

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 918

AN ACT

To repeal sections 260.373, 260.437, and 260.520, RSMo, and to enact in lieu thereof four new sections relating to the department of natural resources.

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

Section A. Sections 260.373, 260.437, and 260.520, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 260.373, 260.437, 260.520, and 640.095, to read as follows:

260.373. 1. After August 28, 2012, the authority of the commission to promulgate rules under sections 260.350 to 260.391 and 260.393 to 260.433 is subject to the following:

(1) The commission shall not promulgate rules that are stricter than [or implement requirements], apply prior to, or apply mandatory obligations outside of the requirements of Title 40, U.S. Code of Federal Regulations, Parts 260, 261, 262, 264, 265, 268, and 270, as promulgated pursuant to Subtitle C of the Resource Conservation and Recovery Act, as amended;

(2) The commission shall not implement requirements prior to the requirements of Title 40, U.S. Code of Federal Regulations, Parts 260, 261, 262, 264, 265, 268, and 270, as promulgated pursuant to Subtitle C of the Resource Conservation and Recovery Act, as amended;

(3) Notwithstanding the limitations of [subdivision] subdivisions (1) and (2) of this subsection, where state statutes expressly prescribe standards or requirements that are stricter than or implement requirements prior to any federal requirements, or where state statutes allow the

establishment or collection of fees, costs, or taxes, the commission may promulgate rules as necessary to implement such statutes;

[(3)] (4) Notwithstanding the limitations of subdivision (1) of this subsection, the commission may retain, modify, or repeal any current rules pertaining to the following:

(a) [Thresholds for determining whether a hazardous waste generator is a large quantity generator, small quantity generator, or conditionally exempt small quantity generator;

(b)] Descriptions of applicable registration requirements; and

[(c)] (b) The reporting of hazardous waste activities to the department; provided, however, that the commission shall promulgate rules, effective beginning with the reporting period July 1, [2015] 2017 - June 30, [2016] 2018, that allow for the submittal of reporting data in [an electronic] any format on an annual basis by large quantity generators and treatment storage and disposal facilities[;

(d) Rules requiring hazardous waste generators to display hazard labels (e.g., Department of Transportation (DOT) labels) on containers and tanks during the time hazardous waste is stored on-site;

(e) The exclusion for hazardous secondary materials used to make zinc fertilizers in 40 CFR 261.4; and

(f) The exclusions for hazardous secondary materials that are burned for fuel or that are recycled].

2. Nothing in this section shall be construed to repeal any other provision of law, and the commission and the department shall continue to have the authority to implement and enforce other statutes, and the rules promulgated pursuant to their authority.

3. [No later than December 31, 2013, the department shall identify rules in Title 10, Missouri Code of State Regulations, Division 25, Chapters 3, 4, 5, and 7 that are inconsistent with the provisions of subsection 1 of this section. The department shall thereafter file with the Missouri secretary of state any amendments necessary to ensure that such rules are not inconsistent with the provisions of subsection 1 of this section.] On December 31, [2015] 2017, any rule contained in Title 10, Missouri Code of State Regulations, Division 25, Chapters 3, 4, 5, [or] 7, 9, and 11, that [remains] is inconsistent with the provisions of subsection 1 above shall be null and void to the extent that it is inconsistent, and the least stringent rule shall control. Any such rule that applies mandatory obligations outside of the requirements of Title 40, U.S. Code of Federal Regulations, Parts 260, 261, 262, 264, 265, 268, and 270, as promulgated pursuant to Subtitle C of the Resource Conservation and Recovery Act, as amended, shall be null and void. The department shall file with the Missouri secretary of state any amendments necessary to ensure that rules are not inconsistent with the provisions of subsection 1 of this section.

4. Nothing in this section shall be construed to effectuate a modification of any permit. Upon request, the department shall modify as appropriate any permit containing requirements no longer in effect due to this section.

5. The department is prohibited from selectively excluding any rule or portion of a rule promulgated by the commission from any authorization application package, or program revision, submitted to the U.S. Environmental Protection Agency under Title 40, U.S. Code of Federal Regulations, Sections 271.5 or 271.21.

6. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2012, shall be invalid and void.

260.437. 1. In addition to any other powers vested in it by law, the commission shall have the power to adopt, amend or repeal, after due notice and public hearing, standards, rules and regulations to implement sections 260.435 to [260.480] 260.482.

2. Except as provided in sections 260.565 to 260.573, the commission shall not promulgate rules that are stricter than, apply prior to, or apply mandatory obligations outside of the requirements of Title 40, U.S. Code of Federal Regulations, Part 300, as promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

3. The commission shall file with the Missouri secretary of state any amendments necessary to ensure that rules are not inconsistent with the provisions of this section. Any rule contained in the Missouri code of state regulations that is inconsistent with the provisions of this section shall be null and void to the extent that it is inconsistent, and the least stringent rule shall control. Any such rule that applies mandatory obligations outside of the requirements of Title 40, U.S. Code of Federal

Regulations, Part 300, as promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, shall be null and void.

4. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in sections 260.435 to 260.482 shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2022, shall be invalid and void.

260.520. 1. The director may adopt, amend, promulgate or repeal, after due notice and hearing, rules and regulations to implement sections 260.500 to **[260.550]** 260.552 pursuant to this section and chapter 536. No rule or portion of a rule promulgated under the authority of sections 260.500 to **[260.550]** 260.552 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024.

2. Except as provided in sections 260.565 to 260.573, the director shall not promulgate rules that are stricter than, apply prior to, or apply mandatory obligations outside of the requirements of Title 40, U.S. Code of Federal Regulations, as promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

3. The director shall file with the Missouri secretary of state any amendments necessary to ensure that rules are not inconsistent with the provisions of this section. Any

rule contained in the Missouri code of state regulations that is inconsistent with the provisions of this section shall be null and void to the extent that it is inconsistent, and the least stringent rule shall control. Any such rule that applies mandatory obligations outside of the requirements of Title 40, U.S. Code of Federal Regulations, Part 300, as promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, shall be null and void.

640.095. In all instances where the department of natural resources has authority to issue penalties and determines that a penalty should be levied, the department shall provide in writing to the alleged violator, together with any claim or demand for a penalty, the factual basis for the violation and a copy of the rules or statutory provisions upon which the department relies for alleging a violation has occurred and determining the appropriate penalty, along with a statement of facts specifying each element of the violation and basis for the penalty, including how the department calculated the penalty, with particularity. This information shall be a complete record so that an alleged violator can understand the alleged violation, the applicability of the rules or statutory provisions, appropriateness of the penalty, and the accuracy of the calculation so that the alleged violator can respond properly to the department. Any statement provided by the department in compliance with this section shall be treated as confidential information and shall not be disclosed to any party except the alleged violator.