

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 419**  
**94TH GENERAL ASSEMBLY**

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Reported from the Committee on Conservation and Natural Resources April 19, 2007 with recommendation that House Committee Substitute for Senate Bill No. 419 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

1890L.03C

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**AN ACT**

To repeal sections 247.050, 247.060, 247.110, 250.231, 250.233, 253.095, 260.200, 260.211, 260.212, 260.240, 260.247, 260.249, 260.250, 260.330, 260.335, 260.360, 260.800, 444.765, 444.766, 444.770, 444.772, and 444.774, RSMo, and to enact in lieu thereof forty-five new sections relating to natural resources, with penalty provisions.

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

Section A. Sections 247.050, 247.060, 247.110, 250.231, 250.233, 253.095, 260.200, 260.211, 260.212, 260.240, 260.247, 260.249, 260.250, 260.330, 260.335, 260.360, 260.800, 444.765, 444.766, 444.770, 444.772, and 444.774, RSMo, are repealed and forty-five new sections enacted in lieu thereof, to be known as sections 135.633, 247.050, 247.060, 247.110, 250.231, 250.233, 253.095, 256.700, 256.705, 256.710, 260.200, 260.211, 260.212, 260.240, 260.247, 260.249, 260.250, 260.330, 260.335, 260.360, 260.800, 444.765, 444.766, 444.770, 444.772, 444.774, 640.300, 640.305, 640.310, 640.315, 640.320, 640.325, 640.330, 640.335, 640.340, 640.800, 640.803, 640.806, 640.809, 640.812, 640.815, 640.818, 640.821, 640.824, and 640.827, to read as follows:

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

- (1) **"Authority", the Missouri agriculture and small business development authority;**
- (2) **"Eligible expenses", the actual cost to a producer of implementing odor abatement best management practices and systems necessary to achieve MELO**

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 accreditation from the department of agriculture. Eligible expenses includes the actual  
7 cost of implementing odor abatement best management practices and systems necessary  
8 to meet preferred environmental practices. All eligible expenses shall be less any federal  
9 or other state incentives;

10 (3) "MELO", managed environment livestock operation;

11 (4) "Odor abatement best management practices", best management practices as  
12 established by the department of natural resources and the department of agriculture;

13 (5) "Preferred environmental practice", those odor abatement best management  
14 practices which exceed the criteria for MELO accreditation;

15 (6) "Producer", a person, partnership, corporation, trust, or limited liability  
16 company who is a Missouri resident and whose primary purpose is agriculture production;

17 (7) "Tax credit", a credit against the tax otherwise due under chapter 143, RSMo,  
18 excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or otherwise due  
19 under chapter 147, 148, or 153, RSMo;

20 (8) "Taxpayer", any individual or entity subject to the tax imposed in chapter 143,  
21 RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the  
22 tax imposed in chapter 147, 148, or 153, RSMo.

23 2. For all taxable years beginning on or after January 1, 2007, a taxpayer shall be  
24 allowed a tax credit for the eligible costs of implementing odor abatement best management  
25 practices and systems. The authority shall establish a managed environment livestock  
26 operation odor abatement tax credit program for producers. The maximum cumulative  
27 tax credit amount per taxpayer shall be equal to:

28 (1) The lesser of fifty percent of such eligible expense of implementing odor  
29 abatement best management practices and systems necessary to achieve MELO  
30 accreditation from the department of agriculture, or fifty thousand dollars; or

31 (2) The lesser of seventy-five percent of such eligible expense of implementing odor  
32 abatement best management practices and systems necessary to meet preferred  
33 environmental practices, or seventy-five thousand dollars.

34 3. If the amount of the tax credit issued exceeds the amount of the taxpayer's state  
35 tax liability for the tax year for which the credit is claimed, the difference shall not be  
36 refundable but may be carried back to any of the taxpayer's three prior taxable years and  
37 carried forward to any of the taxpayer's five subsequent taxable years regardless of the  
38 type of tax liability to which such credits are applied as authorized under subsection 4 of  
39 this section. Tax credits granted under this section may be transferred, sold, or assigned.  
40 Whenever a certificate of tax credit is assigned, transferred, sold, or otherwise conveyed,  
41 a notarized endorsement shall be filed with the authority specifying the name and address

of the new owner of the tax credit or the value of the credit. The cumulative amount of tax credits which may be issued under this section in any one fiscal year shall not exceed three million dollars.

4. Producers may receive a credit against the tax or estimated quarterly tax otherwise due under chapter 143, RSMo, other than taxes withheld under sections 143.191 to 143.265, RSMo, or chapter 147 or 148, RSMo.

5. Tax credits claimed in a taxable year may be done so on a quarterly basis and applied to the estimated quarterly tax otherwise due under subsection 4 of this section. If a quarterly tax credit claim or series of claims contributes to causing an overpayment of taxes for a taxable year, such overpayment shall not be refunded but shall be applied to the next taxable year.

6. A producer shall submit to the authority an application for tax credit allocation before any eligible expenses are expended. The authority may promulgate rules establishing eligibility under this section, taking into consideration:

(1) The potential for significant odor reduction;

(2) The producers ability to provide funding for the implementation of best management odor abatement projects;

(3) The implementation of proven odor abatement technologies; and

(4) Such other factors as the authority may establish.

7. The authority may impose a one-time application fee of one-fourth of one percent which shall be collected at the time of the tax credit issuance.

8. Ninety percent of the tax credits authorized under this section shall initially be issued to producers for MELO accreditation projects in any fiscal year. If any portion of the ninety percent of tax credits offered to producers for MELO accreditation projects is unused as of March first in any fiscal year, the unused portion of tax credits may be offered to producers for preferred environmental practices.

9. If any portion of the ten percent of tax credits offered to producers for preferred environmental practices projects is unused as of March first in any fiscal year, the unused portion of tax credits may be offered to approved MELO accreditation projects.

10. Any odor abatement tax credit not issued by June thirtieth of each fiscal year shall expire.

11. 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 pursuant to chapter 536, RSMo,

78 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**  
79 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**  
80 **adopted after August 28, 2007, shall be invalid and void.**

81 **12. The provisions of this section shall expire on June 30, 2012.**

247.050. The following powers are hereby conferred upon public water supply districts  
2 organized under the provisions of sections 247.010 to 247.220:

- 3 (1) To sue and be sued;
- 4 (2) To purchase or otherwise acquire water for the necessities of the district;
- 5 (3) To accept by gift any funds or property for the uses and purposes of the district;
- 6 (4) To dispose of property belonging to the district, under the conditions expressed in  
7 sections 247.010 to 247.220;
- 8 (5) To build, acquire by purchase or otherwise, enlarge, improve, extend and maintain  
9 a system of waterworks, including fire hydrants;
- 10 (6) To contract and be contracted with;
- 11 (7) To condemn private property within or without the district, needed for the uses and  
12 purposes in sections 247.010 to 247.220 provided for;
- 13 (8) To lease, acquire and own any and all property, equipment and supplies needed  
14 within or without the district in the successful operation of a waterworks system;
- 15 (9) To contract indebtedness and issue general or special obligation bonds, or both, of  
16 the district therefor, as herein provided;
- 17 (10) To acquire by purchase or otherwise, a system of waterworks, and to build, enlarge,  
18 improve, extend and equip such system for the uses and purposes of the district;
- 19 (11) To certify to the county commission or county commissions of the county or  
20 counties within which such district is situate, the amount or amounts to be provided by the levy  
21 of a tax upon all taxable property within the district to create an interest and sinking fund for the  
22 payment of general obligation bonds of the district and the interest thereon; and also
- 23 (12) To create an incidental fund to take care of all costs and expenses incurred in  
24 incorporating the district, and all obligations contracted prior thereto and connected therewith;  
25 and
- 26 (13) To purchase equipment and supplies needed in the operation of the water system  
27 of the district; provided, however, that the power to create an incidental fund by the levy of a  
28 general property tax shall cease after two annual levies therefor shall have been made, and such  
29 levy shall not exceed fifteen cents per annum on each one hundred dollars assessed valuation of  
30 taxable property within the district;

31 (14) To provide for the collection of taxes and rates or charges for water and water  
32 service **or sewer service and to establish, make, and collect fees and charges for the**  
33 **construction of water or sewerage systems;**

34 (15) To sell and distribute water to the inhabitants of the district and to consumers  
35 outside the district, delivered within or at the boundaries of the district;

36 (16) To fix rates for the sale of water; and

37 (17) To make general rules and regulations in relation to the management of the affairs  
38 of the district.

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. A member shall be at least twenty-five years of age and shall  
6 not be delinquent in the payment of taxes at the time of his election. Except as provided in  
7 subsection 2 of this section, the term of office of a member of the board shall be three years. The  
8 remaining members of the board shall appoint a qualified person to fill any vacancy on the board.  
9 If no qualified person who lives in the subdistrict for which there is a vacancy is willing to serve  
10 on the board, the board may appoint an otherwise qualified person, who lives in the district but  
11 not in the subdistrict in which the vacancy exists to fill such vacancy.

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

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

24 **4. Directors elected in 2008, 2009, and 2010 shall serve from the first Tuesday after**  
25 **the first Monday in June until the first Tuesday in April of the third year following the**  
26 **year of their election. All directors elected thereafter shall serve from the first Tuesday in**  
27 **April until the first Tuesday in April of the third year following the year of their election.**

247.110. 1. Subject to such regulation and control as may now exist in or may hereafter  
2 be conferred upon the public service commission of the state of Missouri, the fixing of rates,  
3 **fees**, or charges for **the construction of water systems or sewer systems of the provision of**  
4 water or water service **or sewer service** furnished by a district incorporated under sections  
5 247.010 to 247.220 is hereby vested in its board of directors. The rates, **fees**, or charges to be  
6 so fixed **may be determined by any reasonable plan or reasonable method of calculation**  
7 **established by the board of directors of the district and** shall, at all times, be reasonable, but  
8 in determining the reasonableness of rates, **fees**, or charges, the board shall take into  
9 consideration the sum or sums required to retire outstanding special obligation bonded  
10 indebtedness of the district and the interest accruing thereon, the need for extensions of mains,  
11 repairs, depreciation, enlargement of plant, adequate service, obsolescence, overhead charges,  
12 operating expenses, and the need of an operating fund out of which the district may protect itself  
13 in emergencies and out of which the incidental expenses of the district may readily be met.

14 2. Any **fee or charge for the construction of water systems or sewer systems or the**  
15 **provision of** water or water services **or sewer services** levied by the board of directors of a water  
16 district shall be due at such time or times as specified by the board and may be considered  
17 delinquent if not paid by the due date. The board may assess penalties on delinquent payments  
18 owed to the district. These penalties shall not exceed a reasonable amount.

19 3. Upon ten days prior notice to the person **delinquent in paying any fee or charge or**  
20 to whom water service **or sewer service** was delivered, the board of directors of a water district  
21 may cause to be filed with the recorder of deeds in the county where the land is located a legal  
22 description of the property on which water **or sewer fees or** charges are thirty days or more  
23 delinquent, the names and addresses of the title owners and the amount due, provided the person  
24 who owns the property is the same person who owes for the water **or sewer** service delivered  
25 **or who is delinquent in paying the fees or charges**, which shall constitute a lien upon the land  
26 so charged. The board shall file with the recorder of deeds a notice of satisfaction when the  
27 delinquent amounts, any interest on the delinquent amounts and any recording fees or attorney  
28 fees have been paid in full.

29 4. The lien authorized in this section may be enforced by an action filed in the circuit  
30 court having jurisdiction in the county where water services are delivered. The pleadings,  
31 practice, process, and other proceedings in cases arising under this section shall be the same as  
32 in ordinary civil actions and proceedings in circuit courts.

250.231. Any city, town [or], village, **or sewer district** operating a waterworks or sewer  
2 system shall have all of the powers necessary and convenient to provide for the **construction**,  
3 operation, maintenance, administration and regulation, including the adoption of rules and  
4 regulations, of any individual home or business sewerage systems within its jurisdiction.

250.233. Any city, town [or] , village, **or sewer district** operating a sewerage system or  
2 waterworks may establish, make and collect charges **and fees for the construction of water**  
3 **systems or sewerage systems and the provision of water and water services or** sewerage  
4 services, including **connection fees and** tap-on fees. The charges may be set as a flat fee [or]  
5 **, may be** based upon the amount of water supplied to the premises, **or may be determined by**  
6 **any other reasonable plan or reasonable method of calculation established by the**  
7 **governing body of the city, town, village, or sewer district**, and shall be in addition to those  
8 charges which may be levied and collected for maintenance, repair and administration, including  
9 debt service expenses. Any private water company or public water supply district supplying  
10 water to the premises located within said city, town or village shall, at reasonable charge upon  
11 reasonable request, make available to such city, town or village its records and books so that such  
12 city, town or village may obtain therefrom such data as may be necessary to calculate the charges  
13 for sewer service. Prior to establishing any such **water or** sewer charges, public hearings shall  
14 be held thereon and at least thirty days' notice shall be given thereof.

253.095. In order to further the interpretive or educational functions of Missouri state  
2 parks, the director of the Missouri department of natural resources is authorized to enter into  
3 agreements with private, not-for-profit organizations that are organized [solely] to provide  
4 cooperative, interpretive, **facility enhancement** or educational services to any [one] Missouri  
5 state park. The director may provide state park facility space **and incidental staff support** to  
6 such an organization under a cooperative agreement, **which reimburses the department for the**  
7 **actual costs of such space and incidental staff support and clearly demonstrates the fiscal,**  
8 **interpretive, educational, and facility enhancement benefits to the state.** Net proceeds  
9 received from the sale of publications or other materials **and services** provided by an  
10 organization pursuant to such an agreement entered into under this section shall be retained by  
11 the organization for use in the interpretive or educational services provided [to such park that the  
12 organization is designated to serve] **in state parks.**

**256.700. 1. Any operator desiring to engage in surface mining who applies for a**  
2 **permit under section 444.772, RSMo, shall in addition to all other fees authorized under**  
3 **such section, annually submit a geologic resources fee. Such fee shall be deposited in the**  
4 **geologic resources fund established under section 256.705. For any operator of a gravel**  
5 **mining operation where the annual tonnage of gravel mined by such operator is less than**  
6 **five thousand tons, there shall be no fee under this section.**  
7  
8 **2. The director of the department of natural resources may require a geologic**  
9 **resources fee for each permit not to exceed one hundred dollars. The director may also**  
10 **require a geologic resources fee for each site listed on a permit not to exceed one hundred**  
11 **dollars for each site. The director may also require a geologic resources fee for each acre**

11 permitted by the operator under section 444.772, RSMo, not to exceed ten dollars per acre.  
12 If such fee is assessed, the fee per acre on all acres bonded by a single operator that exceeds  
13 a total of three hundred acres shall be reduced by fifty percent. In no case shall the  
14 geologic resources fee portion for any permit issued under section 444.772, RSMo, be more  
15 than three thousand five hundred dollars.

16 3. Beginning August 28, 2007, the geologic resources fee shall be set at a permit fee  
17 of fifty dollars, a site fee of fifty dollars, and an acre fee of six dollars. Fees may be raised  
18 as allowed in this subsection by a regulation change promulgated by the director of the  
19 department of natural resources. Prior to such a regulation change, the director shall  
20 consult the industrial minerals advisory council created under section 256.710 in order to  
21 determine the need for such an increase in fees.

22 4. Fees imposed under this section shall become effective August 28, 2007, and shall  
23 expire on December 31, 2020. No other provisions of sections 256.700 to 256.710 shall  
24 expire.

256.705. 1. All sums received through the payment of fees under section 256.700  
2 shall be placed in the state treasury and credited to the "Geologic Resources Fund" which  
3 is hereby created.

4 2. After appropriation by the general assembly, the money in such fund shall be  
5 expended to collect, process, manage, and distribute geologic and hydrologic resource  
6 information pertaining to mineral resource potential in order to assist the mineral industry  
7 and for no other purpose. Such funds shall be utilized by the division of geology and land  
8 survey within the department of natural resources.

9 3. Any portion of the fund not immediately needed for the purposes authorized  
10 shall be invested by the state treasurer as provided by the constitution and laws of this  
11 state. All income from such investments shall, unless otherwise prohibited by the  
12 constitution of this state, be deposited in the geologic resources fund. The provisions of  
13 section 33.080, RSMo, relating to the transfer of unexpended balances in various funds to  
14 the general revenue fund at the end of each biennium shall not apply to funds in the  
15 geologic resources fund.

16 4. General revenue of the state or other state funds may be appropriated or  
17 expended for the administration of sections 256.700 to 256.710. The state geologist may  
18 enter into a memorandum of understanding or other agreement that allows for state or  
19 federal funds to supplement the geologic resources fund.

256.710. 1. There is hereby created an advisory council to the state geologist known  
2 as the "Industrial Minerals Advisory Council". The council shall be composed of nine  
3 members, eight of whom shall be appointed by the director of the department of natural



4 resources. The eight appointed members shall consist of three representatives of the  
5 limestone quarry operators, one representative of the clay mining industry, one  
6 representative of the sandstone industry, one representative of the sand and gravel mining  
7 industry, one representative of the barite mining industry and one representative of the  
8 granite mining industry. The director of the department of transportation, or his or her  
9 designee, shall also serve as a member of the council. The director of the department of  
10 natural resources or his or her designee shall serve as a nonvoting, ex officio member of the  
11 council in addition to the nine members provided by this subsection and shall act as  
12 chairperson of the council. As chairperson, the director of the department of natural  
13 resources, or his or her designee, shall convene the council as needed and preside over all  
14 council meetings.

15       2. The advisory council shall:

16       (1) Meet at least once each year;

17       (2) Annually review with the state geologist the income received and expenditures  
18 made under sections 256.700 and 256.705;

19       (3) Consider all information and advise the director of the department of natural  
20 resources in determining the method and amount of fees to be assessed;

21       (4) In performing its duties under this subsection, represent the best interests of the  
22 Missouri mining industry;

23       (5) Serve in an advisory capacity in all matters pertaining to the administration of  
24 this section and section 256.700;

25       (6) Serve in an advisory capacity in all other matters brought before the council by  
26 the director of the department of natural resources.

27       3. All members of the advisory council, with the exception of the director of the  
28 department of transportation or his or her designee who shall serve indefinitely, shall serve  
29 for terms of three years and until their successors are duly appointed and qualified; except  
30 that, of the members first appointed:

31       (1) One member who represents the limestone quarry operators, the representative  
32 of the clay mining industry, and the representative of the sandstone mining industry shall  
33 serve terms of three years;

34       (2) One member who represents the limestone quarry operators, the representative  
35 of the sand and gravel mining industry, and the representative of the barite mining  
36 industry shall serve terms of two years; and

37       (3) One member who represents the limestone quarry operators, and the  
38 representative of the granite mining industry shall serve a term of one year.

39       4. All members shall be residents of this state. Any member may be reappointed.

40           **5. All members shall be reimbursed for reasonable expenses incurred in the**  
41 **performance of their official duties in accordance with the reimbursement policy set by the**  
42 **director. All reimbursements paid under this section shall be paid from fees collected**  
43 **under section 256.700.**

44           **6. Every vacancy on the advisory council shall be filled by the director of the**  
45 **department of natural resources. The person selected to fill any such vacancy shall possess**  
46 **the same qualifications required by this section as the member he or she replaces and shall**  
47 **serve until the end of the unexpired term of his or her predecessor.**

          260.200. 1. The following words and phrases when used in sections 260.200 to 260.345  
2 shall mean:

3           (1) "Alkaline-manganese battery" or "alkaline battery", a battery having a manganese  
4 dioxide positive electrode, a zinc negative electrode, an alkaline electrolyte, including  
5 alkaline-manganese button cell batteries intended for use in watches, calculators, and other  
6 electronic products, and larger-sized alkaline-manganese batteries in general household use;

7           (2) **"Bioreactor", a municipal solid waste disposal area or portion of a municipal**  
8 **solid waste disposal area where the controlled addition of liquid waste or water accelerates**  
9 **both the decomposition of waste and landfill gas generation;**

10          (3) "Button cell battery" or "button cell", any small alkaline-manganese or  
11 mercuric-oxide battery having the size and shape of a button;

12          [(3)] (4) "City", any incorporated city, town, or village;

13          [(4)] (5) "Clean fill", uncontaminated soil, rock, sand, gravel, concrete, asphaltic  
14 concrete, cinderblocks, brick, minimal amounts of wood and metal, and inert solids as approved  
15 by rule or policy of the department for fill, reclamation or other beneficial use;

16          [(5)] (6) "Closure", the permanent cessation of active disposal operations, abandonment  
17 of the disposal area, revocation of the permit or filling with waste of all areas and volumes  
18 specified in the permit and preparing the area for long-term care;

19          [(6)] (7) "Closure plan", plans, designs and relevant data which specify the methods and  
20 schedule by which the operator will complete or cease disposal operations, prepare the area for  
21 long-term care, and make the area suitable for other uses, to achieve the purposes of sections  
22 260.200 to 260.345 and the regulations promulgated thereunder;

23          [(7)] (8) "Conference, conciliation and persuasion", a process of verbal or written  
24 communications consisting of meetings, reports, correspondence or telephone conferences  
25 between authorized representatives of the department and the alleged violator. The process shall,  
26 at a minimum, consist of one offer to meet with the alleged violator tendered by the department.  
27 During any such meeting, the department and the alleged violator shall negotiate in good faith  
28 to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

29           **(9) "Construction and demolition waste", waste materials from the construction**  
30 **and demolition of residential, industrial, or commercial structures, but does not include**  
31 **materials defined as clean fill under this section;**

32           [(8)] **(10) "Demolition landfill", a solid waste disposal area used for the controlled**  
33 **disposal of demolition wastes, construction materials, brush, wood wastes, soil, rock, concrete**  
34 **and inert solids insoluble in water;**

35           [(9)] **(11) "Department", the department of natural resources;**

36           [(10)] **(12) "Director", the director of the department of natural resources;**

37           [(11)] **(13) "District", a solid waste management district established under section**  
38 **260.305;**

39           [(12)] **(14) "Financial assurance instrument", an instrument or instruments, including,**  
40 **but not limited to, cash or surety bond, letters of credit, corporate guarantee or secured trust fund,**  
41 **submitted by the applicant to ensure proper closure and postclosure care and corrective action**  
42 **of a solid waste disposal area in the event that the operator fails to correctly perform closure and**  
43 **postclosure care and corrective action requirements, except that the financial test for the**  
44 **corporate guarantee shall not exceed one and one-half times the estimated cost of closure and**  
45 **postclosure. The form and content of the financial assurance instrument shall meet or exceed**  
46 **the requirements of the department. The instrument shall be reviewed and approved or**  
47 **disapproved by the attorney general;**

48           [(13)] **(15) "Flood area", any area inundated by the one hundred year flood event, or the**  
49 **flood event with a one percent chance of occurring in any given year;**

50           [(14)] **(16) "Household consumer", an individual who generates used motor oil through**  
51 **the maintenance of the individual's personal motor vehicle, vessel, airplane, or other machinery**  
52 **powered by an internal combustion engine;**

53           [(15)] **(17) "Household consumer used motor oil collection center", any site or facility**  
54 **that accepts or aggregates and stores used motor oil collected only from household consumers**  
55 **or farmers who generate an average of twenty-five gallons per month or less of used motor oil**  
56 **in a calendar year. This section shall not preclude a commercial generator from operating a**  
57 **household consumer used motor oil collection center;**

58           [(16)] **(18) "Household consumer used motor oil collection system", any used motor oil**  
59 **collection center at publicly owned facilities or private locations, any curbside collection of**  
60 **household consumer used motor oil, or any other household consumer used motor oil collection**  
61 **program determined by the department to further the purposes of sections 260.200 to 260.345;**

62           [(17)] **(19) "Infectious waste", waste in quantities and characteristics as determined by**  
63 **the department by rule, including isolation wastes, cultures and stocks of etiologic agents, blood**  
64 **and blood products, pathological wastes, other wastes from surgery and autopsy, contaminated**

65 laboratory wastes, sharps, dialysis unit wastes, discarded biologicals known or suspected to be  
66 infectious; provided, however, that infectious waste does not mean waste treated to department  
67 specifications;

68 [(18)] (20) "Lead-acid battery", a battery designed to contain lead and sulfuric acid with  
69 a nominal voltage of at least six volts and of the type intended for use in motor vehicles and  
70 watercraft;

71 [(19)] (21) "Major appliance", clothes washers and dryers, water heaters, trash  
72 compactors, dishwashers, conventional ovens, ranges, stoves, woodstoves, air conditioners,  
73 refrigerators and freezers;

74 [(20)] (22) "Mercuric-oxide battery" or "mercury battery", a battery having a  
75 mercuric-oxide positive electrode, a zinc negative electrode, and an alkaline electrolyte,  
76 including mercuric-oxide button cell batteries generally intended for use in hearing aids and  
77 larger size mercuric-oxide batteries used primarily in medical equipment;

78 [(21)] (23) "Minor violation", a violation which possesses a small potential to harm the  
79 environment or human health or cause pollution, was not knowingly committed, and is not  
80 defined by the United States Environmental Protection Agency as other than minor;

81 [(22)] (24) "Motor oil", any oil intended for use in a motor vehicle, as defined in section  
82 301.010, RSMo, train, vessel, airplane, heavy equipment, or other machinery powered by an  
83 internal combustion engine;

84 [(23)] (25) "Motor vehicle", as defined in section 301.010, RSMo;

85 [(24)] (26) "Operator" and "permittee", anyone so designated, and shall include cities,  
86 counties, other political subdivisions, authority, state agency or institution, or federal agency or  
87 institution;

88 [(25)] (27) "Permit modification", any permit issued by the department which alters or  
89 modifies the provisions of an existing permit previously issued by the department;

90 [(26)] (28) "Person", any individual, partnership, corporation, association, institution,  
91 city, county, other political subdivision, authority, state agency or institution, or federal agency  
92 or institution;

93 (29) **"Plasma arc technology", a process that converts electrical energy into thermal**  
94 **energy. This electric arc is created when an ionized gas transfers electric power between**  
95 **two or more electrodes;**

96 [(27)] (30) "Postclosure plan", plans, designs and relevant data which specify the  
97 methods and schedule by which the operator shall perform necessary monitoring and care for the  
98 area after closure to achieve the purposes of sections 260.200 to 260.345 and the regulations  
99 promulgated thereunder;

100           [(28)] **(31)** "Recovered materials", those materials which have been diverted or removed  
101 from the solid waste stream for sale, use, reuse or recycling, whether or not they require  
102 subsequent separation and processing;

103           [(29)] **(32)** "Recycled content", the proportion of fiber in a newspaper which is derived  
104 from postconsumer waste;

105           [(30)] **(33)** "Recycling", the separation and reuse of materials which might otherwise be  
106 disposed of as solid waste;

107           [(31)] **(34)** "Resource recovery", a process by which recyclable and recoverable material  
108 is removed from the waste stream to the greatest extent possible, as determined by the  
109 department and pursuant to department standards, for reuse or remanufacture;

110           [(32)] **(35)** "Resource recovery facility", a facility in which recyclable and recoverable  
111 material is removed from the waste stream to the greatest extent possible, as determined by the  
112 department and pursuant to department standards, for reuse or remanufacture;

113           [(33)] **(36)** "Sanitary landfill", a solid waste disposal area which accepts commercial and  
114 residential solid waste;

115           [(34)] **(37)** "Scrap tire", a tire that is no longer suitable for its original intended purpose  
116 because of wear, damage, or defect;

117           [(35)] **(38)** "Scrap tire collection center", a site where scrap tires are collected prior to  
118 being offered for recycling or processing and where fewer than five hundred tires are kept on site  
119 on any given day;

120           [(36)] **(39)** "Scrap tire end-user facility", a site where scrap tires are used as a fuel or fuel  
121 supplement or converted into a useable product. Baled or compressed tires used in structures,  
122 or used at recreational facilities, or used for flood or erosion control shall be considered an end  
123 use;

124           [(37)] **(40)** "Scrap tire generator", a person who sells tires at retail or any other person,  
125 firm, corporation, or government entity that generates scrap tires;

126           [(38)] **(41)** "Scrap tire processing facility", a site where tires are reduced in volume by  
127 shredding, cutting, or chipping or otherwise altered to facilitate recycling, resource recovery, or  
128 disposal;

129           [(39)] **(42)** "Scrap tire site", a site at which five hundred or more scrap tires are  
130 accumulated, but not including a site owned or operated by a scrap tire end-user that burns scrap  
131 tires for the generation of energy or converts scrap tires to a useful product;

132           [(40)] **(43)** "Solid waste", garbage, refuse and other discarded materials including, but  
133 not limited to, solid and semisolid waste materials resulting from industrial, commercial,  
134 agricultural, governmental and domestic activities, but does not include hazardous waste as

135 defined in sections 260.360 to 260.432, recovered materials, overburden, rock, tailings, matte,  
136 slag or other waste material resulting from mining, milling or smelting;

137 [(41)] **(44)** "Solid waste disposal area", any area used for the disposal of solid waste from  
138 more than one residential premises, or one or more commercial, industrial, manufacturing,  
139 recreational, or governmental operations;

140 [(42)] **(45)** "Solid waste fee", a fee imposed pursuant to sections 260.200 to 260.345 and  
141 may be:

142 (a) A solid waste collection fee imposed at the point of waste collection; or

143 (b) A solid waste disposal fee imposed at the disposal site;

144 [(43)] **(46)** "Solid waste management area", a solid waste disposal area which also  
145 includes one or more of the functions contained in the definitions of recycling, resource recovery  
146 facility, waste tire collection center, waste tire processing facility, waste tire site or solid waste  
147 processing facility, excluding incineration;

148 [(44)] **(47)** "Solid waste management system", the entire process of managing solid waste  
149 in a manner which minimizes the generation and subsequent disposal of solid waste, including  
150 waste reduction, source separation, collection, storage, transportation, recycling, resource  
151 recovery, volume minimization, processing, market development, and disposal of solid wastes;

152 [(45)] **(48)** "Solid waste processing facility", any facility where solid wastes are salvaged  
153 and processed, including:

154 (a) A transfer station; or

155 (b) An incinerator which operates with or without energy recovery but excluding waste  
156 tire end-user facilities; or

157 (c) A material recovery facility which operates with or without composting; **or**

158 **(d) A plasma arc technology facility;**

159 [(46)] **(49)** "Solid waste technician", an individual who has successfully completed  
160 training in the practical aspects of the design, operation and maintenance of a permitted solid  
161 waste processing facility or solid waste disposal area in accordance with sections 260.200 to  
162 260.345;

163 [(47)] **(50)** "Tire", a continuous solid or pneumatic rubber covering encircling the wheel  
164 of any self-propelled vehicle not operated exclusively upon tracks, or a trailer as defined in  
165 chapter 301, RSMo, except farm tractors and farm implements owned and operated by a family  
166 farm or family farm corporation as defined in section 350.010, RSMo;

167 [(48)] **(51)** "Used motor oil", any motor oil which, as a result of use, becomes unsuitable  
168 for its original purpose due to loss of original properties or the presence of impurities, but used  
169 motor oil shall not include ethylene glycol, oils used for solvent purposes, oil filters that have  
170 been drained of free flowing used oil, oily waste, oil recovered from oil tank cleaning operations,

171 oil spilled to land or water, or industrial nonlube oils such as hydraulic oils, transmission oils,  
172 quenching oils, and transformer oils;

173 [(49)] (52) "Utility waste landfill", a solid waste disposal area used for fly ash waste,  
174 bottom ash waste, slag waste and flue gas emission control waste generated primarily from the  
175 combustion of coal or other fossil fuels;

176 [(50)] (53) "Yard waste", leaves, grass clippings, yard and garden vegetation and  
177 Christmas trees. The term does not include stumps, roots or shrubs with intact root balls.

178 2. For the purposes of this section and sections 260.270 to [260.278] **260.279** and any  
179 rules in place as of August 28, 2005, or promulgated under said sections, the term "scrap" shall  
180 be used synonymously with and in place of "waste", as it applies only to scrap tires.

260.211. 1. A person commits the offense of criminal disposition of demolition waste  
2 [in the first degree] if he purposely or knowingly disposes of or causes the disposal of more than  
3 two thousand pounds or four hundred cubic feet of such waste [in violation of section 260.210]  
4 **on property in this state other than in a solid waste processing facility or solid waste**  
5 **disposal area having a permit as required by section 260.205, except as provided by**  
6 **subsection 2 of this section; provided that, this subsection shall not prohibit the use or**  
7 **require a solid waste permit for the use of solid wastes in normal farming operations or in**  
8 **the processing or manufacturing of other products in a manner that will not create a public**  
9 **nuisance or adversely affect public health and shall not prohibit the disposal of or require**  
10 **a solid waste permit for the disposal by an individual of solid wastes resulting from his or**  
11 **her own residential activities on property owned or lawfully occupied by him or her when**  
12 **such wastes do not thereby create a public nuisance or adversely affect the public health.**  
13 Demolition waste shall not include clean fill or vegetation. Criminal disposition of demolition  
14 waste [in the first degree] is a class [A misdemeanor] **D felony**. In addition to other penalties  
15 prescribed by law, a person convicted of criminal disposition of demolition waste [in the first  
16 degree] is subject to a fine not to exceed twenty thousand dollars, except as provided below. The  
17 magnitude of the fine shall reflect the seriousness or potential seriousness of the threat to human  
18 health and the environment posed by the violation, but shall not exceed twenty thousand dollars,  
19 except that if a court of competent jurisdiction determines that the person responsible for illegal  
20 disposal of demolition waste under this subsection did so for remuneration as a part of an  
21 ongoing commercial activity, the court shall set a fine which reflects the seriousness or potential  
22 threat to human health and the environment which at least equals the economic gain obtained by  
23 the person, and such fine may exceed the maximum established herein.

24 2. **Any person who purposely or knowingly disposes of or causes the disposal of**  
25 **more than two thousand pounds or four hundred cubic feet of his or her personal**  
26 **construction or demolition waste on his or her own property shall be guilty of a class C**

27 **misdemeanor. If such person receives any amount of money, goods, or services in**  
28 **connection with permitting any other person to dispose of construction or demolition waste**  
29 **on his or her property, such person will be guilty of a class D felony.**

30       **3.** The court shall order any person convicted of illegally disposing of demolition waste  
31 upon his own property for remuneration to clean up such waste and, if he fails to clean up the  
32 waste or if he is unable to clean up the waste, the court may notify the county recorder of the  
33 county containing the illegal disposal site. The notice shall be designed to be recorded on the  
34 record.

35       [3. Any person who pleads guilty or is convicted of criminal disposition of demolition  
36 waste in the first degree a second or subsequent time shall be guilty of a class D felony, and  
37 subject to the penalties provided in subsection 1 of this section in addition to those penalties  
38 prescribed by law.

39       **4.** A person commits the offense of criminal disposition of demolition waste in the  
40 second degree if he purposely or knowingly disposes of or causes the disposal of less than the  
41 amount of demolition waste specified in subsection 1 of this section in violation of section  
42 260.210. Criminal disposition of demolition waste in the second degree is a class C  
43 misdemeanor.

44       **5.** In addition to other penalties prescribed by law, a person convicted of criminal  
45 disposition of demolition waste in the second degree is subject to a fine, and the magnitude of  
46 the fine shall reflect the seriousness or potential seriousness of the threat to human health and  
47 the environment posed by the violation, but shall not exceed two thousand dollars.

48       **6.** Any person who pleads guilty or is convicted of criminal disposition of demolition  
49 waste in the second degree a second or subsequent time shall be guilty of a class D felony, and  
50 subject to the penalties provided in subsection 5 of this section in addition to those penalties  
51 prescribed by law.

52       **7.] 4.** The court may order restitution by requiring any person convicted under this  
53 section to clean up any demolition waste he illegally dumped and the court may require any such  
54 person to perform additional community service by cleaning up and properly disposing of  
55 demolition waste illegally dumped by other persons.

56       **[8.] 5.** The prosecutor of any county or circuit attorney of any city not within a county  
57 may, by information or indictment, institute a prosecution for any violation of the provisions of  
58 this section.

59       **6.** Any person shall be guilty of conspiracy as defined in section 564.016, RSMo, if  
60 he or she knows or should have known that his agent or employee has committed the acts  
61 described in sections 260.210 to 260.212 while engaged in the course of employment.



260.212. 1. A person commits the offense of criminal disposition of solid waste [in the first degree] if he purposely or knowingly disposes of or causes the disposal of more than five hundred pounds or one hundred cubic feet of commercial or residential solid waste [on any property in this state other than a sanitary landfill in violation of section 260.210] **on any property in this state other than a solid waste processing facility or solid waste disposal area having a permit as required by section 260.205; provided that, this subsection shall not prohibit the use or require a solid waste permit for the use of solid wastes in normal farming operations or in the processing or manufacturing of other products in a manner that will not create a public nuisance or adversely affect the public health and shall not prohibit the disposal of or require a solid waste permit for the disposal by an individual of solid wastes resulting from his or her own residential activities on property owned or lawfully occupied by him or her when such wastes do not thereby create a public nuisance or adversely affect the public health.** Criminal disposition of solid waste [in the first degree] is a class [A misdemeanor] **D felony**. In addition to other penalties prescribed by law, a person convicted of criminal disposition of solid waste [in the first degree] is subject to a fine, and the magnitude of the fine shall reflect the seriousness or potential seriousness of the threat to human health and the environment posed by the violation, but shall not exceed twenty thousand dollars, except that if a court of competent jurisdiction determines that the person responsible for illegal disposal of solid waste under this subsection did so for remuneration as a part of an ongoing commercial activity, the court shall set a fine which reflects the seriousness or potential threat to human health and the environment which at least equals the economic gain obtained by the person, and such fine may exceed the maximum established herein.

2. The court shall order any person convicted of illegally disposing of solid waste upon his own property for remuneration to clean up such waste and, if he fails to clean up the waste or if he is unable to clean up the waste, the court may notify the county recorder of the county containing the illegal disposal site. The notice shall be designed to be recorded on the record.

3. [Any person who pleads guilty or is convicted of criminal disposition of solid waste in the first degree a second or subsequent time shall be guilty of a class D felony. If a court of competent jurisdiction determines that the person responsible for illegal disposal of solid waste under this subsection did so for remuneration as a part of an ongoing commercial activity, the court shall set a fine which reflects the seriousness or potential threat to human health and the environment which equals at least three times the economic gain obtained by the person, and such fine may exceed the maximum established in this section.

4. A person commits the offense of criminal disposition of solid waste in the second degree if he purposely or knowingly disposes of or causes the disposal of less than the amount of commercial or residential solid waste specified in subsection 1 of this section on any property

37 in this state other than a permitted sanitary landfill in violation of section 260.210. Criminal  
38 disposition of solid waste in the second degree is a class C misdemeanor.

39 5. In addition to other penalties prescribed by law, a person convicted of criminal  
40 disposition of solid waste in the second degree is subject to a fine, and the magnitude of the fine  
41 shall reflect the seriousness or potential seriousness of the threat to human health and the  
42 environment posed by the violation, but shall not exceed two thousand dollars.

43 6. Any person who pleads guilty or is convicted of criminal disposition of solid waste  
44 in the second degree a second or subsequent time shall be guilty of a class D felony. If a court  
45 of competent jurisdiction determines that the person responsible for illegal disposal of solid  
46 waste under this subsection did so for remuneration as a part of an ongoing commercial activity,  
47 the court shall set a fine which reflects the seriousness or potential threat to human health and  
48 the environment which equals at least three times the economic gain obtained by the person, and  
49 such fine may exceed the maximum established in this subsection.

50 7.] The court may order restitution by requiring any person convicted under this section  
51 to clean up any commercial or residential solid waste he illegally dumped and the court may  
52 require any such person to perform additional community service by cleaning up commercial or  
53 residential solid waste illegally dumped by other persons.

54 [8.] 4. The prosecutor of any county or circuit attorney of any city not within a county  
55 may, by information or indictment, institute a prosecution for any violation of the provisions of  
56 this section.

57 [9.] 5. Any person shall be guilty of conspiracy as defined in section 564.016, RSMo,  
58 if he knows or should have known that his agent or employee has committed the acts described  
59 in sections 260.210 to 260.212 while engaged in the course of employment.

260.240. 1. In the event the director determines that any provision of sections 260.200  
2 to 260.245 **and 260.330** or any standard, rule, regulation, final order or approved plan  
3 promulgated pursuant thereto is being, was, or is in imminent danger of being violated, the  
4 director may, in addition to those remedies provided in section 260.230, cause to have instituted  
5 a civil action in any court of competent jurisdiction for injunctive relief to prevent any such  
6 violation or further violation or in the case of violations concerning a solid waste disposal area  
7 or a solid waste processing facility, for the assessment of a penalty not to exceed one thousand  
8 dollars per day for each day, or part thereof, the violation occurred and continues to occur, or  
9 both, as the court deems proper **or in the case of violations concerning a solid waste disposal**  
10 **area and in the case of a violation of section 260.330 by a solid waste processing facility, for**  
11 **the assessment of a penalty not to exceed five thousand dollars per day, or part thereof, the**  
12 **violation occurred and continues to occur, or both, as the court deems proper.** A civil  
13 monetary penalty under this section shall not be assessed for a violation where an administrative

14 penalty was assessed under section 260.249. The director may request either the attorney general  
15 or a prosecuting attorney to bring any action authorized in this section in the name of the people  
16 of the state of Missouri. Suit can be brought in any county where the defendant's principal place  
17 of business is located or where the violation occurred. Any offer of settlement to resolve a civil  
18 penalty under this section shall be in writing, shall state that an action for imposition of a civil  
19 penalty may be initiated by the attorney general or a prosecuting attorney representing the  
20 department under authority of this section, and shall identify any dollar amount as an offer of  
21 settlement which shall be negotiated in good faith through conference, conciliation and  
22 persuasion.

23         2. Any rule, regulation, standard or order of a county commission, adopted pursuant to  
24 the provisions of sections 260.200 to 260.245, may be enforced in a civil action for mandatory  
25 or prohibitory injunctive relief or for the assessment of a penalty not to exceed [one] **five**  
26 hundred dollars per day for each day, or part thereof, that a violation of such rule, regulation,  
27 standard or order of a county commission occurred and continues to occur, or both, as the  
28 commission deems proper. The county commission may request the prosecuting attorney or  
29 other attorney to bring any action authorized in this section in the name of the people of the state  
30 of Missouri.

31         3. The liabilities imposed by this section shall not be imposed due to any violation  
32 caused by an act of God, war, strike, riot or other catastrophe.

260.247. 1. Any city **or political subdivision** which annexes an area or enters into or  
2 expands solid waste collection services into an area where the collection of solid waste is  
3 presently being provided by one or more private entities, **for commercial or residential**  
4 **services**, shall notify the private entity or entities of its intent to provide solid waste collection  
5 services in the area by certified mail.

6         2. A city **or political subdivision** shall not commence solid waste collection in such area  
7 for at least two years from the effective date of the annexation or at least two years from the  
8 effective date of the notice that the city **or political subdivision** intends to enter into the business  
9 of solid waste collection or to expand existing solid waste collection services into the area, unless  
10 the city **or political subdivision** contracts with the private entity or entities to continue such  
11 services for that period. **If for any reason the city or political subdivision does not exercise**  
12 **its option to provide for or contract for the provision of services within an affected area**  
13 **within three years from the effective date of the notice, then the city or political subdivision**  
14 **shall renotify under subsection 1 of this section.**

15         3. If the services to be provided under a contract with the city **or political subdivision**  
16 pursuant to subsection 2 of this section are substantially the same as the services rendered in the  
17 area prior to the decision of the city to annex the area or to enter into or expand its solid waste

18 collection services into the area, the amount paid by the city shall be at least equal to the amount  
19 the private entity or entities would have received for providing such services during that period.

20 4. Any private entity or entities which provide collection service in the area which the  
21 city **or political subdivision** has decided to annex or enter into or expand its solid waste  
22 collection services into shall make available upon written request by the city not later than thirty  
23 days following such request, all information in its possession or control which pertains to its  
24 activity in the area necessary for the city to determine the nature and scope of the potential  
25 contract.

26 5. The provisions of this section shall apply to private entities that service fifty or more  
27 residential accounts or [fifteen or more] **any** commercial accounts in the area in question.

260.249. 1. In addition to any other remedy provided by law, upon a determination by  
2 the director that a provision of sections 260.200 to 260.281, or a standard, limitation, order, rule  
3 or regulation promulgated pursuant thereto, or a term or condition of any permit has been  
4 violated, the director may issue an order assessing an administrative penalty upon the violator  
5 under this section. An administrative penalty shall not be imposed until the director has sought  
6 to resolve the violations through conference, conciliation and persuasion and shall not be  
7 imposed for minor violations of sections 260.200 to 260.281 or minor violation of any standard,  
8 limitation, order, rule or regulation promulgated pursuant to sections 260.200 to 260.281 or  
9 minor violations of any term or condition of a permit issued pursuant to sections 260.200 to  
10 260.281 or any violations of sections 260.200 to 260.281 by any person resulting from  
11 mismanagement of solid waste generated and managed on the property of the place of residence  
12 of the person. If the violation is resolved through conference, conciliation and persuasion, no  
13 administrative penalty shall be assessed unless the violation has caused, or has the potential to  
14 cause, a risk to human health or to the environment, or has caused or has potential to cause  
15 pollution, or was knowingly committed, or is defined by the United States Environmental  
16 Protection Agency as other than minor. Any order assessing an administrative penalty shall state  
17 that an administrative penalty is being assessed under this section and that the person subject to  
18 the penalty may appeal as provided by section 260.235. Any such order that fails to state the  
19 statute under which the penalty is being sought, the manner of collection or rights of appeal shall  
20 result in the state's waiving any right to collection of the penalty.

21 2. The department shall promulgate rules and regulations for the assessment of  
22 administrative penalties. The amount of the administrative penalty assessed per day of violation  
23 for each violation under this section shall not exceed the amount of the civil penalty specified  
24 in section [260.230] **260.240**. Such rules shall reflect the criteria used for the administrative  
25 penalty matrix as provided for in the Resource Conservation and Recovery Act, 42 U.S.C.  
26 6928(a), Section 3008(a), and the harm or potential harm which the violation causes, or may

27 cause, the violator's previous compliance record, and any other factors which the department may  
28 reasonably deem relevant. An administrative penalty shall be paid within sixty days from the  
29 date of issuance of the order assessing the penalty. Any person subject to an administrative  
30 penalty may appeal as provided in section 260.235. Any appeal will stay the due date of such  
31 administrative penalty until the appeal is resolved. Any person who fails to pay an  
32 administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen  
33 percent of the penalty plus ten percent per annum on any amounts owed. Any administrative  
34 penalty paid pursuant to this section shall be handled in accordance with section 7 of article IX  
35 of the state constitution. An action may be brought in the appropriate circuit court to collect any  
36 unpaid administrative penalty, and for attorney's fees and costs incurred directly in the collection  
37 thereof.

38 3. An administrative penalty shall not be increased in those instances where department  
39 action, or failure to act, has caused a continuation of the violation that was a basis for the penalty.  
40 Any administrative penalty must be assessed within two years following the department's initial  
41 discovery of such alleged violation, or from the date the department in the exercise of ordinary  
42 diligence should have discovered such alleged violation.

43 4. The state may elect to assess an administrative penalty, or, in lieu thereof, to request  
44 that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in  
45 the appropriate circuit court.

46 5. Any final order imposing an administrative penalty is subject to judicial review upon  
47 the filing of a petition pursuant to section 536.100, RSMo, by any person subject to the  
48 administrative penalty.

260.250. 1. After January 1, 1991, major appliances, waste oil and lead-acid batteries  
2 shall not be disposed of in a solid waste disposal area. After January 1, 1992, yard waste shall  
3 not be disposed of in a solid waste disposal area, **except as otherwise provided in this**  
4 **subsection. After August 28, 2007, yard waste may be disposed of in a municipal solid**  
5 **waste disposal area or portion of a municipal solid waste disposal area provided that:**

6 (1) **The department has approved the municipal solid waste disposal area or**  
7 **portion of a solid waste disposal area to operate as a bioreactor under 40 CFR Part 258.4;**  
8 **and**

9 (2) **The landfill gas produced by the bioreactor will be used for the generation of**  
10 **electricity.**

11 2. After January 1, 1991, waste oil shall not be incinerated without energy recovery.

12 3. Each district, county and city shall address the recycling, reuse and handling of  
13 aluminum containers, glass containers, newspapers, whole tires, plastic beverage containers and  
14 steel containers in its solid waste management plan consistent with sections 260.250 to 260.345.

260.330. 1. Except as otherwise provided in subsection 6 of this section, effective October 1, 1990, each operator of a solid waste sanitary landfill shall collect a charge equal to one dollar and fifty cents per ton or its volumetric equivalent of solid waste accepted and each operator of the solid waste demolition landfill shall collect a charge equal to one dollar per ton or its volumetric equivalent of solid waste accepted. Each operator shall submit the charge, less collection costs, to the department of natural resources for deposit in the "Solid Waste Management Fund" which is hereby created. On October 1, 1992, and thereafter, the charge imposed herein shall be adjusted annually by the same percentage as the increase in the general price level as measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency. No annual adjustment shall be made to the charge imposed under this subsection during October 1, 2005, to October 1, [2009] **2014**, except an adjustment amount consistent with the need to fund the operating costs of the department and taking into account any annual percentage increase in the total of the volumetric equivalent of solid waste accepted in the prior year at solid waste sanitary landfills and demolition landfills and solid waste to be transported out of this state for disposal that is accepted at transfer stations. No annual increase during October 1, 2005, to October 1, [2009] **2014**, shall exceed the percentage increase measured by the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency and calculated on the percentage of revenues dedicated under subdivision (1) of subsection 2 of section 260.335. Any such annual adjustment shall only be made at the discretion of the director, subject to appropriations. Collection costs shall be established by the department and shall not exceed two percent of the amount collected pursuant to this section.

2. The department shall, by rule and regulation, provide for the method and manner of collection.

3. The charges established in this section shall be enumerated separately from the disposal fee charged by the landfill and may be passed through to persons who generated the solid waste. Moneys shall be transmitted to the department shall be no less than the amount collected less collection costs and in a form, manner and frequency as the department shall prescribe. The provisions of section 33.080, RSMo, to the contrary notwithstanding, moneys in the account shall not lapse to general revenue at the end of each biennium. Failure to collect the charge does not relieve the operator from responsibility for transmitting an amount equal to the charge to the department.

4. The department may examine or audit financial records and landfill activity records and measure landfill usage to verify the collection and transmittal of the charges established in this section. The department may promulgate by rule and regulation procedures to ensure and

37 to verify that the charges imposed herein are properly collected and transmitted to the  
38 department.

39         5. Effective October 1, 1990, any person who operates a transfer station in Missouri shall  
40 transmit a fee to the department for deposit in the solid waste management fund which is equal  
41 to one dollar and fifty cents per ton or its volumetric equivalent of solid waste accepted. Such  
42 fee shall be applicable to all solid waste to be transported out of the state for disposal. On  
43 October 1, 1992, and thereafter, the charge imposed herein shall be adjusted annually by the  
44 same percentage as the increase in the general price level as measured by the Consumer Price  
45 Index for All Urban Consumers for the United States, or its successor index, as defined and  
46 officially recorded by the United States Department of Labor or its successor agency. No annual  
47 adjustment shall be made to the charge imposed under this subsection during October 1, 2005,  
48 to October 1, [2009] **2014**, except an adjustment amount consistent with the need to fund the  
49 operating costs of the department and taking into account any annual percentage increase in the  
50 total of the volumetric equivalent of solid waste accepted in the prior year at solid waste sanitary  
51 landfills and demolition landfills and solid waste to be transported out of this state for disposal  
52 that is accepted at transfer stations. No annual increase during October 1, 2005, to October 1,  
53 [2009] **2014**, shall exceed the percentage increase measured by the Consumer Price Index for All  
54 Urban Consumers for the United States, or its successor index, as defined and officially recorded  
55 by the United States Department of Labor or its successor agency and calculated on the  
56 percentage of revenues dedicated under subdivision (1) of subsection 2 of section 260.335. Any  
57 such annual adjustment shall only be made at the discretion of the director, subject to  
58 appropriations. The department shall prescribe rules and regulations governing the transmittal  
59 of fees and verification of waste volumes transported out of state from transfer stations.  
60 Collection costs shall also be established by the department and shall not exceed two percent of  
61 the amount collected pursuant to this subsection. A transfer station with the sole function of  
62 separating materials for recycling or resource recovery activities shall not be subject to the fee  
63 imposed in this subsection.

64         6. Each political subdivision which owns an operational solid waste disposal area may  
65 designate, pursuant to this section, up to two free disposal days during each calendar year. On  
66 any such free disposal day, the political subdivision shall allow residents of the political  
67 subdivision to dispose of any solid waste which may be lawfully disposed of at such solid waste  
68 disposal area free of any charge, and such waste shall not be subject to any state fee pursuant to  
69 this section. Notice of any free disposal day shall be posted at the solid waste disposal area site  
70 and in at least one newspaper of general circulation in the political subdivision no later than  
71 fourteen days prior to the free disposal day.

260.335. 1. Each fiscal year eight hundred thousand 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. Each fiscal year up to two hundred thousand dollars from the solid waste management fund be used by the department upon appropriation for grants to solid waste management districts for district grants and district operations. Only those solid waste management districts that are allocated fewer funds under subsection 2 of this section than if revenues had been allocated based on the criteria in effect in this section on August 27, 2004, are eligible for these grants. An eligible district shall receive a proportionate share of these grants based on that district's share of the total reduction in funds for eligible districts calculated by comparing the amount of funds allocated under subsection 2 of this section with the amount of funds that would have been allocated using the criteria in effect in this section on August 27, 2004. 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 revenues deposited into the fund each fiscal year after moneys have been made available under subsection 1 of this section shall be allocated as follows:

(1) Thirty-nine percent of the revenues shall be dedicated, upon appropriation, to the elimination of illegal solid waste disposal, to identify and prosecute persons disposing of solid waste illegally, to conduct solid waste permitting activities, to administer grants and perform other duties imposed in sections 260.200 to 260.345 and section 260.432. In addition to the thirty-nine percent of the revenues, the department may receive any annual increase in the charge during October 1, 2005, to October 1, [2009] **2014**, under section 260.330 and such increases shall be used solely to fund the operating costs of the department;

(2) Sixty-one percent of the revenues, except any annual increases in the charge under section 260.330 during October 1, 2005, to October 1, [2009] **2014**, which shall be used solely to fund the operating costs of the department, shall be allocated through grants, upon appropriation, to participating cities, counties, and districts. Revenues to be allocated under this subdivision shall be divided as follows: forty percent shall be allocated based on the population of each district in the latest decennial census, and sixty percent shall be allocated based on the amount of revenue generated within each district. For the purposes of this subdivision, revenue generated within each district shall be determined from the previous year's data. No more than



37 fifty percent of the revenue allocable under this subdivision may be allocated to the districts upon  
38 approval of the department for implementation of a solid waste management plan and district  
39 operations, and at least fifty percent of the revenue allocable to the districts under this  
40 subdivision shall be allocated to the cities and counties of the district or to persons or entities  
41 providing solid waste management, waste reduction, recycling and related services in these cities  
42 and counties. Each district shall receive a minimum of seventy-five thousand dollars under this  
43 subdivision. After August 28, 2005, each district shall receive a minimum of ninety-five  
44 thousand dollars under this subdivision for district grants and district operations. Each district  
45 receiving moneys under this subdivision shall expend such moneys pursuant to a solid waste  
46 management plan required under section 260.325, and only in the case that the district is in  
47 compliance with planning requirements established by the department. Moneys shall be awarded  
48 based upon grant applications. Any moneys remaining in any fiscal year due to insufficient or  
49 inadequate applications may be reallocated pursuant to this subdivision;

50 (3) Except for the amount up to one-fourth of the department's previous fiscal year  
51 expense, any remaining unencumbered funds generated under subdivision (1) of this subsection  
52 in prior fiscal years shall be reallocated under this section;

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

55 (5) The department and the environmental improvement and energy resources authority  
56 shall conduct sample audits of grants provided under this subsection.

57 3. The advisory board created in section 260.345 shall recommend criteria to be used to  
58 allocate grant moneys to districts, cities and counties. These criteria shall establish a priority for  
59 proposals which provide methods of solid waste reduction and recycling. The department shall  
60 promulgate criteria for evaluating grants by rule and regulation. Projects of cities and counties  
61 located within a district which are funded by grants under this section shall conform to the  
62 district solid waste management plan.

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

67 5. The department, in conjunction with the solid waste advisory board, shall review the  
68 performance of all grant recipients to ensure that grant moneys were appropriately and effectively  
69 expended to further the purposes of the grant, as expressed in the recipient's grant application.  
70 The grant application shall contain specific goals and implementation dates, and grant recipients  
71 shall be contractually obligated to fulfill same. The department may require the recipient to  
72 submit periodic reports and such other data as are necessary, both during the grant period and

73 up to five years thereafter, to ensure compliance with this section. The department may audit the  
74 records of any recipient to ensure compliance with this section. Recipients of grants under  
75 sections 260.300 to 260.345 shall maintain such records as required by the department. If a grant  
76 recipient fails to maintain records or submit reports as required herein, refuses the department  
77 access to the records, or fails to meet the department's performance standards, the department  
78 may withhold subsequent grant payments, if any, and may compel the repayment of funds  
79 provided to the recipient pursuant to a grant.

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

82 7. If the moneys are not transmitted to the department within the time frame established  
83 by the rule promulgated, interest shall be imposed on the moneys due the department at the rate  
84 of ten percent per annum from the prescribed due date until payment is actually made. These  
85 interest amounts shall be deposited to the credit of the solid waste management fund.

260.360. When used in sections 260.350 to 260.430 and in standards, rules and  
2 regulations adopted pursuant to sections 260.350 to 260.430, the following words and phrases  
3 mean:

4 (1) "Cleanup", all actions necessary to contain, collect, control, treat, disburse, remove  
5 or dispose of a hazardous waste;

6 (2) "Commission", the hazardous waste management commission of the state of  
7 Missouri created by sections 260.350 to 260.430;

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

14 (4) "Department", the Missouri department of natural resources;

15 (5) "Detonation", an explosion in which chemical transformation passes through the  
16 material faster than the speed of sound, which is 0.33 kilometers per second at sea level;

17 (6) "Director", the director of the Missouri department of natural resources;

18 (7) "Disposal", the discharge, deposit, injection, dumping, spilling, leaking, or placing  
19 of any waste into or on any land or water so that such waste, or any constituent thereof, may enter  
20 the environment or be emitted into the air or be discharged into the waters, including  
21 groundwaters;

22 (8) "Final disposition", the location, time and method by which hazardous waste loses  
23 its identity or enters the environment, including, but not limited to, disposal, resource recovery  
24 and treatment;

25 (9) "Generation", the act or process of producing waste;

26 (10) "Generator", any person who produces waste;

27 (11) "Hazardous waste", any waste or combination of wastes, as determined by the  
28 commission by rules and regulations, which, because of its quantity, concentration, or physical,  
29 chemical or infectious characteristics, may cause or significantly contribute to an increase in  
30 mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a  
31 present or potential threat to the health of humans or the environment;

32 (12) "Hazardous waste facility", any property that is intended or used for hazardous  
33 waste management including, but not limited to, storage, treatment and disposal sites;

34 (13) "Hazardous waste management", the systematic recognition and control of  
35 hazardous waste from generation to final disposition including, but not limited to, its  
36 identification, containerization, labeling, storage, collection, transfer or transportation, treatment,  
37 resource recovery or disposal;

38 (14) "Infectious waste", waste in quantities and characteristics as determined by the  
39 department by rule and regulation, including the following wastes known or suspected to be  
40 infectious: isolation wastes, cultures and stocks of etiologic agents, contaminated blood and  
41 blood products, other contaminated surgical wastes, wastes from autopsy, contaminated  
42 laboratory wastes, sharps, dialysis unit wastes, discarded biologicals and antineoplastic  
43 chemotherapeutic materials; provided, however, that infectious waste does not mean waste  
44 treated to department specifications;

45 (15) "Manifest", a department form accompanying hazardous waste from point of  
46 generation, through transport, to final disposition;

47 (16) "Minor violation", a violation which possesses a small potential to harm the  
48 environment or human health or cause pollution, was not knowingly committed, and is not  
49 defined by the United States Environmental Protection Agency as other than minor;

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

54 (18) **"Plasma arc technology", a process that converts electrical energy into thermal**  
55 **energy. The plasma arc is created when a voltage is established between two points;**

56 (19) "Resource recovery", the reclamation of energy or materials from waste, its reuse  
57 or its transformation into new products which are not wastes;

58 [(19)] (20) "Storage", the containment or holding of waste at a designated location in  
59 such manner or for such a period of time, as determined in regulations adopted hereunder, so as  
60 not to constitute disposal of such waste;

61 [(20)] (21) "Treatment", the processing of waste to remove or reduce its harmful  
62 properties or to contribute to more efficient or less costly management or to enhance its potential  
63 for resource recovery including, but not limited to, existing or future procedures for  
64 biodegradation, concentration, reduction in volume, detoxification, fixation, incineration, **plasma**  
65 **arc technology**, or neutralization;

66 [(21)] (22) "Waste", any material for which no use or sale is intended and which will be  
67 discarded or any material which has been or is being discarded. "Waste" shall also include  
68 certain residual materials, to be specified by the rules and regulations, which may be sold for  
69 purposes of energy or materials reclamation, reuse or transformation into new products which  
70 are not wastes;

71 [(22)] (23) "Waste explosives", any waste which has the potential to detonate, or any  
72 bulk military propellant which cannot be safely disposed of through other modes of treatment.

260.800. As used in sections 260.800 to 260.815, the following terms shall mean:

2 (1) "Governing body", any city, municipality, county or combination thereof, or an  
3 authority or agency created by intergovernmental compact;

4 (2) "Solid waste", garbage, refuse and other discarded materials including, but not  
5 limited to, solid and semisolid waste materials resulting from industrial, commercial,  
6 agricultural, governmental and domestic activities, but does not include overburden, rock,  
7 tailings, matte, slag or other waste material resulting from mining, milling or smelting;

8 (3) "Waste to energy facility", any facility, **including plasma arc technology**, with the  
9 electric generating capacity of up to eighty megawatts which is fueled by solid waste.

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

3 (1) "Affected land", the pit area or area from which overburden shall have been removed,  
4 or upon which overburden has been deposited after September 28, 1971. When mining is  
5 conducted underground, affected land means any excavation or removal of overburden required  
6 to create access to mine openings, except that areas of disturbance encompassed by the actual  
7 underground openings for air shafts, portals, adits and haul roads in addition to disturbances  
8 within fifty feet of any openings for haul roads, portals or adits shall not be considered affected  
9 land. Sites which exceed the excluded areas by more than one acre for underground mining  
10 operations shall obtain a permit for the total extent of affected lands with no exclusions as  
11 required under sections 444.760 to 444.790;

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

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

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

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

23 (6) "Director", the staff director of the land reclamation commission;

24 (7) **"Department", the department of natural resources;**

25 (8) "Excavation", any operation in which earth, minerals, or other material in or on the  
26 ground is moved, removed, or otherwise displaced for purposes of construction at the site of  
27 excavation, by means of any tools, equipment, or explosives and includes, but is not limited to,  
28 backfilling, grading, trenching, digging, ditching, drilling, well-drilling, auguring, boring,  
29 tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, demolition  
30 of structures, and the use of high-velocity air to disintegrate and suction to remove earth and  
31 other materials. For purposes of this section, excavation or removal of overburden for purposes  
32 of mining for a commercial purpose or for purposes of reclamation of land subjected to surface  
33 mining is not included in this definition. Neither shall excavations of sand and gravel by  
34 political subdivisions using their own personnel and equipment or private individuals for  
35 personal use be included in this definition;

36 [(8)] (9) "Fill dirt", material removed from its natural location through mining or  
37 construction activity, which is a mixture of unconsolidated earthy material, which may include  
38 some minerals, and which is used to fill, raise, or level the surface of the ground at the site of  
39 disposition, which may be at the site it was removed or on other property, and which is not  
40 processed to extract mineral components of the mixture. Backfill material for use in completing  
41 reclamation is not included in this definition;

42 [(9)] (10) "Land improvement", work performed by or for a public or private owner or  
43 lessor of real property for purposes of improving the suitability of the property for construction  
44 at an undetermined future date, where specific plans for construction do not currently exist;

45 [(10)] (11) "Mineral", a constituent of the earth in a solid state which, when extracted  
46 from the earth, is usable in its natural form or is capable of conversion into a usable form as a  
47 chemical, an energy source, or raw material for manufacturing or construction material. For the

48 purposes of this section, this definition includes barite, tar sands, and oil shales, but does not  
49 include iron, lead, zinc, gold, silver, coal, surface or subsurface water, fill dirt, natural oil or gas  
50 together with other chemicals recovered therewith;

51 [(11)] **(12)** "Mining", the removal of overburden and extraction of underlying minerals  
52 or the extraction of minerals from exposed natural deposits for a commercial purpose, as defined  
53 by this section;

54 [(12)] **(13)** "Operator", any person, firm or corporation engaged in and controlling a  
55 surface mining operation;

56 [(13)] **(14)** "Overburden", all of the earth and other materials which lie above natural  
57 deposits of minerals; and also means such earth and other materials disturbed from their natural  
58 state in the process of surface mining other than what is defined in subdivision (10) of this  
59 section;

60 [(14)] **(15)** "Peak", a projecting point of overburden created in the surface mining  
61 process;

62 [(15)] **(16)** "Pit", the place where minerals are being or have been mined by surface  
63 mining;

64 [(16)] **(17)** "Public entity", the state or any officer, official, authority, board, or  
65 commission of the state and any county, city, or other political subdivision of the state, or any  
66 institution supported in whole or in part by public funds;

67 [(17)] **(18)** "Refuse", all waste material directly connected with the cleaning and  
68 preparation of substance mined by surface mining;

69 [(18)] **(19)** "Ridge", a lengthened elevation of overburden created in the surface mining  
70 process;

71 [(19)] **(20)** "Site" or "mining site", any location or group of associated locations where  
72 minerals are being surface mined by the same operator;

73 [(20)] **(21)** "Surface mining", the mining of minerals for commercial purposes by  
74 removing the overburden lying above natural deposits thereof, and mining directly from the  
75 natural deposits thereby exposed, and shall include mining of exposed natural deposits of such  
76 minerals over which no overburden lies and, after August 28, 1990, the surface effects of  
77 underground mining operations for such minerals. For purposes of the provisions of sections  
78 444.760 to 444.790, surface mining shall not include excavations to move minerals or fill dirt  
79 within the confines of the real property where excavation occurs or to remove minerals or fill dirt  
80 from the real property in preparation for construction at the site of excavation. No excavation  
81 of fill dirt shall be deemed surface mining regardless of the site of disposition or whether  
82 construction occurs at the site of excavation.

444.766. 1. No provision of sections 444.760 to 444.790 shall apply to the excavation of minerals or fill dirt for the purposes of construction or land improvement as unrelated to the mining of minerals for a commercial purpose or reclamation of land subsequent to the surface mining of minerals.

2. No permit is required under sections 444.760 to 444.790 for the purpose of moving minerals or fill dirt within the confines of real property where excavation occurs, or for purposes of removing minerals or fill dirt from the real property as provided in this section.

(1) Excavations for construction pursuant to engineering plans and specifications prepared by an architect, professional engineer, or landscape architect licensed pursuant to chapter 327, RSMo, or any excavation for construction performed under a written contract that requires excavation of minerals or fill dirt and establishes dates for completion of work and specifies the terms of payment for work, shall be presumed to be for the purposes of construction and shall not require a permit for surface mining.

(2) Excavations for purposes of land improvement where 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 **dead trees, decaying vegetation**, tree limbs, and stumps shall be presumed to be for the purposes of land improvement and shall not require a permit for surface mining, provided that:

(a) The site has not been designated as a surface mine by the federal Mine Safety and Health Administration;

(b) Minerals from the property are not used for commercial purposes on a frequent or ongoing basis; and

(c) A pit, peak, or ridge does not persist at the site as inconsistent with the purposes of land improvement.

(3) Permits shall not be required for the excavation of fill dirt, regardless of the site of disposition or whether construction occurs at the site of excavation.

3. (1) If the director or his or her designee 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 sent in writing to the owner of the property by certified mail 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, the person may make a written request for a hearing before the commission at its next regular

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

45 (2) Until a final written determination has been issued under the process established  
46 under subdivision (1) of this subsection, the person receiving a letter stating the reasons a mining  
47 permit is required may continue activity at the site in dispute. The commission may stay the  
48 director's determination. If the final written determination is that a permit is required, all fees  
49 otherwise provided by statute or rules of the commission shall apply. If the determination is that  
50 no permit is required, no permit fees shall be required by the director or the commission.

51 (3) The process set out in this subsection for determining whether a mining permit is  
52 required shall not be subject to the hearing requirements of section 444.789.

444.770. 1. It shall be unlawful for any operator to engage in surface mining without  
2 first obtaining from the commission a permit to do so, in such form as is hereinafter provided,  
3 including any operator involved in any gravel mining operation where the annual tonnage of  
4 gravel mined by such operator is less than five thousand tons, **except as provided in subsection**  
5 **2 of this section.**

6 2. (1) **A property owner or operator conducting gravel removal at the request of**  
7 **a property owner for the primary purpose of managing seasonal gravel accretion on**  
8 **property not used primarily for gravel mining, or a political subdivision who contracts**  
9 **with an operator for excavation to obtain sand and gravel material solely for the use of**  
10 **such political subdivision shall be exempt from obtaining a permit as required in**  
11 **subsection 1 of this section. Such gravel removal shall be conducted solely on the property**  
12 **owner's or political subdivision's property and shall be in accordance with department**  
13 **guidelines, rules, and regulations. The property owner shall notify the department before**  
14 **any person or operator conducts gravel removal from the property owner's property if the**  
15 **gravel is sold or intended to be sold commercially. Notification shall include the nature of**  
16 **the activity, name of the county and stream in which the site is located and the property**  
17 **owner's name. The property owner shall not be required to notify the department**  
18 **regarding any gravel removal at each site location for up to one year from the original**  
19 **notification regarding that site. The property owner shall renotify the department before**  
20 **any person or operator conducts gravel removal at any site after the expiration of one year**



21 from the previous notification regarding that site. At the time of each notification to the  
22 department, the department shall provide the property owner with a copy of the  
23 department's guidelines, rules, and regulations relevant to the activity reported. Said  
24 guidelines, rules and regulations may be transmitted either by mail or via the Internet.

25 (2) The annual tonnage of gravel mined by such property owner or operator  
26 conducting gravel removal at the request of a property owner shall be less than five  
27 thousand tons, with a site limitation of fifteen hundred tons annually. Any operator  
28 conducting gravel removal at the request of a property owner that has removed five  
29 thousand tons of sand and gravel material within one calendar year shall have a watershed  
30 management practice plan approved by the commission in order to remove any future sand  
31 or gravel material the remainder of the calendar year. The application for approval shall  
32 be accompanied by a three hundred dollar application fee and shall contain the name of  
33 the watershed from which the operator will be conducting sand and gravel removal, the  
34 location within the watershed district that the sand and gravel will be removed, and the  
35 description of the vehicles and equipment used for removal. Upon approval of the  
36 watershed management practice plan, the department shall provide a copy of the relevant  
37 commission regulations to the operator.

38 (3) No property owner or operator conducting gravel removal at the request of a  
39 property owner for the primary purpose of managing seasonal gravel accretion on  
40 property not used primarily for gravel mining, or a political subdivision who contracts  
41 with an operator for excavation to obtain sand and gravel material solely for the use of  
42 such political subdivision shall conduct gravel removal annually from March fifteenth to  
43 June first.

44 (4) No property owner or operator conducting gravel removal at the request of a  
45 property owner for the primary purpose of managing seasonal gravel accretion on  
46 property not used primarily for gravel mining shall conduct gravel removal from any site  
47 located within a distance, to be determined by the commission and included in the  
48 guidelines, rules, and regulations given to the property owner at the time of notification,  
49 of any building, structure, highway, road, bridge, viaduct, water or sewer line, and pipeline  
50 or utility line.

51 3. Sections 444.760 to 444.790 shall apply only to those areas which are opened on or  
52 after January 1, 1972, or to the extended portion of affected areas extended after that date. The  
53 effective date of this section for minerals not previously covered under the provisions of sections  
54 444.760 to 444.790 shall be August 28, 1990.

55 [3.] 4. All surface mining operations where land is affected after September 28, 1971,  
56 which are under the control of any government agency whose regulations are equal to or greater

57 than those imposed by section 444.774, are not subject to the further provisions of sections  
58 444.760 to 444.790, except that such operations shall be registered with the land reclamation  
59 commission.

60 [4.] 5. Any portion of a surface mining operation which is subject to the provisions of  
61 sections 260.200 to 260.245, RSMo, and the regulations promulgated thereunder, shall not be  
62 subject to the provisions of sections 444.760 to 444.790, and any bonds or portions thereof  
63 applicable to such operations shall be promptly released by the commission, and the associated  
64 permits canceled by the commission upon presentation to it of satisfactory evidence that the  
65 operator has received a permit pursuant to section 260.205, RSMo, and the regulations  
66 promulgated thereunder. Any land reclamation bond associated with such released permits shall  
67 be retained by the commission until presentation to the commission of satisfactory evidence that:

68 (1) The operator has complied with sections 260.226 and 260.227, RSMo, and the  
69 regulations promulgated thereunder, pertaining to closure and postclosure plans and financial  
70 assurance instruments; and

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

73 [5.] 6. Notwithstanding the provisions of subsection 1 of this section, any political  
74 subdivision which uses its own personnel and equipment or any private individual for personal  
75 use may conduct in-stream gravel operations without obtaining from the commission a permit  
76 to conduct such an activity.

77 **7. Any person filing a complaint of an alleged violation of this section, with the**  
78 **department, shall identify himself by name and telephone number, provide the date and**  
79 **location of the violation, and provide adequate information, as determined by the**  
80 **department, that there has been a violation. Any records, statements, or communications**  
81 **submitted by any person to the department relevant to the complaint shall remain**  
82 **confidential and used solely by the department to investigate such alleged violation.**

444.772. 1. Any operator desiring to engage in surface mining shall make written  
2 application to the director for a permit.

3 2. Application for permit shall be made on a form prescribed by the commission and  
4 shall include:

5 (1) The name of all persons with any interest in the land to be mined;

6 (2) The source of the applicant's legal right to mine the land affected by the permit;

7 (3) The permanent and temporary post office address of the applicant;

8 (4) Whether the applicant or any person associated with the applicant holds or has held  
9 any other permits pursuant to sections 444.500 to 444.790, and an identification of such permits;

10 (5) The written consent of the applicant and any other persons necessary to grant access  
11 to the commission or the director to the area of land affected under application from the date of  
12 application until the expiration of any permit granted under the application and thereafter for  
13 such time as is necessary to assure compliance with all provisions of sections 444.500 to 444.790  
14 or any rule or regulation promulgated pursuant to them. Permit applications submitted by  
15 operators who mine an annual tonnage of less than ten thousand tons shall be required to include  
16 written consent from the operator to grant access to the commission or the director to the area  
17 of land affected;

18 (6) A description of the tract or tracts of land and the estimated number of acres thereof  
19 to be affected by the surface mining of the applicant for the next succeeding twelve months; and

20 (7) Such other information that the commission may require as such information applies  
21 to land reclamation.

22 3. The application for a permit shall be accompanied by a map in a scale and form  
23 specified by the commission by regulation.

24 4. The application shall be accompanied by a bond, security or certificate meeting the  
25 requirements of section 444.778, **a geologic resources fee authorized under section 256.700,**  
26 **RSMo**, and a permit fee approved by the commission not to exceed [six hundred] **one thousand**  
27 dollars. The commission may also require a fee for each site listed on a permit not to exceed  
28 [three] **four** hundred dollars for each site. If mining operations are not conducted at a site for  
29 six months or more during any year, the fee for such site for that year shall be reduced by fifty  
30 percent. The commission may also require a fee for each acre bonded by the operator pursuant  
31 to section 444.778 not to exceed [ten] **twenty** dollars per acre. If such fee is assessed, the  
32 per-acre fee on all acres bonded by a single operator that exceed a total of [one] **two** hundred  
33 acres shall be reduced by fifty percent. In no case shall the total fee for any permit be more than  
34 [two] **three** thousand [five hundred] dollars. Permit and renewal fees shall be established by  
35 rule, **except for the initial fees established in this subsection**, and shall be set at levels that  
36 recover the cost of administering and enforcing sections 444.760 to 444.790, making allowances  
37 for grants and other sources of funds. The director shall submit a report to the commission and  
38 the public each year that describes the number of employees and the activities performed the  
39 previous calendar year to administer sections 444.760 to 444.790. For any operator of a gravel  
40 mining operation where the annual tonnage of gravel mined by such operator is less than five  
41 thousand tons, the total cost of submitting an application shall be three hundred dollars. The  
42 issued permit shall be valid from the date of its issuance until the date specified in the mine plan  
43 unless sooner revoked or suspended as provided in sections 444.760 to 444.790. **Beginning**  
44 **August 28, 2007, the initial fees shall be a permit fee of eight hundred dollars, a site fee of**  
45 **four hundred dollars, and an acre fee of ten dollars, with a maximum fee of three thousand**

46 **dollars. Fees may increase as allowed in this subsection after a regulation change that**  
47 **demonstrates the need for increased fees.**

48         5. An operator desiring to have his or her permit amended to cover additional land may  
49 file an amended application with the commission. Upon receipt of the amended application, and  
50 such additional fee and bond as may be required pursuant to the provisions of sections 444.760  
51 to 444.790, the director shall, if the applicant complies with all applicable regulatory  
52 requirements, issue an amendment to the original permit covering the additional land described  
53 in the amended application.

54         6. An operation may withdraw any land covered by a permit, excepting affected land,  
55 by notifying the commission thereof, in which case the penalty of the bond or security filed by  
56 the operator pursuant to the provisions of sections 444.760 to 444.790 shall be reduced  
57 proportionately.

58         7. Where mining or reclamation operations on acreage for which a permit has been  
59 issued have not been completed, the permit shall be renewed. The operator shall submit a permit  
60 renewal form furnished by the director for an additional permit year and pay a fee equal to an  
61 application fee calculated pursuant to subsection 4 of this section, but in no case shall the  
62 renewal fee for any operator be more than [two] **three** thousand [five hundred] dollars. For any  
63 operator involved in any gravel mining operation where the annual tonnage of gravel mined by  
64 such operator is less than five thousand tons, the permit as to such acreage shall be renewed by  
65 applying on a permit renewal form furnished by the director for an additional permit year and  
66 payment of a fee of three hundred dollars. Upon receipt of the completed permit renewal form  
67 and fee from the operator, the director shall approve the renewal. With approval of the director  
68 and operator, the permit renewal may be extended for a portion of an additional year with a  
69 corresponding prorating of the renewal fee.

70         8. Where one operator succeeds another at any uncompleted operation, either by sale,  
71 assignment, lease or otherwise, the commission may release the first operator from all liability  
72 pursuant to sections 444.760 to 444.790 as to that particular operation if both operators have  
73 been issued a permit and have otherwise complied with the requirements of sections 444.760 to  
74 444.790 and the successor operator assumes as part of his or her obligation pursuant to sections  
75 444.760 to 444.790 all liability for the reclamation of the area of land affected by the former  
76 operator.

77         9. The application for a permit shall be accompanied by a plan of reclamation that meets  
78 the requirements of sections 444.760 to 444.790 and the rules and regulations promulgated  
79 pursuant thereto, and shall contain a verified statement by the operator setting forth the proposed  
80 method of operation, reclamation, and a conservation plan for the affected area including  
81 approximate dates and time of completion, and stating that the operation will meet the

82 requirements of sections 444.760 to 444.790, and any rule or regulation promulgated pursuant  
83 to them.

84 10. At the time that a permit application is deemed complete by the director, the operator  
85 shall publish a notice of intent to operate a surface mine in any newspaper qualified pursuant to  
86 section 493.050, RSMo, to publish legal notices in any county where the land is located. If the  
87 director does not respond to a permit application within forty-five calendar days, the application  
88 shall be deemed to be complete. Notice in the newspaper shall be posted once a week for four  
89 consecutive weeks beginning no more than ten days after the application is deemed complete.  
90 The operator shall also send notice of intent to operate a surface mine by certified mail to the  
91 governing body of the counties or cities in which the proposed area is located, and to the last  
92 known addresses of all record landowners of contiguous real property or real property located  
93 adjacent to the proposed mine plan area. The notices shall include the name and address of the  
94 operator, a legal description consisting of county, section, township and range, the number of  
95 acres involved, a statement that the operator plans to mine a specified mineral during a specified  
96 time, and the address of the commission. The notices shall also contain a statement that any  
97 person with a direct, personal interest in one or more of the factors the commission may consider  
98 in issuing a permit may request a public meeting, a public hearing or file written comments to  
99 the director no later than fifteen days following the final public notice publication date.

100 11. The commission may approve a permit application or permit amendment whose  
101 operation or reclamation plan deviates from the requirements of sections 444.760 to 444.790 if  
102 it can be demonstrated by the operator that the conditions present at the surface mining location  
103 warrant an exception. The criteria accepted for consideration when evaluating the merits of an  
104 exception or variance to the requirements of sections 444.760 to 444.790 shall be established by  
105 regulations.

106 12. Fees imposed pursuant to this section shall become effective August 28, [2001]  
107 **2007**, and shall expire on December 31, [2007] **2013**. No other provisions of this section shall  
108 expire.

444.774. 1. Every operator to whom a permit is issued pursuant to the provisions of  
2 sections 444.760 to 444.790 may engage in surface mining upon the lands described in the  
3 permit upon the performance of and subject to the following requirements with respect to such  
4 lands:

5 (1) All ridges and peaks of overburden created by surface mining, except areas meeting  
6 the qualifications of subdivision (4) of this subsection, or where washing, cleaning or retaining  
7 ponds and reservoirs may be formed under subdivision (2) of this subsection, shall be graded to  
8 a rolling topography traversable by farm machinery, but such slopes need not be reduced to less  
9 than the original grade of that area prior to mining, and the slope of the ridge of overburden

10 resulting from a box cut need not be reduced to less than twenty-five degrees from horizontal  
11 whenever the same cannot be practically incorporated into the land reclaimed for wildlife  
12 purposes pursuant to subdivision (4) of this subsection. In surface mining the operator shall  
13 remove all debris and materials not allowed by the reclamation plan before the bond or any  
14 portion thereof may be released;

15 (2) As a means of controlling damaging erosion, the director may require the operator  
16 to construct terraces or use such other measures and techniques as are necessary to control soil  
17 erosion and siltation on reclaimed land. Such erosion control measures and techniques may also  
18 be required on overburden stockpiles if the erosion is causing environmental damage outside the  
19 permit area. In determining the grading requirements to restore barite pit areas, the sidewalls of  
20 the excavation shall be graded to a point where it blends with the surrounding countryside, but  
21 in no case should the contour be such that erosion and siltation be increased;

22 (3) In the surface mining of tar sands, the operator shall recover and collect all spent  
23 sands and other refuse yielded from the processing of tar sands, whether such spent sands and  
24 refuse are produced at the surface mine or elsewhere, in the manner prescribed by the  
25 commission as conditions of the permit, and shall finally dispose of such spent sands and refuse  
26 in the manner prescribed by the commission as conditions of the permit and in accordance with  
27 the provisions of sections 444.760 to 444.790;

28 (4) Up to and including twenty-five percent of the total acreage to be reclaimed each year  
29 need not be graded to a rolling topography if the land is reclaimed for wildlife purposes as  
30 required by the commission, except that all peaks and ridges shall be leveled off to a minimum  
31 width of thirty feet or one-half the diameter of the base of the pile at the original ground surface  
32 whichever is less;

33 (5) Surface mining operations that remove and do not replace the lateral support shall  
34 not, unless mutually agreed upon by the operator and the adjacent property owner, remove the  
35 lateral support in the vicinity of any established right-of-way line of any public road, street or  
36 highway closer than a distance equal to twenty-five feet plus one and one-half times the depth  
37 of the unconsolidated material from such right-of-way line to the beginning of the excavation;  
38 except that, unless granted a variance by the commission, the minimum distance is fifty feet.  
39 The provisions of this subdivision shall apply to all existing surface mining operations beginning  
40 August 28, 1990, except as provided in subsection [2] 3 of section 444.770;

41 (6) If surface mining is or has been conducted up to the minimum distance as defined  
42 in subdivision (5) of this subsection along an established right-of-way line of any public road,  
43 street or highway, a barrier or berm of adequate height shall be placed or constructed along the  
44 perimeter of the excavation. Adequate height shall mean a height of no less than three feet.  
45 Such barriers or berms shall not be required if barriers, berms or guardrails already exist on the

46 adjoining right-of-way. Barriers or berms of adequate height may also be required by the  
47 commission when surface mining is or has been conducted up to the minimum distance as  
48 defined in subdivision (5) of this subsection along other property lines, but only as necessary to  
49 mitigate serious and obvious threats to public safety;

50 (7) The operator may construct earth dams to form lakes in pits resulting from the final  
51 cut in a mining area; except that, the formation of the lakes shall not interfere with underground  
52 or other mining operations or damage adjoining property and shall comply with the requirements  
53 of subdivision (8) of this subsection;

54 (8) The operator shall cover the exposed face of a mineral seam where acid-forming  
55 materials are present, to a depth of not less than two feet with earth that will support plant life  
56 or with a permanent water impoundment, terraced or otherwise so constructed as to prevent a  
57 constant inflow of water from any stream and to prevent surface water from flowing into such  
58 impoundment in such amounts as will cause runoff or spillage from said impoundment in a  
59 volume which will cause kills of fish or animals downstream. The operator shall cover an  
60 exposed deposit of tar sands, including an exposed face thereof, to a depth of not less than two  
61 feet with earth that will support plant life, and in addition may cover such deposit or face with  
62 a permanent water impoundment as provided above; however, no water impoundment shall be  
63 so constructed as to allow a permanent layer of oil or other hydrocarbon to collect on the surface  
64 of such impoundment in an amount which will adversely affect fish, wildfowl and other wildlife  
65 in or upon such impoundment;

66 (9) The operator shall reclaim all affected lands except as otherwise provided in sections  
67 444.760 to 444.790. The operator shall determine on company-owned land, and with the  
68 landowners on leased land for leases that are entered into after August 28, 1990, which parts of  
69 the affected land shall be reclaimed for forest, pasture, crop, horticultural, homesite, recreational,  
70 industrial or other use including food, shelter, and ground cover for wildlife;

71 (10) The operator, with the approval of the commission, shall sow, set out or plant upon  
72 the affected land, seeds, plants, cuttings of trees, shrubs, grasses or legumes. The plantings or  
73 seedlings shall be appropriate to the type of reclamation designated by the operator on  
74 company-owned land and with the owner on leased land for leases entered into after August 28,  
75 1990, and shall be based upon sound agronomic and forestry principles;

76 (11) Surface mining operations conducted in the flood plains of streams and rivers, and  
77 subject to periodic flooding, may be exempt from the grading requirements contained in this  
78 section if it can be demonstrated to the commission that such operations will be unsafe to pursue  
79 or ineffective in achieving reclamation required in this section because of the periodic flooding;

80 (12) Such other requirements as the commission may prescribe by rule or regulation to  
81 conform with the purposes and requirements of sections 444.760 to 444.790.

82           2. An operator shall commence the reclamation of the area of land affected by its  
83 operation as soon as possible after the completion of surface mining of viable mineral reserves  
84 in any portion of the permit area in accordance with the plan of reclamation required by  
85 subsection 9 of section 444.772, the rules and regulations of the commission, and the conditions  
86 of the permit. Grading shall be completed within twelve months after mining of viable mineral  
87 reserves is complete in that portion of the permit area based on the operator's prior mining  
88 practices at that site. Mining shall not be deemed complete if the operator can provide credible  
89 evidence to the director that viable mineral reserves are present. The seeding and planting of  
90 supporting vegetation, as provided in the reclamation plan, shall be completed within twenty-four  
91 months after with mining has been completed survival of such supporting vegetation by the  
92 second growing season.

93           3. With the approval of the director, the operator may substitute for all or any part of the  
94 affected land to be reclaimed, an equal number of acres of land previously mined and not  
95 reclaimed. If any area is so substituted the operator shall submit a map and reclamation plan of  
96 the substituted area, and this map and reclamation plan shall conform to all requirements with  
97 respect to other maps and reclamation plan required by section 444.772. The operator shall be  
98 relieved of all obligations pursuant to sections 444.760 to 444.790 with respect to the land for  
99 which substitution has been permitted. On leased land, the landowner shall grant written  
100 approval to the operator for substitutions made pursuant to this subsection.

101           4. The operator shall file a report with the commission within sixty days after the date  
102 of expiration of a permit stating the exact number of acres of land affected by the operation, the  
103 extent of the reclamation already accomplished, and such other information as may be required  
104 by the commission.

105           5. The operator shall ensure that all affected land where vegetation is to be reestablished  
106 is covered with enough topsoil or other approved material in order to provide a proper rooting  
107 medium. No topsoil or other approved material is required to be placed on areas described in  
108 subdivision (4) of subsection 1 of this section or on any areas to be reclaimed for industrial uses  
109 as specified in the reclamation plan.

110           6. The commission may grant such additional time for meeting with the completion dates  
111 required by sections 444.760 to 444.790 as are necessary due to an act of God, war, strike, riot,  
112 catastrophe, or other good cause shown.

**640.300. Nothing in sections 640.300 to 640.340 shall be interpreted to impede or  
2 excuse the disclosure of normal regulatory reporting requirements for environmental  
3 compliance, however, no environmental audit shall be disclosed except by lawful subpoena  
4 or court order as provided in sections 640.300 to 640.340, in order to encourage owners and  
5 operators of facilities regulated under state, federal, regional, or local laws, ordinances,**



6 regulations, permits, or orders to conduct voluntary internal environmental audits of their  
7 compliance with those laws, and to promote the prompt disclosure to the department of  
8 natural resources in order to correct any deficiencies discovered.

640.305. As used in sections 640.300 to 640.340, the following terms shall mean:

2 (1) "Compliance management system" or "environmental management system",  
3 a regulated entity's documented systematic efforts, appropriate to the size and nature of  
4 its business, to prevent, detect, and correct noncompliance through all of the following:

5 (a) Compliance policies, standards, and procedures that identify how employees  
6 and agents are to meet the requirements of laws, regulations, permits, enforceable  
7 agreements, and other sources of authority for environmental requirements;

8 (b) Assignment of overall responsibility for overseeing compliance with policies,  
9 standards, and procedures, and assignment of specific responsibility for assuring  
10 compliance at each facility or operation;

11 (c) Mechanisms for systematically assuring that compliance policies, standards, and  
12 procedures are being carried out, including monitoring and auditing systems reasonably  
13 designed to detect and correct noncompliance, periodic evaluation of the overall  
14 performance of the compliance management system, or environmental management  
15 system, and a means for employees or agents to report noncompliance of environmental  
16 requirements without fear of retaliation;

17 (d) Efforts to communicate effectively the regulated entity's standards and  
18 procedures to all employees and other agents;

19 (e) Appropriate incentives to managers and employees to perform in accordance  
20 with the compliance policies, standards, and procedures, including consistent enforcement  
21 through appropriate disciplinary mechanisms; and

22 (f) Procedures for the prompt and appropriate correction of any noncompliance,  
23 and any necessary modifications to the regulated entity's compliance management system  
24 or environmental management system to prevent future noncompliance;

25 (2) "Department", the department of natural resources;

26 (3) "Environmental audit", a systematic, documented, periodic, and objective  
27 review by regulated entities of facility operations and practices related to meeting  
28 environmental requirements;

29 (4) "Environmental audit report", the documented analysis, conclusions, and  
30 recommendations resulting from an environmental audit, but not including data obtained  
31 in or testimonial evidence concerning such audit;

32 (5) "Regulated entity", any entity, including a federal, state, or municipal  
33 department or facility, which is regulated under federal or state environmental laws.

**640.310.** If a regulated entity satisfies all of the conditions of section 640.330, neither the department nor the attorney general may seek penalties, other than the recovery of the economic benefits gained through noncompliance with environmental requirements, for noncompliance of state, federal, or local laws, regulations, permits, or orders relating to environmental requirements discovered and disclosed by the entity. If a regulated entity satisfies all of the conditions of section 640.330, except for the periodic routine assessment through an environmental audit or compliance management system, the department may recover as penalties the economic benefits gained through noncompliance, and reduce any other penalties up to seventy-five percent for noncompliance of state or federal laws, regulations, permits, or orders relating to environmental requirements discovered and disclosed by the entity.

**640.315.** If a regulated entity establishes that it satisfies subdivisions (1) to (9) of section 640.330, the department shall not recommend to the attorney general or other prosecuting authority that criminal charges be brought against the disclosing entity, as long as the department determines that the noncompliance is not part of a pattern or practice that demonstrates or involves:

(1) A prevalent management philosophy or practice that conceals or condones environmental noncompliance; or

(2) High-level corporate officials' or managers' conscious involvement in, or willful blindness to, noncompliance of federal environmental law.

**640.320.** Regardless of whether the department recommends the regulated entity for criminal prosecution, the department may recommend for prosecution the criminal acts of individual managers or employees under existing policies guiding the exercise of enforcement discretion.

**640.325. 1.** The department, the attorney general, and any prosecuting attorney shall not request or use an environmental audit report to initiate a civil or criminal investigation of an entity, including but not limited to the use of such report in routine inspections. If the department has an independent reason to believe that noncompliance has occurred, the department may seek any information relevant to identifying noncompliance or determining liability or extent of harm.

**2.** The department shall not disclose from any audit report information relating to scientific and technological innovations in which the owner has a proprietary interest or any information which is otherwise protected from disclosure by law.

**640.330.** In order to receive the benefits of sections 640.310 to 640.325, owners and operators of facilities regulated under state, federal, regional, or local laws, ordinances, regulations, permits, or orders shall comply with the following:

4           **(1) The noncompliance was discovered through:**

5           **(a) An environmental audit; or**

6           **(b) A compliance management system, reflecting the regulated entity's due**  
7 **diligence in preventing, detecting, and correcting noncompliance. The regulated entity**  
8 **shall provide accurate and complete documentation to the department as to how its**  
9 **compliance management system meets the criteria or due diligence and how the regulated**  
10 **entity discovered the noncompliance through its compliance management system. The**  
11 **department may require the registered entity to make available to the public a description**  
12 **of its compliance management system;**

13           **(2) The noncompliance was discovered voluntarily and not through a legally**  
14 **mandated monitoring or sampling requirement prescribed by statute, regulation, permit,**  
15 **judicial, or administrative order, or consent agreement. For example, sections 640.310 to**  
16 **640.325, do not apply to:**

17           **(a) Emissions noncompliance detected through a continuous emissions monitor, or**  
18 **alternative monitor established in a permit, regulation, order, or other instrument, in**  
19 **which any such monitoring is required;**

20           **(b) Noncompliance of National Pollutant Discharge Elimination System discharge**  
21 **limits detected through required sampling or monitoring; and**

22           **(c) Noncompliance discovered through a compliance audit required to be**  
23 **performed by the terms of a consent order or settlement agreement, unless the audit is a**  
24 **component of agreement terms to implement a comprehensive environmental management**  
25 **system;**

26           **(3) The regulated entity fully discloses the specific noncompliance in writing to the**  
27 **department within twenty-one days, or such shorter time period as may be required by**  
28 **law, after the entity discovers that the noncompliance has, or may have, occurred. The**  
29 **time at which the entity discovers that a noncompliance has, or may have, occurred begins**  
30 **when any officer, director, employee, or agent of the facility has an objectively reasonable**  
31 **basis for believing that a noncompliance has, or may have, occurred;**

32           **(4) The regulated entity discovers and discloses the potential noncompliance to the**  
33 **department prior to:**

34           **(a) The commencement of a federal, state, or local department inspection or**  
35 **investigation, or the issuance by such department of an information request to the**  
36 **registered entity, in which the department determines that the facility did not know that**  
37 **it was under civil investigation, and the department determines that the entity is otherwise**  
38 **acting in good faith, in which case the department is authorized to reduce or waive civil**  
39 **penalties in accordance with section 640.310;**

- 40           (b) Notice of a citizen suit;
- 41           (c) The filing of a complaint by a third party;
- 42           (d) The reporting of the noncompliance to the department or other governmental
- 43 agency by a whistle-blower employee and not be authorized to speak on behalf of the
- 44 regulated entity; or
- 45           (e) Imminent discovery of the noncompliance by a regulatory department or
- 46 agency;
- 47           (5) The regulated entity shall correct the noncompliance within sixty calendar days
- 48 from the date of discovery, or such shorter time period as may be required by law,
- 49 certifying in writing that the noncompliance has occurred and taking appropriate
- 50 measures as determined by the department to remedy any environmental or human harm
- 51 due to the noncompliance. The department retains the authority to order an entity to
- 52 correct a noncompliance within a specific time period shorter than sixty days whenever
- 53 correction in such shorter time period is necessary to protect public health and the
- 54 environment. If more than sixty days is needed to correct the noncompliance, the regulated
- 55 entity shall so request additional time from the department in writing prior to the
- 56 expiration of the sixty-day period. The Missouri department of natural resources will
- 57 approve or deny the request before the expiration of the sixty-day period. If the
- 58 department approves additional time, the department may require a regulated entity to
- 59 enter into a publicly available written agreement, administrative consent order, or judicial
- 60 consent decree as a condition for obtaining relief under sections 640.310 to 640.325, in
- 61 particular where compliance or remedial measures are complex or a lengthy schedule for
- 62 attaining and maintaining compliance or remediating harm is required;
- 63           (6) The regulated entity shall agree in writing or other appropriate order to take
- 64 steps acceptable to the director to prevent a recurrence of the noncompliance, including
- 65 improvements to its environmental auditing or compliance management system;
- 66           (7) The specific noncompliance, or a closely related noncompliance, has not
- 67 occurred within the previous three years at the same facility and has not occurred within
- 68 the past five years as part of a pattern at multiple facilities owned or operated by the same
- 69 entity. For the purposes of this section, noncompliance includes:
- 70           (a) Failure to comply with any federal, state, or local environmental law identified
- 71 in a judicial or administrative order, consent agreement or order, complaint, or notice of
- 72 noncompliance, conviction, or plea agreement; or
- 73           (b) Any act or omission for which the regulated entity has previously received
- 74 penalty mitigation from the department or another state or local department;
- 75           (8) The noncompliance is not one which:

76 (a) Resulted in serious actual harm, or may have presented an imminent and  
77 substantial endangerment, to human health or the environment; or

78 (b) Violates the specific terms of any judicial or administrative order or consent  
79 agreement; and

80 (9) The regulated entity cooperates as requested by the department and provides  
81 such information as is necessary and requested by the department to determine  
82 applicability of sections 640.310 to 640.325.

640.335. The department shall make available to the public the terms and  
2 conditions of and supporting documentation demonstrating any compliance agreement  
3 reached under sections 640.310 to 640.325, including the nature of the noncompliance, the  
4 remedy, and the schedule for returning to compliance; provided, however, the department  
5 shall not disclose from any audit report information relating to scientific and technological  
6 innovations in which the owner has a proprietary interest or any information which is  
7 otherwise protected from disclosure by law.

640.340. Nothing in sections 640.300 to 640.335 shall prevent a private party from  
2 bringing a cause of action, where otherwise permitted under the law, against an entity  
3 whose noncompliance with any relevant environmental law has caused damage to such  
4 private party.

640.800. As used in sections 640.800 to 640.824 the following terms shall mean:

2 (1) "Alternative fuel", any of the following:

3 (a) Biodiesel used separately or in mixtures of twenty percent known as B-20 or up  
4 to B-100;

5 (b) Electric;

6 (c) Ethanol used separately or in mixtures of seventy percent or more by volume  
7 mixed with gasoline;

8 (d) Fuels derived from biological materials such as ethanol, biodiesel, or other  
9 recognized additives;

10 (e) Hydrogen;

11 (f) Natural gas either as compressed natural or liquefied natural gas;

12 (g) Propane liquefied petroleum gas;

13 (2) "Alternative fuel infrastructure project", fueling stations or sites, fueling tanks  
14 and trucks, charging stations, and other equipment used to fuel alternative fuel vehicles  
15 or produce alternative fuels;

16 (3) "Alternative fuel vehicle", a vehicle that has been developed for, and is intended  
17 to be operated using one or more alternative fuel;

- 18           (4) "Alternative fuel provider", a person or organization that produces or sells  
19 alternative fuel;
- 20           (5) "Bi-fuel vehicle", an alternative fuel vehicle capable of running on either an  
21 alternative fuel or gasoline;
- 22           (6) "Board", the clean American fuel board created under section 640.803;
- 23           (7) "Conventional vehicle", a vehicle running only on gasoline, reformulated  
24 gasoline, or diesel fuel;
- 25           (8) "Dedicated vehicle", an alternative fuel vehicle that can only be operated using  
26 an alternative fuel;
- 27           (9) "Department", the department of natural resources;
- 28           (10) "Director", the director of the department of natural resources;
- 29           (11) "Dual-fuel vehicle", an alternative fuel vehicle capable of running on an  
30 alternative fuel and either gasoline or diesel during some portion of its operations;
- 31           (12) "Flex-fuel vehicle", an alternative fuel vehicle capable of operating on gasoline  
32 fuel with an alternative fuel in various combinations;
- 33           (13) "Fund", the alternative fuel vehicle revolving fund created under section  
34 640.812;
- 35           (14) "Hybrid vehicle", a vehicle that is powered by an electric motor and an engine  
36 combusting an alternative fuel, gasoline, or diesel fuel;
- 37           (15) "Incremental cost" or "differential cost", the difference in price between an  
38 alternative fuel vehicle and a conventional vehicle of the same make and model as provided  
39 by the original equipment manufacturer or the difference in price between conventional  
40 fuels such as gasoline and diesel or an alternative fuel;
- 41           (16) "Person", an individual, a business, a corporation, unit of municipal or county  
42 government, but does not mean any unit of the federal government.

2           640.803. There is hereby established "The Clean American Fuel Board". The  
3 board shall consist of seven members. The governor shall appoint six members to the  
4 board, one member from the ethanol industry, one member from the natural gas industry,  
5 one member from the liquefied petroleum gas industry, one member from the biodiesel  
6 industry, one member from the Kansas City Regional Clean City Coalition and one from  
7 the St. Louis Clean City Coalition. The director shall be an ex officio member of the board  
as well as its chairperson.

2           640.806. Members of the board shall not be compensated for their services, but they  
3 shall be reimbursed for actual and necessary expenses incurred in the performance of their  
4 duties. The members of the board shall elect one member as vice chairperson, such  
member shall serve as chairperson in the absence of the director. Each member appointed

5 by the governor shall serve for a term of two years and may be reappointed by the  
6 governor for an additional term of two years. The department of natural resources shall  
7 provide staff to the board and aid it in the performance of its duties.

2 **640.809.** The specific duties of the board shall include, but not be limited to, the  
following:

3 (1) Establishing and administering policies determined in consultation with other  
4 state agencies, including the departments of transportation, environment, and natural  
5 resources as well as interested organizations and businesses to comply with environmental  
6 and energy regulations of the United States Department of Energy and the Environmental  
7 Protection Agency;

8 (2) Preparing a report, including, but not limited to, a calculation of fuel cost  
9 differential rebates and designation of certified conversion and original equipment  
10 manufacturer technologies. Such report shall be prepared by January 1, 2008, and  
11 updated every year thereafter. Such report shall be made available to the governor, the  
12 general assembly, the department of natural resources, and the department of  
13 transportation;

14 (3) Preparing a report on the number of alternative fuel vehicles registered in  
15 Missouri and of the expenditure of funds under sections 640.800 to 640.824. Such report  
16 shall be prepared by January 1, 2008, and updated every year thereafter. Such report  
17 shall be made available to the governor, the general assembly, the department of natural  
18 resources, and the department of transportation;

19 (4) Establishing a procedure for persons to apply for grants from the fund under  
20 sections 640.815, and selecting persons who shall receive such grants;

21 (5) Establishing a procedure, consistent with the requirements under section  
22 640.821, for persons to apply for rebates from the fund under section 640.818, and selecting  
23 persons who shall receive such rebates.

2 **640.812. 1.** There is hereby created in the state treasury the "Alternative Fuel  
3 Vehicle Revolving Fund", which shall consist of moneys appropriated to the fund by the  
4 general assembly, and any other moneys donated to or accepted by the board. The state  
5 treasurer shall be custodian of the fund and may approve disbursements from the fund in  
6 accordance with sections 30.170 and 30.180, RSMo. Upon appropriation, money in the  
fund shall be used solely for the administration of sections 640.800 to 640.824.

7 2. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any  
8 moneys remaining in the fund at the end of the biennium shall not revert to the credit of  
9 the general revenue fund.

10           **3. The state treasurer shall invest moneys in the fund in the same manner as other**  
11 **funds are invested. Any interest and moneys earned on such investments shall be credited**  
12 **to the fund.**

**640.815. 1. A person may be eligible for a grant from the fund in an amount of up**  
2 **to twenty-five percent of the cost of an alternative fuel vehicle infrastructure project that**  
3 **is selected by the board. Such grant shall not exceed one hundred thousand dollars per**  
4 **project.**

5           **2. A person may be eligible for a grant from the fund in an amount of up to**  
6 **twenty-five percent of the total cost of installing a public access American fuels**  
7 **infrastructure project. Such grant shall not exceed one hundred thousand dollars per**  
8 **project, and no person shall receive more than two hundred thousand annually.**

9           **3. Any funds not used by a grantee under this section shall be returned to the**  
10 **treasurer and deposited into the fund.**

11           **4. To qualify for a grant under this section, the infrastructure shall be accessible**  
12 **to the public or serve vehicles used by the public, or for the public benefit by reducing**  
13 **harmful air emissions. Priority shall be given to projects serving ten or more vehicles in**  
14 **counties at risk for nonattainment penalties under federal Environmental Protection**  
15 **Agency regulations.**

16           **5. Up to ten percent of the grants from the fund may be used for education**  
17 **awareness and outreach activities such as the "Clean Cities", Missouri Green Fleets.**

**640.818. 1. A person who has purchased an alternative fuel vehicle weighing less**  
2 **than eight thousand five hundred pounds gross weight, either from an original equipment**  
3 **manufacturer dealer or that has been retrofitted with a kit certified by the board may be**  
4 **eligible for up to eighteen thousand dollars in rebates, in a year, to be made from the fund.**  
5 **Such rebates shall be:**

6           **(1) Up to eighty percent of the incremental cost for an original equipment**  
7 **manufacturer dedicated vehicle, with a maximum of three thousand dollars per vehicle;**

8           **(2) Up to eighty percent of the incremental cost for an original equipment**  
9 **manufacturer bi-fuel vehicle, with a maximum of two thousand dollars per vehicle;**

10           **(3) Up to ten percent of the incremental cost for a hybrid vehicle, with a maximum**  
11 **of five hundred dollars per vehicle;**

12           **(4) Up to ten percent of the total purchase price for all other dedicated alternative**  
13 **fuel vehicles and hybrid vehicles that have no comparable conventional model on which**  
14 **to base incremental cost calculations, with a maximum of one thousand dollars per vehicle.**

15           **2. A person who has purchased an alternative fuel vehicle weighing more than eight**  
16 **thousand five hundred pounds gross weight, either through an original equipment**



17 manufacturer or that has been retrofitted with a kit certified by the board, may be eligible  
18 for the following rebates from the fund:

19 (1) Up to fifty percent of the incremental cost for a dedicated vehicle, with a  
20 maximum of ten thousand dollars per vehicle;

21 (2) Up to fifty percent of the incremental cost for a bi-fuel, flex-fuel, or hybrid  
22 vehicle, with a maximum of ten thousand dollars per vehicle;

23 (3) Up to ten percent of the total purchase price for all other dedicated alternative  
24 fuel vehicles and hybrid vehicles designated as eligible by the administering agency that  
25 have no comparable conventional model on which to base incremental cost calculations,  
26 with a maximum of ten thousand dollars per vehicle.

27 3. A person who leases for at least three years an alternative fuel vehicle shall be  
28 eligible for the rebate in subsections 1 and 2 of this section in the same manner as those  
29 persons who purchase an alternative fuel vehicle.

30 4. A person may be eligible for a yearly rebate, to be made from the fund, in the  
31 amount equal to ten percent of the person's cost of alternative fuel with a maximum of five  
32 thousand dollars a year. To be eligible for such rebate, fuel shall be purchased from a  
33 Missouri fuel provider.

640.821. 1. An application for a rebate under subsection 1 or 2 of section 640.818  
2 shall be made upon a form furnished by the department. Such form shall include:

3 (1) Evidence of the ownership and license registration of the alternative fuel  
4 vehicle;

5 (2) A signed statement that the evidence of ownership and license registration and  
6 all other representations in the application are made under oath or affirmation and are  
7 true and correct to the best knowledge and belief of the person applying, subject to the  
8 penalties of making a false affidavit or declaration;

9 (3) Any other information the board deems necessary to determine eligibility for  
10 rebate under subsection 1 or 2 of section 640.818.

11 2. An application for a rebate under subsection 3 of section 640.818 shall be made  
12 upon a form furnished by the department. Such form shall include:

13 (1) Evidence that the person applying for the rebate is the lessee of the alternative  
14 fuel vehicle;

15 (2) A signed statement that the evidence of lessee status and all other  
16 representations in the application are made under oath or affirmation and are true and  
17 correct to the best knowledge and belief of the person applying, subject to the penalties of  
18 making a false affidavit or declaration;

19           (3) Any other information the board deems necessary to determine eligibility for  
20 rebate under subsection 3 of section 640.818.

21           3. An application for a rebate under subsection 4 of section 640.818 shall be made  
22 upon a form furnished by the department. Such form shall include:

23           (1) Evidence of the person's purchase of alternative fuel, including copies of or  
24 original fuel receipts;

25           (2) A signed statement that the evidence of purchase of alternative fuel and all other  
26 representations in the application are made under oath or affirmation and are true and  
27 correct to the best knowledge and belief of the person applying, subject to the penalties of  
28 making a false affidavit or declaration;

29           (3) Any other information the board deems necessary to determine eligibility for  
30 rebate under subsection 4 of section 640.818.

          640.824. 1. The department shall promulgate rules necessary for the  
2 administration of sections 640.800 to 640.824 and necessary to aid the board in its functions  
3 under sections 640.800 to 640.824.

4           2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,  
5 that is created under the authority delegated in this section shall become effective only if  
6 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if  
7 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable  
8 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,  
9 to review, to delay the effective date, or to disapprove and annul a rule are subsequently  
10 held unconstitutional, then the grant of rulemaking authority and any rule proposed or  
11 adopted after August 28, 2007, shall be invalid and void.

          640.827. Pursuant to section 23.253, RSMo, of the Missouri Sunset Act:

2           (1) The provisions of the new program authorized under sections 640.800 to  
3 640.824 shall automatically sunset six years after the effective date of sections 640.800 to  
4 640.824 unless reauthorized by an act of the general assembly; and

5           (2) If such program is reauthorized, the program authorized under sections 640.800  
6 to 640.824 shall automatically sunset twelve years after the effective date of the  
7 reauthorization of sections 640.800 to 640.824; and

8           (3) This section shall terminate on September first of the calendar year immediately  
9 following the calendar year in which the program authorized under sections 640.800 to  
10 640.824 is sunset.

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