron, lead, zinc, gold, silver, coal, surface or

subsurface water, fill dirt, natural oil or gas together with other chemicals recovered therewith;

(11) "Mining", the removal of overburden and extraction of underlying minerals or the extraction of minerals from exposed natural deposits for a commercial purpose, as defined by this section;

[(5)**]** (12) "Operator", any person, firm or corporation engaged in and controlling a surface mining operation;

[(6)**]** (13) "Overburden", all of the earth and other materials which lie above natural deposits of minerals; and also means such earth and other materials disturbed from their natural state in the process of surface mining other than what is defined in subdivision **[**(4)**]** (10) of this section;

[(7)**]** (14) "Peak", a projecting point of overburden created in the surface mining process;

[(8)**]** (15) "Pit", the place where minerals are being or have been mined by surface mining;

(16) "Public entity", the state or any officer, official, authority, board, or commission of the state, and any county, city, or other political subdivision of the state, or any institution supported in whole or in part by public funds;

(17) "Quarry", any open pit or land disturbance whose primary business purpose is the commercial surface mining of minerals for purposes of being processed and sold to public entities or private persons. A quarry operation includes but is not limited to blasting, mining, screening, sorting, crushing, milling, stockpiling, and weight scales or other means of measuring the quantity of minerals sold;

[(9)**]** (18) "Refuse", all waste material directly connected with the cleaning and preparation of substance mined by surface mining;

[(10)**]** (19) "Ridge", a lengthened elevation of overburden created in the surface mining process;

[(11)**]** (20) "Site" or "mining site", any location or group of associated locations where minerals are being surface mined by the same operator;

[(12)**]** (21) "Surface mining", the mining of minerals for commercial purposes by removing the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed, and shall include mining of exposed natural deposits of such minerals over which no overburden lies and, after August 28, 1990, the surface effects of underground mining operations for such minerals. For the purposes of sections 444.762 to 444.787, surface mining shall not be construed to mean excavations to move minerals or fill dirt within the confines of the real property where the excavation occurs or to remove minerals or fill dirt from the real property in preparation for construction at the site of excavation.

444.767. 1. The commission may:

(1) Adopt and promulgate rules and regulations pursuant to section 444.530 and chapter 536, RSMo, respecting the administration of sections 444.760 to 444.790 and in conformity therewith;

(2) Encourage and conduct investigation, research, experiments and demonstrations, and collect and disseminate information relating to strip mining and reclamation and

conservation of lands and waters affected by strip mining;

(3) Examine and pass on all applications and plans and specifications submitted by the operator for the method of operation and for the reclamation and conservation of the area of land affected by the operation;

(4) Make investigations and inspections which are necessary to ensure compliance with the provisions of sections 444.760 to 444.790;

(5) Conduct hearings pursuant to sections 444.760 to 444.790 and may administer oaths or affirmations and subpoena witnesses to the inquiry;

(6) Order, after hearing, the revocation of any permit and to cease and desist operations for failure to comply with any of the provisions of sections 444.760 to 444.790 or any corrective order of the commission;

(7) Order forfeiture of any bond for failure to comply with any provisions of sections 444.760 to 444.790 or any corrective order of the commission or other order of the commission;

(8) Cause to be instituted in any court of competent jurisdiction legal proceedings for injunction or other appropriate relief to enforce the provisions of sections 444.760 to 444.790 and any order of the commission promulgated thereunder;

(9) Retain, employ, provide for, and compensate, within the limits of appropriations made for that purpose, such consultants, assistants, deputies, clerks, and other employees on a full- or part-time basis as may be necessary to carry out the provisions of sections 444.760 to 444.790 and prescribe the times at which

they shall be appointed and their powers and duties;

(10) Study and develop plans for the reclamation of lands that have been strip mined prior to September 28, 1971;

(11) Accept, receive and administer grants or other funds or gifts from public and private agencies and individuals, including the federal government, for the purpose of carrying out any of the functions of sections 444.760 to 444.790, including the reclamation of lands strip mined prior to August 28, 1990. The commission may promulgate such rules and regulations or enter into such contracts as it may deem necessary for carrying out the provisions of this subdivision;

(12) Budget and receive duly appropriated moneys for expenditures to carry out the provisions and purposes of sections 444.760 to 444.790;

(13) Prepare and file a biennial report with the governor and members of the general assembly;

(14) Order, after hearing, an operator to adopt such corrective measures as are necessary to comply with the provisions of sections 444.760 to 444.790.

2. The commission shall have no authority under this act to regulate the excavation of minerals or fill dirt for the purposes of construction at the site of excavation, as unrelated to reclamation of land subsequent to the surface mining of minerals.

3. The powers authorized by this section shall be utilized to promote the reclamation of land subjected to disturbance by surface mining for purposes of restoration of land for recreational, residential, commercial, industrial, or other beneficial use subsequent to mining and to promote and protect

the health, safety, and general welfare of the people of this state in relation to surface mining.

444.770. 1. It shall be unlawful for any operator to engage in surface mining without first obtaining from the commission a permit to do so, in such form as is hereinafter provided, including any operator involved in any gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand tons. The commission may establish excavation standards by guidelines for operators of in-stream sand and gravel mines that are exempt from permitting requirements pursuant to this subsection, provided that, private landowners who use or conduct in-stream sand and gravel mining and use such excavated material for personal use shall be exempt from such excavation standards. Such excavation standards shall not be more stringent than standards required of operators required to obtain permits. If an operator that is not required to obtain a permit violates such excavation standards and results in an impact on the stream, the operator shall take corrective actions as directed by the commission and the commission shall require the operator to apply for a permit to continue operating at the site of such violation.

2. Any private landowner who is exempt from obtaining a permit pursuant to subsection 1 of this section may contract for in-stream sand and gravel operations and may either personally or through their contractor sell up to two thousand tons of sand and gravel material annually. Any contractor conducting in-stream sand and gravel operations on behalf of a landowner shall not remove more than a total of two thousand tons of sand and gravel

material per year from all sources without a permit.

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

[3.**]** 4. All surface mining operations where land is affected after September 28, 1971, which are under the control of any government agency whose regulations are equal to or greater than those imposed by section 444.774, are not subject to the further provisions of sections 444.760 to 444.790, except that such operations shall be registered with the land reclamation commission.

[4.**]** 5. Any portion of a surface mining operation which is subject to the provisions of sections 260.200 to 260.245, RSMo, and the regulations promulgated thereunder, shall not be subject to the provisions of sections 444.760 to 444.790, and any bonds or portions thereof applicable to such operations shall be promptly released by the commission, and the associated permits canceled by the commission upon presentation to it of satisfactory evidence that the operator has received a permit pursuant to section 260.205, RSMo, and the regulations promulgated thereunder. Any land reclamation bond associated with such released permits shall be retained by the commission until presentation to the commission of satisfactory evidence that:

(1) The operator has complied with sections 260.226 and

260.227, RSMo, and the regulations promulgated thereunder, pertaining to closure and postclosure plans and financial assurance instruments; and

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

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

7. The department shall provide information and educational opportunities to educate the public regarding permit requirements and best mining practices.

8. Notwithstanding any commission rule, policy, or interpretation to the contrary, no public entity, private person or contractor or subcontractor to such public entity or private person shall be required to obtain a permit under this section for the purpose of moving minerals or fill dirt within the confines of real property where excavation occurs, for purposes of construction, or to remove minerals or fill dirt from the real property as incidental to the primary purpose of construction at the site of excavation. It shall be a rebuttable presumption that excavations are for the purposes of construction if:

(1) Excavation, moving, or removing of minerals or fill dirt is performed by the public entity, a private person or a

contractor to such public entity or private person or by a subcontractor pursuant to engineering plans and specifications for construction on the real property that were prepared by an architect, professional engineer, or landscape architect licensed under chapter 327 RSMo; or

(2) There is a written contract between a contractor and a public entity or a private person or between a contractor and a subcontractor requiring excavation for purposes of construction that establishes dates for completion of the work or portions of the work, specifies the terms of payment for work, and requires the excavation, moving, or removing of minerals or fill dirt for purposes of construction.

9. It shall be a rebuttable presumption that excavations purported to be for the purposes of construction are surface mining if minerals removed from the site are in quantities greater than required to perform on engineering plans or specifications or to comply with work required by a written contract.

10. Any private person, leasor, public entity, contractor, or subcontractor engaged in land improvement involving the displacement, moving, or removal of minerals and fill dirt may or may not be required to obtain a surface mining permit under a determination by the director or commission as to whether activity on the real property constitutes surface mining.

(1) It shall be a rebuttable presumption that land improvement activities are for the purpose of mining if:

(a) The real property has been designated as a surface mine by the federal Mine Safety and Health Administration; or

(b) Minerals from the property are sold to other persons on a frequent on-going basis as demonstrated by financial records of the property owner or purchasers of minerals; or

(c) A pit, peak, or ridge as defined in land reclamation laws persists at the property without the property being leveled or filled as consistent with plans, drawings, or maps for land improvement and which endangers the health, safety, or welfare of the general public or constitutes a public nuisance.

(2) It shall be rebuttable presumption that land improvement activities are not for the purposes of mining and do not require a permit if minerals removed from the site are excess minerals that cannot be used on-site for any practical purpose and at no time are subjected to crushing, screening, or other means of beneficiation with the exception of removal of tree limbs and stumps, and:

(a) The real property has been approved by a county, city, or other recognized planning and zoning authority for designated use other than as a quarry or surface mine; or

(b) Surety bonds or other financial assurances have been provided by the owner of the property as required by a city or county for purposes other than mining; or

(c) Performance or payment bonds have been provided by a contractor as required by a public entity under section 107.170 RSMo; or

(d) The land improvement is for the purpose of preparing the real property for tilling of the soil and planting of crops or other agricultural purposes.

(3) The commission shall promulgate rules further defining

when land improvement requires or does not require a surface mining permit. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

11. If the director or staff determines that a surface mining permit is required for real property which is purported to be for purposes of construction or land improvement not requiring a surface mining permit under this section, such determination shall be communicated to the owner of the property by letter stating the reasons for such determination. Upon request of the person receiving the letter, an informal conference shall be scheduled with the director within fifteen calendar days to discuss the determination. Following the informal conference, the director shall issue a written determination regarding his or her findings of fact no later than thirty calendar days after the date of the conference. If the director agrees that a surface mining permit is required and the person disagrees with that decision upon written request the person may request a hearing before the commission at its next regular meeting. Such written request shall be filed within thirty calendar days of receipt of

the director's written determination, except when the thirtieth day would be later than the date of the next regularly scheduled commission meeting, the written request shall be filed at least seven days prior to the commission meeting unless the director and the person filing the request mutually agree to place the matter on the commission's agenda for a later meeting. The commission shall issue a written determination as to whether a surface mining permit is required under Missouri law within thirty calendar days after the hearing. The written determination may be appealed as provided under this chapter.

12. Until a final determination has been issued under the process established under subsection 11 of this section, the person receiving a letter stating the reasons a mining permit is required may continue activity at the site in dispute. If the final written determination is that a permit is required, all fees otherwise provided by statute or rules of the commission shall apply. If the determination is that no permit is required, no permit fees shall be required by the director or commission.

13. The burden of proof to establish that a permit is required shall be on the director and the commission regarding rebuttable presumptions created under subsections 8 to 9 of this section and subdivision (2) of subsection 10 of this section. The burden of proof to establish that a permit is not required shall be on the person receiving a written determination that a permit is required regarding the rebuttable presumption created under subdivision (1) of subsection 10.

14. The process set out in subsections 11 to 13 of this section for determining if a mining permit is required shall not

be subject to the hearing requirements of section 444.789.

444.787. 1. The commission shall investigate surface mining operations in the state of Missouri. If the investigations show that surface mining is being or is going to be conducted without a permit in violation of sections 444.760 to 444.790 or in violation of any revocation order, and the commission has not issued a variance, the commission shall request the attorney general to file suit in the name of the state of Missouri for an injunction and civil penalties not to exceed one thousand dollars per day for each day, or part thereof, the violation has occurred. Suit may be filed either in the county where the violation occurs or in Cole County.

2. If the investigation shows that a surface mining operation for which a permit has been issued is being conducted contrary to or in violation of any provision of sections 444.760 to 444.790 or any rule or regulation promulgated by the commission or any condition imposed on the permit or any condition of the bond, the director may by conference, conciliation and persuasion endeavor to eliminate the violation. If the violation is not eliminated, the director shall provide to the operator by registered mail a notice describing the nature of the violation, corrective measures to be taken to abate the violation, and the time period for abatement. Within fifteen days of receipt of this notice the operator may request an informal conference with the director to contest the notice. The director may modify, vacate or enforce the notice and shall provide notice to the operator of his action within thirty days of the informal conference. If the operator fails to comply with

the notice, as amended by the director, in the time prescribed within the notice, the director shall file a formal complaint with the commission for suspension or revocation of the permit, and for forfeiture of bond, or for appropriate corrective measures. When the director files a formal complaint, the commission shall cause to have issued and served upon the person complained against a written notice together with a copy of the formal complaint, which shall specify the provision of sections 444.760 to 444.790 or the rule or regulation or the condition of the permit or of the bond of which the person is alleged to be in violation, a statement of the manner in, and the extent to which, the person is alleged to be in violation. The person complained against may, within fifteen days of receipt of the complaint, request a hearing before the commission. Such hearing shall be conducted in accordance with the provisions of section 444.789.

3. After due consideration of the hearing record, or upon failure of the operator to request a hearing by the date specified in the complaint, the commission shall issue and enter such final order and make such final determination as it shall deem appropriate under the circumstances. Included in such order and determination may be the revocation of any permit and to cease and desist operations. The commission shall immediately notify the respondent of its decision in writing by certified mail.

4. Any final order or determination or other final action by the commission shall be approved in writing by at least four members of the commission. The commission shall not issue any permit to any person who has had a permit revoked until the

violation that caused the revocation is corrected to the satisfaction of the commission. Any final order of the commission can be appealed in accordance with chapter 536, RSMo.

5. If the suit filed under subsection 1 of this section alleges that the violation of operating without a permit constitutes fraud in purporting to be exempted by the provisions of this section for construction or land improvement and the court imposes civil penalties for a violation, additional penalties may be levied at the discretion of the court for up to double the cumulative total of penalties authorized by subsection 1 of this section.

621.015. The "Administrative Hearing Commission" is assigned to the office of administration. It shall consist of no more than three commissioners. The commissioners shall be appointed by the governor with the advice and consent of the senate. The term of each commissioner shall be for six years and until his successor is appointed, qualified and sworn. The commissioners shall be attorneys at law admitted to practice before the supreme court of Missouri, but shall not practice law during their term of office. Each commissioner shall receive annual compensation of fifty-one thousand dollars plus any salary adjustment provided pursuant to section 105.005, RSMo. Each commissioner shall also be entitled to actual and necessary expenses in the performance of his duties. The office of the administrative hearing commission shall be located in the City of Jefferson and it may employ necessary clerical assistance, compensation and expenses of the commissioners to be paid from appropriations **[**from general revenue**]** made for that purpose.

621.250. 1. All authority to hear appeals granted in chapters 260, 444, 640, 643, and 644, RSMo, the hazardous waste management commission in chapter 260, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, shall be transferred to the administrative hearing commission pursuant to chapter 621, RSMo. The authority to render final decisions after hearing on appeals heard by the administrative hearing commission shall remain with the commissions listed in this subsection.

2. Except as otherwise provided by law, any person or entity who is a party to, or who is affected by, any finding, order, decision, or assessment for which the authority to hear appeals was transferred to the administrative hearing commission in subsection 1 of this section shall be entitled to a hearing before the administrative hearing commission by the filing of a petition with the administrative hearing commission within thirty days after any such finding, order, decision, or assessment is placed in the United States mail or within thirty days any such finding, order, decision, or assessment is delivered, whichever is earlier.

3. Any decision by the director of the department of natural resources that may be appealed to the commissions listed in subsection 1 of section 621.052 shall contain a notice of the right of appeal in substantially the following language: "If you were adversely affected by this decision, you may appeal to have the matter heard by the administrative hearing commission. To

appeal, you must file a petition with the administrative hearing commission within thirty days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the administrative hearing commission.". Within fifteen days after the administrative hearing commission renders its recommended decision, it shall transmit the record and a transcript of the proceedings together with the administrative hearing commission's recommended decision to the commission having authority to issue a final decision. The commission shall hold a meeting within thirty days to provide an opportunity for oral argument and written briefs, if requested by any party. Within fifteen days thereafter, the commission shall render a final decision on the appeal. Failure to comply with the time requirements of this subsection shall render the recommended decision of the administrative hearing commission final. The decision of the commission shall be based only on the facts and evidence in the hearing record. The commission may adopt the recommended decision as its final decision. The commission may change a finding of fact or conclusion of law made by the administrative hearing commission, or may vacate or modify the recommended decision issued by the administrative hearing commission, only if the commission determines: that the administrative hearing commission did not properly apply or interpret applicable law or commission rules or prior administrative decisions; or that a

technical error in a finding of fact should be changed. The commission shall state in writing the specific reason and legal basis for a change made under this subsection.

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

5. The costs for hearing appeals pursuant to this section shall be paid as administrative costs from the respective funds of the programs of the department of natural resources from which the appeals are taken.

6. In all matters heard by the administrative hearing commission pursuant to this section, the burden of proof shall be upon the program of the department of natural resources that issued the decision being appealed, except that in matters involving the denial of a permit, license, or registration, the burden of proof shall be on the applicant for such permit, license, or registration.

640.013. All authority to hear appeals granted in chapters 260, 444, 640, 643, and 644, RSMo, the hazardous waste management commission in chapter 260, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, shall be transferred to the administrative hearing commission pursuant to chapter 621, RSMo. The authority to render final decisions after hearing on appeals heard by the administrative hearing commission

shall remain with the commissions listed in this subsection.

[260.342. The department of natural resources shall collect and disseminate information and conduct educational and training programs that assist in the implementation of sections 260.200 to 260.345. The information and programs shall be designed to enhance district, county and city solid waste management systems and to inform the public of the relationship between an individual's consumption of goods and services, the generation of different types and quantities of solid waste and the implementation of solid waste management priorities under sections 260.200 to 260.345. Educational information shall also address other environmental concerns associated with solid waste management including energy consumption and conservation; air and water pollution; and land use planning. The department of natural resources may cooperate with the department of elementary and secondary education for the purpose of developing specific educational curriculum and programs. The information and programs shall be prepared for use on a statewide basis for the following:

(1) Municipal, county and state officials and employees;

(2) Kindergarten through post-baccalaureate students and teachers;

(3) Private solid waste scrap brokers, dealers and processors;

(4) Businesses which use or could use recycled materials or which produce or could produce products from recycled materials, and persons who support or serve these businesses; and

(5) The general public.**]**

Section B. Because of the need to protect the state's environment, section A 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 section A of this act shall be in full force and effect upon its passage and approval.