

# SENATE BILL NO. 539

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

1832S.011

KRISTINA MARTIN, Secretary

## AN ACT

To repeal section 260.395, RSMo, and to enact in lieu thereof one new section relating to hazardous waste facility permits.

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

Section A. Section 260.395, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 260.395,  
3 to read as follows:

260.395. 1. After six months from the effective date  
2 of the standards, rules and regulations adopted by the  
3 commission pursuant to section 260.370, it shall be unlawful  
4 for any person to transport any hazardous waste in this  
5 state without first obtaining a hazardous waste transporter  
6 license. Any person transporting hazardous waste in this  
7 state shall file an application for a license pursuant to  
8 this subsection which shall:

9 (1) Be submitted on a form provided for this purpose  
10 by the department and shall furnish the department with such  
11 equipment identification and data as may be necessary to  
12 demonstrate to the satisfaction of the department that  
13 equipment engaged in such transportation of hazardous waste,  
14 and other equipment as designated in rules and regulations  
15 pursuant to sections 260.350 to 260.430, is adequate to  
16 provide protection of the health of humans and the  
17 environment and to comply with the provisions of any federal  
18 hazardous waste management act and sections 260.350 to  
19 260.430 and the standards, rules and regulations adopted  
20 pursuant to sections 260.350 to 260.430. If approved by the

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

21 department, this demonstration of protection may be  
22 satisfied by providing certification that the equipment so  
23 identified meets and will be operated in accordance with the  
24 rules and regulations of the Missouri public service  
25 commission and the federal Department of Transportation for  
26 the transportation of the types of hazardous materials for  
27 which it will be used;

28 (2) Include, as specified by rules and regulations,  
29 demonstration of financial responsibility, including, but  
30 not limited to, guarantees, liability insurance, posting of  
31 bond or any combination thereof which shall be related to  
32 the number of units, types and sizes of equipment to be used  
33 in the transport of hazardous waste by the applicant;

34 (3) Include, as specified in rules and regulations, a  
35 fee payable to the state of Missouri which shall consist of  
36 an annual application fee, plus an annual use fee based upon  
37 tonnage, mileage or a combination of tonnage and mileage.  
38 The fees established pursuant to this subdivision shall be  
39 set to generate, as nearly as is practicable, six hundred  
40 thousand dollars annually. No fee shall be collected  
41 pursuant to this subdivision from railroads that pay a fee  
42 pursuant to subsection 18 of this section. Fees collected  
43 pursuant to this subdivision shall be deposited in the  
44 hazardous waste fund created pursuant to section 260.391.

45 2. If the department determines the application  
46 conforms to the provisions of any federal hazardous waste  
47 management act and sections 260.350 to 260.430 and the  
48 standards, rules and regulations adopted pursuant to  
49 sections 260.350 to 260.430, it shall issue the hazardous  
50 waste transporter license with such terms and conditions as  
51 it deems necessary to protect the health of humans and the  
52 environment. The department shall act within ninety days

53 after receipt of the application. If the department denies  
54 the license, it shall issue a report to the applicant  
55 stating the reason for denial of the license.

56 3. A license may be suspended or revoked whenever the  
57 department determines that the equipment is or has been  
58 operated in violation of any provision of sections 260.350  
59 to 260.430 or any standard, rule or regulation, order, or  
60 license term or condition adopted or issued pursuant to  
61 sections 260.350 to 260.430, poses a threat to the health of  
62 humans or the environment, or is creating a public nuisance.

63 4. Whenever a license is issued, renewed, denied,  
64 suspended or revoked by the department, any aggrieved  
65 person, by petition filed with the administrative hearing  
66 commission within thirty days of the decision, may appeal  
67 such decision as provided by sections 621.250 and 640.013.  
68 Once the administrative hearing commission has reviewed the  
69 appeal, the administrative hearing commission shall issue a  
70 recommended decision to the commission on license issuance,  
71 renewal, denial, suspension, or revocation. The commission  
72 shall issue its own decision, based on the appeal, for  
73 license issuance, renewal, denial, suspension, or  
74 revocation. If the commission changes a finding of fact or  
75 conclusion of law made by the administrative hearing  
76 commission, or modifies or vacates the decision recommended  
77 by the administrative hearing commission, it shall issue its  
78 own decision, which shall include findings of fact and  
79 conclusions of law. The commission shall mail copies of its  
80 final decision to the parties to the appeal or their counsel  
81 of record. The commission's decision shall be subject to  
82 judicial review pursuant to chapter 536. No judicial review  
83 shall be available until and unless all administrative  
84 remedies are exhausted.

85           5. A license shall be issued for a period of one year  
86 and shall be renewed upon proper application by the holder  
87 and a determination by the department that the applicant is  
88 in compliance with all provisions of sections 260.350 to  
89 260.430 and all standards, rules and regulations, orders and  
90 license terms and conditions adopted or issued pursuant to  
91 sections 260.350 to 260.430.

92           6. A license is not required for the transport of any  
93 hazardous waste on the premises where it is generated or  
94 onto contiguous property owned by the generator thereof, or  
95 for those persons exempted in section 260.380. Nothing in  
96 this subsection shall be interpreted to preclude the  
97 department from inspecting unlicensed hazardous waste  
98 transporting equipment and to require that it be adequate to  
99 provide protection for the health of humans and the  
100 environment.

101           7. After six months from the effective date of the  
102 standards, rules and regulations adopted by the commission  
103 pursuant to section 260.370, it shall be unlawful for any  
104 person to construct, substantially alter or operate,  
105 including operations specified in the rules and regulations,  
106 a hazardous waste facility without first obtaining a  
107 hazardous waste facility permit for such construction,  
108 alteration or operation from the department. Such person  
109 must submit to the department at least ninety days prior to  
110 submitting a permit application a letter of intent to  
111 construct, substantially alter or operate any hazardous  
112 waste disposal facility. The person must file an  
113 application within one hundred eighty days of the filing of  
114 a letter of intent unless granted an extension by the  
115 commission. The department shall publish such letter of  
116 intent as specified in section 493.050 within ten days of

117 receipt of such letter. The letter shall be published once  
118 each week for four weeks in the county where the hazardous  
119 waste disposal facility is proposed. Once such letter is  
120 submitted, all conditions for the permit application  
121 evaluation purposes in existence as of the date of  
122 submission shall be deemed frozen, in that no subsequent  
123 action by any person to change such conditions in an attempt  
124 to thwart a fair and impartial decision on the application  
125 for a permit shall be allowed as grounds for denial of the  
126 permit. Any person before constructing, substantially  
127 altering or operating a hazardous waste facility in this  
128 state shall file an application for a permit which shall:

129 (1) Be submitted on a form provided for this purpose  
130 by the department and shall furnish the department with  
131 plans, specifications and such other data as may be  
132 necessary to demonstrate to the satisfaction of the  
133 department that such facility does or will provide adequate  
134 protection of the health of humans and the environment and  
135 does or will comply with the provisions of any federal  
136 hazardous waste management act and sections 260.350 to  
137 260.430 and the standards, rules and regulations adopted  
138 pursuant to sections 260.350 to 260.430;

139 (2) Include plans, designs, engineering reports and  
140 relevant data for construction, alteration or operation of a  
141 hazardous waste facility, to be submitted to the department  
142 by a registered professional engineer licensed by this state;

143 (3) Include, as specified by rules and regulations,  
144 demonstration of financial responsibility, including, but  
145 not limited to, guarantees, liability insurance, posting of  
146 bond or any combination thereof, which shall be related to  
147 type and size of facility;

148           (4) Include such environmental and geologic  
149 information, assessments and studies as required by the  
150 rules and regulations of the commission;

151           (5) Include a fee payable to the state of Missouri  
152 which shall not exceed one thousand dollars, which shall  
153 cover the first year of the permit, if issued, but which is  
154 not refundable. If the permit is issued for more than one  
155 year, a fee equal in amount to the first year's fee shall be  
156 paid to the state of Missouri prior to issuance of the  
157 permit for each year the permit is to be in effect beyond  
158 the first year;

159           (6) The department shall supervise any field work  
160 undertaken to collect geologic and engineering data for  
161 submission with the application. The state geologist and  
162 departmental engineers shall review the geologic and  
163 engineering plans, respectively, and attest to their  
164 accuracy and adequacy. The applicant shall pay all  
165 reasonable costs, as determined by the commission, incurred  
166 by the department pursuant to this subsection.

167           8. (1) Prior to issuing or renewing a hazardous waste  
168 facility permit, the department shall issue public notice by  
169 press release or advertisement and shall notify all record  
170 owners of adjoining property by mail directed to the last  
171 known address, and the village, town or city, if any, and  
172 the county in which the hazardous waste facility is located;  
173 and, upon request, shall hold a public hearing after public  
174 notice as required in this subsection at a location  
175 convenient to the area affected by the issuance of the  
176 permit.

177           (2) Prior to issuing or renewing a hazardous waste  
178 disposal facility permit the department shall issue public  
179 notice by press release and advertisement and shall notify

180 all record owners of property, within one mile of the outer  
181 boundaries of the site, by mail directed to the last known  
182 address; and shall hold a public hearing after public notice  
183 as required in this subsection at a location convenient to  
184 the area affected by the issuance of the permit.

185 9. If the department determines that the application  
186 conforms to the provisions of any federal hazardous waste  
187 management act and sections 260.350 to 260.430 and the  
188 standards, rules and regulations adopted pursuant to  
189 sections 260.350 to 260.430, it shall issue the hazardous  
190 waste facility permit, with such terms and conditions and  
191 require such testing and construction supervision as it  
192 deems necessary to protect the health of humans or the  
193 environment. The department shall act within one hundred  
194 eighty days after receipt of the application. If the  
195 department denies the permit, it shall issue a report to the  
196 applicant stating the reason for denial of a permit.

197 10. A permit may be suspended or revoked whenever the  
198 department determines that the hazardous waste facility is,  
199 or has been, operated in violation of any provision of  
200 sections 260.350 to 260.430 or any standard, rule or  
201 regulation, order or permit term or condition adopted or  
202 issued pursuant to sections 260.350 to 260.430, poses a  
203 threat to the health of humans or the environment or is  
204 creating a public nuisance.

205 11. Whenever a permit is issued, renewed, denied,  
206 suspended or revoked by the department, any aggrieved  
207 person, by petition filed with the administrative hearing  
208 commission within thirty days of the decision, may appeal  
209 such decision as provided by sections 621.250 and 640.013.  
210 Once the administrative hearing commission has reviewed the  
211 appeal, the administrative hearing commission shall issue a

212 recommended decision to the commission on permit issuance,  
213 renewal, denial, suspension, or revocation. The commission  
214 shall issue its own decision, based on the appeal, for  
215 permit issuance, renewal, denial, suspension, or  
216 revocation. If the commission changes a finding of fact or  
217 conclusion of law made by the administrative hearing  
218 commission, or modifies or vacates the decision recommended  
219 by the administrative hearing commission, it shall issue its  
220 own decision, which shall include findings of fact and  
221 conclusions of law. The commission shall mail copies of its  
222 final decision to the parties to the appeal or their counsel  
223 of record. The commission's decision shall be subject to  
224 judicial review pursuant to chapter 536, except that the  
225 court of appeals district with territorial jurisdiction  
226 coextensive with the county where the hazardous waste  
227 facility is to be located or is located shall have original  
228 jurisdiction. No judicial review shall be available until  
229 and unless all administrative remedies are exhausted.

230 12. A permit shall be issued for a fixed term, which  
231 shall not exceed ten years in the case of any land disposal  
232 facility, storage facility, incinerator, or other treatment  
233 facility. Nothing in this subsection shall preclude the  
234 department from reviewing and modifying a permit at any time  
235 during its term. Review of any application for a permit  
236 renewal shall consider improvements in the state of control  
237 and measurement technology as well as changes in applicable  
238 regulations. Each permit issued pursuant to this section  
239 shall contain such terms and conditions as the department  
240 determines necessary to protect human health and the  
241 environment, and upon proper application by the holder and a  
242 determination by the department that the applicant is in  
243 compliance with all provisions of sections 260.350 to



244 260.430 and all standards, rules and regulations, orders and  
245 permit terms and conditions adopted or issued pursuant to  
246 sections 260.350 to 260.430.

247 13. A hazardous waste facility permit is not required  
248 for:

249 (1) On-site storage of hazardous wastes where such  
250 storage is exempted by the commission by rule or regulation;  
251 however, such storage must conform to the provisions of any  
252 federal hazardous waste management act and sections 260.350  
253 to 260.430 and the applicable standards, rules and  
254 regulations adopted pursuant to sections 260.350 to 260.430  
255 and any other applicable hazardous materials storage and  
256 spill-prevention requirements provided by law; **or**

257 (2) A publicly owned treatment works which has an  
258 operating permit pursuant to section 644.051 and is in  
259 compliance with that permit[;]

260 (3) A resource recovery facility which the department  
261 certifies uses hazardous waste as a supplement to, or  
262 substitute for, nonwaste material, and that the sole purpose  
263 of the facility is manufacture of a product rather than  
264 treatment or disposal of hazardous wastes;

265 (4) That portion of a facility engaged in hazardous  
266 waste resource recovery, when the facility is engaged in  
267 both resource recovery and hazardous waste treatment or  
268 disposal, provided the owner or operator can demonstrate to  
269 the department's satisfaction and the department finds that  
270 such portion is not intended and is not used for hazardous  
271 waste treatment or disposal].

272 14. Facilities exempted pursuant to subsection 13 of  
273 this section must comply with the provisions of subdivisions  
274 (3) to (7) **of subsection 1** of section 260.390 and such other  
275 requirements, to be specified by rules and regulations, as

276 are necessary to comply with any federal hazardous waste  
277 management act or regulations hereunder. Generators who use  
278 such an exempted facility shall keep records of hazardous  
279 wastes transported, except by legal flow through sewer  
280 lines, to the facility and submit such records to the  
281 department in accordance with the provisions of section  
282 260.380 and the standards, rules and regulations adopted  
283 pursuant to sections 260.350 to 260.430. [Any person,  
284 before constructing, altering or operating a resource  
285 recovery facility in this state shall file an application  
286 for a certification. Such application shall include:

287 (1) Plans, designs, engineering reports and other  
288 relevant information as specified by rule that demonstrate  
289 that the facility is designed and will operate in a manner  
290 protective of human health and the environment; and

291 (2) An application fee of not more than five hundred  
292 dollars for a facility that recovers waste generated at the  
293 same facility or an application fee of not more than one  
294 thousand dollars for a facility that recovers waste  
295 generated at off-site sources. Such fees shall be deposited  
296 in the hazardous waste fund created in section 260.391.

297 The department shall review such application for conformance  
298 with applicable laws, rules and standard engineering  
299 principles and practices. The applicant shall pay to the  
300 department all reasonable costs, as determined by the  
301 commission, incurred by the department pursuant to this  
302 subsection. All such funds shall be deposited in the  
303 hazardous waste fund created in section 260.391.]

304 15. The owner or operator of any hazardous waste  
305 facility in existence on September 28, 1977, who has  
306 achieved federal interim status pursuant to 42 U.S.C.  
307 Section 6925(e), and who has submitted to the department

308 Part A of the federal facility permit application, may  
309 continue to receive and manage hazardous wastes in the  
310 manner as specified in the Part A application, and in  
311 accordance with federal interim status requirements, until  
312 completion of the administrative disposition of a permit  
313 application submitted pursuant to sections 260.350 to  
314 260.430. The department may at any time require submission  
315 of, or the owner or operator may at any time voluntarily  
316 submit, a complete application for a permit pursuant to  
317 sections 260.350 to 260.430 and commission regulations. The  
318 authority to operate pursuant to this subsection shall cease  
319 one hundred eighty days after the department has notified an  
320 owner or operator that an application for permit pursuant to  
321 sections 260.350 to 260.430 must be submitted, unless within  
322 such time the owner or operator submits a completed  
323 application therefor. Upon submission of a complete  
324 application, the authority to operate pursuant to this  
325 subsection shall continue for such reasonable time as is  
326 required to complete the administrative disposition of the  
327 permit application. If a facility loses its federal interim  
328 status, or the Environmental Protection Agency requires the  
329 owner or operator to submit Part B of the federal  
330 application, the department shall notify the owner or  
331 operator that an application for a permit must be submitted  
332 pursuant to this subsection. In addition to compliance with  
333 the federal interim status requirements, the commission  
334 shall have the authority to adopt regulations requiring  
335 persons operating pursuant to this subsection to meet  
336 additional state interim status requirements.

337 16. No person, otherwise qualified pursuant to  
338 sections 260.350 to 260.430 for a license to transport  
339 hazardous wastes or for a permit to construct, substantially

340 alter or operate a hazardous waste facility, shall be denied  
341 such license or permit on the basis of a lack of need for  
342 such transport service or such facility because of the  
343 existence of other services or facilities capable of meeting  
344 that need; except that permits for hazardous waste  
345 facilities may be denied on determination made by the  
346 department that the financial resources of the persons  
347 applying are such that the continued operation of the sites  
348 in accordance with sections 260.350 to 260.430 cannot be  
349 reasonably assured or on determination made by the  
350 department that the probable volume of business is  
351 insufficient to ensure and maintain the solvency of then  
352 existing permitted hazardous waste facilities.

353 17. All hazardous waste landfills constructed after  
354 October 31, 1980, shall have a leachate collection system.  
355 The rules and regulations of the commission shall treat and  
356 protect all aquifers to the same level of protection. The  
357 provisions of this subsection shall not apply to the  
358 disposal of tailings and slag resulting from mining, milling  
359 and primary smelting operations.

360 18. Any railroad corporation as defined in section  
361 388.010 that transports any hazardous waste as defined in  
362 section 260.360 or any hazardous substance as defined in  
363 section 260.500 shall pay an annual fee of three hundred  
364 fifty dollars. Fees collected pursuant to this subsection  
365 shall be deposited in the hazardous waste fund created in  
366 section 260.391.

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