

FIRST REGULAR SESSION

SENATE BILL NO. 600

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDGEWAY.

Read 1st time February 27, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2327S.011

AN ACT

To repeal sections 640.130 and 643.090, RSMo, and to enact in lieu thereof two new sections relating to the authority of the department of natural resources to issue cease and desist orders.

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

Section A. Sections 640.130 and 643.090, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as section 640.045 and 640.130, to read as follows:

640.045. 1. The department of natural resources may issue a cease and desist order if the director:

(1) Determines that any person is violating any provision over which the department has authority to regulate in chapters 236, 256, 260, 300, 304, 319, 444, 578, 640, 643, or 644; and

(2) Makes a finding that the violation constitutes a clear and present danger to public health, public welfare, or the environment.

2. If such person continues the violation after the cease and desist order is issued, the director shall cause to be filed by the attorney general or other counsel in the name of this state, suit for a temporary restraining order, temporary injunction, or permanent injunction as appropriate, and a penalty not to exceed ten thousand dollars per day for each day, or part thereof, the violation occurred and continues to occur.

3. Any cease and desist order issued under the authority of

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

16 **subsection 1 of this section is a final order and is subject to judicial**
17 **review upon the filing of a petition under section 536.100, RSMo, by any**
18 **person subject to the order.**

640.130. 1. [Whenever the department of natural resources determines
2 that an emergency exists which endangers or could be expected to endanger the
3 public health and safety with regard to drinking water supplies, the department
4 of natural resources may, without notice or hearing, issue an order reciting the
5 existence of such a condition and requiring the person to take such action as will
6 lessen or abate the danger. Notwithstanding any provisions of section 192.320,
7 RSMo, and sections 640.100 to 640.140, such order shall be effective immediately.

8 [2.] At the request of the department, the attorney general may bring an
9 injunctive action or other appropriate action in the name of the people of the
10 state to enforce provisions of section 192.320, RSMo, and sections 640.100 to
11 640.140, the rules promulgated pursuant to section 192.320, RSMo, and sections
12 640.100 to 640.140 and the orders of the department of natural resources issued
13 pursuant to section 192.320, RSMo, and sections 640.100 to 640.140.

14 [3.] 2. Whenever the department of natural resources determines that a
15 public water system is in violation of sections 640.100 to 640.140, or any rules
16 promulgated pursuant thereunder, the department of natural resources may issue
17 an administrative order requiring the public water system to comply with such
18 rule or statute.

19 [4.] 3. The court may impose a civil penalty of not more than fifty dollars
20 per day or part thereof for the first violation of section 192.320, RSMo, and
21 sections 640.100 to 640.140; one hundred dollars per day or part thereof for the
22 second violation and for each violation thereafter, including any order issued
23 pursuant to this section, or any rules or regulations promulgated pursuant to
24 sections 640.100 to 640.140. The department shall not seek a civil monetary
25 penalty under this section for a violation where an administrative penalty was
26 assessed and collected. Any offer of settlement to resolve a civil penalty under
27 this section shall be in writing, shall state that an action for imposition of a civil
28 penalty may be initiated by the attorney general under authority of this section
29 and shall identify any dollar amount as an offer of settlement which shall be
30 negotiated in good faith through conference, conciliation and persuasion.

31 [5.] 4. Any person aggrieved by an emergency order may appeal within
32 thirty days after the issuance of the order to the circuit court of the county in
33 which the public water system is located or if the public water system is located

34 in more than one county, to the circuit court of any such county. The circuit court
35 shall within ten days after the filing of the appeal hear the cause and determine
36 the same.

[643.090. 1. If the commission or the director finds that a
2 generalized condition of the ambient air due to meteorological
3 conditions and a buildup of air contaminants in any portion of this
4 state constitutes or may constitute an emergency risk to the public
5 health, safety or welfare of those in the area, the commission or the
6 director shall declare that an emergency exists and may, with the
7 written approval of the governor, by order prohibit, restrict or
8 condition all sources of air contaminants contributing to the
9 emergency condition during such periods of time necessary to
10 alleviate or lessen the effects of the emergency condition. The
11 commission shall adopt rules and regulations to implement this
12 subsection. Orders issued pursuant to this subsection shall be
13 enforced by the commission and the state and local police and local
14 air conservation enforcement personnel. Those authorized to
15 enforce such orders may take reasonable steps as are required
16 to assure compliance therewith.

17 2. In the absence of a generalized condition of air
18 contaminants as referred to in subsection 1 of this section, and
19 notwithstanding other provisions of this or any other law to the
20 contrary, if the commission or the director determines that any
21 person is engaging or may engage in any activity involving a
22 significant risk of air contamination or is discharging or causing to
23 be discharged into the ambient air, directly or indirectly, any air
24 contaminant, and such activity or discharge constitutes a clear and
25 present danger to the public health or public welfare or the
26 environment, the commission or the director shall issue a written
27 cease and desist order to said person to discontinue immediately
28 such activity or discharge; provided, however, the commission may
29 countermand such order of the director. If such person,
30 notwithstanding such order, continues the activity or discharge of
31 such contaminants into the atmosphere, the commission or the
32 director shall cause to be filed by the attorney general or other
33 counsel in the name of this state, suit for a temporary restraining

34 order, temporary injunction, and permanent injunction. Any such
35 action shall be given precedence over all other matters pending in
36 the circuit courts.]

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