

FIRST REGULAR SESSION

HOUSE BILL NO. 440

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KNIGHT.

0509H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 266.355, 643.050, 643.079, and 643.245, RSMo, and to enact in lieu thereof three new sections relating to anhydrous ammonia.

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

Section A. Sections 266.355, 643.050, 643.079, and 643.245, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 643.050, 643.079, and 643.245, to read as follows:

643.050. 1. In addition to any other powers vested in it by law the commission shall have the following powers:

(1) Adopt, promulgate, amend and repeal rules and regulations consistent with the general intent and purposes of sections 643.010 to 643.355, chapter 536, ~~and~~ Titles V and VI of the federal Clean Air Act, as amended, 42 U.S.C. 7661[~~5~~] et seq., **and 42 U.S.C. Section 7412(r), as amended, for covered processes of agricultural stationary sources that use, store, or sell anhydrous ammonia,** including but not limited to:

(a) Regulation of use of equipment known to be a source of air contamination;

(b) Establishment of maximum quantities of air contaminants that may be emitted from any air contaminant source; ~~and~~

(c) Regulations necessary to enforce the provisions of Title VI of the Clean Air Act, as amended, 42 U.S.C. 7671[~~5~~] et seq., regarding any Class I or Class II substances as defined therein; **and**

(d) **Regulations necessary to implement and enforce the risk management plans under 42 U.S.C. Section 7412(r), as amended, for agricultural facilities that use, store, or sell anhydrous ammonia;**

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.

17 (2) After holding public hearings in accordance with section 643.070, establish areas of
18 the state and prescribe air quality standards for such areas giving due recognition to variations,
19 if any, in the characteristics of different areas of the state which may be deemed by the
20 commission to be relevant;

21 (3) (a) To require persons engaged in operations which result in air pollution to monitor
22 or test emissions and to file reports containing information relating to rate, period of emission
23 and composition of effluent;

24 (b) Require submission to the director for approval of plans and specifications for any
25 article, machine, equipment, device, or other contrivance specified by regulation the use of which
26 may cause or control the issuance of air contaminants; but any person responsible for complying
27 with the standards established under sections 643.010 to 643.355 shall determine, unless found
28 by the director to be inadequate, the means, methods, processes, equipment and operation to meet
29 the established standards;

30 (4) Hold hearings upon appeals from orders of the director or from any other actions or
31 determinations of the director hereunder for which provision is made for appeal, and in
32 connection therewith, issue subpoenas requiring the attendance of witnesses and the production
33 of evidence reasonably relating to the hearing;

34 (5) Enter such order or determination as may be necessary to effectuate the purposes of
35 sections 643.010 to 643.355. In making its orders and determinations hereunder, the commission
36 shall exercise a sound discretion in weighing the equities involved and the advantages and
37 disadvantages to the person involved and to those affected by air contaminants emitted by such
38 person as set out in section 643.030. If any small business, as defined by section 643.020,
39 requests information on what would constitute compliance with the requirements of sections
40 643.010 to 643.355 or any order or determination of the department or commission, the
41 department shall respond with written criteria to inform the small business of the actions
42 necessary for compliance. No enforcement action shall be undertaken by the department or
43 commission until the small business has had a period of time, negotiated with the department,
44 to achieve compliance;

45 (6) Cause to be instituted in a court of competent jurisdiction legal proceedings to
46 compel compliance with any final order or determination entered by the commission or the
47 director;

48 (7) Settle or compromise in its discretion, as it may deem advantageous to the state, any
49 suit for recovery of any penalty or for compelling compliance with the provisions of any rule;

50 (8) Develop such facts and make such investigations as are consistent with the purposes
51 of sections 643.010 to 643.355, and, in connection therewith, to enter or authorize any
52 representative of the department to enter at all reasonable times and upon reasonable notice in

53 or upon any private or public property for the purpose of inspecting or investigating any
54 condition which the commission or director shall have probable cause to believe to be an air
55 contaminant source or upon any private or public property having material information relevant
56 to said air contaminant source. The results of any such investigation shall be reduced to writing,
57 and a copy thereof shall be furnished to the owner or operator of the property. No person shall
58 refuse entry or access, requested for purposes of inspection under this provision, to an authorized
59 representative of the department who presents appropriate credentials, nor obstruct or hamper
60 the representative in carrying out the inspection. A suitably restricted search warrant, upon a
61 showing of probable cause in writing and upon oath, shall be issued by any judge having
62 jurisdiction to any such representative for the purpose of enabling him to make such inspection;

63 (9) Secure necessary scientific, technical, administrative and operational services,
64 including laboratory facilities, by contract or otherwise, with any educational institution,
65 experiment station, or any board, department, or other agency of any political subdivision or state
66 or the federal government;

67 (10) Classify and identify air contaminants; and

68 (11) Hold public hearings as required by sections 643.010 to 643.355.

69 2. No rule or portion of a rule promulgated under the authority of this chapter shall
70 become effective unless it has been promulgated pursuant to the provisions of section 536.024.

71 3. The commission shall have the following duties with respect to the prevention,
72 abatement and control of air pollution:

73 (1) Prepare and develop a general comprehensive plan for the prevention, abatement and
74 control of air pollution;

75 (2) Encourage voluntary cooperation by persons or affected groups to achieve the
76 purposes of sections 643.010 to 643.355;

77 (3) Encourage political subdivisions to handle air pollution problems within their
78 respective jurisdictions to the extent possible and practicable and provide assistance to political
79 subdivisions;

80 (4) Encourage and conduct studies, investigations and research;

81 (5) Collect and disseminate information and conduct education and training programs;

82 (6) Advise, consult and cooperate with other agencies of the state, political subdivisions,
83 industries, other states and the federal government, and with interested persons or groups;

84 (7) Represent the state of Missouri in all matters pertaining to interstate air pollution
85 including the negotiations of interstate compacts or agreements.

86 4. Nothing contained in sections 643.010 to 643.355 shall be deemed to grant to the
87 commission or department any jurisdiction or authority with respect to air pollution existing

88 solely within commercial and industrial plants, works, or shops or to affect any aspect of
89 employer-employee relationships as to health and safety hazards.

90 5. Any information relating to secret processes or methods of manufacture or production
91 discovered through any communication required under this section shall be kept confidential.

643.079. 1. Any air contaminant source required to obtain a permit issued under sections
2 643.010 to 643.355 shall pay annually beginning April 1, 1993, a fee as provided herein. For the
3 first year the fee shall be twenty-five dollars per ton of each regulated air contaminant emitted.
4 Thereafter, the fee shall be set every three years by the commission by rule and shall be at least
5 twenty-five dollars per ton of regulated air contaminant emitted but not more than forty dollars
6 per ton of regulated air contaminant emitted in the previous calendar year. If necessary, the
7 commission may make annual adjustments to the fee by rule. The fee shall be set at an amount
8 consistent with the need to fund the reasonable cost of administering sections 643.010 to
9 643.355, taking into account other moneys received pursuant to sections 643.010 to 643.355.
10 For the purpose of determining the amount of air contaminant emissions on which the fees
11 authorized under this section are assessed, a facility shall be considered one source ~~[under the~~
12 ~~definition of]~~ **as described in** subsection 2 of section 643.078, except that a facility with
13 multiple operating permits shall pay the emission fees authorized under this section separately
14 for air contaminants emitted under each individual permit.

15 2. A source which produces charcoal from wood shall pay an annual emission fee under
16 this subsection in lieu of the fee established in subsection 1 of this section. The fee shall be
17 based upon a maximum fee of twenty-five dollars per ton and applied upon each ton of regulated
18 air contaminant emitted for the first four thousand tons of each contaminant emitted in the
19 amount established by the commission pursuant to subsection 1 of this section, reduced
20 according to the following schedule:

21 (1) For fees payable under this subsection in the years 1993 and 1994, the fee shall be
22 reduced by one hundred percent;

23 (2) For fees payable under this subsection in the years 1995, 1996 and 1997, the fee shall
24 be reduced by eighty percent;

25 (3) For fees payable under this subsection in the years 1998, 1999 and 2000, the fee shall
26 be reduced by sixty percent.

27 3. The fees imposed in subsection 2 of this section shall not be imposed or collected after
28 the year 2000 unless the general assembly reimposes the fee.

29 4. Each air contaminant source with a permit issued under sections 643.010 to 643.355
30 shall pay the fee for the first four thousand tons of each regulated air contaminant emitted each
31 year but no air contaminant source shall pay fees on total emissions of regulated air contaminants
32 in excess of twelve thousand tons in any calendar year. A permitted air contaminant source

33 which emitted less than one ton of all regulated pollutants shall pay a fee equal to the amount per
34 ton set by the commission. An air contaminant source which pays emission fees to a holder of
35 a certificate of authority issued pursuant to section 643.140 may deduct such fees from any
36 amount due under this section. The fees imposed in this section shall not be applied to carbon
37 oxide emissions. The fees imposed in subsection 1 and this subsection shall not be applied to
38 sulfur dioxide emissions from any Phase I affected unit subject to the requirements of Title IV,
39 Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. Section 7651[;] et seq., any
40 sooner than January 1, 2000. The fees imposed on emissions from Phase I affected units shall
41 be consistent with and shall not exceed the provisions of the federal Clean Air Act, as amended,
42 and the regulations promulgated thereunder. Any such fee on emissions from any Phase I
43 affected unit shall be reduced by the amount of the service fee paid by that Phase I affected unit
44 pursuant to subsection 8 of this section in that year. Any fees that may be imposed on Phase I
45 sources shall follow the procedures set forth in subsection 1 **of this section** and this subsection
46 and shall not be applied retroactively.

47 5. Moneys collected under this section shall be transmitted to the director of revenue for
48 deposit in appropriate subaccounts of the natural resources protection fund created in section
49 640.220. A subaccount shall be maintained for fees paid by air contaminant sources which are
50 required to be permitted under Title V of the federal Clean Air Act, as amended, 42 U.S.C.
51 Section 7661[;] et seq., and used, upon appropriation, to fund activities by the department to
52 implement the operating permits program authorized by Title V of the federal Clean Air Act, as
53 amended. Another subaccount shall be maintained for fees paid by air contaminant sources
54 which are not required to be permitted under Title V of the federal Clean Air Act as amended,
55 and used, upon appropriation, to fund other air pollution control program activities. Another
56 subaccount shall be maintained for service fees paid under subsection 8 of this section by Phase
57 I affected units which are subject to the requirements of Title IV, Section 404, of the federal
58 Clean Air Act Amendments of 1990 (**42 U.S.C. Section 7651c**), as amended, [~~42 U.S.C. Section~~
59 ~~7651;~~] and used, upon appropriation, to fund air pollution control program activities. The
60 provisions of section 33.080 to the contrary notwithstanding, moneys in the fund shall not revert
61 to general revenue at the end of each biennium. Interest earned by moneys in the subaccounts
62 shall be retained in the subaccounts. The per-ton fees established under subsection 1 of this
63 section may be adjusted annually, consistent with the need to fund the reasonable costs of the
64 program, but shall not be less than twenty-five dollars per ton of regulated air contaminant nor
65 more than forty dollars per ton of regulated air contaminant. The first adjustment shall apply to
66 moneys payable on April 1, 1994, and shall be based upon the general price level for the
67 twelve-month period ending on August thirty-first of the previous calendar year.

68 6. The department may initiate a civil action in circuit court against any air contaminant
69 source which has not remitted the appropriate fees within thirty days. In any judgment against
70 the source, the department shall be awarded interest at a rate determined pursuant to section
71 408.030 and reasonable attorney's fees. In any judgment against the department, the source shall
72 be awarded reasonable attorney's fees.

73 7. The department shall not suspend or revoke a permit for an air contaminant source
74 solely because the source has not submitted the fees pursuant to this section.

75 8. Any Phase I affected unit which is subject to the requirements of Title IV, Section
76 404, of the federal Clean Air Act **Amendments of 1990 (42 U.S.C. Section 7651c)**, as amended,
77 [~~42 U.S.C. Section 7651,~~] shall pay annually beginning April 1, 1993, and terminating December
78 31, 1999, a service fee for the previous calendar year as provided herein. For the first year, the
79 service fee shall be twenty-five thousand dollars for each Phase I affected generating unit to help
80 fund the administration of sections 643.010 to 643.355. Thereafter, the service fee shall be
81 annually set by the commission by rule, following public hearing, based on an annual allocation
82 prepared by the department showing the details of all costs and expenses upon which such fees
83 are based consistent with the department's reasonable needs to administer and implement
84 sections 643.010 to 643.355 and to fulfill its responsibilities with respect to Phase I affected
85 units, but such service fee shall not exceed twenty-five thousand dollars per generating unit. Any
86 such Phase I affected unit which is located on one or more contiguous tracts of land with any
87 Phase II generating unit that pays fees under subsection 1 or subsection 2 of this section shall be
88 exempt from paying service fees under this subsection. A "contiguous tract of land" shall be
89 defined to mean adjacent land, excluding public roads, highways and railroads, which is under
90 the control of or owned by the permit holder and operated as a single enterprise.

91 9. The department of natural resources shall determine the fees due pursuant to this
92 section by the state of Missouri and its departments, agencies and institutions, including two- and
93 four-year institutions of higher education. The director of the department of natural resources
94 shall forward the various totals due to the joint committee on capital improvements and the
95 directors of the individual departments, agencies and institutions. The departments, as part of
96 the budget process, shall annually request by specific line item appropriation funds to pay said
97 fees and capital funding for projects determined to significantly improve air quality. If the
98 general assembly fails to appropriate funds for emissions fees as specifically requested, the
99 departments, agencies and institutions shall pay said fees from other sources of revenue or funds
100 available. The state of Missouri and its departments, agencies and institutions may receive
101 assistance from the small business technical assistance program established pursuant to section
102 643.173.

103 **10. Each retail agricultural facility that uses, stores, or sells anhydrous ammonia**
104 **that is an air contaminant source subject to the risk management plan under 42 U.S.C.**
105 **Section 7412(r), as amended, shall pay an annual registration fee of two hundred dollars.**
106 **In addition, each retail agricultural facility that uses, stores, or sells anhydrous ammonia**
107 **shall pay an annual tonnage fee calculated on the number of tons of anhydrous ammonia**
108 **sold. The initial retail tonnage fee shall be set at one dollar and twenty-five cents per ton**
109 **of anhydrous ammonia used or sold. Each distributor or terminal agricultural facility that**
110 **uses, stores, or sells anhydrous ammonia that is an air contaminant source subject to the**
111 **risk management plan program 3 under 40 C.F.R. Part 68 shall pay an annual registration**
112 **fee of five thousand dollars and shall not pay a tonnage fee. The annual registration fees**
113 **and tonnage fee may be periodically revised under subsection 11 of this section. However,**
114 **the fees collected shall be used exclusively for the purposes of administering the provisions**
115 **of 42 U.S.C. Section 7412(r), as amended, for such agricultural facilities. Fees paid by**
116 **agricultural air contaminant sources that use, store, or sell anhydrous ammonia for the**
117 **purposes of implementing the requirements of 42 U.S.C. Section 7412(r), as amended, shall**
118 **be deposited into the anhydrous ammonia risk management plan subaccount within the**
119 **natural resources protection fund created in section 643.245. If the funding exceeds the**
120 **reasonable costs to administer the programs as set forth in this section, the department of**
121 **natural resources shall reduce fees for all registrants if the fees derived exceed the**
122 **reasonable cost of administering the risk management plan under 42 U.S.C. Section**
123 **7412(r), as amended.**

124 **11. Notwithstanding any statutory fee amounts or maximums to the contrary, the**
125 **department of natural resources may conduct a comprehensive review and propose changes to**
126 **the fee structure authorized by sections 643.073, 643.075, 643.079, 643.225, 643.228, 643.232,**
127 **643.237, and 643.242 after holding stakeholder meetings in order to solicit stakeholder input**
128 **from each of the following groups: the asbestos industry, electric utilities, mineral and metallic**
129 **mining and processing facilities, cement kiln representatives, and any other interested industrial**
130 **or business entities or interested parties. The department shall submit a proposed fee structure**
131 **with stakeholder agreement to the air conservation commission. The commission shall review**
132 **such recommendations at the forthcoming regular or special meeting, but shall not vote on the**
133 **fee structure until a subsequent meeting. If the commission approves, by vote of two-thirds**
134 **majority or five of seven commissioners, the fee structure recommendations, the commission**
135 **shall authorize the department to file a notice of proposed rulemaking containing the**
136 **recommended fee structure, and after considering public comments, may authorize the**
137 **department to file the order of rulemaking for such rule with the joint committee on**
138 **administrative rules pursuant to sections 536.021 and 536.024 no later than December first of**

139 the same year. If such rules are not disapproved by the general assembly in the manner set out
140 below, they shall take effect on January first of the following calendar year and the previous fee
141 structure shall expire upon the effective date of the commission-adopted fee structure. Any
142 regulation promulgated under this subsection shall be deemed to be beyond the scope and
143 authority provided in this subsection, or detrimental to permit applicants, if the general assembly,
144 within the first sixty calendar days of the regular session immediately following the filing of such
145 regulation, by concurrent resolution disapproves the regulation by concurrent resolution. If the
146 general assembly so disapproves any regulation filed under this subsection, the commission shall
147 continue to use the previous fee structure. The authority of the commission to further revise the
148 fee structure as provided by this subsection shall expire on August 28, 2024.

643.245. 1. All moneys received pursuant to sections 643.225 to 643.245 and any other
2 moneys so designated shall be placed in the state treasury and credited to the "Natural Resources
3 Protection Fund — Air Pollution Asbestos Fee Subaccount", which is hereby created. Such
4 moneys received pursuant to sections 643.225 to 643.245 shall, subject to appropriation, be used
5 solely for the purpose of administering this chapter. Any unexpended balance in such fund at
6 the end of any appropriation period shall not be transferred to the general revenue fund of the
7 state treasury and shall be exempt from the provisions of section 33.080.

8 2. **All moneys received under subsection 10 of section 643.079 and any other**
9 **moneys so designated shall be placed in the "Natural Resources Protection Fund -**
10 **Anhydrous Ammonia Risk Management Plan Subaccount", which is hereby created. Such**
11 **moneys received under subsection 10 of section 643.079 shall, subject to appropriation, be**
12 **used solely for the purpose of administering the provisions of section 643.079. Any**
13 **unexpended balance in such fund at the end of any appropriation period shall not be**
14 **transferred to the general revenue fund of the state treasury and shall be exempt from the**
15 **provisions of section 33.080.**

16 3. The state treasurer, with the approval of the board of fund commissioners, is
17 authorized to deposit all of the moneys in any of the qualified state depositories. All such
18 deposits shall be secured in such manner and shall be made upon such terms and conditions as
19 are now and may hereafter be approved by law relative to state deposits. Any interest received
20 on such deposits shall be credited to the natural resources protection fund — air pollution
21 asbestos fee subaccount.

~~2 [266.355. Unless provided for by federal law, rule or regulation, the~~
~~3 director of the department of agriculture shall promulgate, pursuant to chapter~~
~~4 536, and enforce regulations setting forth minimum general standards covering~~
~~5 the design, construction, location, installation, and operation of equipment for~~
~~6 storing, handling, transporting by tank truck, tank trailer, tank car and utilizing~~
~~anhydrous ammonia. The provisions of this section shall not apply to equipment~~

7 ~~which is in use for storing anhydrous ammonia as of August 28, 2010, and which~~
8 ~~is found by the department to be in substantial compliance with generally~~
9 ~~accepted standards of safety regarding life and property. The department shall~~
10 ~~adopt the minimum general safety standards for the storage and handling of~~
11 ~~anhydrous ammonia set forth in ANSI Standard K61.1-1999, Safety~~
12 ~~Requirements for the Storage and Handling of Anhydrous Ammonia; except that,~~
13 ~~ANSI Standard K61.1-1999 shall not be adopted by the department prior to~~
14 ~~December 1, 2012. For purposes of this section, "ANSI" means the American~~
15 ~~National Standards Institute.]~~

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