

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4340S.01I
 Bill No.: SB 918
 Subject: Boards, Commissions, Committees, Councils; Fees; Department of Natural Resources; Waste - Hazardous
 Type: Original
 Date: February 17, 2022

Bill Summary: This proposal modifies provisions relating to the Department of Natural Resources.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Hazardous Waste Fund	(\$291,605)	(\$386,689)	(\$382,073)
Total Estimated Net Effect on <u>Other State Funds</u>	(\$291,605)	(\$386,689)	(\$382,073)

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Hazardous Waste Fund	(2.72 FTE)	(2.72 FTE)	(2.72 FTE)
Total Estimated Net Effect on FTE	(2.72 FTE)	(2.72 FTE)	(2.72 FTE)

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Natural Resources (DNR)** assume the following regarding this proposal:

The Department assumes that the proposed legislation would not impact the state's ability to require generator reporting or to assess and collect fees.

§260.373.1(3)(a) – Removes the thresholds for determining generator status.

The Environmental Protection Agency (EPA) has different thresholds than Missouri for generator status. Negotiations took place that exempted the thresholds of generator status from the implemented “no stricter than” provision in a previous amendment to this statute. Removing this exemption would require the Department to remove the “or accumulate” portion of generator status from 10 CSR 25-3.260 Definitions, Modifications to Incorporations and confidential Business Information. This would change the structure of how Hazardous Waste Fees are calculated and the total amount collected.

It is assumed that all large and small quantity generators who reported generating less than 1.3205 tons of hazardous waste during the July 1, 2019 to June 30, 2020 and the July 1, 2020 to June 30, 2021 reporting years would change their status to conditionally exempt small quantity generators (CESQG) and would not pay the registration fee and would also not pay the In-State Waste Fee (\$200 assumed for calculation, although a small number could have been assessed \$206.10).

It is assumed that all large and small quantity generators that did not pay an In-State waste fee in both of those years would change their status to CESQG and would not pay the registration fee.

2020 Reporting Year

71 sites paid \$206.10 = \$14,633.10
576 sites paid \$200.00 = \$115,200
Total 2020 Reduction = \$129,833.10

2021 Reporting Year*

60 sites paid \$206.10 = \$12,366
548 sites paid \$200.00 = \$109,600
Total 2021 Reduction = \$121,966

Total 2 year reduction = \$251,799.10

Average annual reduction = \$125,899.55
Round to **\$130,000**

*There are a greater than normal number of generators that have not yet filed reports. These revenue estimates will increase once reporting is final. (the estimates are rounded up to \$140,000).

Registration Renewal Fee

Sites Moving from LQG to SQG or CESQG

80 sites

LQG 80 sites @ \$500 = \$40,000

SQG or CESQG 80 sites @ \$150 = \$12,000

Resulting Reduction = **\$28,000**

Total Fiscal Impact = **\$158,000**

§260.437.2 – Removes the authority for the Department to promulgate rules that are stricter than or apply in any subject area not addressed by federal regulations.

The Department is concerned that with the strict application of this section, the Department would not be able to operate state programs that do not have equivalent federal statutory or regulatory authority such as the Brownfields/Voluntary Cleanup Program (BVCP). The BVCP offers entities an option to enter the program to conduct a risk-based cleanup. The entities pay an application fee, oversight costs, and a long-term monitoring fee. Loss of the program would remove these revenue streams. The Department's three year average from FY 2019 through FY 2021 for revenues from these revenue streams is \$469,045 per year. These do not tie directly to cost recovery of expenditures due to timing of applications, receipt of long-term monitoring fees, and timing of invoices and related payments, and the allocation of program administrative costs. This amount was used consistently across the fiscal years (first year is pro-rated to calculate the fiscal impact).

Without the BVCP, the Department is assuming that it would not be eligible to apply for federal Brownfields cooperative agreements. The current 128A Brownfield grant application totals \$1,000,000. The Department also assumes it would not be able to apply for future competitive grants under the federal 104k Brownfields funding. In FY 2021, the Department received \$300,000 in competitive grant funding.

A portion of the federal funding supports the Department's work related to sites that have been remediated but require oversight to monitor contamination left in place, including updating and operating of the ESTART online mapper. ESTART provides information on sites in the state where hazardous substances have been reported or released.

If the public information mapper is required by statute, some of the work funded under the federal funding would need to continue under state funding. The federal grant does include pass through funding used to conduct free assessments on suspected brownfield sites.

- Federal – The \$1,000,000 and an estimated 9.28 FTE is based on the Department’s most recent grant application under EPA’s 128a Brownfields grant program for FY 2022. The federal impacts of loss of grant funding and cost avoidance were netted to \$0.
- Since funding under EPA’s 104K Brownfields program is competitive and not available every year, the Department did not include this as an estimated revenue loss, but noted the amount received in FY 2022 for informational purposes.
- State VCP cost avoidance amounts are based on current program staff planning excluding federal funds utilizing current midpoint salary amounts. The Long-Term Stewardship activities, including federal portions, were retained in the Hazardous Waste Fund (HWF). The impact was estimated based on 2.72 FTE. The first year HWF impacts were prorated for 10 months and total \$230,933.
- The federal 128A Brownfields grant is capped at \$1,000,000 so any COLA or inflationary impacts were added to the impact for the HWF.
- The federal 128A Brownfields grant impact is not prorated in the first year since the grant work plan commitments could not be met and the grant runs on the state fiscal year.

Oversight does not have information to the contrary and therefore, Oversight will reflect the estimates as provided by DNR. For simplicity, Oversight will not reflect the potential loss of federal grant funding as DNR has indicated the net effect will be \$0 after cost avoidance of FTE.

Oversight notes the Hazardous Waste Fund (0676) had a balance of \$10,852,061 as of December 31, 2021.

Officials from the **Department of Economic Development (DED)** assume the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for DED.

Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year’s legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs.

However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with its core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
HAZARDOUS WASTE FUND (0676)			
<u>Savings</u> – DNR – 2.72 FTE no longer funded through the Voluntary Cleanup Program p. 4-5	\$230,933	\$240,356	\$244,972
<u>Loss</u> – DNR – reduced fees for voluntary cleanup program p. 4-5	(\$390,871)	(\$469,045)	(\$469,045)
<u>Loss</u> – DNR – reduced fees for hazardous waste generators p. 3-4	(\$131,667)	(\$158,000)	(\$158,000)
ESTIMATED NET EFFECT ON THE HAZARDOUS WASTE FUND	<u>(\$291,605)</u>	<u>(\$386,689)</u>	<u>(\$382,073)</u>
Estimated Net FTE Change to the Hazardous Waste Fund	(2.72 FTE)	(2.72 FTE)	(2.72 FTE)

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

Small hazardous waste businesses could be impacted as a result of this proposal.

FISCAL DESCRIPTION

This act modifies provisions relating to the management of hazardous waste.

Under the act, the Hazardous Waste Management Commission shall not promulgate rules that are stricter than, apply prior to, or apply in any subject area not addressed by certain federal regulations promulgated pursuant to the Resource Conservation and Recovery Act.

The act repeals the Commission's authority to retain, modify, or repeal rules relating to:

1. Thresholds for determining whether a hazardous waste generator is a large quantity generator, small quantity generator, or conditionally exempt small quantity generator;
2. Rules requiring hazardous waste generators to display hazard labels on containers and tanks during the time hazardous waste is stored on-site;
3. The exclusion for hazardous secondary materials used to make zinc fertilizers; and
4. The exclusions for hazardous secondary materials that are burned for fuel or that are recycled.

The Commission shall promulgate rules for the reporting of hazardous waste activities to the Department of Natural Resources, effective beginning with the reporting period July 1, 2017- June 30, 2018, that allow for the submittal of reporting data in any format on an annual basis by large quantity generators and treatment storage and disposal facilities.

The act also repeals a requirement that the Department identify certain rules relating to hazardous waste in the Missouri Code of State Regulations that are inconsistent with certain rules promulgated by the Commission.

On December 31, 2017, any rule relating to hazardous waste, resource recovery, or used oil contained in the Missouri Code of State Regulations that remains inconsistent with certain rules promulgated by the Commission shall be null and void to the extent that such rule is inconsistent, and the least stringent rule shall control. Any rule that applies in any subject area not addressed by the requirements of certain federal regulations promulgated pursuant to Subtitle C of the Resource Conservation and Recovery Act, as amended, shall be null and void.

The Commission shall not promulgate rules that are stricter than, apply prior to, or apply in any subject area not addressed by the requirements of certain federal regulations promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended. The Commission shall file with the Missouri Secretary of State any amendments necessary to ensure that rules are not inconsistent with the provisions of the act. Any rule that is inconsistent with provisions of the act or applies in any subject area not addressed by the federal regulations shall be null and void.

The Director of the Department of Natural Resources shall not promulgate rules that are stricter than, apply prior to, or apply in any subject area not addressed by the requirements of certain federal regulations promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

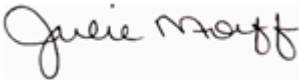
The Director shall file with the Missouri Secretary of State any amendments necessary to ensure that rules are not inconsistent with the provisions of the act. Any rule that is inconsistent with provisions of the act or applies in any subject area not addressed by the federal regulations shall be null and void. (Sections 260.373, 260.437, 260.520)

In instances where the Department of Natural Resources has authority to issue fines or penalties and determines that a fine or penalty should be levied, the Department is required to provide information as set forth in the act to the alleged violator in order for the alleged violator to understand the basis for the fine or penalty. Any statement provided by the Department in compliance with this provision shall be treated as confidential information and shall not be disclosed to any party except the alleged violator. (Section 640.095)

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Natural Resources
Department of Economic Development
Office of the Secretary of State
Joint Committee on Administrative Rules



Julie Morff
Director
February 17, 2022



Ross Strope
Assistant Director
February 17, 2022