

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1854
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Energy and Environment April 24, 2008 with recommendation that House Committee Substitute for House Bill No. 1854 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

3889L.04C

AN ACT

To repeal sections 236.400, 236.410, 236.415, 236.420, 236.425, 236.435, 236.440, 236.445, 236.460, 236.465, 236.500, 319.318, 444.765, 444.766, 444.770, 444.772, 444.773, 444.774, 643.151, and 644.076, RSMo, and to enact in lieu thereof forty-five new sections relating to natural resources, with penalty provisions and an emergency clause for a certain section.

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

Section A. Sections 236.400, 236.410, 236.415, 236.420, 236.425, 236.435, 236.440, 236.445, 236.460, 236.465, 236.500, 319.318, 444.765, 444.766, 444.770, 444.772, 444.773, 444.774, 643.151, and 644.076, RSMo, are repealed and forty-five new sections enacted in lieu thereof, to be known as sections 66.450, 236.400, 236.410, 236.415, 236.420, 236.425, 236.435, 236.440, 236.445, 236.460, 236.465, 236.500, 260.1050, 260.1053, 260.1055, 260.1059, 260.1062, 260.1065, 260.1068, 260.1071, 260.1074, 260.1089, 260.1092, 260.1101, 319.318, 444.765, 444.766, 444.768, 444.770, 444.772, 444.773, 444.774, 640.017, 640.300, 640.305, 640.310, 640.315, 640.320, 640.325, 640.330, 640.335, 640.340, 640.345, 643.151, and 644.076, to read as follows:

66.450. No county with a charter form of government and with more than one million inhabitants shall enact any county ordinance governing the establishment of areas within the unincorporated areas of such county for the collection and transfer of waste, trash, and other materials, including recovered materials or authorizing bids or proposals

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.

5 **for the provision of such services, without approval by the voters of the county. Any such**
6 **county ordinance shall be void unless approved by the voters of the county.**

236.400. As used in sections 236.400 to 236.500, standards, rules and regulations
2 promulgated hereunder, unless the context otherwise requires the following words and terms
3 mean:

4 (1) "Agricultural dam", any dam constructed to impound water for use in irrigation,
5 livestock watering, or commercial fish rearing and sale;

6 (2) "Alterations", "repairs", or either of them, such alterations or repairs as affect the
7 safety of a dam or reservoir, or public safety, life or property;

8 (3) "Chief engineer", the head of the dam and reservoir safety program of the department
9 of natural resources or his representative;

10 (4) "Construction permit", a written authorization issued by the council giving the owner
11 **of a high hazard dam** the right to construct, alter, enlarge, reduce, repair or remove a dam or
12 reservoir or appurtenances thereto, with such conditions as are necessary to adequately protect
13 the public safety, life, property, the dam or reservoir;

14 (5) "Dam", any artificial or manmade barrier, **including appurtenant works**, which
15 does or may impound water, and [which impoundment has or may have a surface area of fifteen
16 or more acres of water at the water storage elevation, or which is thirty-five feet or more in
17 height from the natural bed of the stream or watercourse measured at the downstream toe of the
18 barrier or dam, if it is not across a streambed or watercourse, together with appurtenant works.
19 Sections 236.400 to 236.500 shall not apply to any dam which is not or will not be in excess of
20 thirty-five feet in height or to any dam or reservoir licensed and operated under the Federal
21 Power Act] **is twenty-five feet or more in height with a storage volume of at least fifty acre-**
22 **feet of water. For purposes of this definition, the height of the dam is measured either from**
23 **the natural bed of the stream or watercourse at the downstream toe of the barrier or dam**
24 **or the lowest point on the downstream toe of the dam, whichever is lower, up to the dam**
25 **crest elevation. The storage volume is the amount of water stored in the reservoir below**
26 **the dam crest elevation;**

27 (6) "Dam and reservoir safety council", as designated by sections 236.400 to 236.500 and
28 referred to as the "council" shall consist of seven members appointed by the governor according
29 to the provisions of sections 236.400 to 236.500;

30 (7) **"Dam crest elevation", the lowest elevation of the top surface of the dam**
31 **exclusive of the spillway;**

32 (8) "Director", the director of the department of natural resources of the state of
33 Missouri;

34 **(9) "Downstream environment zone", the area downstream of a dam that would**
35 **be affected by inundation in the event the dam failed with the water level in the lake being**
36 **at the dam crest level. Inundation is water two feet or more deep around the impacted**
37 **structure;**

38 **[(8)] (10) "Enlargement", any change in or addition to an existing dam or reservoir which**
39 **raises the height of a dam, increases the watershed for a reservoir, or raises the water storage**
40 **elevation of the water impounded by a dam or reservoir;**

41 **[(9)] (11) "Experienced professional engineer", an engineer registered in the state of**
42 **Missouri and experienced in hydraulics, hydrology and civil engineering as applied to dam**
43 **design and construction;**

44 **[(10)] (12) "High hazard", loss of human life is probable or expected if the dam**
45 **were to fail. Loss of life is assumed to occur if the dam fails and permanent dwellings or**
46 **any public building, campground with permanent water and electrical services, or**
47 **industrial buildings exist within the downstream environment zone;**

48 **(13) "Industrial building", a permanent, enclosed structure used by groups of**
49 **workers usually involved in some type of manufacturing, processing, or industrial related**
50 **process;**

51 **(14) "Low hazard", any dam that is not high hazard;**

52 **(15) "Maintenance", the proper keeping of all aspects of a dam or reservoir and**
53 **appurtenances thereto, that pertain to safety, in a state of repair and working order as necessary**
54 **to comply with sections 236.400 to 236.500, any permit hereunder, and protect public safety, life**
55 **and property;**

56 **[(11)] (16) "Natural physical changes", those changes not directly or indirectly caused**
57 **by man which affect the safety of the dam or reservoir;**

58 **[(12)] (17) "Operation", the physical changes, natural or manmade that occur or are made**
59 **to a dam or reservoir, or operation of the mechanisms or appurtenances of the dam or reservoir,**
60 **which affect or may affect public safety, life or property;**

61 **[(13)] (18) "Operation or operating permit", a written authorization issued by the**
62 **council giving the owner the right to operate and maintain a high hazard dam for a period**
63 **of up to five years and indicating that the dam meets the requirements of sections 236.400**
64 **to 236.500 and the guidelines, standards, rules, and regulations issued under sections**
65 **236.400 to 236.500. The permit shall contain such conditions as to operations,**
66 **maintenance, and repair as are necessary to protect public safety, life, and the dam or**
67 **reservoir adequately;**

68 **(19) "Owner", a person who owns, controls, operates, maintains, manages, or proposes**
69 **to construct a dam or reservoir including:**

- 70 (a) The state and its departments, institutions, agencies, and political subdivisions, but
71 not the United States government;
- 72 (b) A municipal or quasi-municipal corporation;
- 73 (c) A district;
- 74 (d) A public utility;
- 75 (e) A natural person, firm, partnership, association, corporation, political subdivision,
76 or legal entity;
- 77 (f) The duly authorized agents, lessees, or trustees of any of the foregoing;
- 78 (g) Receivers or trustees appointed by any court for any of the foregoing;
- 79 **(20) "Permanent dwelling", a dwelling occupied at least ninety days a year;**
80 **[(14)] (21) "Permit", a construction[, safety or registration] or operating permit;**
81 **[(15)] (22) "Permit applicant", an owner who applies for a construction[, safety or**
82 **registration] or operating permit;**
- 83 **(23) "Public building", a permanent, enclosed structure used by the general public**
84 **but not necessarily owned by the public;**
- 85 **(24) "Public utility", a drinking water reservoir, drinking water and wastewater**
86 **treatment facilities, and electrical power plants;**
- 87 **[(16)] (25) "Reduction", any decrease in the height of a dam, watershed size, or water**
88 **storage elevation of the water impounded by a dam or reservoir;**
- 89 **[(17) "Registration permit", a permit issued for a period not to exceed five years by the**
90 **council to the owner of a dam or reservoir in existence on September 28, 1979, or which**
91 **becomes subject to the provisions of sections 236.400 to 236.500 for such dams and reservoirs**
92 **which are in a properly maintained condition or which have made and complied with**
93 **recommendations for corrections of observed defects of the dam or reservoir and have been**
94 **examined and approved in accordance with sections 236.400 to 236.500 and standards, rules and**
95 **regulations and guidelines issued pursuant to sections 236.400 to 236.500;**
- 96 **(18)] (26) "Registration", a written statement submitted to the chief engineer on**
97 **forms provided by the department, by the owner of a dam or reservoir, including the name**
98 **of the legal owner, a contact person, the address of the legal owner and contact person, the**
99 **telephone number of the legal owner and contact person, the height of the dam, the**
100 **estimated reservoir storage volume at the dam crest elevation, and the general location of**
101 **the dam;**
- 102 **(27) "Reservoir", any impoundment which results from a dam as defined in sections**
103 **236.400 to 236.500;**
- 104 **[(19) "Safety permit", a permit issued to the owner for a period of five years, or less if**
105 **safety considerations so require, by the council indicating that the dam meets the requirements**

106 of sections 236.400 to 236.500 and the guidelines, standards, rules and regulations issued
107 pursuant to sections 236.400 to 236.500, and containing such conditions as to operations,
108 maintenance and repair as are necessary to adequately protect public safety, life and the dam or
109 reservoir;

110 (20)] (28) "Water", water, other liquid or tailings;

111 [(21)] (29) "Water storage elevation", that elevation [of] **or** water surface at the principal
112 spillway which could be obtained by the dam or reservoir were there no outflow and were the
113 reservoir full of water;

114 [(22)] (30) "Watershed", the area, usually expressed in acres of square miles, that
115 contributes or may contribute surface water to a reservoir.

236.410. 1. There is hereby created a "Dam and Reservoir Safety Council", whose
2 domicile for the purposes of sections 236.400 to 236.500 shall be the department of natural
3 resources of the state of Missouri, for the regulation of dam and reservoir safety. The council
4 shall consist of seven members, no more than four of whom shall be members of the same
5 political party, appointed by the governor with the advice and consent of the senate.

6 2. The members of the council shall have a background of academic training or
7 professional experience directly related to the design of dams and reservoirs. At least two
8 members of the council shall be professional engineers registered in the state of Missouri, one
9 of whom shall represent the general public; at least one member shall be [an engineering] **a**
10 geologist **registered in the state of Missouri whom also has professional geological practice**
11 **experience relating to dam safety**; at least one member, in addition to the professional
12 engineer, shall be a representative of the general public; two members shall be from industry, one
13 of whom shall be earthmoving contractors; and one member shall be the owner of a **regulated**
14 **high hazard** dam or reservoir. The members shall serve for a term of two years; except, of the
15 first appointments three shall be appointed for one year. The governor shall fill any vacancy on
16 the council and may remove any appointed member for cause. The council shall annually elect
17 a chairman and vice chairman from among its members. The council shall meet regularly but
18 not less than quarterly. Special meetings and hearings may be called upon delivery of written
19 notice to each member of the council signed by the director, the chief engineer, the council
20 chairman or four of the council members. Four members of the council shall constitute a quorum
21 to transact the business of the council. The council shall decide all questions by a majority vote
22 of those present and constituting a quorum. The members of this council shall not receive any
23 compensations other than for actual travel and subsistence when acting officially as members of
24 the council.

236.415. 1. The council considering recommendations of the chief engineer shall,
2 subsequent to a public meeting, adopt, subject to the approval of the director, the general

3 technological guidelines and the standards, guidelines, rules and regulations applicable to
4 permits, **hazard classification**, the design, construction, maintenance, operation, alteration,
5 repair, enlargement, reduction, removal or natural physical changes that may occur to a dam or
6 reservoir. Violations of guidelines, standards, rules and regulations are violations of sections
7 236.400 to 236.500 permitting the revocation, suspension, or refusal to issue any permit required
8 by sections 236.400 to 236.500. No standards, guidelines, rules, or regulations shall be adopted,
9 or any amendment or repeal thereof shall be effective, except after a public hearing to be held
10 after thirty days' prior notice by advertisement or press release, and publication as required in
11 chapter 536, RSMo, of the date, time and place of the hearing and opportunity given to the public
12 to be heard.

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

22 3. The council upon hearing the recommendations of the chief engineer and reviewing
23 the application for a construction or [registration] **operating** permit shall approve or deny the
24 permit application. The council may delegate authority to approve or deny permit applications
25 to the chief engineer, whose actions shall be subject to appeal to the council as provided in
26 subsection 2 of section 236.425.

27 4. No standard, rule or regulation or guideline, or amendment or repeal thereof, adopted
28 by the council shall be in force and effect until it has been approved in writing by the director and
29 the requirements of chapter 536, RSMo, are satisfied. The affirmative vote of at least four
30 members of the council shall be required for adoption.

31 **5. The inspection fee for dams not licensed and operated under the Federal Power**
32 **Act shall be four hundred fifty dollars per dam per year for high hazard dams. An**
33 **application fee for new high hazard dams constructed after August 28, 2008, and not**
34 **licensed or operated under the Federal Power Act shall be assessed a permit application**
35 **review fee of three thousand dollars or one percent of the actual total cost for construction**
36 **of the dam, whichever is lower. Inspection fees and construction permit application review**
37 **fees for dams licensed and operated under the Federal Power Act shall be established by**
38 **the council. All of the above fees shall be adjusted on July first of every year according to**

39 the Engineering News Record inflation factor index for professional engineering services.
40 Inspection fees and construction permit application renewal fees will be due to the
41 department within ninety days of receipt of an invoice, but no later than the thirtieth of
42 June of each year. The state treasurer shall deposit all fees related to dam inspection and
43 construction permits in the state treasury and moneys received by gifts, bequests, or
44 contributions, to the credit of the Dam & Reservoir Fee subaccount in the Natural
45 Resources Protection Fund established by section 640.220, RSMo. Moneys in the
46 subaccount shall, subject to appropriation, be expended for the administration and
47 enforcement of sections 236.400 to 236.500 by the department of natural resources. Any
48 balance in the subaccount at the end of the biennium shall remain in the fund and shall not
49 be subject to the provisions of section 33.080, RSMo. Notwithstanding any other provision
50 of law, any federally regulated dam located in a county of the third classification without
51 a township form of government and with more than six thousand six hundred but fewer
52 than six thousand seven hundred inhabitants in excess of eighty feet tall which is not
53 located on a natural stream or waterway shall be continuously monitored twenty-four
54 hours a day by an employee of the business entity which controls operation of the facility
55 who shall take all appropriate measures to monitor the dam and its pumps. All
56 agricultural dams shall be exempt from the inspection fee. If the council with the advice
57 of the chief engineer determines that the dam or reservoir is no longer used for agricultural
58 services, it shall become subject to the inspection fee.

236.420. The council, with the advice and assistance of the chief engineer, shall carry
2 out a state program of inspection of dams and reservoirs in accordance with regulations adopted
3 by the council. All **high hazard** dams and reservoirs in this state shall be inspected [on a
4 periodic basis] at least every three years to determine if they constitute a threat to public safety,
5 life or property. **Dams licensed and operated under the Federal Power Act shall be**
6 **inspected yearly.** The chief engineer shall submit reports to the director and the council
7 concerning the condition of each dam or reservoir inspected, and recommendations as to any
8 alterations or repairs needed.

236.425. 1. The chief engineer shall administer the provisions of sections 236.400 to
2 236.500 by:

3 (1) Recommending [general] technological guidelines that pertain to the design,
4 construction, maintenance, operation, use, alteration, repair, enlargement, reduction, or natural
5 physical changes of, or that may occur to, a dam or reservoir including their removal[; except
6 that, detailed technical specifications shall not be promulgated to regulate the design,
7 construction, operation, maintenance, use, alteration, repair or removal of a dam or reservoir].
8 Such guidelines shall not be effective until adopted by the council and approved by the director

9 at a public meeting, after notice requirements set forth in subsection 1 of section 236.415 herein
10 have been satisfied;

11 (2) Making recommendations concerning the issuing, continuing in effect, revoking,
12 modifying, suspending, or denying, under such conditions as prescribed by sections 236.400 to
13 236.500 and such rules as may be adopted to protect public safety, life, property, dams and
14 reservoirs, construction permits for the construction, alteration, enlargement, reduction, repair
15 or removal of **high hazard** dams or appurtenances thereto, and [safety and registration]
16 **operating** permits to [insure] **ensure** continuing protection of public safety, life, property, dams
17 and reservoirs, for all **high hazard** dams subject to the provisions of sections 236.400 to
18 236.500;

19 (3) Making such investigations, including hearings, as are proper to protect public safety,
20 life and property from an unsafe dam or reservoir, and to determine whether any permits should
21 be issued, continued, revoked, modified, suspended, or denied or whether any violations of
22 sections 236.400 to 236.500, standards, or rules or regulations have occurred or are occurring;

23 (4) Entering, at any reasonable time, any private or public premises as necessary to make
24 an investigation or inspection of a dam or reservoir, or records kept, pertaining thereto, and such
25 inspection shall follow reasonable notice to the owner given prior to such investigation or
26 inspection except in the case of an emergency threatening public safety, life or property, in which
27 case such inspection or investigation may be made without prior notice. A suitably restricted
28 search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by
29 any judge having jurisdiction, to the chief engineer or his representative for the purpose of
30 enabling him to make the inspection.

31 2. The council shall meet with or hear the appeal of a permit applicant and his
32 representative upon request of the permit applicant if the chief engineer has rejected the
33 application for a construction[, safety or registration] **or operating** permit.

236.435. 1. Prior to the commencement of the construction, alteration, enlargement,
2 reduction or removal of a **high hazard** dam or reservoir, the owner shall apply to the council and
3 upon satisfying the requirements of sections 236.400 to 236.500 and the rules, regulations and
4 standards promulgated pursuant hereto, obtain a construction permit.

5 2. The application for a construction permit shall bear the seal and signature of an
6 experienced professional engineer registered in Missouri [or employed by a qualified engineering
7 division of a state or federal agency regularly engaged in dam construction for soil and water
8 conservation, or irrigation or relating to wildlife conservation] and shall be accompanied by the
9 design report and plans and [specification] **specifications** of the proposed design, alteration,
10 enlargement, reduction, repair or removal of the dam or reservoir. **A geologic report shall**
11 **accompany an application for a construction permit.**

12 3. Any person constructing or owning a dam or reservoir, or living or owning property
13 in an area affected, or whose safety may be affected by such dam or reservoir may consult with
14 the chief engineer concerning such dam or reservoir.

15 4. The council upon hearing the recommendation of the chief engineer shall approve or
16 deny an application for a construction permit within forty-five days after its receipt or the
17 completion of any hearings in connection with such application, whichever is later. The permit
18 shall be issued upon the receipt of the application if, in the judgment of the council, requirements
19 of sections 236.400 to 236.500 and all standards, rules and regulations hereunder are satisfied
20 and the design will be adequate to protect the public safety, life and property.

21 5. The council upon hearing the recommendation of the chief engineer may reject the
22 application if it decides that there is insufficient information to determine the safety of the
23 proposed construction, alteration, enlargement, reduction or removal of the dam or reservoir or
24 that the construction, alteration, enlargement, reduction or removal of the dam or reservoir would
25 endanger public safety, life or property, or otherwise not comply with sections 236.400 to
26 236.500 and any rules, standards, guidelines and regulations adopted hereunder.

27 6. A landowner who now owns or proposes to construct an agricultural dam or reservoir
28 which will be used primarily for agricultural purposes will be exempt from all provisions of
29 sections 236.400 to 236.500. If the council with the advice of the chief engineer, determines that
30 the dam or reservoir is no longer used primarily for agricultural services **or is a high hazard**
31 **dam or reservoir**, it shall become subject to the provisions of sections 236.400 to 236.500.

32 7. [Dams or their construction, alterations, enlargements, reductions or removals
33 designed by, and their construction, alteration, enlargement, reduction or repair or removal
34 monitored by, a qualified engineer regularly engaged in dam construction for soil and water
35 conservation or irrigation or relating to wildlife conservation are for the purposes of such
36 construction or other listed actions exempt from the provisions of this section except that the
37 plans for the dam shall be filed with the chief engineer prior to construction, or other listed
38 action. Amended plans shall be filed at the completion of construction or other listed action if
39 there have been significant deviations from the previously filed plans.] **Any dam or reservoir**
40 **with a surface area of five acres or less at the water storage elevation that will be used**
41 **primarily for fireclay quarry reclamation under the provisions of the land reclamation**
42 **commission shall be exempt from all provisions of sections 236.400 to 236.500;**

43 8. **Any dam or reservoir providing thirty or less megawatts that, in the event of**
44 **catastrophic failure, would emit water that is fully contained on federal property where**
45 **no permanent structures are located shall be exempt from all provisions of sections 236.400**
46 **to 236.500.**

236.440. 1. The owner shall notify the council upon completion of construction, alteration, enlargement, or reduction of the **high hazard** dam or reservoir. This notification shall bear the seal and signature of an experienced professional engineer and shall be accompanied by an application for [a safety] **an operating** permit. The owner of any **high hazard** dam or reservoir subject to the provisions of sections 236.400 to 236.500 shall obtain [a safety] **an operating** permit following completion of construction.

2. Upon receipt of complete and proper application for [a safety] **an operating** permit, including notification of completion by the owner and certification by an experienced professional engineer that the new construction, alteration, enlargement or reduction has been completed in accordance with the provisions of the construction permit and sections 236.400 to 236.500, the council shall upon receipt of the application issue [a safety] **an operating** permit. The council upon advice of the chief engineer may deny the application if it determines that violations of the construction permit or sections 236.400 to 236.500 exist. If revisions have been made which vary substantially from the provisions of the construction permit, it must be shown that the revisions do not endanger public safety, life or property. The [safety] **operating** permit for dams constructed pursuant to a construction permit issued under sections 236.400 to 236.500, may contain conditions the council upon advice of the chief engineer determines are necessary for the protection of public safety, life and property and a schedule and timetable for the dam and reservoir to achieve compliance with the construction permit and provisions of sections 236.400 to 236.500, standards, rules and regulations promulgated hereunder, but such conditions shall not be more stringent or restrictive than those contained in the construction permit.

3. [Owners of dams and reservoirs in existence on September 28, 1979, shall obtain registration permits for dams of fifty to seventy feet in height within four years, and for dams up to fifty feet in height within six years of September 28, 1979, or as otherwise required by the provisions of sections 236.400 to 236.500 and rules and regulations adopted hereunder. A registration] **An operating** permit shall be issued by the council upon the advice of the chief engineer for dams and reservoirs only after it is determined that the **high hazard** dam meets the standards of sections 236.400 to 236.500 and rules and regulations hereunder, and any recommendations made by the inspecting engineer pursuant thereto.

4. **Owners of all dams, as defined in section 236.400, in existence on or constructed after August 28, 2008, who do not have a current registration or safety permit issued prior to August 28, 2008, shall register the existence of their dam with the chief engineer no later than six months after August 28, 2008, and the owners of high hazard dams shall apply for an operating permit no later than one year after August 28, 2008, or at such other future time as the council shall adopt by rule.**

36 **5. Owners of a dam or reservoir licensed and operating under the Federal Power**
37 **Act, 16 U.S.C. Section 791a, et seq., as amended, shall apply for an operating permit no**
38 **later than three months after August 28, 2008.**

39 **6.** Upon complete and proper application for [a registration] **an operating** permit, on
40 forms provided by the department of natural resources, by the owner of a **high hazard** dam [in
41 existence upon September 28, 1979, including a certification by an experienced professional
42 engineer or an engineering division of a state or federal agency regularly engaged in dam
43 construction for soil or water conservation, irrigation, or relating to wildlife conservation,] that
44 the dam has been inspected in accordance with sections 236.400 to 236.500, standards, rules and
45 regulations and guidelines promulgated hereunder, and that the owner has complied with the
46 inspecting engineer's [or agency's] recommendations necessary to correct observed defects of the
47 dam or reservoir, the council shall, upon receipt of the application, issue [a registration] **an**
48 **operating** permit. The council upon hearing the recommendations of the chief engineer may
49 deny the application if it determines that the owner has not complied with the inspecting
50 engineer's [or agency's] recommendations.

51 **[5.] 7.** For **high hazard** dams for which construction was completed prior to the
52 effective date of the construction permit requirements hereunder, the [registration] **operating**
53 permit may contain conditions the council upon hearing recommendations of the chief engineer
54 determines to be necessary to bring the dam and reservoir into compliance with sections 236.400
55 to 236.500 and standards, rules and regulations promulgated hereunder.

56 **[6.] 8.** If a **high hazard** dam or reservoir has been removed by the owner, the council
57 shall issue a final approval upon notification by the owner and receipt of certification by an
58 experienced professional engineer that the removal has been carried out in accordance with the
59 provisions of the construction permit issued for such removal. Failure to obtain final approval
60 shall be a violation of sections 236.400 to 236.500.

61 **[7.]** The council shall issue safety permits for dams or their construction, alterations,
62 enlargements, reductions or removals designed by, and their construction or other listed actions
63 monitored by, a state or federal agency engaged in dam construction for soil and water
64 conservation, irrigation or relating to wildlife conservation provided the owners obtain from such
65 agency and file with the chief engineer a statement upon completion of the construction or other
66 listed actions and at not greater than five year intervals, and with every application for renewal
67 of a safety permit, that the dam conforms to the plans on file with the chief engineer and is in a
68 safe, properly maintained condition.

69 **8.] 9.** The owner shall apply for renewal of [a safety or registration] **an operating** permit
70 not less than sixty days prior to expiration of the previously issued permit. The chief engineer
71 shall determine if the dam and reservoir are essentially as described in the latest permit issued

72 for that dam and reservoir, whether they satisfy the requirements of sections 236.400 to 236.500
73 and any rules, regulations, standards and guidelines adopted pursuant to sections 236.400 to
74 236.500 and whether any inspection conducted in connection with the permit renewal reveals
75 any defect in the dam or reservoir which would threaten public safety, life or property. Unless
76 the chief engineer determines that the dam and reservoir are not properly maintained, do not
77 satisfy the requirements of the permit, act or rules, regulations, standards and guidelines
78 promulgated hereunder, or that defects revealed by the inspection are not corrected, the council
79 upon hearing the recommendations of the chief engineer shall issue or renew the [safety or
80 registration] **operating** permit upon forty-five days of the receipt of a complete and proper
81 application. The council may require the owner to furnish a certification, as a part of an
82 application to renew a permit hereunder, by an experienced professional engineer [or a qualified
83 engineering division of a state or federal agency regularly engaged in dam construction for water
84 conservation, irrigation or relating to wildlife conservation] that the dam is in a properly
85 maintained condition and that any recommendation for correction of defects which violate
86 sections 236.400 to 236.500, guidelines, rules, regulations and standards hereunder or which
87 threaten public safety, life or property have been complied with and that the engineer detected
88 no other such defects which have not been corrected.

89 [9.] **10.** If a barrier or water impoundment becomes a dam or reservoir through alteration
90 or enlargement as defined herein, it shall be subject to the provisions of sections 236.400 to
91 236.500, **and the owner shall register the dam with the council immediately.**

92 **11. If downstream conditions change the hazard classification of any dam or**
93 **reservoir, it shall be immediately subject to the provisions of sections 236.400 to 236.500**
94 **for that new class.**

95 [10.] **12.** Failure to obtain and comply with a permit as required in this section is a
96 violation of sections 236.400 to 236.500.

236.445. 1. If it is found that a **high hazard** dam or reservoir presents a threat to public
2 safety, life or property, or that the safety of the dam or reservoir is threatened, the permit for the
3 dam or reservoir shall be suspended and shall be reinstated only when the owner at his expense
4 has completed the necessary alteration or has established such operational procedures as the
5 council upon hearing the recommendations of the chief engineer deems necessary for protection
6 of the public safety, life, property, the dam or reservoir. If necessary for such protection, the
7 council may require the owner at his expense to remove the dam or reservoir, or if the owner
8 refuses or neglects to act, the state may alter or remove the dam or reservoir, and the chief
9 engineer may recover the costs of such action as provided in section 236.450.

10 2. If the owner refuses to alter or remove a dam or reservoir as directed when found to
11 be a threat as set forth in sections 236.400 to 236.500, he shall be in violation of sections

12 236.400 to 236.500 and the permit requirements hereunder, and such action shall subject the
13 owner to the enforcement provisions contained herein and revocation of the permit.

236.460. **1.** The owner shall notify the chief engineer upon the sale or other transfer of
2 interest in a dam or reservoir, either existing or under construction, alteration or removal. The
3 construction[, safety or registration] **or operating** permit shall be transferred to the successive
4 owner, **along with notification of the current hazard classification of the dam**, upon receipt
5 of this notification and upon determination that such transfer will not endanger public safety, life,
6 property, the dam or reservoir.

**2. Failure to notify the chief engineer of the transfer shall result in the prior owner
8 retaining the obligations imposed by sections 236.400 to 236.500 until such time as the chief
9 engineer is notified. In the event that the prior owner is a corporation and the corporation
10 fails to transfer ownership or interest because of the dissolution or bankruptcy of the
11 corporation, then the officers, directors, and stockholders, if any, individually shall have
12 all obligations imposed by sections 236.400 to 236.500.**

236.465. Irrespective of any other provisions of sections 236.400 to 236.500, the
2 following provisions shall apply to the construction, alteration or enlargement of tailing, slime
3 and settling ponds and to other similar industrial water retention structures included within the
4 definitions of dam or reservoir in section 236.400:

(1) Applications for construction[, safety or registration] **and operating** permits shall
6 be submitted as provided in section 236.435 and section 236.440 except that design plans and
7 specifications which outline any anticipated enlargement of the industrial water retention
8 structure shall be included;

(2) It shall not be necessary to reapply for a permit each time the structure is enlarged
10 if the enlargement plans have been submitted in and approved with the original application, and
11 the provisions of subdivision (3) of this section have been satisfied;

(3) Upon notification of the chief engineer, bearing the seal and signature of an
13 experienced professional engineer, that the initial phase of construction has been completed in
14 accordance with the provisions of the construction permit and sections 236.400 to 236.500, or
15 if [a registration] **an operating** permit has been issued as provided in subdivision (1) of this
16 section, and before any enlargement is begun, and if no violation of sections 236.400 to 236.500
17 can be shown, [a safety permit or a registration] **an operating** permit with special provisions that
18 authorize the planned enlargement to the initially constructed structure shall be issued, on
19 application, if enlargement plans were included and approved in the original application;

(4) It is not necessary to retain continuously a professional engineer after the initial stage
21 of construction;

22 (5) The dam shall be inspected by an experienced professional engineer registered in the
23 state of Missouri as required to renew the [safety permit or registration] **operating** permit at
24 five-year intervals unless safety of the public, life and property require a shorter period of time;

25 (6) The chief engineer shall make inspections of these structures as necessary to insure
26 adequate protection for public safety, life and property[;

27 (7) Where it is shown that a tailings, slime and settling pond, or other similar water
28 retention structure is subject to inspection for safety, using standards at least as stringent as those
29 required under sections 236.400 to 236.500, by a federal or state agency and the owner notifies
30 the council that the structure is subject to such inspection, such structures shall be exempt from
31 the provisions of sections 236.400 to 236.500].

236.500. 1. Any person who willfully violates any of the provisions of sections 236.400
2 to 236.500 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not
3 less than five hundred dollars nor more than ten thousand dollars, or by confinement in the
4 county jail for a term of not less than thirty days nor more than one year, or by both such fine and
5 confinement.

6 2. In the event of a continuing violation, each day that the violation continues shall
7 constitute a separate and distinct offense.

8 3. Any person who willfully obstructs, hinders or prevents the council, the chief engineer
9 or his agents or employees from performing the duties imposed by sections 236.400 to 236.500
10 and rules and regulations promulgated hereunder or who willfully resists the council, the chief
11 engineer or his agents in the performance of the duties imposed on them by sections 236.400 to
12 236.500 and rules and regulations promulgated hereunder is guilty of a misdemeanor and, upon
13 conviction, shall be punished as provided in subsection 1 of this section.

14 4. Any owner who willfully engages in the construction, repair, alteration or removal of
15 any **high hazard** dam or reservoir without a construction permit or in violation of a construction
16 permit or willfully violates the requirements of or for [a safety or registration] **an operating**
17 permit is guilty of a misdemeanor and, upon conviction, shall be punished as provided in
18 subsection 1 of this section.

**260.1050. Sections 260.1050 to 260.1101 may be cited as the "Manufacturer
2 Responsibility and Consumer Convenience Equipment Collection and Recovery Act".**

260.1053. As used in sections 260.1050 to 260.1101, the following terms mean:

2 (1) **"Brand", the name, symbol, logo, trademark, or other information that**
3 **identifies a product rather than the components of the product;**

4 (2) **"Computer materials", a desktop or notebook computer and includes a**
5 **computer monitor or other display device that does not contain a tuner;**

- 6 (3) "Consumer", an individual who uses equipment that is purchased primarily for
7 personal or home business use;
- 8 (4) "Department", department of natural resources;
- 9 (5) "Equipment", computer materials or a television, or both;
- 10 (6) "Manufacturer", a person:
- 11 (a) Who manufactures or manufactured equipment under a brand that:
- 12 a. The person owns or owned; or
- 13 b. The person is or was licensed to use, other than under a license to manufacture
14 equipment for delivery exclusively to or at the order of the licensor;
- 15 (b) Who sells or sold equipment manufactured by others under a brand that:
- 16 a. The person owns or owned; or
- 17 b. The person is or was licensed to use, other than under a license to manufacture
18 equipment for delivery exclusively to or at the order of the licensor;
- 19 (c) Who manufactures or manufactured equipment without affixing a brand;
- 20 (d) Who manufactures or manufactured equipment to which the person affixes or
21 affixed a brand that:
- 22 a. The person does not or has not owned; or
- 23 b. The person is not or was not licensed to use; or
- 24 (e) Who imports or imported equipment manufactured outside the United States
25 into the United States unless at the time of importation the company or licensee that sells
26 or sold the equipment to the importer has or had assets or a presence in the United States
27 sufficient to be considered the manufacturer;
- 28 (7) "Television", any telecommunication system device that can receive moving
29 pictures and sound broadcast over a distance and includes a television tuner or a display
30 device peripheral to a computer in which the display device contains a television tuner.
- 260.1055. The provisions of sections 260.1050 to 260.1101 shall be enforced through
2 the authority of chapter 407, RSMo.
- 260.1059. 1. The collection, recycling, and reuse provisions of sections 260.1050 to
2 260.1101 apply to equipment used and returned to the manufacturer by a consumer in this
3 state and do not impose any obligation on an owner or operator of a solid waste facility.
- 4 2. Sections 260.1050 to 260.1101 do not apply to:
- 5 (1) Any part of a motor vehicle, a personal digital assistant, or a telephone,
6 including wireless devices;
- 7 (2) A consumer's lease of equipment or a consumer's use of equipment under a
8 lease agreement; or

9 (3) The sale or lease of equipment to an entity when the manufacturer and the
10 entity enter into a contract that effectively addresses the collection, recycling, and reuse of
11 equipment that has reached the end of its useful life.

260.1062. 1. Before a manufacturer may offer equipment for sale in this state, the
2 manufacturer shall:

3 (1) Adopt and implement a recovery plan;

4 (2) Affix a permanent, readily visible label to the equipment with the
5 manufacturer's brand.

6 2. The recovery plan shall enable a consumer to recycle equipment without paying
7 a separate fee at the time of recycling and shall include provisions for:

8 (1) The manufacturer's collection from a consumer of any equipment that has
9 reached the end of its useful life and is labeled with the manufacturer's brand; and

10 (2) Recycling or reuse of equipment collected under subdivision (1) of this
11 subsection.

12 3. The collection of equipment provided under the recovery plan shall be:

13 (1) Reasonably convenient and available to consumers in this state; and

14 (2) Designed to meet the collection needs of consumers in this state.

15 4. Examples of collection methods that alone or combined meet the convenience
16 requirements of this section include a system:

17 (1) By which the manufacturer or the manufacturer's designee offers the consumer
18 an option for returning equipment by mail at no charge to the consumer;

19 (2) Using a physical collection site that the manufacturer or the manufacturer's
20 designee keeps open and staffed and to which the consumer may return equipment; and

21 (3) Using a collection event held by the manufacturer or the manufacturer's
22 designee at which the consumer may return equipment.

23 5. Collection services under this section may use existing collection and
24 consolidation infrastructure for handling equipment and may include systems jointly
25 managed by a group of manufacturers, electronic recyclers and repair shops, recyclers of
26 other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers,
27 and other suitable operations. If a manufacturer or its designee offers a mail-back system
28 as described in subsection 4 of this section, either individually or by working together with
29 a group of manufacturers or by working with others, it shall be deemed to meet the
30 convenience requirements of this section.

31 6. The recovery plan shall include information for the consumer on how and where
32 to return the manufacturer's equipment. The manufacturer:

33 (1) Shall include collection, recycling, and reuse information on the manufacturer's
34 publicly available Internet site;

35 (2) Shall provide collection, recycling, and reuse information to the department;
36 and

37 (3) May include collection, recycling, and reuse information in the packaging for
38 or in other materials that accompany the manufacturer's equipment when the equipment
39 is sold.

40 7. Information about collection, recycling, and reuse on a manufacturer's publicly
41 available Internet site does not constitute a determination that the manufacturer's recovery
42 plan or actual practices are in compliance with sections 260.1050 to 260.1101 or other state
43 or federal law.

44 8. If more than one person is a manufacturer of a certain brand of equipment, as
45 defined by section 260.1053, any of those persons may assume responsibility for and satisfy
46 the obligations of a manufacturer under sections 260.1050 to 260.1101 for that brand. If
47 none of those persons assumes responsibility or satisfies the obligations of a manufacturer
48 for the equipment of that brand, the department may consider any of those persons to be
49 the responsible manufacturer for purposes of sections 260.1050 to 260.1101.

50 9. The obligations under sections 260.1050 to 260.1101 of a manufacturer who
51 manufactures or manufactured equipment, or sells or sold equipment manufactured by
52 others, under a brand that was previously used by a different person in the manufacture
53 of the equipment extends to all equipment bearing that brand regardless of its date of
54 manufacture.

260.1065. 1. A person who is a retailer of equipment shall not sell or offer to sell
2 new equipment in this state unless the equipment is labeled with the manufacturer's label
3 and the manufacturer is included on a list of manufacturers that have recovery plans.

4 2. A retailer is not required to collect equipment for recycling or reuse under
5 sections 260.1050 to 260.1101.

260.1068. 1. A manufacturer or retailer of equipment is not liable in any way for
2 information in any form that a consumer leaves on computer materials that are collected,
3 recycled, or reused under sections 260.1050 to 260.1101.

4 2. The consumer is responsible for any information in any form left on the
5 consumer's computer materials that are collected, recycled, or reused.

6 3. Compliance with sections 260.1050 to 260.1101 does not exempt a person from
7 liability under other law.

260.1071. 1. The department shall educate consumers regarding the collection,
2 recycling, and reuse of equipment.

3 **2. The department shall host or designate another person to host an Internet site**
4 **providing consumers with information about the recycling and reuse of equipment,**
5 **including best management practices and information about and links to information on:**
6 **(1) Manufacturers' collection, recycling, and reuse programs; and**
7 **(2) Equipment collection events, collection sites, and community equipment**
8 **recycling and reuse programs.**

260.1074. 1. The department may conduct audits and inspections to determine
2 **compliance with sections 260.350 to 260.430.**

3 **2. The attorney general may file suit to enjoin an activity related to the sale of**
4 **equipment in violation of sections 260.1050 to 260.1101.**

260.1089. All equipment collected under sections 260.1050 to 260.1101 shall be
2 **recycled or reused in a manner that complies with federal, state, and local law.**

260.1092. 1. If federal law establishes a national program for the collection and
2 **recycling of equipment and the department determines that the federal law substantially**
3 **meets the purposes of sections 260.1050 to 260.1101, the department may adopt an agency**
4 **statement that interprets the federal law as preemptive of sections 260.1050 to 260.1101.**

5 **2. Sections 260.1050 to 260.1101 shall expire on the date the department issues a**
6 **statement under this section.**

260.1101. It shall not be considered a violation of sections 260.1050 to 260.1101 for
2 **a retailer to sell any inventory accrued before the effective date of sections 260.1050 to**
3 **260.1101.**

319.318. 1. Any person using explosives shall comply with the provisions of this
2 **section.**

3 **2. Provisions of federal law and regulation regarding the manufacturing, transportation,**
4 **distribution, and storage of explosives shall be enforced by the appropriate federal agency and**
5 **shall not be subject to enforcement under sections 319.300 to 319.345.**

6 **3. Each person using explosives shall ensure that explosives are used only in**
7 **accordance with existing state and federal law and the regulations promulgated by the**
8 **board, which shall include provisions to:**

9 **(1) Require adequate advance written notice by the operator to local governments,**
10 **utilities, and residents who might be affected by the use of such explosives by publication**
11 **of the planned blasting schedule in a newspaper of general circulation in the locality and**
12 **by mailing a copy of the proposed blasting schedule to every resident living within one-half**
13 **mile of the proposed mine plan and by providing daily notice to residents or occupiers in**
14 **such area prior to any blasting;**

15 **(2) Require the operator to maintain for a period of at least three years and make**
16 **available for public inspection upon request a log detailing the location of the blast, the**
17 **pattern and depth of the drill holes, the amount of explosives used per hole, and the order**
18 **and length of delay in the blast;**

19 **(3) Limit the kind of explosives and detonating equipment, the size, the timing and**
20 **frequency of blasts based upon the physical conditions at the site so as to prevent injury**
21 **to persons, damage to public and private property outside the permit area, adverse impacts**
22 **on any underground mine, and change in the course, channel or availability of ground or**
23 **surface water outside the permit area;**

24 **(4) Require that all blasting operations be conducted by trained and competent**
25 **persons as certified by the Missouri division of fire safety;**

26 **(5) For detonations conducted after August 28, 2008, provide that upon the request**
27 **of a resident or owner of a man-made dwelling, utility, or structure within one-half mile**
28 **of any portion of the long-term mine plan area the operator shall conduct a preblasting**
29 **survey of such structures and submit the survey to the commission and a copy to the**
30 **resident or owner making the request.**

31 **4.** Within sixty days after August 28, 2007, each person using explosives or intending
32 to use explosives in Missouri shall register with the division of fire safety. Any person using
33 explosives who is not required to register on the effective date, who subsequently uses explosives
34 in Missouri shall register with the division of fire safety prior to first using explosives in
35 Missouri. The initial registration shall state the name of the person, address, telephone number,
36 facsimile number, e-mail address, and name of the principal individual having responsibility for
37 supervision of the use of explosives. A fee of two hundred dollars shall be submitted with the
38 initial registration.

39 **[4.] 5.** Each person using explosives that is required to register under subsection [3] **4**
40 of this section shall by January thirty-first of each year after registering file an annual report with
41 the division of fire safety for the preceding calendar year:

42 **(1)** The initial annual report shall only include that portion of the preceding calendar year
43 after the date the person became subject to the requirement to register under subsection [3] **4** of
44 this section;

45 **(2)** The report shall include:

46 **(a)** Any change or addition to the information required in subsection 3 of this section;

47 **(b)** The name and address of the distributors from which explosives were purchased;

48 **(c)** The total number of pounds of explosives purchased for use in Missouri and the total
49 number of pounds actually used in Missouri during the period covered by the report. Persons

50 required to report annually shall maintain records sufficient to prove the accuracy of the
51 information reported;

52 (3) The person using explosives shall submit with the annual report a fee per ton, as
53 established under this section, based on the amount of explosives used in Missouri. If the report
54 of total pounds used results in a portion of a ton, the cumulative total of the fee shall be rounded
55 to the nearest ton. The fee shall be five hundred dollars plus one dollar and fifteen cents per ton
56 of explosives used. The fee per ton authorized under this subdivision may be adjusted by rule
57 provided the fee shall not exceed two dollars per ton. The state blasting safety board shall review
58 the fee schedule on a biennial basis and approve or disapprove adjustments in fees by rule.

59 [5.] 6. (1) The division of fire safety may audit the records of any person using
60 explosives required to report annually under subsection [4] 5 of this section to determine the
61 accuracy of the number of pounds of explosives reported. In connection with such audit, the
62 division of fire safety may also require any distributor of explosives to provide a statement of
63 sales during the year to persons required to report under subsection [4] 5 of this section.

64 (2) It shall be a violation of sections 319.300 to 319.345 to fail to register or report as
65 required by subsection [3] 4 of this section or knowingly report false information in the reports
66 required under subsections [3 and] 4 **and 5** of this section. The state fire marshal may issue a
67 notice of violation under section 319.333 for failure to register or report or for knowingly
68 reporting false information in the reports required by subsections [3 and] 4 **and 5** of this section.
69 The notice of violation shall be subject to the same procedures and rights of appeal as established
70 in sections 319.324, 319.327, and 319.333.

71 (3) Any person who fails to register or report or who knowingly reports false information
72 in the reports required under subsections [3 and] 4 **and 5** of this section shall be subject to a civil
73 penalty not exceeding two thousand dollars for the first offense or a penalty not exceeding five
74 thousand dollars for a second or subsequent offense. Fees for use of explosives not reported
75 shall also be paid.

76 [6.] 7. It shall be a violation of sections 319.300 to 319.345 for any person using
77 explosives to:

78 (1) Engage in blasting other than by a licensed blaster or an individual working under
79 the direct supervision of a licensed blaster;

80 (2) Fail to calculate the scaled distance, conduct monitoring of vibration and noise levels,
81 and conduct record keeping as required by sections 319.300 to 319.345;

82 (3) Fail to carry a minimum of one million dollars in commercial general liability
83 insurance.

84 [7.] 8. The state fire marshal may issue a notice of violation for any violation of
85 subsection [6] 7 of this section which shall be subject to the same procedures and rights of appeal
86 as established in sections 319.324, 319.327, and 319.333.

87 [8.] 9. A violation of subsection 6 of this section shall be subject to a civil penalty not
88 exceeding two thousand dollars for the first offense or a penalty not exceeding five thousand
89 dollars for a second or subsequent offense.

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
2 of minerals or fill dirt for the purposes of construction or land improvement as unrelated to the
3 mining of minerals for a commercial purpose or reclamation of land subsequent to the surface
4 mining of minerals.

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

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

14 (2) Excavations for purposes of land improvement where minerals removed from the site
15 are excess minerals that cannot be used on-site for any practical purpose and at no time are
16 subjected to crushing, screening, or other means of beneficiation with the exception of removal
17 of **dead trees, decaying vegetation**, tree limbs, and stumps shall be presumed to be for the
18 purposes of land improvement and shall not require a permit for surface mining, provided that:

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

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

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

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

27 3. (1) If the director or his or her designee determines that a surface mining permit is
28 required for real property which is purported to be for purposes of construction or land
29 improvement not requiring a surface mining permit under this section, such determination shall
30 be sent in writing to the owner of the property by certified mail stating the reasons for such
31 determination. Upon request of the person receiving the letter, an informal conference shall be
32 scheduled with the director within fifteen calendar days to discuss the determination. Following
33 the informal conference, the director shall issue a written determination regarding his or her
34 findings of fact no later than thirty calendar days after the date of the conference. If the director
35 agrees that a surface mining permit is required and the person disagrees with that decision, the
36 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.

**444.768. 1. (1) The commission shall establish a planning process enabling
2 objective decisions based upon competent and scientifically sound data and information
3 as to which, if any, land areas are unsuitable for all or certain types of surface mining
4 operations under the standards set forth in subdivisions (2) and (3) of this subsection.**

5 (2) Upon petition under subsection 2 of this section, the commission shall designate
6 an area as unsuitable for all or certain types of surface mining operations if the commission
7 determines that reclamation is not technologically and economically feasible.

8 (3) Upon petition under subsection 2 of this section, a surface area may be
9 designated unsuitable for certain types of surface mining operations if such operations will:

10 (a) Be incompatible with existing state or local land use plans or programs; or

11 (b) Affect fragile or historic lands in which such operations could result in
12 significant damage to important historic, cultural, scientific, and esthetic values and
13 natural systems; or

14 (c) Affect lands in which such operations could result in a substantial loss or
15 reduction of long-range productivity of water, and such lands to include aquifers and
16 aquifer recharge areas; or

17 (d) Affect lands in which such operations could substantially endanger life and
18 property.

19 (4) To provide for surface mining lands review, the commission shall:

20 (a) Develop or utilize an existing data base and an inventory system which will
21 permit proper evaluation of the capacity of different land areas of the state to support and
22 permit reclamation of surface mining operations;

23 (b) Develop a method or methods for implementing land use planning decisions,
24 concerning surface mining operations; and

25 (c) Provide proper notice and opportunities for public participation, including a
26 public hearing prior to making any designation or redesignation, under this section.

27 (5) Determinations of the unsuitability of land for surface mining shall be
28 integrated as closely as possible with present and future land use planning and regulation
29 processes at the federal, state, and local levels.

30 (6) The requirements of this section shall not apply to lands on which surface
31 mining operations were in existence or applied for prior to August 28, 2008.

32 2. Any person having an interest which is or may be adversely affected shall have
33 the right to petition the commission to have an area designated as unsuitable for surface
34 mining operations, or to have such a designation terminated. Such a petition shall contain
35 allegations of facts with supporting evidence which would tend to establish the allegations.
36 Within ten months after receipt of the petition the commission shall hold a public hearing
37 in the locality of the affected area, after appropriate notice of the date, time, and location
38 of such hearing. After a person having an interest which is or may be adversely affected
39 has filed a petition and before the hearing, any person may intervene by filing allegations
40 of facts with supporting evidence which would tend to establish the allegations. Within

41 sixty days after such hearing, the commission shall issue and furnish to the petitioner, and
42 any other party to the hearing, a written decision regarding the petition, and the reasons
43 therefore. In the event that all the petitioners stipulate an agreement prior to the requested
44 hearing, and withdraw their request, such hearing need not be held.

45 3. Prior to designating any land areas as unsuitable for surface mining operations,
46 the commission shall prepare a detailed statement on:

47 (1) The potential mineral resources of the area;

48 (2) The demand for mineral resources; and

49 (3) The impact of such designation on the environment, the economy, and the
50 supply of those mineral resources.

51 4. After August 28, 2008, no surface mining operations except those which exist on
52 or before August 28, 2008, shall be permitted:

53 (1) On any lands within the boundaries of units of the National Park System, the
54 National Wildlife Refuge Systems, the National System of Trails, the National Wilderness
55 Preservation System, the Wild and Scenic Rivers System, including study rivers designated
56 of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of
57 Congress;

58 (2) On any federal lands within the boundaries of any national forest unless
59 permitted by the United States Secretary of the Interior;

60 (3) On any lands which will adversely affect any publicly owned park or places
61 included in the National Register of Historic Sites unless approved jointly by the
62 commission and the federal, state, or local agency with jurisdiction over the park or the
63 historic site;

64 (4) On any lands within one hundred feet of the outside right-of-way line of any
65 public road, except where mine access roads or haulage roads join such right-of-way line;
66 except that the commission may permit such roads to be relocated or the area affected to
67 lie within one hundred feet of such road, if after public notice and opportunity for public
68 hearing in the locality, a written finding is made that the interests of the public and the
69 landowners affected thereby will be protected; or

70 (5) On any lands within three hundred feet from any occupied dwelling, unless
71 waived by the owner thereof, or within three hundred feet of any public building, school,
72 church, community, or institutional building, public park, or within one hundred feet of
73 a cemetery;

74 (6) On lands that harbor a federal or state threatened or endangered species as
75 determined by the Missouri department of conservation heritage review;

76 **(7) On lands that have habitats or unique natural areas that threatened or**
77 **endangered species depend on for survival as identified by the Missouri department of**
78 **conservation heritage review.**

79 **5. The commission shall not approve the application for a permit to conduct surface**
80 **mining where such mining would endanger a residence, public building, school, church,**
81 **cemetery, commercial or residential building, stream, lake, public road or other property.**

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

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

53 6. An operation may withdraw any land covered by a permit, excepting affected land,
54 by notifying the commission thereof, in which case the penalty of the bond or security filed by

55 the operator pursuant to the provisions of sections 444.760 to 444.790 shall be reduced
56 proportionately.

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

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

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

83 10. At the time that a permit application is deemed complete by the director, the operator
84 shall publish a notice of intent to operate a surface mine in any newspaper **closest to the**
85 **proposed mine site that is** qualified pursuant to section 493.050, RSMo, to publish legal notices
86 in any county where the land is located. If the director does not respond to a permit application
87 within forty-five calendar days, the application shall be deemed to be complete. Notice in the
88 newspaper shall be posted once a week for four consecutive weeks beginning no more than ten
89 days after the application is deemed complete. The operator shall also send notice of intent to
90 operate a surface mine by certified mail to the governing body of the counties or cities in which

the proposed area is located, and to the last known addresses of all record landowners of contiguous real property or real property [located adjacent to the proposed mine plan area] **adjoining the property of the proposed mine plan area. People who own property across a river or stream or on the other side of a right-of-way shall also receive, by certified mail, a notice of intent to operate a surface mine, unless such property is in another state. Certified mail of a notice of intent to operate a surface mine shall also be sent to all utilities and easement holders which are located within or adjoining the property of the proposed mine area.** The notices shall include the name and address of the operator, a legal description consisting of county, section, township and range, the number of acres involved, a statement that the operator plans to mine a specified mineral during a specified time, and the address of the commission. The notices shall also contain a statement that any person with a direct, personal interest in one or more of the factors the commission may consider in issuing a permit may request a public meeting, a public hearing or file written comments to the director no later than fifteen days following the final public notice publication date.

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

12. Fees imposed pursuant to this section shall become effective August 28, 2007, and shall expire on December 31, 2013. No other provisions of this section shall expire.

13. All complete new site or permit applications received after August 28, 2008, shall contain an environmental impact assessment. The contents of the assessment shall include but not be limited to the following:

- (1) Abstract;**
- (2) Introduction;**
- (3) Nature and scope of the issues;**
- (4) Process and procedural context;**
- (5) Description of the proposed project;**
- (6) Public participation;**
- (7) Geology and hydrogeology;**
- (8) Social and cultural dynamism;**
- (9) Prehistoric/archeology resource study;**
- (10) Results and implications;**
- (11) Lessons learned;**

127 **(12) List of relevant published papers or other source material.**

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

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

12 3. If the recommendation of the director is for issuance of the permit, the director shall
13 issue the permit without a public meeting or a hearing except that upon petition, received prior
14 to the date of the notice of recommendation, from any person whose health, safety or livelihood
15 will be unduly impaired by the issuance of this permit, a public meeting or a hearing may be
16 held. If a public meeting is requested pursuant to this chapter [and the applicant agrees], the
17 director shall, within thirty days after the time for such request has passed, order that a public
18 meeting be held. The meeting shall be held in a reasonably convenient location for all interested
19 parties. The applicant shall cooperate with the director in making all necessary arrangements for
20 the public meeting. Within thirty days after the close of the public meeting, the director shall
21 recommend to the commission approval or denial of the permit. If the public meeting does not
22 resolve the concerns expressed by the public, any person whose health, safety or livelihood will
23 be unduly impaired by the issuance of such permit may make a written request to the land
24 reclamation commission for a formal public hearing. The land reclamation commission may
25 grant a public hearing to formally resolve concerns of the public. Any public hearing before the
26 commission shall address one or more of the factors set forth in this section.

27 4. In any hearing held pursuant to this section the burden of proof shall be on the
28 applicant for a permit. If the commission finds, based on competent and substantial scientific
29 evidence on the record, that an interested party's health, safety or livelihood will be unduly
30 impaired by the issuance of the permit, the commission may deny such permit. If the
31 commission finds, based on competent and substantial scientific evidence on the record, that the
32 operator has demonstrated, during the five-year period immediately preceding the date of the
33 permit application, a pattern of noncompliance at other locations in Missouri that suggests a
34 reasonable likelihood of future acts of noncompliance, the commission may deny such permit.
35 In determining whether a reasonable likelihood of noncompliance will exist in the future, the

36 commission may look to past acts of noncompliance in Missouri, but only to the extent they
37 suggest a reasonable likelihood of future acts of noncompliance. Such past acts of
38 noncompliance in Missouri, in and of themselves, are an insufficient basis to suggest a
39 reasonable likelihood of future acts of noncompliance. In addition, such past acts shall not be
40 used as a basis to suggest a reasonable likelihood of future acts of noncompliance unless the
41 noncompliance has caused or has the potential to cause, a risk to human health or to the
42 environment, or has caused or has potential to cause pollution, or was knowingly committed, or
43 is defined by the United States Environmental Protection Agency as other than minor. If a
44 hearing petitioner or the commission demonstrates either present acts of noncompliance or a
45 reasonable likelihood that the permit seeker or the operations of associated persons or
46 corporations in Missouri will be in noncompliance in the future, such a showing will satisfy the
47 noncompliance requirement in this subsection. In addition, such basis must be developed by
48 multiple noncompliances of any environmental law administered by the Missouri department of
49 natural resources at any single facility in Missouri that resulted in harm to the environment or
50 impaired the health, safety or livelihood of persons outside the facility. For any permit seeker
51 that has not been in business in Missouri for the past five years, the commission may review the
52 record of noncompliance in any state where the applicant has conducted business during the past
53 five years. Any decision of the commission made pursuant to a hearing held pursuant to this
54 section is subject to judicial review as provided in chapter 536, RSMo. No judicial review shall
55 be available, however, until and unless all administrative remedies are exhausted.

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 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.

**640.017. 1. For activities that may require multiple environmental state permits,
2 an applicant may request to coordinate a unified permit schedule with the department
3 which covers the timing and order to obtain such permits. In determining the schedule,
4 the department and applicant shall consider which permits are most critical for the
5 regulated activity, the need for unified public participation for all of the regulated aspects
6 of the permitted activity, the applicant's anticipated staging of construction and financing
7 for the permitted activity, and the applicant's use of innovative environmental approaches
8 or strategies to minimize its environmental impacts.**

9 **2. The department may initiate the unified permits process for a class of similar
10 activities by notifying any known applicants interested in those regulated activities of the
11 intent to use the unified process. To the extent practicable and consistent with the**

12 purposes of this section, the department shall coordinate with interested applicants on the
13 unified permit schedule.

14 3. The department shall determine all of the permits required for a specific
15 proposed activity based on information provided by the applicant; additional information
16 regarding the proposed activity may result in different permits being required. The
17 department shall propose a unified permitting schedule to interested applicants. Any
18 multiple-permit applicant may decline at any time to have its permits processed in
19 accordance with the schedule and instead proceed in a permit-by-permit approach. The
20 department shall publicize the order and tentative schedule on the department's Internet
21 web site.

22 4. Following the establishment of a unified permit schedule, the director shall notify
23 the applicant in writing of the order in which the applicant shall obtain permits. The
24 department shall proceed to consider applications accordingly and may only modify the
25 schedule with the consent of the applicant through the date of the public hearing. Each
26 application shall be reviewed by the department based solely on its own merits and
27 compliance with the applicable law.

28 5. The department shall coordinate with the applicant, to the extent possible, to
29 align the unified permit process so that all public meetings or hearings related to the
30 permits are consolidated into one hearing in a location near the facility.

31 6. In furtherance of this section, the director may waive otherwise applicable
32 procedural requirements related to timing as set forth in state environmental laws or rules
33 found in this chapter and chapters 260, 444, and 644, RSMo, so long as:

34 (1) The public comment periods related to each permit are not shortened; and

35 (2) The unified permitting schedule does not impair the ability of the applicant or
36 the department to comply with substantive legal requirements related to the permit
37 application.

38 7. The director shall promulgate rules to implement the provisions of this section.
39 Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is
40 created under the authority delegated in this section shall become effective only if it
41 complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
42 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
43 and if any of the powers vested with the general assembly under chapter 536, RSMo, to
44 review, to delay the effective date, or to disapprove and annul a rule are subsequently held
45 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
46 after August 28, 2008, shall be invalid and void.

640.300. Environmental audits may be conducted by owners and operators of facilities regulated under state, federal, regional, or local laws, ordinances, regulations, permits, or orders to conduct voluntary internal environmental audits of their compliance with those laws, and to promote the prompt disclosure to the department of natural resources in order to correct any deficiencies discovered. Nothing in sections 640.300 to 640.340, RSMo, shall be interpreted to change any reporting requirement or any response action required by any other law, and any information reported is subject to the public availability requirements of chapter 610, RSMo. An environmental audit report may be withheld from disclosure unless it is required by a regulatory reporting requirement or its disclosure required by lawful subpoena or court order. Nothing in sections 640.300 to 640.340, RSMo, shall be interpreted to impede, delay, interrupt or otherwise interfere with the disclosure of normal regulatory reporting requirements for environmental compliance, and any information reported is subject to the public availability requirements of chapter 610, RSMo.

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

- (1) "Compliance management system" or "environmental management system", a regulated entity's documented systematic efforts, appropriate to the size and nature of its business, to prevent, detect, and correct noncompliance through all of the following:**
 - (a) Compliance policies, standards, and procedures that identify how employees and agents are to meet the requirements of laws, regulations, permits, enforceable agreements, and other sources of authority for environmental requirements;**
 - (b) Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation;**
 - (c) Mechanisms for systematically assuring that compliance policies, standards, and procedures are being carried out, including monitoring and auditing systems reasonably designed to detect and correct noncompliance, periodic evaluation of the overall performance of the compliance management system, or environmental management system, and a means for employees or agents to report noncompliance of environmental requirements without fear of retaliation;**
 - (d) Efforts to communicate effectively the regulated entity's standards and procedures to all employees and other agents;**
 - (e) Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards, and procedures, including consistent enforcement 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,
2 neither the department nor the attorney general may seek penalties, other than the
3 recovery of the economic benefits gained through noncompliance with environmental
4 requirements, for noncompliance of state, federal, or local laws, regulations, permits, or
5 orders relating to environmental requirements discovered and disclosed by the entity. If
6 a regulated entity satisfies all of the conditions of section 640.330, except for the periodic
7 routine assessment through an environmental audit or compliance management system,
8 the department may recover as penalties the economic benefits gained through
9 noncompliance, and reduce any other penalties up to seventy-five percent for
10 noncompliance of state or federal laws, regulations, permits, or orders relating to
11 environmental requirements discovered and disclosed by the entity.

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

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

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

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

2 **640.325.** The department, the attorney general, and any prosecuting attorney shall
3 not request or use an environmental audit report to initiate a civil or criminal investigation
4 of an entity, including but not limited to the use of such report in routine inspections. If
5 the department has an independent reason to believe that noncompliance has occurred, the
6 department may seek any information relevant to identifying noncompliance or
determining liability or extent of harm.

640.330. In order to receive the benefits of sections 640.310 to 640.325, owners and
2 operators of facilities regulated under state, federal, regional, or local laws, ordinances,
3 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 department will approve or deny the request before
57 the expiration of the sixty-day period. If the department approves additional time, the
58 department may require a regulated entity to enter into a publicly available written
59 agreement, administrative consent order, or judicial consent decree as a condition for
60 obtaining relief under sections 640.310 to 640.325, in particular where compliance or
61 remedial measures are complex or a lengthy schedule for attaining and maintaining
62 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 in Missouri
69 by the same 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 actual harm, or may have presented an imminent and substantial
77 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.

 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.

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

 643.151. 1. It is unlawful for any person to cause or permit any air pollution by emission
2 of any air contaminant from any air contaminant source located in Missouri, in violation of
3 sections 643.010 to 643.190, or any rule promulgated by the commission.

 2. No person who knows or should know of the existence of such rules may cause or
5 permit any air pollution by emission of any air contaminant source located outside Missouri, and
6 which emissions enter Missouri in excess of the emission control regulations applicable to the
7 portion of Missouri where the air contaminant enters the state.

8 3. In the event the commission determines that any provision of sections 643.010 to
9 643.190, or the rules promulgated hereunder, permits issued, or any final order or determination
10 made by the commission or the director is being violated, the commission may cause to have
11 instituted a civil action in any court of competent jurisdiction for injunctive relief to prevent any
12 further violation or for the assessment of a penalty not to exceed ten thousand dollars for each
13 violation per day for each day, or part thereof, the violation continues to occur, or both, as the
14 court may deem proper. A civil monetary penalty under this section shall not be assessed for a
15 violation where an administrative penalty was assessed under section 643.085. The commission
16 may request the attorney general or other counsel to bring such action in the name of the people
17 of the state of Missouri. Process may be served in any manner provided by chapter 506, RSMo,
18 including but not limited to sections 506.510 and 506.520, RSMo. Suit may be brought in any
19 county where the defendant's principal place of business is located or where the air contaminant
20 source is located or where the air contaminants enter the state of Missouri. Any offer of
21 settlement to resolve a civil penalty under this section shall be in writing, shall state that an
22 action for imposition of a civil penalty may be initiated by the attorney general or a prosecuting
23 attorney representing the department under authority of this section, and shall identify any dollar
24 amount as an offer of settlement which shall be negotiated in good faith through conference,
25 conciliation and persuasion.

26 4. **Any recycling company that converts animal parts into petroleum that the**
27 **commission or the director determines to be in persistent violation of the provisions of this**
28 **section or any odor rule promulgated by the department shall forfeit any permits issued**
29 **by the department under sections 640.700 to 640.755, RSMo, this chapter, or chapter 644,**
30 **RSMo, until such time that the recycling company that converts animal parts into**
31 **petroleum successfully obtains a new permit. For the purposes of this subsection, the term**
32 **"persistent violation" shall mean any recycling company that converts animal parts into**
33 **petroleum that has been found by the commission or the director to have violated the**
34 **provisions of this section at least six times during any twelve-month period or at least**
35 **twelve times during any thirty-six month period.**

36 5. **During any thirty-six month period, any recycling company that converts animal**
37 **parts into petroleum that the commission or director has found to have violated the**
38 **provisions of this section on more than one occasion shall be subject to a penalty of not less**
39 **than ten thousand dollars and not more than thirty thousand dollars for each violation per**
40 **day for each day, or part thereof, the violation continues to occur, or both, as the court may**
41 **deem proper.**

42 6. Any member of the commission or employee thereof who is convicted of willful
43 disclosure or conspiracy to disclose confidential information to any person other than one

44 entitled to the information under sections 643.010 to 643.190 is guilty of a class A misdemeanor
45 and upon conviction thereof shall be punished by a fine of not more than one thousand dollars.

46 [5.] 7. No liability shall be imposed upon persons violating the provisions of sections
47 643.010 to 643.190 or any rule hereunder due to any violation caused by an act of God, war,
48 strike, riot or other catastrophe.

644.076. 1. It is unlawful for any person to cause or permit any discharge of water
2 contaminants from any water contaminant or point source located in Missouri in violation of
3 sections 644.006 to 644.141, or any standard, rule or regulation promulgated by the commission.
4 In the event the commission or the director determines that any provision of sections 644.006
5 to 644.141 or standard, rules, limitations or regulations promulgated pursuant thereto, or permits
6 issued by, or any final abatement order, other order, or determination made by the commission
7 or the director, or any filing requirement pursuant to sections 644.006 to 644.141 or any other
8 provision which this state is required to enforce pursuant to any federal water pollution control
9 act, is being, was, or is in imminent danger of being violated, the commission or director may
10 cause to have instituted a civil action in any court of competent jurisdiction for the injunctive
11 relief to prevent any such violation or further violation or for the assessment of a penalty not to
12 exceed ten thousand dollars per day for each day, or part thereof, the violation occurred and
13 continues to occur, or both, as the court deems proper. A civil monetary penalty pursuant to this
14 section shall not be assessed for a violation where an administrative penalty was assessed
15 pursuant to section 644.079. The commission, the chair of a watershed district's board of trustees
16 created under section 249.1150, RSMo, or the director may request either the attorney general
17 or a prosecuting attorney to bring any action authorized in this section in the name of the people
18 of the state of Missouri. Suit may be brought in any county where the defendant's principal place
19 of business is located or where the water contaminant or point source is located or was located
20 at the time the violation occurred. Any offer of settlement to resolve a civil penalty pursuant to
21 this section shall be in writing, shall state that an action for imposition of a civil penalty may be
22 initiated by the attorney general or a prosecuting attorney representing the department pursuant
23 to this section, and shall identify any dollar amount as an offer of settlement which shall be
24 negotiated in good faith through conference, conciliation and persuasion.

25 2. **Any recycling company that converts animal parts into petroleum that the**
26 **commission or the director determines to be in persistent violation of the provisions of this**
27 **section shall forfeit any permits issued by the department under sections 640.700 to**
28 **640.755, RSMo, chapter 643, RSMo, or chapter 644, until such time the recycling company**
29 **that converts animal parts into petroleum successfully obtains a new permit. For the**
30 **purposes of this subsection, the term "persistent violation" shall mean any recycling**
31 **company that converts animal parts into petroleum that the commission or the director has**

32 found to have violated the provisions of this section at least six times during any
33 twelve-month period or at least twelve times during any thirty-six month period.

34 **3. During any thirty-six month period, any recycling company that converts animal**
35 **parts into petroleum that the commission or director has found to have violated the**
36 **provisions of this section on more than one occasion shall be subject to a penalty of not less**
37 **than ten thousand dollars and not more than thirty thousand dollars for each violation per**
38 **day for each day, or part thereof, the violation continues to occur, or both, as the court may**
39 **deem proper.**

40 **4.** Any person who knowingly makes any false statement, representation or certification
41 in any application, record, report, plan, or other document filed or required to be maintained
42 pursuant to sections 644.006 to 644.141 or who falsifies, tampers with, or knowingly renders
43 inaccurate any monitoring device or method required to be maintained pursuant to sections
44 644.006 to 644.141 shall, upon conviction, be punished by a fine of not more than ten thousand
45 dollars, or by imprisonment for not more than six months, or by both.

46 **[3.] 5.** Any person who willfully or negligently commits any violation set forth pursuant
47 to subsection 1 of this section shall, upon conviction, be punished by a fine of not less than two
48 thousand five hundred dollars nor more than twenty-five thousand dollars per day of violation,
49 or by imprisonment for not more than one year, or both. Second and successive convictions for
50 violation of the same provision of this section by any person shall be punished by a fine of not
51 more than fifty thousand dollars per day of violation, or by imprisonment for not more than two
52 years, or both.

53 **[4.] 6.** The liabilities which shall be imposed pursuant to any provision of sections
54 644.006 to 644.141 upon persons violating the provisions of sections 644.006 to 644.141 or any
55 standard, rule, limitation, or regulation adopted pursuant thereto shall not be imposed due to any
56 violation caused by an act of God, war, strike, riot, or other catastrophe.

Section B. Because immediate action is necessary to prevent a county ordinance
2 governing waste collection from becoming effective on July first, the enactment of section
3 66.450 of section A of this act is deemed necessary for the immediate preservation of the public
4 health, welfare, peace, and safety, and is hereby declared to be an emergency act within the
5 meaning of the constitution, and the enactment of section 66.450 of section A of this act shall
6 be in full force and effect upon its passage and approval.

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