Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 4—Methods for Identifying Hazardous Waste

PROPOSED AMENDMENT

10 CSR 25-4.261 Methods for Identifying Hazardous Waste. The commission is amending sections (1) and (2).

PURPOSE: Periodically, department staff review each rule to determine whether updates, clarifications, corrections, or substantive changes are needed. Since the most recent time this rule was amended, staff members have identified various necessary corrections and clarifications to the text of this rule. The proposed corrections and clarifications are intended to ensure that the rule is both accurate and concise. Also, this rule needs to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR), published annually on July 1. Currently, this rule incorporates by reference the 1997 CFR, which includes changes through July 1, 1997. One of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of the Environmental Protection Agency is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating this rule to incorporate by reference the 2000 edition of the CFR will ensure that this rule is both consistent with, and current through, the most recent edition of the CFR. This amendment would add to the rule all changes made to 40 CFR part 261, the corresponding part of the federal regulations, between July 1, 1997 and July 1, 2000. Department staff have reviewed the changes made to this part of the CFR during this time period and recommend that this rule be amended to incorporate by reference these changes, except that, as noted below, the amendment to the federal regulations which provides an exclusion from the definition of hazardous waste for comparable fuels is not proposed for incorporation into the state regulations. Portions of specific federal rules proposed for incorporation by reference in this proposed amendment, and the corresponding* ***Federal Register*** *notice for each, are as follows: Land Disposal Restrictions Phase IV rule (63 FR 28556, May 26, 1998, part 261 only), Hazardous Remediation Waste Management Requirements (63 FR 65874, November 30, 1998, part 261 only), and NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (64 FR 52827, September 30, 1999, part 261 only).*

Also, Senate Bill 577 was passed by the 2000 General Assembly. The bill revised or added various amounts and types of fees assessed on hazardous waste generators and hazardous waste management facilities in the state of Missouri, including the category tax, generator fee, transporter license fee, and resource recovery application fee. The bill eliminated the hazardous waste generator category tax revenue target from law and eliminates the five categories of waste based on tonnage. Both of these changes require amendment of the existing hazardous waste regulations. Other changes which require modification of the existing rule include the increase in category tax site caps for both Category A and Category B waste, establishment of a $50 minimum category tax for individual generators, and allowance of an annual 2.55% increase in the tax rates and caps. Various rules within Title 10, Division 25 of the ***Code of State Regulations*** *need to be amended to implement these statutory changes.*

(Note: Each of the federal rules listed above includes changes that affect CFR parts other than 40 CFR part 261. However, as noted above, only those changes to 40 CFR part 261 are incorporated by reference in the proposed amendment of this rule, with one exception. The changes to part 261 contained in the final rule titled Revised Standards for Hazardous Waste Combustors (63 FR 33781, June 19, 1998) are not incorporated by reference.)

(1) The regulations set forth in 40 CFR part 261, July 1, *[1997]* **2000**, except for the changes made at 55 FR 50450, December 6, 1990, 56 FR 27332, June 13, 1991**,** *[and]* 60 FR 7366, February 7, 1995, **and 63 FR 33823, June 19, 1998,** are incorporated by reference. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) This section sets forth specific modifications of the regulations incorporated in section (1) of this rule. A person required to identify a hazardous waste shall comply with this section as it modifies 40 CFR part 261 as incorporated in this rule. (Comment: This section has been organized in order that all Missouri additions, changes or deletions to any subpart of the federal regulation are noted within the corresponding subsection of this section. For example, changes to 40 CFR part 261 subpart A will be located in subsection (2)(A) of this rule.)

(A) **General.** The following are changes to 40 CFR part 261 subpart A incorporated in this rule:

1. Material that is stored or accumulated in surface impoundments or waste piles is inherently waste-like as provided in 40 CFR 261.2(d) incorporated in this rule, and is a solid waste, regardless of whether the material is recycled;

2. A solid waste, as defined in 40 CFR 261.2, as incorporated in this rule, is a hazardous waste if it is a mixture of solid waste and one (1) or more hazardous wastes listed in 40 CFR part 261 subpart D, as incorporated in this rule, and has not been excluded from 40 CFR 261.3(a)(2), as incorporated in this rule, under 40 CFR 260.20 and 260.22, as incorporated in 10 CSR 25-3.260. However, mixtures of solid wastes and hazardous wastes listed in 40 CFR part 261 subpart D, as incorporated in this rule, are not hazardous wastes (except by application of 40 CFR part 261.3(a)(2)(i) or (ii), as incorporated in this rule) if the generator can demonstrate that the mixture consists of wastewater, the discharge of which is regulated under Chapter 644, RSMo, the Missouri Clean Water Law;

3. In Table 1 of 40 CFR 261.2, add an asterisk in column 3, row 6, Reclamation of Commercial Chemical Products listed in 40 CFR 261.33 and add the following additional footnote: "Note 2. Commercial chemical products listed in 40 CFR 261.33 are not solid wastes when the original manufacturer uses, reuses or legitimately recycles the material in his/her manufacturing process";

4. Except as provided otherwise in 40 CFR 261.3(c)(2)(ii), as incorporated in this rule, any solid waste generated from the treatment, storage or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate (but not including precipitation runoff) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.);

5. In addition to the requirements in 40 CFR 261.3 incorporated in this rule, hazardous waste may not be diluted solely for the purpose of rendering the waste nonhazardous unless dilution is warranted in an emergency response situation or where the dilution is part of a hazardous waste treatment process regulated or exempted under 10 CSR 25-7 or 10 CSR 25-9;

6. Fly ash that is not regulated under sections 260.200–260.245, RSMo or section 644.006–644.564, RSMo or is not beneficially reused as allowed under 10 CSR 80-2.020(9)(B), and fails TCLP is not subject to the exclusion at 40 CFR 261.4(b)(4) and shall be disposed of in a permitted hazardous waste facility;

7. In 40 CFR 261.4(a)(8)(i) incorporated in this rule, substitute "is a totally enclosed treatment facility" for "through completion of reclamation is closed";

8. 40 CFR 261.4(a)(11) is not incorporated in this rule;

9. 40 CFR 261.4(a)(16) is not incorporated in this rule (Note: The paragraph at 40 CFR 261.4(a)(16) added by 63 FR 33823, June 19, 1998, is the paragraph not incorporated by 10 CSR 25-4.261(2)(A)9.);

*[9.]***10.** Household hazardous waste which is segregated from the solid waste stream becomes a regulated hazardous waste upon acceptance by delivery at a commercial hazardous waste treatment, storage or disposal facility. Any waste for which the commercial facility becomes the generator in this way shall not be subject to waste minimization requirements under 40 CFR 264.73(b)(9), as incorporated by 10 CSR 25-7.264(1), nor shall that facility be required to pay hazardous waste fees and taxes on that waste pursuant to 10 CSR 25-12.010;

*[10.]***11.** A generator shall submit the information required in 40 CFR 261.4(e)(2)(v)(C) as incorporated in this rule to the department along with the summary manifest reports required in 10 CSR 25-5.262(2)(D)1.;

*[11.]***12.** The changes to 40 CFR 261.5, special requirements for hazardous waste generated by small quantity generators, incorporated in this rule are as follows:

A. The modification set forth in 10 CSR 25-3.260(1)(A)*[23.]***25.** applies in this rule in addition to other modifications set forth;

B. 40 CFR 261.5(g)(2) is not incorporated in this rule;

C. A process, procedure, method, or technology is considered to be on-site treatment for the purposes of 40 CFR 261.5(f)(3) and 40 CFR 261.5(g)(3), as incorporated in this rule, only if it meets the following criteria:

(I) The process, procedure, method or technology reduces the hazardous characteristic(s) and/or the quantity of a hazardous waste; and

(II) The process, procedure, method or technology does not result in off-site emissions of any hazardous waste or constituent; and

D. If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR 279.10(b)(3) as incorporated in 10 CSR 25-11.279;

*[12.]***13.** The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 261.6(a)(3)(i), as incorporated in this rule. The state may not assume authority from the EPA to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies;

*[13.]***14.** 40 CFR 261.6(a)(4) is amended by adding the following sentence: "Used oil that exhibits a hazardous characteristic and that is released into the environment is subject to the requirements of 10 CSR 25-3, 4, 5, 6, 7, 8, 9 and 13.";

*[14.]***15.** *[40 CFR 261.9(b) is not incorporated in this rule;]* **Provided they are managed in accordance with the requirements of 40 CFR 261.9 and 10 CSR 25-16.273, the following wastes are excluded from the requirements of 10 CSR 25-5.262 to 10 CSR 25-7.270:**

A. Batteries as described in 40 CFR 273.2 and as modified in 10 CSR 25-16.273(2)(A)2.;

B. Pesticides as described in 40 CFR 273.3 and as modified in 10 CSR 25-16.273(2)(A)3.;

C. Mercury switches as described in 10 CSR 25-16.273(2)(A)4.A., mercury containing thermometers and manometers as described in 10 CSR 25-16.273 (2)(A)4.B.; and

D. Lamps as described in 40 CFR 273.5.

*[15.]***16.** Recyclable materials that meet the definition of used oil in 40 CFR 260.10 as incorporated in 10 CSR 25-3.260(1), shall be managed in accordance with 10 CSR 25-11.279 and applicable portions of 10 CSR 25-3.260–10 CSR 25-9.020; and

*[16.]***17.** The resource recovery of hazardous waste is regulated by 10 CSR 25-9.020. An owner/operator of a facility that uses, reuses or recycles hazardous waste shall be certified under 10 CSR 25-9 or permitted under 10 CSR 25-7, unless otherwise excluded. Therefore, the parenthetic text in 40 CFR 261.6(c)(1) is not incorporated in this rule.

(B) **Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Wastes.** *(Reserved)*

(C) **Characteristics of Hazardous Waste.** *(Reserved)*

(D) **Lists of Hazardous Wastes.** The following are additions or changes to the lists in 40 CFR part 261 subpart D, incorporated in this rule:

1. Hazardous waste identified by the Environmental Protection Agency (EPA) hazardous waste number F020, F023 or F027 is hazardous waste even if highly purified 2,4,5-trichlorophenol is used. Therefore, the following language is deleted from 40 CFR 261.31 incorporated in this rule:

A. In F020, delete the words "(This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)";

B. In F023, delete the words "(This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)"; and

C. In F027, delete the words "(This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.)";

2. Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill of waste listed in F020, F021, F022, F023, F026 or F027 (including the changes made in 10 CSR 25-4.261(2)(D)1.), regardless of the quantity or time of the spill or release, is an acutely hazardous waste and is designated the Missouri hazardous waste number MH01. Note: This does not include hexachlorophene soap rinses resulting from medicinal uses.);

3. 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) is an acutely hazardous waste and is designated the Missouri hazardous waste number MH02. Without regard to any quantity specified in 40 CFR 261.5, as incorporated and modified in paragraph (2)(A)10. of this rule, if a generator generates less than one gram (1 g) of 2,3,7,8-TCDD in a calendar month and does not accumulate one gram (1 g) of 2,3,7,8-TCDD at any one time, that generator shall manage that hazardous waste in accordance with subsection 260.380.2, RSMo. When a generator generates one gram (1 g) of 2,3,7,8-TCDD in a calendar month or accumulates at least one gram (1 g) of 2,3,7,8-TCDD at any one time, that generator shall manage that hazardous waste in accordance with the provisions in 10 CSR 25*[.]***;**

4. 40 CFR 261.38 is not incorporated in this rule.

*AUTHORITY: section 260.370, RSMo [Supp. 1997] **2000**. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Feb. 1, 2001.*

*PUBLIC COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, the Environmental Protection Agency has determined each rule to result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. This determination is discussed in the Regulatory Impact Analysis section of the **Federal Register** notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis*

prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, even without the cost savings associated with incorporation by reference of the changes to part 261 contained in the final rule titled Revised Standards for Hazardous Waste Combustors (63 FR 33781, June 19, 1998), adoption of the remainder of the changes will result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. The Environmental Protection Agency's determination is discussed in the Regulatory Impact Analysis section of the ***Federal Register*** *notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this amendment will not cost private entities more than $500 in the aggregate.*

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille, 319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on April 20, 2001. Faxed or E-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 5—Rules Applicable to Generators of Hazardous Waste

PROPOSED AMENDMENT

10 CSR 25-5.262 Standards Applicable to Generators of Hazardous Waste. The commission is amending sections (1) and (2).

PURPOSE: Periodically, department staff review each rule to determine whether updates, clarifications, corrections, or substantive changes are needed. Since the most recent time this rule was amended, staff members have identified various necessary corrections and clarifications to the text of this rule. The proposed corrections and clarifications are intended to ensure that the rule is both accurate and concise. Also, this rule needs to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR), published annually on July 1. Currently, this rule incorporates by reference the 1997 CFR, which includes changes through July 1, 1997. One of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating this rule to incorporate the 2000 CFR will ensure that it is current through the most recent edition of the CFR. This amendment would add to this rule changes made to 40 CFR part 262, the corresponding part of the federal regulations, between July 1, 1997 and July 1, 2000. Department staff have reviewed the changes made to part 262 of the CFR during this time period and recommend that this rule be amended to incorporate by reference these changes.*

Also, Senate Bill 577 was passed by the 2000 General Assembly. The bill revised or added various amounts and types of fees assessed on hazardous waste generators and hazardous waste management facilities in the state of Missouri, including the category tax, generator fee, transporter license fee, and resource recovery application fee. The bill eliminated the hazardous waste generator category tax revenue target from law and eliminates the five categories of waste based on tonnage. Both of these changes require amendment of the existing hazardous waste regulations. Other changes which require modification of the existing rule include the increase in category tax site caps for both Category A and Category B waste, establishment of a $50 minimum category tax for individual generators, and allowance of an annual 2.55% increase in the tax rates and caps. Various rules within Title 10, Division 25 of the ***Code of State Regulations*** *need to be amended to implement these statutory changes.*

(Note: Each of the federal rules listed above includes changes that affect CFR parts other than 40 CFR part 262. However, as noted above, only those changes to 40 CFR part 262 are incorporated by reference in the proposed amendment of this rule.)

(1) The regulations set forth in *[40]* **49** CFR part 172, *[March 20, 1997, 40 CFR part 265, July 1, 1994,]* **October 1, 1999,** 40 CFR 302.4 and .5, July 1, *[1997]* **2000**, and *[49]* **40** CFR part 262, July 1, *[1997]* **2000** except Subpart H, are incorporated by reference. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) A generator, except as conditionally exempted in accordance with 10 CSR 25-4.261, shall comply with the requirements of this section in addition to the requirements incorporated in section (1). Where contradictory or conflicting requirements exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the additional storage standards which are added to 40 CFR part 262 subpart C are found in subsection (2)(C) of this rule.)

(A) *[Registration]* **General**. The following registration requirements are additional requirements to**, or modifications of, the requirements specified in** 40 CFR part 262 subpart A:

1. In lieu of 40 CFR 262.12(a) and (c), a generator shall comply with the following requirements:

A. A person generating in one (1) month or accumulating at any one time the quantities of hazardous waste specified in 10 CSR 25-4.261 and a transporter who is required to register as a generator under 10 CSR 25-6.263 shall register and is subject to applicable rules under 10 CSR 25-3.260–10 CSR 25-9.020 and 10 CSR 25-12.010; *[and]*

B. An out-of-state generator who utilizes a hazardous waste management facility within Missouri shall register before utilizing the facility;

C. A person generating hazardous waste on a "one-time" basis may apply for a temporary registration. A temporary registration shall be valid for one initial 30-day period with the possibility of an extension of one additional 30-day period. Should a temporary registration exceed the total 60-day

period outlined here, the department shall consider the registration to be permanent rather than temporary. Temporary, one-time registrations shall only be issued to Missouri generators. All reporting requirements and registration fees outlined in this chapter shall apply to temporary registrations; and

D. Conditionally exempt generators may choose to register and obtain EPA and Missouri identification numbers, but in doing so will be subject to any initial registration fee and annual renewal fee outlined in this chapter;

2. An owner/operator of a treatment, storage, disposal or resource recovery facility who ships hazardous waste from the facility shall comply with this rule;

3. The following constitutes the procedure for registering:

A. A person who is required to register shall file *[duplicate,]* **a** completed registration form*/s/* furnished by the department*[;]*. **The department shall require an original ink signature on all registration forms before processing. In the event the department develops the ability to accept electronic submission of the registration form, the signature requirement will be consistent with the legally accepted standards in Missouri for an electronic signature on documents. All generators located in Missouri shall use only the Missouri version of the registration form;**

B. A person required to register shall also complete and file an updated generator registration form if the information filed with the department changes; *[and]*

C. The department may request additional information, including information concerning the nature and hazards associated with a particular waste or any information or reports concerning the quantities and disposition of any hazardous wastes as necessary to authorize storage, treatment or disposal and to ensure proper hazardous waste management*[.]*;

D. A person who is required to register, and those conditionally exempt generators who choose to register, shall pay a $100 initial registration fee at the time their registration form is filed with the department. The department shall not process any form for an initial registration if the $100 fee is not included. Generators shall thereafter pay an annual renewal fee of $100 in order to maintain their registration in good standing; and

E. Any person who pays the registration fee with what is found to be an insufficient check shall have their registration immediately revoked;

4. The following constitutes the procedure for registration renewal:

A. The calendar year shall constitute the annual registration period;

B. Annual registration renewal billings will be sent on December 1 of each year to all generators holding an active registration;

C. Any generator initially registering between October 1 and December 31 of any given year shall pay the initial registration fee, but shall not pay the annual renewal fee for the calendar year immediately following their initial registration. From that year forward, they shall pay the annual renewal fee;

D. Any generator failing to pay the annual renewal fee by the due date specified on the billing shall be administratively inactivated and subject to enforcement action for failure to properly maintain their registration;

E. Generators administratively inactivated for failure to pay the renewal fee in a timely manner, who later in the same registration year pay the annual renewal fee, shall pay a $50 administrative reinstatement fee in addition to the $100 annual renewal fee;

F. Generators who request that their registration be made inactive rather than pay the renewal fee, who later in that same renewal year pay the annual renewal fee to reactivate their registration, shall pay a $50 administrative reinstatement fee in addition to the $100 annual renewal fee; and

G. Any person who pays the annual renewal fee with what is found to be an insufficient check shall have their registration immediately revoked;

5. The department may administratively inactivate the registration of generators that fail to pay any applicable hazardous waste fees and taxes in a timely manner after appropriate notice to do so.

(B) The Manifest. This subsection sets forth requirements for manifest acquisition and use. Additional manifest and reporting requirements are set forth in subsections (2)(D) and (E). This subsection is applicable to all Missouri generators and to all other generators who deposit hazardous waste in Missouri. (Note: This section is not applicable to an out-of-state or international generator who is shipping hazardous waste through, in less than ten (10) days, but not depositing hazardous waste in Missouri. This subsection does not prevent a transporter from voluntarily carrying information in addition to the manifest. Any reference to the United States Environmental Protection Agency (EPA) form 8700-22 means the form as revised by EPA and approved by the federal Office of Management and Budget (OMB).

1. The Missouri manifest form has its own set of instructions, these regulations do not allow the use of the continuation sheet, and these regulations require the manifest to be completed prior to shipping the hazardous waste off-site. *[Therefore, in 40 CFR 262.20(a), delete "and if necessary, EPA form 8700-22A" and substitute "Missouri manifest instructions" for "the Appendix to part 262." Add the following at the end of the paragraph: "A generator shall record all information required in 40 CFR 262.20 prior to shipment. When a shipment involves the use of more than two (2) transporters or more than four (4) hazardous wastes, a generator must complete EPA 8700-22/MDNR-HWG 10 or EPA 8700-22 forms in accordance with this rule in lieu of EPA form 8700-22A (continuation sheet)."]*

2. In addition to the requirements set forth in 40 CFR 262.20, the generator must record legibly the following additional information on the manifest prior to shipment and in accordance with instructions:

A. The Missouri hazardous waste manifest document number, which is the six (6)-digit Missouri generator identification number and the consecutive shipment number;

B. The actual site address (street, city, state and zip code) if different from the mailing address of the shipment's origin;

C. The license plate number for the waste-carrying portion of the vehicle used to transport waste, including the state of registration;

D. The transport company's identification number(s) assigned by the department and telephone number(s)*[.]*;

E. The receiving facility's Missouri identification number if the designated facility is located in Missouri and the telephone number of the receiving facility;

F. The EPA hazardous waste number(s) for each waste material being shipped. If the waste(s) being shipped is a mixture of different EPA hazardous waste types as listed in 10 CSR 25-4.261, each EPA hazardous waste type found within the mixture shall be identified by its respective EPA hazardous waste number;

G. The Missouri waste code *[MP21]* **MH02** if the hazardous waste is 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) as listed in 10 CSR 25-4.261(2)(D)3.;

H. The Missouri waste code D098 if the hazardous waste is a used oil as described at 10 CSR 25-11.279(2)(I)1.B.; and

I. Either the total weight in kilograms or pounds or the specific gravity for wastes listed or measured in gallons, liters or cubic yards.

3. Any generator who is required to use the Missouri/EPA form 8700-22/MDNR-HWG 10 and who copies or prints his/her

own uniform manifest forms is subject to the following requirements in addition to the requirements of 40 CFR 262.21:

A. A generator shall ensure that the form is printed so that there is no displacement of information or alteration of the form;

B. The generator shall copy or print and attach the instruction sheets to the manifest form;

C. Generator information may only be added to the manifest form or instruction sheets in accordance with subparts (a) and (b) of 40 CFR part 262.21 and as follows:

(I) Any information requirements may be printed on the forms or instruction sheets except that the certification signature and acceptance signatures shall be handwritten and shall not be printed or stamped on the manifest; and

(II) Transporter safety information, treatment, storage or disposal information, and bill of lading information may be printed in the special handling instructions and additional information space or, if necessary, on the back of the manifest form;

D. Copy distribution and other general company information may be printed in the margin or on the back of the manifest form. The manifest shall be marked for copy distribution as follows:

First page (original)—to the department;

Second page—generator file copy;

Third page—treatment, storage or disposal facility final copy;

Fourth page—transporter number one;

Fifth page—optional (second transporter, other state); and

Sixth page—generator (shipment confirmation); and

E. A hazardous materials (HM) column in item 11 may be printed in accordance with United States Department of Transportation regulations in 49 CFR 172.201*[, March 20, 1984]*. Organizational marks such as light lines or line identifiers are permitted to facilitate proper character placement of information.

4. This paragraph sets forth requirements for the use of the Missouri manifest or another state's manifest in different situations.

A. A Missouri generator who deposits hazardous waste out of Missouri but not in a foreign country shall use the receiving state's form equivalent to the EPA form 8700-22, if that state supplies and requires its use. Although another state's form is used, the generator shall record Missouri information on that state's manifest as specified under paragraph (2)(B)2. of this rule.

B. If a Missouri generator manages hazardous waste in another state and not a foreign country and the receiving state does not supply or require use of a specific state manifest, the generator shall acquire from the department and use the EPA 8700-22/MDNR-HWG 10 form except as provided otherwise in paragraph (2)(B)3. of this rule.

C. Any person who imports hazardous waste into Missouri from a foreign country or who generates hazardous waste in Missouri and exports this hazardous waste to a foreign country shall acquire from the department and use the EPA 8700-22/MDNR-HWG 10 form except as provided otherwise in paragraph (2)(B)3. of this rule.

D. Any Missouri generator and any out-of-state generator who deposits hazardous waste in Missouri shall acquire from the department and use the EPA 8700-22/MDNR-HWG 10 form except as provided otherwise in paragraph (2)(B)3. of this rule.

5. Missouri requires that a copy of the completed manifest be submitted to the department by an authorized representative of the generator. Therefore, in 40 CFR 262.22, substitute "two (2) copies" for "another copy."

6. Manifest reporting. This paragraph sets forth additional requirements for manifest reporting. The generator shall contract with the designated facility to return the completed manifest to the generator within thirty-five (35) days after the hazardous waste was accepted by the initial transporter. A generator, in addition to this requirement, and where applicable under paragraph (2)(D)2. of this rule, shall file exception reports.

(E) *[Special Conditions]* **Exports of Hazardous Waste**. This subsection modifies the incorporation of 40 CFR part 262 subpart E. The state cannot assume authority from the EPA to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit acknowledgements of consent to the exporter. In addition, the annual reports and exception reports required in 40 CFR 262.55 and 262.56, incorporated in this rule, shall be filed with the EPA administrator and copies shall be provided to the department. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 262.51, 262.52, 262.53, 262.54, 262.55, 262.56 and 262.57, as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies (for example, the federal Department of Transportation and the Bureau of the Census of the Department of Commerce).

(G) **Farmers**. *(Reserved)*

(H) 40 CFR 262, subpart H, Transfrontier shipments of hazardous waste for recovery within the OECD, is not incorporated in this rule.

*[(H)]***(I)** Emergency Procedures. In the event of a spill of hazardous waste at the generator's site, where there is clear and imminent danger to humans or the environment, the generator shall take reasonable action to eliminate the danger. In the event of a spill of a reportable quantity of material under 40 CFR 302.4 and 302.5 (Note: this includes table 302.4), a generator shall notify the department in accordance with the notification procedure set forth in 10 CSR 24-3.010*[; and]***.**

*[(I)]***(J)** Generator Fee and Taxes. A generator who is required to register under this rule, unless otherwise exempted, shall pay fees and taxes in accordance with 10 CSR 25-12.010.

*AUTHORITY: sections 260.370[, RSMo Supp. 1997] and 260.380, RSMo [1994] **2000**. This rule was previously filed as 10 CSR 25-5.010. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Feb. 1, 2001.*

PUBLIC COST: This proposed amendment is estimated to cost state agencies and political subdivisions $5,100 in the next fiscal year and annually thereafter. A detailed fiscal note with the relevant cost information has been filed with the secretary of state.

PRIVATE COST: This proposed amendment is estimated to cost private entities $61,100 in the next fiscal year and annually thereafter. A detailed fiscal note with the relevant cost information has been filed with the secretary of state.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille, 319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on April 20, 2001. Faxed or E-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Rules Applicable to Generators of Hazardous Waste

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 25-5.262 Standards Applicable to Generators of Hazardous Waste

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
4	Large Quantity Generators	$400
24	Small Quantity Generators	$2400
23	Conditionally-Exempt Small Quantity Generators	$2300
		TOTAL: $5100

III. WORKSHEET

4. Public entities affected are those that are either required to maintain a generator registration with the department or who voluntarily choose to maintain a registration in order to obtain an ID number and who fail to pay the statutory $100 registration renewal fee by the due date specified on the billing, or who request to be inactivated rather than pay the renewal fee, but later in the same registration year reactivate their registration.

5. These entities will be assessed a $50 administrative fee in addition to the $100 statutory renewal fee.

6. Costs within each category are calculated as follows:

   - Payment of the $50 administrative fee to reinstate the registration plus 1 hour of staff time necessary to complete the required registration form, e.g. $50 + (1 hour of staff time at $50/hr.) = $100
   - $100 x 4 Large Quantity Generators = $400
   - $100 x 24 Small Quantity Generators = $2400
   - $100 x 23 Conditionally-Exempt Small Quantity Generators = $2300

IV. ASSUMPTIONS

1. Because the duration of this rule cannot be estimated, an annualized aggregate cost is provided. The annualized aggregate cost is expected to remain constant for the duration of the rule.

2. Fiscal year 2000 dollars are used to estimate the costs, and, since inflation cannot be accurately predicted, no adjustments are made for inflation.

3. Estimates assume a constant regulatory context which requires no reporting or standards beyond those currently required.

4. Estimates assume there will be no new or sudden changes in technology which would influence costs.

5. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good-faith estimates and averages using the department's professional judgement.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Rules Applicable to Generators of Hazardous Waste

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 25-5.262 Standards Applicable to Generators of Hazardous Waste

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
53	Large Quantity Generators	$5,300
312	Small Quantity Generators	$31,200
246	Conditionally-Exempt Small Quantity Generators	$24,600
		TOTAL: $61,100

III. WORKSHEET

1. Private entities affected are those that are either required to maintain a generator registration with the department or who voluntarily choose to maintain a registration in order to obtain an ID number, and who fail to pay the statutory $100 registration renewal fee by the due date specified on the billing, or who request to be inactivated rather than pay the renewal fee, but later in the same registration year reactivate their registration.

2. These entities will be assessed a $50 administrative fee in addition to the $100 statutory renewal fee.

3. Costs within each category are calculated as follows:

   - Payment of the $50 administrative fee to reinstate the registration plus 1 hour of staff time necessary to complete the required registration form, e.g. $50 + (1 hour of staff time at $50/hr.) = $100
   - $100 x 53 Large Quantity Generators = $5,300
   - $100 x 312 Small Quantity Generators = $31,200
   - $100 x 246 Conditionally-Exempt Small Quantity Generators = $24,600

IV. ASSUMPTIONS

1. Because the duration of this rule cannot be estimated, an annualized aggregate cost is provided. The annualized aggregate cost is expected to remain constant for the duration of the rule.

2. Fiscal year 2000 dollars are used to estimate the costs, and, since inflation cannot be accurately predicted, no adjustments are made for inflation.

3. Estimates assume a constant regulatory context which requires no reporting or standards beyond those currently required.

4. Estimates assume there will be no new or sudden changes in technology which would influence costs.

5. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good-faith estimates and averages using the department's professional judgement.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities. The commission is amending sections (1) and (2).

PURPOSE: Periodically, department staff review each rule to determine whether updates, clarifications, corrections, or substantive changes are needed. Since the most recent time this rule was amended, staff members have identified various necessary corrections and clarifications to the text of this rule. The proposed corrections and clarifications are intended to ensure that the rule is both accurate and concise. Also, this rule needs to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR). Currently, this rule incorporates by reference the 1997 CFR, which includes changes through July 1, 1997. One of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating this rule to incorporate the 2000 CFR will ensure that it is current through the most recent edition of the CFR. This amendment would add to the rule changes made to 40 CFR part 264, the corresponding part of the federal regulations, between July 1, 1997 and July 1, 2000. Department staff have reviewed the changes made to this part during this time period and recommend that this rule be amended to incorporate by reference these changes. Portions of specific federal rules proposed for incorporation by reference in this proposed amendment, and the corresponding* ***Federal Register*** *notice for each, are as follows: Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement and Closure Process (63 FR 56710, October 22, 1998, part 264 only), Hazardous Remediation Waste Management Requirements (63 FR 65874, November 30, 1998, part 264 only), and NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (64 FR 52827, September 30, 1999, part 264 only).*

Also, Senate Bill 577 was passed by the 2000 General Assembly. The bill revised or added various amounts and types of fees assessed on hazardous waste generators and hazardous waste management facilities in the state of Missouri, including the category tax, generator fee, transporter license fee, and resource recovery application fee. The bill eliminated the hazardous waste generator category tax revenue target from law and eliminates the five categories of waste based on tonnage. Both of these changes require amendment of the existing hazardous waste regulations. Other changes which require modification of the existing rule include the increase in category tax site caps for both Category A and Category B waste, establishment of a $50 minimum category tax for individual generators, and allowance of an annual 2.55% increase in the tax rates and caps. Various rules within Title 10, Division 25 of the ***Code of State Regulations*** *need to be amended to implement these statutory changes.*

(Note: Each of the federal rules listed above includes changes that affect CFR parts other than 40 CFR part 264. However, as noted above, only those changes to 40 CFR part 264 are incorporated by reference in the proposed amendment of this rule.)

[Editor's Note: EPA form 8700-22/MDNR-HWG 10 follows 10 CSR 25-7.270.]

(1) The regulations set forth in 40 CFR part 264, July 1, *[1997 as amended at 62 FR 64636 through 62 FR 64671, December 8, 1997,]* **2000,** are incorporated by reference. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modification set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control. "Owner/operator," as defined in 10 CSR 25-3.260(2)(O)3., shall be substituted for any reference to "owner and operator" or "owner or operator" in 40 CFR part 264 incorporated in this rule.

(2) The owner/operator of a permitted hazardous waste treatment, storage or disposal facility shall comply with this section in addition to the regulations of 40 CFR part 264. In the case of contradictory or conflicting requirements, the more stringent shall control. (Comment: This section has been organized so that all Missouri additions, changes or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the requirements to be added to 40 CFR part 264 subpart E are found in subsection (2)(E) of this rule.)

(A) *[Applicability]* **General**. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 264 subpart A.

1. A treatment permit is not required under this rule for a resource recovery process that has been certified by the department in accordance with 10 CSR 25-9.020. Storage of hazardous waste prior to resource recovery must be in compliance with this rule.

2. A permit is not required under this rule for an elementary neutralization unit or a wastewater treatment unit receiving only hazardous waste that is generated on-site or generated by its operator or only one (1) generator if the owner/operator, upon request, can demonstrate to the satisfaction of the department compliance with the requirements in 10 CSR 25-7.270(2)(A)3.

3. Hazardous waste which must be managed in a permitted unit (for example, waste generated on-site and stored beyond the time frames allowed without a permit pursuant to 10 CSR 25-5.262, waste received from off-site, certain hazardous waste fuels, etc.) shall not be stored or managed outside an area or unit which does not have a permit or interim status for that waste for a period which exceeds twenty-four (24) hours. This provision shall not apply to railcars held for the period allowed by, and managed in accordance with, 10 CSR 25-7.264(3) of this regulation. (Comment: The purpose of this paragraph is to allow necessary movement of hazardous waste into, out of, and through facilities, and not to evade permit requirements.)

4. 40 CFR 264.1(g)(11)(ii) is not incorporated into this rule.

(S) **Corrective Action for Solid Waste Management Units.** *(Reserved)*

(X) **Miscellaneous Units.** This subsection sets forth requirements in addition to 40 CFR part 264 subpart X incorporated in this rule.

1. A facility which continuously feeds hazardous waste into the treatment process shall be equipped with an automatic waste feed cutoff or a bypass system that is activated when a malfunction in the treatment process occurs. A bypass system shall return hazardous wastefeed to storage and shall not allow a discharge or release of hazardous waste.

2. Residuals of by-products from a treatment process (for example, sludges, spent resins) shall be analyzed during a trial period to determine the effectiveness of the treatment process.

*AUTHORITY: sections 260.370, [RSMo Supp. 1997 and] 260.390 and 260.395, RSMo [1994] **2000**. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the* ***Code of State Regulations***. *Amended: Filed Feb. 1, 2001.*

PUBLIC COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, the Environmental Protection Agency has determined each rule to result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. This determination is discussed in the Regulatory Impact Analysis section of the ***Federal Register*** *notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.*

PRIVATE COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, the Environmental Protection Agency has determined each rule to result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. This determination is discussed in the Regulatory Impact Analysis section of the ***Federal Register*** *notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this proposed amendment will not cost private entities more than $500 in the aggregate.*

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille, 319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on April 20, 2001. Faxed or E-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.265 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities. The commission is amending section (1).

PURPOSE: Periodically, department staff review each rule to determine whether updates, clarifications, corrections, or substantive changes are needed. Since the most recent time this rule was amended, staff members have identified various necessary corrections and clarifications to the text of this rule. The proposed corrections and clarifications are intended to ensure that the rule is both accurate and concise. Also, the rules need to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR). Currently, the regulations incorporate by reference the 1997 CFR, which includes changes through July 1, 1997. One of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2000 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 1997 and July 1, 2000. Department staff have reviewed the changes made to 40 CFR part 265, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the* ***Code of Federal Regulations****. Portions of specific federal rules proposed for incorporation by reference in this proposed amendment, and the corresponding* ***Federal Register*** *notice for each are as follows: Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement and Closure Process (63 FR 56710, October 22, 1998, part 265 only), Hazardous Remediation Waste Management Requirements (63 FR 65874, November 30, 1998, part 265 only), and NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (64 FR 52827, September 30, 1999, part 265 only).*

Also, Senate Bill 577 was passed by the 2000 General Assembly. The bill revised or added various amounts and types of fees assessed on hazardous waste generators and hazardous waste management facilities in the state of Missouri, including the category tax, generator fee, transporter license fee, and resource recovery application fee. The bill eliminated the hazardous waste generator category tax revenue target from law and eliminates the five categories of waste based on tonnage. Both of these changes require amendment of the existing hazardous waste regulations. Other changes which require modification of the existing rule include the increase in category tax site caps for both Category A and Category B waste, establishment of a $50 minimum category tax for individual generators, and allowance of an annual 2.55% increase in the tax rates and caps. Various rules within Title 10, Division 25 of the ***Code of State Regulations*** *need to be amended to implement these statutory changes.*

(Note: Each of the federal rules listed above includes changes that affect CFR parts other than 40 CFR part 265. However, as noted above, only those changes to 40 CFR part 265 are incorporated by reference in the proposed amendment of this rule.)

[Editor's Note: EPA form 8700-22/MDNR-HWG 10 follows 10 CSR 25-7.270.]

(1) The regulations set forth in 40 CFR part 265, July 1, *[1997, as amended at 62 FR 64636 through 62 FR 64671, December 8, 1997]* **2000**, are incorporated by reference. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

*AUTHORITY: sections 260.370, [RSMo Supp. 1997 and] 260.390 and 260.395, RSMo [1994] **2000**. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Feb. 1, 2001.*

PUBLIC COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, the Environmental Protection Agency has determined each rule to

result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. This determination is discussed in the Regulatory Impact Analysis section of the ***Federal Register*** *notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.*

PRIVATE COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, the Environmental Protection Agency has determined each rule to result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. This determination is discussed in the Regulatory Impact Analysis section of the ***Federal Register*** *notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this proposed amendment will not cost private entities more than $500 in the aggregate.*

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille, 319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on April 20, 2001. Faxed or E-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.266 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. The commission is amending sections (1) and (2).

PURPOSE: Periodically, department staff review each rule to determine whether updates, clarifications, corrections, or substantive changes are needed. Since the most recent time this rule was amended, staff members have identified various necessary corrections and clarifications to the text of this rule. The proposed corrections and clarifications are intended to ensure that the rule is both accurate and concise. Also, the rules need to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR). Currently, the regulations incorporate by reference the 1997 CFR, which includes changes through July 1, 1997. One of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2000 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 1997 and July 1, 2000. Department staff have reviewed the changes made to 40 CFR part 266, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the* ***Code of Federal Regulations****. Portions of the following federal rules, and the corresponding* ***Federal Register*** *notice, are proposed for incorporation by reference in this amendment: Land Disposal Restrictions Phase IV rule (63 FR 28556, May 26, 1998, part 266 only) and NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (64 FR 52827, September 30, 1999, part 266 only).*

(Note: Each of the federal rules listed above includes changes that affect CFR parts other than 40 CFR part 266. However, as noted above, only those changes to 40 CFR part 266 are incorporated by reference in the proposed amendment of this rule.)

(1) The regulations set forth in 40 CFR part 266, July 1, *[1994, as amended at 59 FR 38536, July 28, 1994, 59 FR 43500, August 24, 1994, 59 FR 47982, September 19, 1994, 60 FR 25542, May 11, 1995, 60 FR 33914, June 29, 1995, 62 FR 6654, February 12, 1997, and 62 FR 32463, June 13, 1997]* **2000**, are incorporated by reference. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Persons subject to the regulations in 40 CFR part 266 shall comply with the requirements, changes, additions or deletions noted in this section in addition to 40 CFR part 266 incorporated in this rule. (Comment: This section has been organized so that all Missouri additions or changes to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to the management requirements for hazardous waste fuels, 40 CFR part 266 subpart D, are found in subsection (2)(D) of this rule.)

(C) **Recyclable Materials Used in a Manner Constituting Disposal.** In addition to the requirements in 40 CFR part 266 subpart C incorporated in this rule, a person who is marketing hazardous waste recyclable materials which would be used in a manner constituting disposal must obtain a hazardous waste resource recovery certification pursuant to 10 CSR 25-9.020.

(F) **Recyclable Materials Used for Precious Metals Recovery.** *(Reserved)*

(G) **Spent Lead-Acid Batteries Being Reclaimed.** In addition to the requirements in 40 CFR part 266 subpart G a person who reclaims materials from spent lead acid batteries shall obtain a hazardous waste resource recovery certification pursuant to 10 CSR 25-9.020.

1. Owners or operators of facilities that store spent batteries before reclaiming them are subject to the following requirements:

A. Notification requirements under section 3010 of RCRA;

B. All applicable provisions in subparts A, B (but not 40 CFR 264.13 (waste analysis)), C, D, E (but not 264.71 or

264.72 (dealing with the use of the manifest and manifest discrepancies)), and F through L of 40 CFR part 264, as incorporated by reference in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(A) through 10 CSR 25-7.264(2)(L);

C. All applicable provisions in subparts A, B (but not 40 CFR 265.13 (waste analysis)), C, D, E (but not 265.71 or 265.72 (dealing with the use of the manifest and manifest discrepancies)), and F through L of 40 CFR part 264, as incorporated by reference in 10 CSR 25-7.265(1) and modified in 10 CSR 25-7.265(2)(A) through 10 CSR 25-7.265(2)(L);

D. All applicable provisions in parts 270 and 124 of the CFR, as incorporated by reference in 10 CSR 25-7.270 and 10 CSR 25-8.124. (Note: The language printed at 10 CSR 25 7.266(2)(G)1.A.–D. above was originally incorporated by reference from 40 CFR 266.80(b), 1994 edition. The language is reprinted here because it was mistakenly omitted from subsequent editions of the *Code of Federal Regulations*.)

(H) **Hazardous Waste Burned in Boilers and Industrial Furnaces**. Additions, modifications and deletions to 40 CFR part 266 subpart H "Hazardous Waste Burned in Boilers and Industrial Furnaces" are as follow:

1. 40 CFR 266.100(b)(1) is not incorporated by reference in this rule;

2. Add the following provision to 40 CFR 266.100(c) incorporated in this rule: "The owner/operator of facilities that process hazardous waste solely for metal recovery in accordance with 40 CFR 266.100(c) shall be certified for resource recovery pursuant to 10 CSR 25-9.020";

3. In 40 CFR 266.101(c)(2) incorporated in this rule, delete "(c)(1) of" and in its place insert "(c)(1) and (d)(1) of"; and

4. 40 CFR 266.101 is amended by adding a new subsection (d) to 266.101 incorporated in this rule as follows: (d)(1) Treatment facilities. Owners/operators of permitted facilities that thermally, chemically, physically (that is, shredding, grinding, etc.) or biologically treat hazardous waste prior to burning must comply with 10 CSR 25-7.264(2)(X), and owners/operator of interim status facilities that thermally, chemically, physically (that is, shredding, grinding, etc.) or biologically treat hazardous waste prior to burning shall comply with 10 CSR 25-7.265(2)(P) and (Q). Owners/operators of permitted facilities which blend hazardous waste in tanks or containers prior to burning must comply with 10 CSR 25-7.264(2)(J)7., and owners/operators of interim status facilities that blend hazardous waste in tanks or containers prior to burning shall comply with 10 CSR 25-7.265(2)(J).

(M) **Military Munitions.** Additions, modifications and deletions to 40 CFR part 266 subpart M "Military Munitions" are:

1. Oral and written notifications required by 40 CFR 266.203(a)(1) shall be submitted to the department's emergency response coordinator at (573) 634-2436 or (573) 634-CHEM, in lieu of the director; and

2. Oral and written notifications required by 40 CFR 266.205(a)(1) shall be submitted to the department's emergency response coordinator at (573) 634-2436 or (573) 634-CHEM, in lieu of the director.

*AUTHORITY: sections 260.370, [RSMo Supp. 1997 and] 260.390 and 260.395, RSMo [1994] **2000**. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Feb. 1, 2001.*

*PUBLIC COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, the Environmental Protection Agency has determined each rule to result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. This determination is discussed in the Regulatory Impact Analysis section of the **Federal Register** notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.*

*PRIVATE COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, the Environmental Protection Agency has determined each rule to result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. This determination is discussed in the Regulatory Impact Analysis section of the **Federal Register** notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this proposed amendment will not cost private entities more than $500 in the aggregate.*

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.268 Land Disposal Restrictions. The commission is amending sections (1) and (2).

*PURPOSE: Periodically, department staff review each rule to determine whether updates, clarifications, corrections, or substantive changes are needed. Since the most recent time this rule was amended, staff members have identified various necessary corrections and clarifications to the text of this rule. The proposed corrections and clarifications are intended to ensure that the rule is both accurate and concise. Also, the rules need to be periodically updated to incorporate by reference the most current edition of the **Code of Federal Regulations** (CFR). Currently, the regulations incorporate by reference the 1997 CFR, which includes changes through July 1, 1997. One of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2000 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made*

to the corresponding parts of the federal regulations between July 1, 1997 and July 1, 2000. Department staff have reviewed the changes made to 40 CFR part 268, the corresponding part of the CFR, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the ***Code of Federal Regulations****. Portions of specific federal rules proposed for incorporation by reference in this amendment, and the corresponding* ***Federal Register*** *notice for each, are as follows: Land Disposal Restrictions Phase IV rule (63 FR 28556, May 26, 1998, part 268 only) and Hazardous Remediation Waste Management Requirements rule (63 FR 65874, November 30, 1998, part 268 only).*

(Note: Each of the federal rules listed above includes changes that affect CFR parts other than 40 CFR part 268. However, as noted above, only those changes to 40 CFR part 268 are incorporated by reference in the proposed amendment of this rule.)

(1) The regulations set forth in 40 CFR part 268, July 1, *[1997]* **2000**, are incorporated by reference. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Persons who generate or transport hazardous waste and owners/operators of hazardous waste treatment, storage and disposal facilities shall comply with this section in addition to the regulations in 40 CFR part 268. (Comment: This section has been organized so that all Missouri additions, changes or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. For example, the changes to 40 CFR part 268 subpart A are found in subsection (2)(A) of this rule.)

(A) **General.** This subsection sets forth modifications to 40 CFR part 268 subpart A incorporated by reference in section (1) of this rule.

1. 40 CFR 268.1(f)(2) is not incorporated into this rule.

2. The state cannot be delegated the authority from the United States Environmental Protection Agency (EPA) to approve extensions to effective dates of any applicable restrictions, as provided in 40 CFR 268.5 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.5 as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.5 of the federal hazardous waste management regulations.

3. The state cannot be delegated the authority from the EPA to approve exemptions from prohibitions for the disposal of a restricted hazardous waste in a particular unit(s) based upon a petition demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit(s) for as long as the wastes remain hazardous as provided in 40 CFR 268.6 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.6 as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.6 of the federal hazardous waste management regulations.

(B) 40 CFR part 268 subpart B**, Schedule for Land Disposal Prohibition and Establishment of Treatment Standards,** is not incorporated in this rule.

(C) **Prohibitions on Land Disposal.** This subsection sets forth modifications to 40 CFR part 268 subpart C incorporated by reference in section (1) of this rule.

1. The waste specific prohibitions in 40 CFR 268.31 apply to the hazardous wastes identified by EPA hazardous waste numbers F020, F023 and F027 as amended in 10 CSR 25-4.261(2)(D)1.A.–C.

2. The waste specific prohibitions in 40 CFR 268.31 apply to the EPA hazardous waste numbers F020, F021, F022, F023, F026 and F027 as amended in 10 CSR 25-4.261(2)(D)2.

3. The hazardous waste identified by the Missouri hazardous waste number MP21 in 10 CSR 25-4.261(2)(D)3. may be disposed in a landfill or surface impoundment only if that unit is in compliance with the requirements specified in 40 CFR 268.5(h)(2) as incorporated in section (1) of this rule and all other applicable requirements of 10 CSR 25-7.264(1) incorporating by reference 40 CFR part 264 and 10 CSR 25-7.265(1) incorporating by reference 40 CFR part 265.

(D) **Treatment Standards.** This subsection sets forth modifications to 40 CFR part 268 subpart D incorporated by reference in section (1) of this rule.

1. The treatment standards in 40 CFR part 268 subpart D for the hazardous wastes identified by EPA hazardous waste numbers F020, F023 and F027 apply to F020, F023 and F027 hazardous wastes as amended in 10 CSR 25-4.261(2)(D)1.A.–C.

2. The treatment standard in 40 CFR part 268 subpart D for the hazardous wastes identified by EPA hazardous waste numbers F020, F021, F022, F023, F026 and F027 apply to these listed wastes as amended in 10 CSR 25-4.261(2)(D)2.

3. The state cannot be delegated the authority from the U.S. EPA to allow the use of alternative treatment methods as provided in 40 CFR 268.42(b) incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.42(b) as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.42(b) of the federal hazardous waste management regulations.

4. The state cannot be delegated the authority from the U.S. EPA to approve variances from treatment standards as provided in 40 CFR 268.44 incorporated in this rule. The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 268.44, as incorporated in this rule. This modification does not relieve the regulated person of his/her responsibility to comply with 40 CFR 268.44 of the federal hazardous waste management regulations.

(E) Prohibitions on Storage. ***(Reserved)***

AUTHORITY: sections 260.370, [RSMo 1997] 260.390, 260,395 and 260.400, RSMo [1994] ***2000****. Original rule filed Feb. 16, 1990, effective Dec. 31, 1990. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Feb. 1, 2001.*

PUBLIC COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, even though there are some provisions that are more stringent, the Environmental Protection Agency has determined each rule to result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. This determination is discussed in the Regulatory Impact Analysis section of the ***Federal Register*** *notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.*

PRIVATE COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, the Environmental Protection Agency has determined each rule to result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. This determination is discussed in the Regulatory Impact Analysis section of the ***Federal Register*** *notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact*

Analysis.Therefore, this proposed amendment will not cost private entities more than $500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille, 319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on April 20, 2001. Faxed or E-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of Hazardous Waste Facilities

PROPOSED AMENDMENT

10 CSR 25-7.270 Missouri Administered Permit Programs: The Hazardous Waste Permit Program. The commission is amending sections (1) and (2) and removing two of the forms that follow the rule in the *Code of State Regulations*.

PURPOSE: Periodically, department staff review each rule to determine whether updates, clarifications, corrections, or substantive changes are needed. Since the most recent time this rule was amended, staff members have identified various necessary corrections and clarifications to the text of this rule. The proposed corrections and clarifications are intended to ensure that the rule is both accurate and concise. Also, this rule needs to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR), published annually on July 1. Currently, this rule incorporates by reference the 1997 CFR, which includes changes through July 1, 1997. One of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of EPA is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating the regulations to incorporate the 2000 CFR will ensure that the state regulations are current through the most recent edition of the CFR. This amendment would add to the state regulations changes made to the corresponding parts of the federal regulations between July 1, 1997 and July 1, 2000. Department staff have reviewed the changes made to 40 CFR part 270, the corresponding part of the federal regulations, during this time period and recommend that this rule be amended to incorporate by reference these changes. The amendment will update the state regulations to be consistent with the most recent edition of the* ***Code of Federal Regulations****. Portions of specific federal rules proposed for incorporation by reference in this proposed amendment, and the corresponding* ***Federal Register*** *notice for each, are as follows: Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement and Closure Process (63 FR 56710, October 22, 1998, part 270 only), Hazardous Remediation Waste Management Requirements (63 FR 65874, November 30, 1998, part 270 only), and Revised Standards for Hazardous Waste Combustors (63 FR 33782, June 19, 1998, part 270 only), and NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (64 FR 52827, September 30, 1999, part 270 only).*

Also, Senate Bill 577 was passed by the 2000 General Assembly. The bill revised or added various amounts and types of fees assessed on hazardous waste generators and hazardous waste management facilities in the state of Missouri, including the category tax, generator fee, transporter license fee, and resource recovery application fee. The bill eliminated the hazardous waste generator category tax revenue target from law and eliminates the five categories of waste based on tonnage. Both of these changes require amendment of the existing hazardous waste regulations. Other changes which require modification of the existing rule include the increase in category tax site caps for both Category A and Category B waste, establishment of a $50 minimum category tax for individual generators, and allowance of an annual 2.55% increase in the tax rates and caps. Various rules within Title 10, Division 25 of the ***Code of State Regulations*** *need to be amended to implement these statutory changes.*

(Note: Each of the federal rules listed above includes changes that affect CFR parts other than 40 CFR part 270. However, as noted above, only those changes to 40 CFR part 270 are incorporated by reference in the proposed amendment of this rule.)

(1) The regulations set forth in 40 CFR part 270, July 1, *[1997, as amended at 62 FR 64636 through 62 FR 64671, December 8, 1997]* **2000**, are incorporated by reference. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) The owner/operator of a permitted hazardous waste treatment, storage or disposal (TSD) facility shall comply with the requirements noted in this rule along with 40 CFR part 270, incorporated in this rule. (Comment: This section has been organized so that all Missouri additions, changes or deletions to any subpart of the federal regulations are noted within the corresponding subsection of this section. *[FOr]* **For** example, the changes to 40 CFR part 270 subpart A are found in subsection (2)(A) of this rule.)

(D) Changes to Permit. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 270 subpart D.

1. In addition to the requirements of 40 CFR 270.40(b), the department shall determine, in accordance with subsection (2)(H) of this rule, whether the proposed owner or operator, including an officer or management employee of the proposed owner or operator, is a person described in section 260.395.16*[.]*, RSMo and whether any of the conditions specified in section 260.395.17*[.]*, RSMo would exist if the proposed transfer were to take place.

2. "Revocation and reissuance" of a permit, as that term is used in 40 CFR part 270 incorporated in this rule shall mean the same as "total modification" as that term is used in 10 CSR 25-8.124.

3. The "termination" of a permit as used in 40 CFR part 270 incorporated in this rule shall mean the same as "revocation" of a permit as used in 10 CSR 25-8.124.

4. The director shall suspend, revoke or not renew the permit of any person to treat, store and dispose of hazardous waste if that person has had two (2) or more convictions in any court of the United States or of any state other than Missouri, or two (2) or more convictions within a Missouri court for crimes or criminal acts occurring after July 9, 1990, an element of which involves restraint of trade, price fixing, intimidation of the customers of any

person or for engaging in any other acts which may have the effect of restraining or limiting competition concerning activities regulated under Chapter 260, RSMo, the Resource Conservation and Recovery Act or similar laws of other states within any five (5)-year period. Convictions by entities which occurred prior to the purchase or acquisition by a permittee shall not be included. The permittee shall submit a written report to the department within thirty (30) days of the conviction or plea. The report shall include information explaining the charge(s) on which the permittee was convicted, the date(s) of the conviction(s), and the date(s) and charge(s) of previous convictions.

5. The owner/operator of a facility that has had his/her permit (issued under the provisions of sections 260.350—260.434, RSMo) revoked under section 260.379, RSMo may apply to the department for reinstatement of his/her permit after five (5) years has elapsed from the date of the last conviction of crimes or criminal acts as described in section 260.379, RSMo. The application must be in writing and accompanied by a reapplication fee, updated permit application and any other information the department deems necessary in order to reinstate the permit.

6. 40 CFR 270.42(j)(1) and 40 CFR 270.42(j)(2) are not incorporated in this rule.

(H) Habitual Violators. This subsection describes how the department shall determine whether a hazardous waste management facility permit applicant is an habitual violator for purposes of implementing section 260.395.16*[.]*, RSMo. This subsection applies to the issuance, reissuance or total modification of *[a]* hazardous waste management facility permit**s, excluding post-closure and corrective action only permits,** and to *[a]* hazardous waste resource recovery *[facility]* **facilities** for the activities subject to permit requirements in 10 CSR 25-7.264.

1. The department shall consider the applicant's prior operating history pursuant to section 260.395.16*[.]*, RSMo during the review of an application for a permit to operate a hazardous waste management or commercial polychlorinated biphenyl (PCB) facility. All documentation required by this subsection shall be submitted along with the information specified in 40 CFR part 270 subparts B and D incorporated by reference in section (1) of this rule and modified in subsection (2)(B) of this rule, paragraph (2)(D)1. of this rule and 10 CSR 25-13.010(9)(B).

2. Definitions. The definitions in this paragraph apply to subsection (2)(H) of this rule.

A. Facility, for purposes of calculating violations as required in paragraph (2)(H)5. of this rule, means each permitted, licensed interim status, unpermitted or unlicensed hazardous waste management or commercial PCB facility, solid waste disposal area, solid waste processing facility, certified hazardous waste resource recovery facility, or solid or hazardous waste transporter or transfer station.

B. Person, in addition to the definition in section 260.360(17) RSMo, shall mean an officer or management employee of the applicant, any officer or management employee of any corporation or business which owns an interest in the applicant**,** any officer or management employee of any business in which an interest is owned by any person, corporation or business which owns an interest in the applicant, or any officer or management employee of any corporation or business in which an interest is owned by the applicant.

C. Management employee means any individual, including a supervisor, who has the authority to serve as an agent for the employer in that the employee has the authority to perform or effectively recommend any one (1) or more of the following actions: hiring, firing, assigning or directing other employees with respect to waste management operations.

D. Violation means any one (1) or more of the following actions or an equivalent action by this or another regulatory agency or competent authority in response to any violation of the Missouri solid or hazardous waste management law, the solid or hazardous waste management law of another state or any federal law governing the management of solid waste, hazardous waste, PCB material or PCB units:

(I) Final administrative order;

(II) Final permit revocation;

(III) Final permit suspension;

(IV) Civil judgment against the applicant;

(V) Criminal conviction; or

(VI) Settlement agreement in connection with a civil action which has been filed in court.

E. Interest, as used in "owning an interest in," means having control of at least seven and one-half percent (7.5%) of an applicant or person as defined in subparagraph (2)(H)2.B. of this rule. This is determined by multiplying the percentages of ownership at each successive level and comparing this result to a seven and one-half percent (7.5%) cutoff level. For city, county, state, federal, and military-owned facilities, interest, or owning an interest in, is defined as one (1) level above or below the facility applying for the permit. (For example, a military-owned facility shall consider one (1) command level above the base on which the facility will be operated as having an interest in the facility. Likewise, the "command" shall consider itself as having an interest in all facilities within the command).

F. Habitual violator means a person who has failed the habitual violator test set out in paragraph (2)(H)5. of this rule.

3. For the purpose of this subsection, any administrative action or order, judgment or criminal conviction that has been ruled on appeal in favor of the applicant by a final decision of a competent authority will not be considered to be a violation. If the applicant has an appeal pending, the outcome of which will affect the issuance of a permit, the department shall delay issuance of the permit until a final decision is rendered.

4. The permit applicant shall submit the following information on the Habitual Violator Disclosure Statement form provided by the department**, incorporated by reference in this rule,** and published in the appendix to this rule as part of the permit application:

A. Names and addresses of all persons meeting any of the following criteria:

(I) Any person who owns an interest in the applicant;

(II) Any person in whom an interest is owned by any person who owns an interest in the applicant; and

(III) Any person in whom the applicant owns an interest;

B. A list of all solid waste management, infectious waste management, commercial PCB management and hazardous waste management permits (Part A and Part B), licenses, certifications or equivalent documents held within the last ten (10) years by the applicant or any person(s) reported under subparagraph (2)(H)4.A. of this rule, for the operation or post-closure of a solid waste management, infectious waste management, commercial PCB or hazardous waste management facility, or a combination of these, as defined in subparagraph (2)(H)2.A. of this rule, in Missouri or in the United States and for each provide the following information:

(I) Permit or identification number;

(II) Type of permit, license, certification or equivalent document and dates held;

(III) Name(s) of the person(s) to whom each permit, license, certification or equivalent document was issued;

(IV) Address or location of each facility; and

(V) Issuing agency;

C. The structure of the applicant in relation to any person(s) reported in accordance with subparagraph (2)(H)4.A.;

D. Names and addresses of the officers and management employees of any person(s) reported in accordance with subparagraph (2)(H)4.A.;

E. A list of all violations, including the identification of any action for which an appeal or final judgment is pending, as

defined in subparagraph (2)(H)2.D. of this rule cited within ten (10) years preceding the date of the permit application incurred by any persons required to be reported under subparagraph (2)(H)4.A. or (2)(H)4.D. of this rule. Each listing shall include the following information:

(I) Dates of violations;

(II) A brief description of each violation, including the type of regulatory action taken;

(III) Statutory or regulatory references, or both, to each specific statute or administrative rule that was violated;

(IV) Name and location of the facility cited; and

(V) Name and address of the issuing agency, and name and address of any competent authority with final jurisdiction regarding each violation*[.]***;**

F. A brief description of all incidents in which any person(s) reported under subparagraph (2)(H)4.A or (2)(H)4.D. of this rule have been adjudged in contempt of any court order enforcing the provisions of any state's solid or hazardous waste laws, or federal laws pertaining to hazardous waste;

G. A listing of all facilities as defined at (2)(H)2.A. owned or operated by any person required to be reported at (2)(H)4.A. or (2)(H)4.D. A brief justification as to why the facility has been included on the listing; and

H. All other information requested by the department necessary for the department to conduct an evaluation of the overall operating history of the applicant.

5. The habitual violator test.

A. A total of calculated violations shall be determined by the following formula: Number of violations (as defined in subparagraph (2)(H)2.D. of this rule), occurring within the ten (10) years preceding the date of the permit application, incurred by any person required to be reported under (2)(H)4.A. or (2)(H)4.D., divided by the total number of facilities (as defined in subparagraph (2)(H)2.A. of this rule) equals the number of calculated violations.

$$\frac{\text{Number of Violations}}{\text{Total Number of Facilities}} = \text{Calculated Violations}$$

B. If the total of calculated violations is two (2.0) or less, the applicant has passed the habitual violator test. If the total of calculated violations is greater than two (2.0), the department will notify the applicant of his/her score. Upon receipt of notification, the applicant shall have thirty (30) days to produce clear and convincing evidence to the department which demonstrates that the applicant is not an habitual violator. The department shall determine whether the evidence is clear and convincing for the purpose of the habitual violator determination. If the evidence produced by the applicant is not found to be clear and convincing, or if no evidence is produced, the department will determine the applicant to be an habitual violator, and the department will notify the applicant of permit denial. If the evidence produced by the applicant is found to be clear and convincing, the department may determine that the applicant has not failed the habitual violator test (if the department determines the applicant has failed, a notice of denial will be sent to the applicant by the department) only after the department has considered the following factors:

(I) The nature and severity of violations;

(II) Any substantial realignment of corporate structure or corporate philosophy, or both;

(III) Any significant pattern of improved environmental compliance;

(IV) The complexity of the facilities and the volume of waste handled; and

(V) Any other relevant factors presented as evidence.

6. The department shall deny a permit for failure of the applicant to provide the required information or for submission of false information.

7. The department may deny a permit for failure of the applicant to provide complete information when submission of the information is required by this rule.

8. The department shall deny a permit if the applicant has failed the habitual violator test specified in paragraph (2)(H)5. of this rule.

9. The department shall not issue a permit to an applicant or a person who has offered in person or through an agent any inducement, including any discussion of possible employment opportunities, to any department employee when that person has an application for a permit pending or a permit under review. Distribution of job announcements from an applicant to the department, which are made in the regular course of business and are intended for general dissemination, shall not be considered improper inducements.

10. The department shall deny a permit if any person(s) reported in accordance with subparagraph (2)(H)4.A. or (2)(H)4.D of this rule has been adjudged in contempt of any court order enforcing the provisions of any state's solid or hazardous waste management laws, or federal laws pertaining to hazardous waste.

11. Any person aggrieved by a permit denial under this subsection may appeal the decision by filing a petition with the Missouri Hazardous Waste Management Commission within thirty (30) days of notice of denial. The appeal hearing shall be conducted in accordance with section 260.400, RSMo and 10 CSR 25-8.124(2).

*AUTHORITY: sections 260.370, [RSMo Supp. 1997 and] 260.390 and 260.395, RSMo [1994] **2000**. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Feb. 1, 2001.*

*PUBLIC COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, the Environmental Protection Agency has determined each rule to result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. This determination is discussed in the Regulatory Impact Analysis section of the **Federal Register** notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.*

PRIVATE COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, the Environmental Protection Agency has determined each rule to result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. This determination is discussed in the Regulatory Impact Analysis section of the Federal Register notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this proposed amendment will not cost private entities more than $500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille,

319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on April 20, 2001. Faxed or E-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 8—Public Participation and General Procedural Requirements

PROPOSED AMENDMENT

10 CSR 25-8.124 Procedures for Decision Making. The commission is amending sections (1)–(3).

PURPOSE: This proposed amendment updates the incorporation by reference of 40 CFR part 124 to the July 1, 2000 edition. The amendment also makes various corrections necessary to ensure that all citations are updated and accurate.

(1) Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized so that Missouri requirements analogous to a particular lettered subpart in 40 CFR part 124 are set forth in the corresponding lettered subsection of section (1) of this rule. For example, the general program requirements in 40 CFR part 124 subpart A, with Missouri modifications, are found in subsection (1)(A) of this rule.)

(A) This subsection sets forth requirements which correspond to those requirements in 40 CFR 124 subpart A.

1. Purpose and scope. This subsection contains procedures for the review, issuance, class 3 modification, total modification, or revocation of all permits issued pursuant to sections 260.350 through 260.434, RSMo. Interim status is not a permit and is covered by specific provisions in 10 CSR 25-7.265 and 10 CSR 25-7.270. Class 1 or class 2 modifications, as defined in 40 CFR 270.41 or 40 CFR 270.43 as incorporated in 10 CSR 25-7.270, are not subject to the requirements of this subsection.

2. Definitions. In addition to the definitions given in 40 CFR 270.2 and 271.2, as incorporated in 10 CSR 25-7.270, the definitions below apply to this rule:

A. "Application" means the Environmental Protection Agency (EPA) standard national forms and the Missouri Hazardous Waste Management Facility Application Form for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in Missouri, including any approved modifications or revisions. It also includes the information required by the department under 40 CFR 270.14 through 270.29, as incorporated into 10 CSR 25-7.270;

B. "Draft permit" means a document prepared under paragraph (1)(A)6. of this rule indicating the department's tentative decision to issue, modify in whole or in part, or reissue a "permit." A denial of a request for modification, total modification or revocation, as discussed in paragraph (1)(A)5. of this rule, is not a "draft permit" and is not appealable to the commission;

C. "Formal hearing" means any contested case held under section 260.400, RSMo;

D. "Public hearing" means any hearing on a preliminary decision at which any member of the public is invited to give oral or written comments;

E. "Revocation" means the termination of a permit;

F. "Schedule of compliance" means a schedule of remedial measures in a final permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with sections 260.350 through 260.434, RSMo;

G. "Total modification" means the revocation and reissuance of a permit;

H. "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity; and

I. "Variance" means any variation from the Missouri Hazardous Waste Management Law as defined in section 260.405, RSMo.

3. Application for a permit.

A. Any person who requires a permit shall complete, sign, and submit to the department an application for each permit required under 40 CFR 270.1 as incorporated in 10 CSR 25-7.270. Applications are not required for permits by rule per 40 CFR 270.60, as incorporated in 10 CSR 25-7.270. The department shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. Permit applications shall comply with the signature and certification requirements of 40 CFR 270.11, as incorporated in 10 CSR 25-7.270.

B. The department shall review for completeness every application for a permit. Each application for a permit submitted should be reviewed for completeness by the department within forty-five (45) days of its receipt. Upon completing the review, the department will notify the applicant in writing whether the application is complete. If the application is incomplete, the department will list the information necessary to make the application complete. When the application is for an existing facility, the department will specify in the notice of deficiency a date for submitting the necessary information. The department will notify the applicant that the application is complete upon receiving the required information. After the application is completed, the department may request additional information from an applicant, but only as necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

C. If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied, and enforcement actions may be taken under the applicable statutory provisions of sections 260.350 through 260.434, RSMo.

D. The effective date of an application is the date the department notifies the applicant that the application is complete, as provided in subparagraph (1)(A)3.B. of this rule.

E. For each application the department will, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the department intends to:

(I) Prepare a draft permit;

(II) Give public notice;

(III) Complete the public comment period, including any public hearing; and

(IV) Issue a final permit.

4. *Reserved.*

5. Modification, total modification, or revocation of permits.

A. Permits may be modified in part or in total, or revoked, either at the request of the permittee or of any interested person or

upon the department's initiative. However, permits may only be modified or revoked for the reasons specified in 40 CFR 270.41 or 40 CFR 270.43, as incorporated in 10 CSR 25-7.270. All requests shall be in writing and shall contain facts and reasons supporting the request.

B. If the department decides the request is not justified, a brief written response giving a reason for the decision shall be sent to the person requesting the modification. Denial of a request for revocation, modification or total modification is not appealable to the commission.

C. Tentative decision to modify.

(I) If the department tentatively decides to modify a permit in total or in part, a draft permit will be prepared according to paragraph (1)(A)6. of this rule incorporating the proposed changes. The department may request additional information and, in the case of a permit modification, may require the submission of an updated application. In the case of a total modification, the department will require the submission of a new application.

(II) In a permit modification under this paragraph, only those conditions to be modified shall be reopened when a draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is totally modified under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any total modification, the permittee shall comply with all conditions of the existing permit until a new, final permit is reissued.

(III) "Class 1 and 2 modifications" as defined in 40 CFR 270.42(a) and (b), as incorporated in 10 CSR 25-7.270, are not subject to the requirements of this section.

D. If the department tentatively decides to revoke a permit, the department will issue a notice and follow the requirements of paragraph (1)(A)15. of this rule.

6. Draft permits.

A. Once the technical review of an application is completed, the department shall tentatively decide whether to prepare a draft permit, or to deny the application.

B. If the department decides to deny the permit application, a notice of denial shall be issued. A notice of denial is subject to the same procedures as any final permit decision prepared under paragraph (1)(A)15. of this rule.

C. If the department decides to prepare a draft permit, the department will prepare a draft permit that contains the following information:

(I) All conditions under 40 CFR 270.30 and 270.32, as incorporated in 10 CSR 25-7.270;

(II) All compliance schedules under 40 CFR 270.33, as incorporated in 10 CSR 25-7.270;

(III) All monitoring requirements under 40 CFR 270.31, as incorporated in 10 CSR 25-7.270; and

(IV) Standards for treatment, storage, and/or disposal and other permit conditions under 40 CFR 270.30, as incorporated in 10 CSR 25-7.270.

D. All draft permits prepared under this paragraph will be accompanied by a fact sheet per paragraph (1)(A)8. of this rule, and made available for public comment per paragraph (1)(A)*[11.]***10.** of this rule, issue a final decision per paragraph (1)(A)15. of this rule and respond to comments per paragraph (1)(A)17. of this rule. An appeal may be filed under section 260.395.11, and Chapter 536, RSMo and section (2) of this rule.

7. *Reserved.*

8. Fact sheet.

A. A fact sheet will be prepared for every draft permit. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The department will send this fact sheet to the applicant and to any person who requests a copy.

B. The fact sheet shall include, when applicable:

(I) A brief description of the type of facility or activity which is the subject of the draft permit;

(II) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(III) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(IV) A description of the procedures for reaching a final decision on the draft permit including:

(a) The beginning and ending dates of the comment period under paragraph (1)(A)10. of this rule and the address where comments will be received;

(b) Procedures for requesting a hearing and the nature of that hearing; and

(c) Any other procedures by which the public may participate in the final decision; and

(V) Name and telephone number of a person to contact for additional information.

9. *Reserved.*

10. Public notice of permit actions and public comment period.

A. Scope.

(I) The department will give public notice that a draft permit has been prepared.

(II) No public notice is required when a request for permit modification, total modification, or revocation is denied. Written notice of that denial will be given to the requester and to the permittee.

B. Timing.

(I) Public notice of the preparation of a draft permit required under subparagraph (1)(A)10.A. of this rule will allow at least forty-five (45) days for public comment.

(II) Public notice of a public hearing will be given at least thirty (30) days before the hearing.

C. Methods. Public notice of a draft permit or intent to deny described in subparagraph (1)(A)10.A. of this rule will be given by the following methods:

(I) By mailing a copy of a notice to the following persons:

(a) The applicant;

(b) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, natural resource management plans, state historic preservation officers, including any affected states (Indian tribes); and

(c) Persons on a mailing list maintained by the facility which is developed by:

I. Including those who request in writing to be on the list;

II. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

III. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. The facility shall be responsible for maintaining and updating the mailing list. The department may require the facility to update the mailing list from time-to-time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request;

IV. Including all record owners of real property adjacent to the facility;

V. Including, for a post-closure disposal facility, all record owners of real property which overlie any known plume of contamination originating from the facility; and

VI. Including, for an operating disposal facility, all record owners of real property located within one (1) mile of the outer boundaries of the proposed facility;

(d) A copy of the notice shall also be sent to any unit of local government having jurisdiction over the area where the facility is proposed;

(e) The department will mail a copy of the legal notice, fact sheet and draft permit to the location where the permit application was placed for public review under subpart (1)(B)2.B.(II)(d) of this rule;

(II) Other publication.

(a) Publication of a legal notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(b) For any active land disposal facility permit, a news release to the media serving the area where the facility is located; and

(III) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents. All public notices issued under this subparagraph shall contain the following minimum information:

(I) Name and address of the department;

(II) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(III) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(IV) Name, address and telephone number of an agency contact person for further information, which may include copies of the draft permit, fact sheet, and the application;

(V) A brief description of the comment procedures, the time and place of any hearing that will be held, a statement of procedures for requesting a hearing (unless a hearing has already been scheduled) and any other procedures by which the public may participate in the final permit decision; and

(VI) Any additional information considered necessary or proper by the department.

11. Public comments and requests for public hearings. During the public comment period provided under paragraph (1)(A)10. of this rule, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised in the hearing. All comments shall be considered by the department in making the final decision and shall be answered as provided in paragraph (1)(A)17. of this rule.

12. Public hearings.

A. The department will hold a public hearing whenever a written request for a hearing is received within forty-five (45) days of the public notice. Whenever the department issues, reviews every five (5) years or renews an active hazardous waste land disposal facility permit, it shall hold a public hearing.

B. The department may hold a public hearing whenever there is significant public interest in a draft permit(s), whenever one or more issues involved in the permit decision could be clarified or at its discretion.

C. Whenever possible, the department will schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.

D. Public notice of the hearing will be given as specified in paragraph (1)(A)10. of this rule.

E. Any person may submit comments or data concerning the draft permit. The department will accept oral comments during the hearing. Reasonable limits may be set on the time allowed for oral comments. Any person who cannot present oral comments due to time limitations will be provided an opportunity to present written comments. The public comment period under paragraph (1)(A)10. of this rule will automatically be extended to the close of any public hearing if the hearing is held later than forty-five (45) days after the start of the public comment period.

F. A tape recording or written transcript of the hearing shall be made available to the public.

13. Obligation to raise issues and provide information during the public comment period. All persons, including applicants, who believe any condition of a draft permit is inappropriate shall raise all ascertainable issues and submit all available arguments supporting their position by the close of the public comment period under paragraph (1)(A)10. of this rule. Any supporting materials that are submitted shall be included in full and may not be incorporated by reference, unless they consist of state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials available to the department upon the department's request.

14. *Reserved.*

15. Issuance and effective date of permit.

A. For purposes of this paragraph, a final permit decision means the issuance, denial, modification, total modification, or revocation of a permit. After the close of the public comment period described in paragraph (1)(A)10. of this rule on a draft permit, the department will issue a final permit decision. The department will notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice will include reference to the procedures for appealing a decision. For active land disposal facility permits, the department also will send a news release announcing the final decision to the news media serving the area where the facility is located.

B. A final permit revocation decision will become effective thirty (30) days after the decision. A final permit issuance or denial will become effective on the date the decision is signed by the department.

16. *Reserved.*

17. Response to comments.

A. At the same time that any final permit decision is issued under paragraph (1)(A)15. of this rule, the department will issue a response to comments. This response shall:

(I) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(II) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

B. The response to comments will be available to the public.

18. *Reserved.*

19. *Reserved.*

20. *Reserved.*

(2) Appeal of Final Decision.

(B) The applicant or any aggrieved person may appeal to the commission a final permit decision, a closure *[ban]* **plan** approval, a post-closure plan approval or any condition of a final permit, closure plan approval or post-closure plan approval by filing a notice of appeal with the commission within thirty (30) days of the decision. The notice of appeal shall set forth the grounds for the appeal. The appeal shall be limited to issues raised during the public comment period and not resolved in the final permit or approval to the applicant's or aggrieved person's satisfaction. Issues included in the notice of appeal outside those raised during the public comment period shall not be considered; however, the commission may consider an appeal of a condition in the final permit that was not part of the draft permit and therefore could not have been commented upon previously.

(3) Transporter License.

(A) Issuance or Denial of a Transporter License.

1. Upon receipt of a complete application for a transporter license, the department will determine whether the license conforms to the requirements of sections 260.385*[, 260.395.1–260.395.6 and 260.395.16,]* **and 260.395,** RSMo and 10 CSR 25-6, and serve on the applicant its decision issuing, with or without conditions, or denying the license. If the license is denied, the department will specify the reasons for the denial. No license will be issued until the fees required by section 260.395.1, RSMo have been paid.

2. The procedure for appealing a license, a denial of a license or any condition of a license shall be the same as the procedure for permit appeals under section (2) of this rule.

AUTHORITY: sections 260.370, [and RSMo Supp. 1997 and] 260.400, [and] 260.405 ***and*** *260.437 RSMo [1994]* ***2000****. Original rule filed June 1, 1998, effective Jan. 30, 1999. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Feb. 1, 2001.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than $500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille, 319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on April 20, 2001. Faxed or E-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 9—Resource Recovery

PROPOSED AMENDMENT

10 CSR 25-9.020 Hazardous Waste Resource Recovery Processes. The commission is amending sections (3) and (4) and adding a new section (5).

PURPOSE: Section 260.395.14, RSMo 2000 requires any person, before constructing, altering or operating a resource recovery facility in the state of Missouri, to apply for a certification from the Missouri Department of Natural Resources. Senate Bill 577, recently passed by the 2000 Missouri General Assembly, increased the application fee to obtain a resource recovery certificate, both for facilities that accept waste from off-site and facilities that only recycle waste on-site. Because various portions of this rule reference the applicable application fee, changes to the rule text are necessary in order to be consistent with the statutory change. The bill also added a provision to section 260.395, RSMo that requires applicants to pay to the Department of Natural Resources all reasonable costs, as determined by the Missouri Hazardous Waste Management Commission, incurred by the department in reviewing the application for conformance with applicable laws, rules, and standard engineering principles and practices. The commission has previously defined the activities associated with engineering review of permit applications that are considered reasonable, and therefore reimbursable. These costs are currently defined in 10 CSR 25-12.010(3)(D). Because the costs associated with engineering review of resource recovery certification applications are similar to those associated with review of permit applications, the proposed amendment to 10 CSR 25-12.010 expands the determination to include these costs. The proposed amendment to this rule references the commission's previous determination.

(3) The owner/operator of a facility which uses, reuses, legitimately recycles or reclaims hazardous waste and is not exempted from certification requirements under section (2) of this rule shall apply for and operate in accordance with a resource recovery facility certification issued by the department.

(D) **The owner/operator of a certified resource recovery facility shall submit a complete application for renewal of certification or a notification of intent to cease operations and close at least ninety (90) days prior to expiration of the prior certification. The owner/operator of a proposed non-exempt resource recovery facility shall submit a complete application at least ninety (90) days prior to construction and operation of the facility.** Upon receipt of a complete application, the department will have ninety (90) days to issue a certificate for operation or to reject the application for stated cause. The resource recovery certification may be issued for no longer than two (2) years. The applicant may appeal the decision in accordance with 10 CSR 25-8. Operation of the resource recovery facility shall not occur until the resource recovery certification has been issued.

(4) The applicant for a resource recovery certificate shall submit a fee with the application **per 10 CSR 25-12.010(3)(F)**. The fee shall cover each application for issuance or renewal and is not refundable. If the certificate is issued, the fee shall cover the full term of the original or renewal certificate. *[The applicant shall pay the following fee in accordance with 10 CSR 25-12: If the application is for a resource recovery facility which legitimately reclaims or recycles hazardous waste for reuse on-site and does not accept waste from off-site, the fee shall be one hundred dollars ($100); or, if the application is for a resource recovery facility which legitimately reclaims or recycles hazardous waste and accepts waste from off-site, the fee shall be five hundred dollars ($500).]*

(5) The applicant for a new or renewal resource recovery certificate shall pay all applicable costs for engineering and geological review per 10 CSR 25-12.010(3)(D).

AUTHORITY: sections 260.370, ***260.395*** *and 260.437, RSMo [1994]* ***2000****. Original rule filed Feb. 16, 1990, effective Dec. 31, 1990. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Feb. 1, 2001.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE COST: This proposed amendment is estimated to cost private entities $29,980.86 in the next fiscal year and annually thereafter. A detailed fiscal note with the relevant cost information has been filed with the secretary of state.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille,

319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

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Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Resource Recovery

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 25-9.020 Hazardous Waste Resource Recovery Processes

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:[1]
39	Certified Resource Recovery Facilities	$29,980.86

[1]This is an annualized cost. Because the duration of this rule cannot be estimated, an annualized aggregate cost is provided.

III. WORKSHEET

- New Regulations Provide For Engineering Review Cost Recovery For Resource Recovery Certification Applications And Modification Requests
- Total Engineering Hours Coded To Resource Recovery For The Last 2 Years : 1239
- Estimated Percentage Of Coded Time Due To Non-Billable Activities : 10%
- Average Billable Hours Per Facility (2 Years) = [1239 x (.90)] / 39 = 28 Hours
- Average Annual Billable Hours Per Facility = 14 Hours
- Engineering Review Hourly Cost Basis = $54.91/Hour
- Average Annual Cost Per Facility (Review Time) = 14 Hours x $54.91/Hour
  = $768.74
- **Estimated increase in annual cost for all facilities = $768.74 x 39**
  = $29,980.86

IV. ASSUMPTIONS

1. A breakdown of all time coded to 3277 (resource recovery) in FY98 and FY99, given by query of the department's time tracking computer program, was used to determine the total amount of time for all resource recovery facilities to be reviewed over the 2 year renewal period; 660 Hours in FY98 and 579 Hours in FY99 were coded to resource recovery review.

2. Non billable, coded, resource recovery hours will include: processing exemption letters, processing requests for

information from facilities and the public, resource recovery policy development, enforcement actions and inspections, resource recovery procedure updates, and other time spent on resource recovery issues not attributable to a specific application, modification, or site.

3. It is assumed that, because current regulations do not provide for engineering review cost recovery, those costs are not billable and not recoverable. Therefore, they are not included in the Total Annualized Cost per facility under the current regulations.

4. Engineering review hourly cost was calculated as follows:

    - Environmental Engineer II hourly cost calculation:
    - Environmental Engineer II salary =$3807/month
    - Adjusted annual cost =(3807)(12)(2.5) = $114210
    - Hourly cost = $114210 / 2080 = $54.91

5. Personnel costs for merit employees are calculated using step "O" of the fiscal year 2000 merit pay plan produced by the Missouri Commission on Management and Productivity (COMAP). The monthly salary of the Environmental Engineer II position responsible for processing Resource Recovery Certification applications was multiplied by twelve to obtain an annual cost. The annual cost is multiplied by a factor of 2.5 to account for fringe benefits and equipment and expenses. Hourly costs are found by dividing this adjusted annual costs by 2080 Full-Time Equivalent (FTE).

6. Because the duration of this rule cannot be estimated, an annualized aggregate cost is provided. The annualized aggregate cost is expected to remain constant for the duration of the rule.

7. Fiscal year 2000 dollars are used to estimate the costs, and, since inflation cannot be accurately predicted, no adjustments are made for inflation.

8. Estimates assume a constant regulatory context which requires no reporting or standards beyond those currently required.

9. Estimates assume that there will be no new or sudden changes in technology which would influence costs.

10. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good-faith estimates and averages using the department's professional judgement.

11. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 10—Abandoned or Uncontrolled Hazardous Waste Disposal Sites

PROPOSED AMENDMENT

10 CSR 25-10.010 Abandoned or Uncontrolled Hazardous Waste Disposal Sites. The commission is amending sections (1), (2) and (7).

PURPOSE: Prior to publication of the department's annual report on Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites in Missouri, all listed owners of registered sites are notified of their site's registry classification, as proposed for publication. The rule currently requires that appeals of site classifications proposed for publication in the Annual Report must be made within 30 days of the date the classification notification letter is mailed. This section of the rule relates only to procedures for verifying a site's classification, prior to publication of the classification in the Annual Report. Once the 30 days have passed, owners of sites on the Registry may still appeal their site classification at any time. The 30-day time limit is solely for the purpose of appealing the classification that will be published in the Annual Report. If the site classification to be published in the Annual Report is not appealed within 30 days, or approximately September 30, of the mailing of those letters, the site is listed at the assigned classification in the upcoming Annual Report. The 30-day time limit allows the necessary time to resolve a classification appeal prior to the publication of the report in December. However, as noted above, once the 30-day time limit has expired, an owner may still appeal the site classification at any time of the year. The only effect the expiration of the 30 days has is that the appeal will not affect the classification to be published in the Annual Report. Because the expiration of this 30-day time limit does not affect an owner's right to appeal his site classification, certified letters are not necessary.

Therefore, the department proposes to delete the requirement to use certified mail to send out the classification notification letters prior to publication of the Annual Registry Report. Mailing these notification letters by certified mail is considered an unnecessary cost in staff time and fiscal resources. The right to appeal a classification is not affected, so certified mail is not necessary. Various changes are also necessary to the portion of the rule that specifies the requirements for Registry consent agreements. These changes codify current practice and policy regarding the content of consent agreements, including responsibilities for completing any site investigation and remedial action, for obtaining departmental approval before implementation of remedial action, for addressing off-site migration, and for reimbursing the department's response and/or oversight costs.

(1) Proposing Sites for the Registry.

(A) When the department proposes to list a site on the registry, it will notify each owner of record of the site of the proposal. Notice shall be given by certified mail directed to the last known address of the person being notified.

1. The notice shall contain a general description of the site proposed to be listed on the registry, a general description of the nature of the waste found at the site and a statement that the owner or operator may request a hearing before the commission in accordance with section (2) of this rule regarding the proposal by filing a notice of appeal by certified mail with the director within thirty (30) days of the notice.

[2. The department, at its option, may include with the notice of the proposal to list a site on the registry, the classification of the site pursuant to section 260.445.3, RSMo. If the notice contains the site classification, the notice shall also state that the owner or operator may request a hearing before the commission regarding the classification by filing a notice of appeal in the manner and within the time specified in paragraph (1)(A)1. of this rule.]

(2) Appeals to the Commission.

(E) Opportunity to Allow Responsible Party *[Clean Ups]* **Cleanups**.

1. Within thirty (30) days of notice under section (1) of this rule, a responsible party may commit in writing to investigate the site and implement an approved remedial action. *[A consent agreement must be signed by the department and the responsible party which establishes a schedule and specific responsibilities for completion of any site investigation and remedial action.]*

2. **A** *[C]*consent agreement*[s]* developed under this section must *[contain a commitment for the responsible party to obtain departmental approval before implementation of any remedial action.]* **be signed by the department and the responsible party and must contain, but not be limited to, the following commitments:**

A. A schedule and specific responsibilities for completion of any site investigation and remedial action;

B. The responsible party will obtain departmental approval before implementation of any remedial action;

C. The responsible party shall be responsible for off-site migration;

D. The responsible party shall reimburse the department for all response and oversight costs incurred by the department.

3. In the case that either party to the consent agreement refuses or fails to carry out the terms of the agreement, either party may request a hearing before the commission on the matter to be handled as an appeal to the commission under section (2) of this rule.

4. Remedial actions undertaken at a site according to terms of a consent agreement developed under this section must include all necessary actions to achieve a classification pursuant to paragraph (7)(B)5. of this rule in order for the department to withdraw its proposed listing of the site on the registry.

5. When the department determines that a remedial action results in a site receiving a classification of 1, 2, 3, or 4 pursuant to subsection (7)(B) of this rule, the department will notify each owner and the party to the consent agreement developed under this section. This notification will be according to procedures established in section (1) of this rule and will include the classification of the site pursuant to subsection (7)(B) of this rule.

(7) Site Assessment.

(B) Classifications and Criteria for Determining Site Classifications.

1. Class 1—sites that are causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment. Sites present a high risk to public health and/or the environment, and the following criteria for determining this site classification shall apply:

A. Hazardous waste on the site is highly concentrated and readily accessible by ingestion and/or inhalation and/or dermal contact; and/or

B. Immediate remediation or action is required to prevent irreparable damage to public health and/or the environment.

2. Class 2—sites that are a significant threat to the environment. Sites present a moderate risk to public health and/or the environment, and the following criteria for determining this site classification shall apply:

A. Hazardous waste on the site exhibits one (1) or more of the following:

(I) Moderately concentrated and accessible by ingestion and/or inhalation and/or dermal contact;

(II) Highly concentrated, but not openly accessible due to the nature of the site and the contamination and/or any remedial action taken; and

(III) Likely to adversely impact human health and/or the environment if not treated.

B. Remediation or action is required to reduce adverse impacts to public health and/or the environment.

3. Class 3—sites that do not present a significant threat to the public health or environment. Sites present a low risk to public health and/or the environment, and the following criteria for determining this site classification shall apply:

A. Hazardous waste on the site exhibits one (1) or more of the following:

(I) Low to moderately concentrated and are not readily accessible by ingestion and/or inhalation and/or dermal contact due to the nature of the site and the contamination and/or any remedial action taken; and

(II) Exceeding established regulatory guidelines; however, are not significantly impacting public health and/or the environment at this time.

B. Action may be deferred; however, hazardous waste remains on-site, and remediation is needed.

4. Class 4—sites that have been properly closed. All department required response actions have been implemented on the sites, and the response actions have been approved by the department. The following criteria for determining this site classification shall apply:

A. Hazardous waste remains on-site; and

B. The site requires continued treatment, containment, or other operation and maintenance until it meets established regulatory guidelines.

5. Class 5—sites that have been properly closed with no evidence of present or potential adverse impact. Sites proposed for the registry or on the registry meet all department requirements and regulatory guidelines for a residential or industrial cleanup as defined in subparagraphs (7)(B)5.A. and B. of this rule.

A. Residential cleanup.

(I) A site is remediated to standards determined on a site-specific basis by the department in consultation with the Missouri Department of Health, considering toxicity and typical residential exposure factors which may include years of exposure, body weight, exposure dose and/or other risk factors.

(II) A site is cleaned up for the hazardous wastes identified and remediated, and the site is not placed on the registry, or may be removed from the registry. A letter may be sent to the landowner authorizing residential use of the site. The county recorder of deeds shall be notified of the removal of a site from the registry.

B. Industrial/commercial cleanup.

(I) A site is—

(a) Remediated to standards determined on a site-specific basis by a method approved by the department in consultation with the Department of Health which considers toxicity and typical industrial exposure factors which may include years of exposure, body weight, exposure dose and/or other risk factors;

(b) Used only for industrial or commercial purposes as long as any remaining hazardous wastes exceed the department's residential or any-use standards; and

(c) Not a source for off-site releases of contaminants in concentrations exceeding residential or any-use standards for any media.

(II) A consent agreement**, as defined in subsection (2)(E),** shall be signed by the department and the property owner which establishes a schedule and specific responsibilities for completion of a site investigation and remedial action.

(a) The property owner shall—

I. Comply with the terms of the consent agreement; and

II. Continue to comply with the terms of the consent agreement.

(b) The consent agreement shall contain the requirement that the property owner file a deed restriction with the recorder of deeds in the county in which the site is located. One (1) or more of the following deed restrictions shall be filed so as to appear on the chain of title for the site, along with any other restrictions specific to the site:

I. Prohibiting the construction or placement of potable water wells on the property without the approval of the Missouri Department of Natural Resources;

II. Prohibiting excavation or construction work in areas of known soil contamination without the approval of the Missouri Department of Natural Resources;

III. Prohibiting the disruption or alteration of a cap, containment system or barrier in an area of known contamination without the approval of the Missouri Department of Natural Resources; and/or

IV. Prohibiting the property from being used for anything but an industrial use.

(III) The deed restriction and consent agreement are required before a site is withdrawn from the registry, or before a proposal to list a site is withdrawn.

(IV) The property owner must provide the department with evidence that the property owner has notified the political subdivision exercising jurisdiction over land use planning of the proposed industrial/commercial cleanup level classification.

(C) When the department proposes to initially classify or reclassify a site on the registry in accordance with criteria contained in subsection (7)(B) of this rule, it will notify each owner of record of the proposed site classification. *[Notice shall be given by certified mail directed to the last known address of the person being notified.]*

1. The notice shall contain the classification being proposed by the site assessment committee and a statement that the owner or operator may petition the director of the department in accordance with subsection (5)(A) of this rule and appeal the director's final decision in accordance with section 260.460, RSMo and this rule.

2. If an owner or operator does not file a notice of appeal within thirty (30) days of the mailing date of the notice specified in paragraph (7)(C)1. of this rule, the department will classify the site on the registry as proposed.

[2.] **3.** No registry classification or reclassification may be made until the notice set forth in subsection (7)(C) of this rule has been mailed, and any appeal to the commission in accordance with section (2) of this rule has been finally resolved. *[If an owner or operator does not file a notice of appeal within thirty (30) days of the mailing date of the notice specified in paragraph (7)(C)1. of this rule, the department will classify the site on the registry as proposed.]*

[3.] **4.** Pending petitions or appeals of registered sites pursuant to subsection (5)(A) of this rule will not prevent the site from being listed in the annual report. Appeals to the commission under subsection (5)(A) of this rule will be noted in the annual report.

AUTHORITY: sections 260.370 [and], 260.437, ***260.440, 260.445, and 260.455,*** *RSMo [Supp. 1997]* ***2000****. Original rule filed Aug. 14, 1984, effective March 1, 1985. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Feb. 1, 2001.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than $500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille, 319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on April 20, 2001. Faxed or E-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 11—Used Oil

PROPOSED AMENDMENT

10 CSR 25-11.279 Recycled Used Oil Management Standards. The commission is amending sections (1) and (2).

PURPOSE: Periodically, department staff review each rule to determine whether updates, clarifications, corrections, or substantive changes are needed. Since the most recent time this rule was amended, staff members have identified various necessary corrections and clarifications to the text of this rule. The proposed corrections and clarifications are intended to ensure that the rule is both accurate and concise. Also, this rule needs to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR), published annually on July 1. Currently, this rule incorporates by reference the 1997 CFR, which includes changes through July 1, 1997. One of the requirements to maintain the ability of the Missouri Department of Natural Resources to implement the Resource Conservation and Recovery Act in Missouri in lieu of the Environmental Protection Agency is that the state regulations must regularly be updated to include recent changes to the federal regulations. Updating this rule to incorporate by reference the 2000 edition of the CFR will ensure that this rule is both consistent with, and current through, the most recent edition of the CFR. This amendment would add to the rule all changes made to 40 CFR part 279, the corresponding part of the federal regulations, between July 1, 1997 and July 1, 2000. Department staff have reviewed the changes made to this part of the CFR during this time period and recommend that this rule be amended to incorporate by reference these changes.*

(1) The regulations set forth in 40 CFR parts 110.1, 112 and 279, July 1, *[1997]* **2000**, are incorporated by reference. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) This section sets forth specific modification to 40 CFR part 279, incorporated by reference in section (1) of this rule. A person managing used oil shall comply with this section in addition to the regulations in 40 CFR part 279. In the case of contradictory or conflicting requirements, the more stringent shall control. (Comment: This section has been organized so that Missouri additions, changes or deletions to a particular lettered subpart in 40 CFR part 279 are noted in the corresponding lettered subsection of this section. For example, changes to 40 CFR part 279 subpart A are found in subsection (2)(A) of this rule.)

(B) Applicability. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart B.

1. 40 CFR 279.10(b)(2) is not incorporated in this rule.

2. Mixtures of used oil and hazardous waste are subject to the following:

A. Except as provided for in subparagraphs (2)(B)2.B. and C. of this rule, used oil that is mixed with hazardous waste shall be handled according to 10 CSR 25-3, 4, 5, 6, 7, 8, 9 and 13;

B. Used oil that is mixed with hazardous waste that solely exhibits the characteristic of ignitability or is mixed with a listed hazardous waste that is listed solely because it exhibits the characteristic of ignitability shall be managed as a used oil; provided that the subsequent mixture does not exhibit the characteristic of ignitability;

C. A generator who generates and accumulates hazardous waste in amounts less than those described in 10 CSR 25-3.260(1)(A)*[23]***25**. shall handle mixtures of used oil with hazardous waste as a used oil.

3. In 40 CFR 279.10(f), incorporated by reference in this rule, delete "subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater)" and in its place substitute "regulated under Chapter 644, RSMo, the Missouri Clean Water Law."

4. In addition to the prohibitions of 40 CFR 279.12, incorporated by reference in this rule, the following shall apply:

A. All used oil is prohibited from disposal in a solid waste disposal area; and

B. Used oil shall not be disposed of into the environment or cause a public nuisance.

(E) Standards for Used Oil Transporters and Transfer Facilities. This subsection sets forth requirements which modify or add to those requirements in 40 CFR part 279 subpart E.

1. In addition to the requirements of 40 CFR 279.42, transporters of used oil shall be licensed in accordance with the requirements in 10 CSR 25-6.263.

2. In addition to the requirements of 40 CFR 279.45(d)–(f), incorporated by reference in this rule, secondary containment systems shall have a capacity equal to or greater than ten percent (10%) of the containerized waste volume, or the volume of the largest container, whichever is greater. (Note: Facilities that store used oil in tanks near navigable waters may be subject to the spill prevention, control and counter-measures standards found in 40 CFR 112.

3. In addition to the requirements of 40 CFR 279.46, incorporated by reference in this rule, the following shall apply:

A. The information described in 40 CFR 279.46(a)–(c), incorporated by reference in this rule shall be recorded on form MO 780-1449(11-93), the Transporter's Used Oil Shipment Record, **incorporated by reference in this rule and** provided by the department; and

B. All transporters who transport one-thousand (1000) gallons or more used oil in a reporting period must submit the information described in 40 CFR 279.46(a) and (b) to the director of the department's Hazardous Waste Program annually, on form MO 780-1555, the Transporter Annual Report Form, **incorporated by reference in this rule and** provided by the department. The form shall include information for a reporting period form July 1 to June 30, and shall be submitted by August 31 following the reporting period.

4. In addition to the requirements of 40 CFR 279.46 incorporated in this rule, transporters of used oil operating a transfer

facility shall maintain an inventory log to assure the off-site shipment of used of within thirty-five (35) days.

5. In addition to the requirements of 40 CFR 279.46(d), incorporated in this rule, the inventory log described in paragraph (2)(E)4. of this rule shall be maintained for at least three (3) years, or longer if required by the department.

6. In addition to the requirement of 40 CFR 279.47, used oil transporters who operate a transfer facility shall close the transfer facility in accordance with 10 CSR 25-6.263(2)(A)10.G.

7. Used oil transfer facilities shall keep all tanks and containers that are exposed to rainfall closed at all times except when adding or removing used oil.

8. For shipments involving rail transportation, the initial rail transporter shall forward copies of the shipping record to—

A. The next nonrail transporter, if any;

B. The receiving facility if the shipment is delivered by rail; or

C. The last rail transporter handling the used oil in the United States.

*AUTHORITY: section 260.370, [RSMo Supp. 1997] **2000**. Original rule filed Jan. 5, 1994, effective Aug. 28, 1994. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Feb. 1, 2001.*

*PUBLIC COST: None of the federal rule changes proposed for incorporation by reference into this rule are expected to result in increased costs, either to implementing agencies or to the regulated community. The determination of the Environmental Protection Agency regarding implementation costs is discussed in the Regulatory Impact Analysis section of the **Federal Register** notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.*

*PRIVATE COST: None of the federal rule changes proposed for incorporation by reference into this rule are expected to result in increased costs, either to implementing agencies or to the regulated community. The determination of the Environmental Protection Agency regarding implementation costs is discussed in the Regulatory Impact Analysis section of the **Federal Register** notice corresponding to adoption of the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this proposed amendment will not cost private entities more than $500 in the aggregate.*

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille, 319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on April 20, 2001. Faxed or E-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 12—Hazardous Waste Fees and Taxes

PROPOSED AMENDMENT

10 CSR 25-12.010 Fees and Taxes. The commission is amending sections (1) and (3), adding a new section (4) and renumbering the remaining section.

PURPOSE: Senate Bill 577 was passed by the 2000 General Assembly. The bill revised or added various amounts and types of fees assessed on hazardous waste generators and hazardous waste management facilities in the state of Missouri, including the category tax, generator fee, transporter license fee, and resource recovery application fee. The bill eliminated the hazardous waste generator category tax revenue target from law and also eliminated the five categories of waste based on tonnage. Both of these changes are included in the proposed amendment. Other changes made by Senate Bill 577 which require modification of the existing rule include an increase in category tax site caps for both Category A and Category B waste, establishment of a $50 minimum category tax for individual generators, and allowance of an annual 2.55% increase in the tax rates and caps. The statutory changes are found in sections 260.479.1 and 260.479.2, RSMo 2000. The bill also authorizes the department to recover resource recovery certificate engineering review costs as well as corrective action costs at hazardous waste management facilities. Both of these statutory changes require an amendment of the existing rule text. Each of the amendments identified above is necessary in order to implement the changes to the Hazardous Waste Management Law contained in Senate Bill 577. Therefore, the existing rule is proposed for amendment in order to implement these statutory changes.

(1) Hazardous Waste Fees and Taxes Applicable to Generators of Hazardous Waste.

(A) A generator of hazardous waste shall pay the following fee as required by subdivision 260.380.1(10), RSMo. A generator as defined in 10 CSR 25-5.262, unless paragraph (1)(A)1., 2. or 3. of this rule provides otherwise, shall pay a fee of one dollar per ton ($1/ton) of hazardous waste generated. This fee shall be payable to the state of Missouri. *[The fee shall be used solely for the administrative costs of the Hazardous Waste Program.]* The fee shall be paid in accordance with the following procedures: The fee shall be paid on an annual basis on or before January 1 of each year. The fee shall equal the product of one dollar per ton ($1/ton) multiplied by the amount of *[metric]* tons of hazardous waste generated during the twelve (12)-month period ending June 30 of the calendar year immediately preceding January 1 of the calendar year in which payment is due. (For example, a generator would be billed in December 1992 for waste produced during the period July 1, 1991 through June 30, 1992.) The fee is applied to hazardous waste defined by or listed in 10 CSR 25-4.261 which is regulated as hazardous waste at the time of its generation except as paragraph (1)(A)1., 2. or 3. of this rule provides otherwise. The fee shall not exceed ten thousand dollars ($10,000) per generator per year.

1. Hazardous waste that is discharged by a generator to a municipal wastewater treatment plant, which is regulated by a permit issued by the Missouri Clean Water Commission, shall be assessed a fee of zero cents per ton (0¢/ton) of hazardous waste so managed.

2. The fee shall not be imposed upon any generator who has registered with the department, in accordance with 10 CSR 25-5.262, less than ten (10) tons of hazardous waste per year.

3. The fee shall not be imposed upon any hazardous waste fuel produced from processing, blending or other treatment.

A. Beginning with the December 1995 billing for hazardous waste generated July 1, 1994 through June 30, 1995, this exemption applies only to the hazardous waste fuel processed, blended or treated by a fuel blender receiving hazardous waste from the original generator who has already paid the tax in this section on the hazardous waste.

B. This exemption does not apply to hazardous waste used directly as a fuel.

(D) An individual generator required to register in accordance with 10 CSR 25-5.262 shall pay a tax based on the volume by weight and management method in accordance with subsection (1)(E) of this rule and as required by section 260.479, RSMo. **Sixty percent (60%) of** *[R]***r**evenues collected from this tax shall be transmitted by the department to the Missouri Department of Revenue for deposit in the hazardous waste remedial fund **and forty percent (40%) of revenues collected from this tax shall be deposited in the hazardous waste fund**. The tax will be based on the volume of hazardous waste generated and the management method utilized beginning on July 1 of the year preceding the billing year and through June 30 of the billing year. A company shall not annually pay more than *[fifty]* **eighty** thousand dollars *[($50,000)]* **($80,000)** collectively for all combined plant sites under the provisions of this subsection, nor shall a generator who is required to register in accordance with 10 CSR 25-5.262 pay less than *[ten]* **fifty** dollars *[($10)]* **($50)** annually. **However, as outlined in subdivision 260.479.2(2), RSMo these minimum and maximum amounts may be adjusted annually by the commission by up to 2.55%.**

1. The following hazardous wastes are exempted from this tax:

A. Any hazardous wastes generated by the state and any political subdivision of the state;

B. Waste oil;

C. Any hazardous waste generated by a person who qualifies as a conditionally exempt generator due to the quantity of waste generated in one (1) month or accumulated at one (1) time as specified under 10 CSR 25-3.260(1)(A)*[22]***25**.; and

D. Hazardous wastes legitimately discharged into a publicly-owned treatment works and exempted in 10 CSR 25-4.261. (Comment: This exclusion does not exclude sludges that are hazardous waste and are generated by industrial wastewater treatment.)

2. This tax shall not be imposed upon the following hazardous waste: hazardous waste fuel produced from hazardous waste by processing, blending or other treatment; hazardous waste which must be disposed of as provided by a remedial plan for an abandoned or uncontrolled hazardous waste site under sections 260.435–260.550, RSMo or as part of a remedial plan required under sections 260.350–260.434, RSMo; or smelter slag waste from the processing of materials into reclaimed metals.

A. Beginning with the billing sent out in December *[1995]* **2001** for hazardous waste generated July 1, *[1994]* **2000** through June 30, *[1995]* **2001**, the exemption for hazardous waste fuel produced from hazardous waste by processing, blending or other treatment shall *[apply only to the hazardous waste fuel processed, blended or treated by a fuel blender receiving hazardous waste from the original generator who has already paid the tax in this section on the hazardous waste]* **be removed in accordance with subdivisions 260.479.5, RSMo and 260.479.7, RSMo. However, this tax on hazardous waste fuel shall be assessed upon and paid by the facility utilizing such hazardous waste fuel as a substitute for other fuel. The tax shall be assessed and paid based upon the reporting year in which the hazardous waste fuel is received by the facility.**

B. This exemption does not apply to hazardous waste used directly as a fuel.

(E) A generator who is not otherwise exempted by paragraph (1)(D)1., 2. or 3. of this rule shall pay a tax in each of the applicable subdivisions.

1. SUBDIVISION A—TAX.

A. A generator who manages hazardous waste by on-site storage that requires a permit in accordance with 10 CSR 25-7.264 or interim status in accordance with 10 CSR 25-7.265 or off-site storage that is not in conjunction with incineration, resource recovery, treatment or any other similar management method and a generator utilizing a disposal facility shall use the following formula to calculate his/her tax for hazardous waste generated from each state fiscal year, July 1 of each year through June 30 of the following year. (Note: A disposal facility means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water and, at which, the waste will remain after closure.)

B. Tax in subdivision A = *[($20 + ($0.08 for each metric ton generated)) x (the number of metric tons (kkg) generated)]* **($21.80 + ($.07989 × number of tons generated)) × (.90785 × number of tons generated)**.

2. SUBDIVISION B—TAX.

A. A generator who utilizes a management technique not included in subdivision A shall use the following formula to calculate his/her tax for hazardous waste generated during the state fiscal year.

B. Tax in subdivision B = *[($10.00 + ($0.04 for each metric ton generated)) x (the number of metric tons (kkg) generated)]* **($10.90 + ($.039945 × number of tons generated)) × (.90785 × number of tons generated)**.

3. TOTAL TAX.

A. The total tax for a generator is the applicable tax in subdivision A plus the applicable tax in subdivision B. No company shall pay more than *[fifty]* **eighty** thousand dollars *[($50,000)]* **($80,000)** or less than *[ten]* **fifty** dollars *[($10)]* **($50)** under subsection (1)(E). *[Example: Company A generates 10.02 kkg of hazardous waste managed at a disposal facility. The tax in subdivision A would be as follows:*

Tax = ($20.00 + ($0.08 x 10.02)) x (10.02) = $208.43.

Company A also generates 5.01 kkg of solvent managed at a resource recovery facility. The tax in subdivision B would be as follows:

Tax = ($10.00 + ($0.04 x 5.01)) x (5.01) = $51.10.

The total tax for Company A would, therefore, be the tax in subdivision A $208.43 + the tax in subdivision B $51.10. The total tax owed by Company A would be $259.53.]

B. *[Tables 1 and 2 illustrate the approximate method by which categories are established for subdivisions A and B; however, they do not take into account computer capability of seven (7) significant figures to the right of the decimal place. Note:]* The billing of each year will be based on information submitted by generators and facilities on the quarterly manifest summary reports required at 10 CSR 25-5.262(2)(D)1., 10 CSR 25-7.264(2)(E)3. and 10 CSR 25-7.265(2)(E). The billing will be based on waste generated during the previous state fiscal year. *[The data will be run on computer programs that sort firms into one (1) of five (5) categories that as nearly as possible will generate a total amount of one and one-half (1 1/2) million dollars annually.]*

(F) The department will bill those generators whose records on file indicate that they are subject to taxes or fees in section (1).

However, if a generator does not receive a billing, it does not relieve the generator of the responsibility to pay fees or taxes imposed by this rule.

[Table 1 – Subdivision A

	Metric Tons			
Category	From	To	Tax Range	
1	500.01	675.39	$30,001	$50,000
2	390.40	500.00	$20,001	$30,000
3	250.01	390.39	$10,001	$20,000
4	42.73	250.00	$ 1,001	$10,000
5	0.001*	42.72	$ 10	$ 1,000]

[Table 2 – Subdivision B

	Metric Tons			
Category	From	To	Tax Range	
1	500.01	675.39	$15,001	$25,000
2	390.40	500.00	$10,001	$15,000
3	250.02	390.39	$ 5,001	$10,000
4	42.75	250.01	$ 501	$ 5,000
5	0.001*	42.72	$ 10	$ 1,000]

*[*0.001 kkg reportable quantity of hazardous waste]*

(G) As outlined in subdivision 260.479.2(2), RSMo, the commission may annually adjust by a maximum of 2.55%, all fee amounts referred to in (1)(D) and (1)(E) of this rule. This adjustment may include the minimum fee, the maximum fees and the rates used to calculate the fee each generator shall pay.

(3) Fees and Taxes Applicable to Applicants for Permits or Certifications and to Owners/Operators of Treatment, Storage, Disposal or Resource Recovery Facilities.

(D) An applicant for a hazardous waste treatment, storage or disposal facility permit **or resource recovery certification** shall pay all applicable costs in accordance with 10 CSR 25-7.270(2)(B)9.**, 10 CSR 25-9.020(5),** and as required by *[subdivision]* **subdivisions** 260.395.7(7) **and 260.395.14(2)**, RSMo for engineering and geological review. Those costs for engineering and geological review will be billed in the following categories:

1. The project engineer's and geologist's time expended in the following areas:

A. Supervision of field work undertaken to collect geologic and engineering data for submission with the permit application **or resource recovery certification application**;

B. Review of geologic and engineering plans submitted in relation to the permit application **or resource recovery certification application**;

C. Assessment and attesting to the accuracy and adequacy of the geologic and engineering plans submitted in relation to the permit application **or resource recovery certification application**; and

D. The project engineer's and geologist's time billed at the engineer's and geologist's hourly rates multiplied by a fixed factor of two and one-half (2 1/2). This fixed factor is comprised of direct labor; fringe benefits including, but not limited to, insurance, medical coverage, Social Security, Workers' Compensation and retirement; direct overhead, including, but not limited to, clerical support and supervisory engineering review and Hazardous Waste Program administrative and management support; general overhead, including, but not limited to, utilities, janitorial services, building expenses, supplies, expenses and equipment, and department indirect costs; and engineering support, including, but not limited to, training, peer review, tracking and coordination;

2. The direct costs associated with travel to the facility site to supervise any field work undertaken to collect geologic and engineering data or to ascertain the accuracy and adequacy of geologic and engineering plans, or both, including, but not limited to, expenses actually incurred for lodging, meals and mileage based on the rate established by the state of Missouri. These costs are in addition to the costs in paragraph (3)(D)1. of this rule; and

3. Costs directly associated with public notification and departmental public hearings, including legal notice costs, media broadcast costs, mailing costs, hearing officer costs, court reporter costs, hearing room costs and security costs, will be billed to the applicant. In a contested case as defined in section 536.070(4), RSMo, costs related to preparing and supplying one (1) copy of the transcript(s) of the case shall not be charged to the applicant.

(F) The applicant for a resource recovery certificate shall pay the following fee in accordance with 10 CSR *[25-9.020(1)(C)1.]* **25-9.020(4) and subdivision 260.395.14(2), RSMo** when submitting the application: *[One]* **Five** hundred dollars *[($100)]***($500)** if the application is for a resource recovery facility which legitimately reclaims or recycles hazardous waste on-site in accordance with 10 CSR 25-9 or *[five hundred]* **one thousand** dollars *[($500)]* **($1,000)** if the application is for a resource recovery facility which receives hazardous waste from off-site for legitimate reclamation or recycling in accordance with 10 CSR 25-9.

(4) Corrective Action Oversight Cost Recovery.

(A) In accordance with subdivision 260.375(30), RSMo, owners/operators of hazardous waste facilities performing corrective action pursuant to sections 260.350 to 260.430, RSMo. and the rules promulgated thereunder shall pay to the department all reasonable costs, as determined by the commission, incurred by the department in the oversight of corrective action investigations, monitoring or cleanup of releases of hazardous waste or hazardous constituents at hazardous waste facilities. Oversight shall include review of the technical and regulatory aspects of corrective action plans, reports, documents, and associated field activities, including attesting to their accuracy and adequacy. All corrective action plans approved by the department pursuant to sections 260.350 to 260.430, RSMo, shall require the department, upon notice by the owner/operator that the approved plan has been completed, to verify within ninety (90) days that the corrective action plan has been complied with and completed. Within thirty (30) business days thereafter and provided that the department agrees that the corrective plan has been complied with and completed, the department shall issue a letter to the owner/operator certifying the completion and compliance.

(B) Corrective action cost recovery billing shall be based on the hourly rate(s) of departmental staff performing corrective action oversight multiplied by a fixed factor of two and one-half (2 1/2). This fixed factor is comprised of direct labor; fringe benefits including, but not limited to, insurance, medical coverage, Social Security, Workers' Compensation and retirement; direct overhead, including, but not limited to, clerical support and supervisory review and Hazardous Waste Program administrative and management support; general overhead, including, but not limited to, utilities, janitorial services, building expenses, supplies, expenses and equipment, and department indirect costs; and other support activities, including, but not limited to, training, peer review, tracking and coordination.

(C) The direct costs associated with travel to hazardous waste facilities for the purpose of corrective action oversight including, but not limited to, expenses actually incurred for lodging, meals and mileage based on the rates established by the state of Missouri shall be recoverable. These direct costs shall be billed to the owner/operator and are in addition to the costs in subsection (4)(B) of this rule.

(D) Corrective action-related costs directly associated with public notification and departmental public hearings, including legal notice costs, media broadcast costs, mailing costs, hearing officer costs, court reporter costs, hearing room costs and security costs, shall be billed to the owner/operator. In a contested case as defined in section 536.070(4), RSMo, costs related to preparing and supplying one (1) copy of the transcript(s) of the case shall not be charged to the owner/operator.

(E) All funds remitted by owners/operators of hazardous waste facilities performing corrective action shall be deposited in the hazardous waste fund created in section 260.391, RSMo.

*[(4)]***(5)** Variance Fee. Any person seeking a variance under 10 CSR 25 shall include a filing fee of fifty dollars ($50) payable to Missouri with each petition as required by subdivision 260.405.4(1), RSMo.

*AUTHORITY: sections 260.370, 260.380, **260.395,** 260.437 and 260.479, RSMo [1994] **2000**. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Feb. 1, 2001.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE COST: This proposed amendment is estimated to cost private entities $8,150 in the next fiscal year and annually thereafter. A detailed fiscal note with the relevant cost information has been filed with the secretary of state.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille, 319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on April 20, 2001. Faxed or E-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Fees and Taxes

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 25-12.010 Hazardous Waste Fees and Taxes

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:[1]
7	Resource Recovery Facilities that accept waste from off-site	$1750
32	Resource Recovery facilities that only recycle on-site waste	$6400
		TOTAL: $8150

[1]This is an annualized cost. Because the duration of this rule cannot be estimated, an annualized aggregate cost is provided.

III. WORKSHEET

Facilities That Accept Waste From Off-Site: 07
Facilities That Only Recycle On-Site Waste: 32

Current Fee Is $500 Every 2 Years For Facilities Accepting Waste From Off-Site
Current Fee Is $100 Every 2 Years For Facilities That Only Recycle On-Site Wastes

Total Annual Cost To Facilities accepting waste from off site under current regulations = (7 x $500) / 2 = $1750
Total Annual Cost to Facilities only recycling on-site waste under current regulations = (32 x 100) / 2 = $1600

Current Annual Cost Per Facility accepting waste from off site = $1750 / 7 = $250
Current Annual Cost Per Facility only recycling on-site waste = $1600 / 32 = $50

Proposed Fee Is $1000 Every 2 Years For Facilities Accepting Waste From Off-Site
Proposed Fee Is $500 Every 2 Years For Facilities That Only Recycle On-Site Wastes

Total Annualized Application Fees for facilities accepting waste from off site = (7 x $1000) / 2 = $3500
Total Annualized Application Fees for facilities only recycling on-site waste = (32 x $500) / 2 = $8000

Annualized Fee Per Facility accepting waste from off site = $3500 / 7 = $500
Annualized Fee Per Facility only recycling on-site waste = $8000 / 32 = $250

Total Annual Cost Proposed Per Facility accepting waste from off site = $500
Total Annual Cost Proposed Per Facility only recycling on-site waste = $250

Increase In Annual Cost Per Facility accepting waste from off site = $500 - $250 = $250
Increase In Annual Cost Per Facility only recycling on-site waste = $250 - $50 = $200

Aggregate Annual Cost Increase for facilities accepting waste from off site = $250 x 7 = $1750
Aggregate Annual Cost Increase for facilities only recycling on-site waste = $200 x 32 = $6400

IV. ASSUMPTIONS

1. Because the duration of this rule cannot be estimated, an annualized aggregate cost is provided. The annualized aggregate cost is expected to remain constant for the duration of the rule.

2. Fiscal year 2000 dollars are used to estimate the costs, and, since inflation cannot be accurately predicted, no adjustments are made for inflation.

3. The universe of affected entities is based on the information on hand as of July 2000, and we assume that the universe will remain constant.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 13—Polychlorinated Biphenyls

PROPOSED AMENDMENT

10 CSR 25-13.010 Polychlorinated Biphenyls. The commission is adding a new section (1), and amending and renumbering sections (1)–(11).

PURPOSE: Periodically, department staff review each rule to determine whether updates, clarifications, corrections, or substantive changes are needed. Since the most recent time this rule was amended, staff members have identified various necessary corrections and clarifications to the text of this rule. The proposed corrections and clarifications are intended to ensure that the rule is both accurate and concise. Also, this rule needs to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR), published annually on July 1. Currently, this rule incorporates by reference the 1997 CFR, which includes changes through July 1, 1997. Updating this rule to incorporate by reference the 2000 edition of the CFR will ensure that this rule is both consistent with, and current through, the most recent edition of the CFR. This amendment would add to the rule changes made to the noted sections of 40 CFR part 761, the corresponding part of the federal regulations, between July 1, 1997 and July 1, 2000. Department staff have reviewed the changes made to this part of the CFR during this time period and recommend that this rule be amended to incorporate by reference these changes.*

(1) The regulations set forth in 40 CFR parts 761.3, 761.30(a)(2)(v), 761.60(b)(1)(i)(B), 761.60(g), 761.65(b), 761.71, 761.79, 40 CFR 761.72, 761.180(b), July 1, 2000 are incorporated by reference. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

[(1)] **(2)** Applicability.

(A) This rule shall apply in the state of Missouri to all polychlorinated biphenyls (PCB) material and PCB units as defined in subsection *[(2)(A)]***(3)(A)** in shipment to or from or managed at a Missouri PCB facility.

(B) Waste oil containing PCBs at a concentration of less than fifty parts per million (50 ppm) and not otherwise meeting the definition of PCB material shall be managed in accordance with 10 CSR 25-11.

(C) Where conflicting regulations exist in 10 CSR 25, the more stringent shall control.

(D) This rule does not relieve a regulated person from his/her responsibility to comply with the federal Toxic Substances Control Act, 15 USC 2601–2629 (December 22, 1987) or the corresponding regulations.

[(2)] **(3)** Definitions and Substitution of Terms. This section supplements and modifies the definitions in 10 CSR 25-3 and 10 CSR 25-7.

(A) Additional Definitions.

1. Consignor means an owner/operator who transfers control of a shipment of PCB material, PCB units or both to a transporter for conveyance to a Missouri PCB facility.

2. High efficiency boiler means one of the following: a boiler which meets the requirements of 40 CFR *[761.60(a)(2)(iii)]* **761.71(a)** or a boiler that has been approved by Environmental Protection Agency (EPA) under 40 CFR *[761.60(a)(3)(iii)]* **761.71(b)**. *[40 CFR 761.60(a)(2)(iii) and 40 CFR 761.60(a)(3)(iii), July 1, 1989, are incorporated by reference.]* PCB facility owners/operators shall not destroy PCBs in concentrations exceeding five hundred parts per million (500 ppm) in a high efficiency boiler.

3. A facility is in operation if all components of the facility necessary for it to function as a PCB facility have been completely constructed, the facility is functioning as a PCB facility and the facility owner/operator has received remuneration for such function at the facility.

4. Large PCB unit means a PCB unit weighing in excess of one hundred pounds (100 lbs.), not including the weight of any PCB material contained within the PCB unit.

5. PCB-contaminated metals reclamation incinerator means a thermal treatment unit which is utilized to remove organic material and residual PCBs from PCB units which formerly contained PCBs at concentrations of less than five hundred parts per million (500 ppm).

6. PCB(s) means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain this substance.

7. A PCB facility is one which accepts PCB material, PCB units or both for brokerage, treatment, storage or disposal on a commercial basis for remuneration.

8. PCB incinerator means an engineered device using controlled flame combustion to thermally degrade PCB material, PCB units or both that is not classified as a high efficiency boiler or a PCB-contaminated metals reclamation incinerator.

9. PCB material is defined as any waste chemical substance that is known or assumed to contain equal to or greater than fifty parts per million (50 ppm) PCBs, or any mixture of a waste chemical substance that is known or assumed to contain equal to or greater than fifty parts per million (50 ppm) PCBs with a chemical substance containing less than fifty parts per million (50 ppm) PCBs. Unless tested in accordance with 40 CFR 761.60(g), oil in or from electrical equipment (except circuit breakers, reclosers and cable) for which the PCB concentration is unknown must be assumed to contain equal to or greater than fifty parts per million (50 ppm) PCBs. *[40 CFR 761.60(g), July 1, 1989, is incorporated by reference.]*

10. PCB units are defined as any waste manufactured item which contains or did contain PCB material, excluding the following PCB articles and PCB containers:

A. Small capacitors that remain as components of waste manufactured items;

B. PCB articles containing PCBs at concentrations of less than five hundred parts per million (500 ppm), provided that the article is first drained of all free-flowing liquids, filled with a solvent that readily solubilizes PCBs (for example, kerosene, toluene), allowed to stand for at least eighteen (18) hours and then drained thoroughly;

C. PCB articles containing PCBs at concentrations of less than five hundred parts per million (500 ppm), provided that the article is first drained of all free-flowing liquids and then thermally treated for the purpose of degrading the residual PCBs and combustible material. (Note: Minimum technical standards for thermal treatment of PCB articles are set forth in subsection (11)(A) of this rule.);

D. PCB containers that are decontaminated in accordance with 40 CFR 761.79 *[, July 1, 1989, is incorporated by reference]*;

E. PCB articles and PCB containers which have internal and external surfaces that have been decontaminated to less than ten micrograms (10 μg) PCBs per one hundred centimeters squared (100 cm^2) surface area;

F. Electrical equipment that has been reclassified to non-PCB status pursuant to 40 CFR 761.30(a)(2)(v) *[. 40 CFR*

761.30(a)(2)(v), July 1, 1989, is incorporated by reference]; and

G. PCB articles and PCB containers that are decontaminated by an alternate method, if approved by the department.

11. Treatment means any method, technique or process, including degreasing, designed to change the physical, chemical or biological character or composition of any PCB material or PCB units so as to recover energy or material resources from the waste or render the waste nontoxic or less toxic, to render the waste safer for transportation, storage or disposal or to make the waste more suitable for recovery, storage or volume reduction.

(B) The definitions for the following terms are codified in 40 CFR 761.3 *[, July 1, 1989]* and are incorporated by reference:

1. Capacitor;
2. Chemical substance;
3. Fluorescent light ballast;
4. PCB article;
5. PCB container;
6. PCB-contaminated electrical equipment; and
7. PCB transformer.

(C) The following terms shall be substituted in the portions of 40 CFR Part 264, 40 CFR Part 265, 40 CFR Part 270 and 10 CSR 25 that apply in this rule:

1. "PCB material," "PCB units" or both shall be substituted for "hazardous waste";

2. "PCB facility" shall be substituted for "hazardous waste facility"; "hazardous waste treatment, storage or disposal facility"; "treatment, storage or disposal facility"; and "HWM facility"; and

3. "PCB facility permit" shall be substituted for "Part B permit" and "RCRA permit."

[(3)] **(4)** Manifesting, Record Keeping and Reporting.

(A) Assignment of PCB Identification Numbers. PCB material and PCB units are assigned the following PCB identification numbers:

M001 Mineral oil dielectric fluid containing equal to or greater than fifty parts per million (50 ppm) PCBs but less than five hundred parts per million (500 ppm) PCBs.
M002 PCB-contaminated electrical equipment with dielectric fluid.
M003 PCB-contaminated electrical equipment that has been drained of all free-flowing liquids.
M004 Dielectric fluid containing greater than five hundred parts per million (500 ppm) PCBs.
M005 PCB transformers with dielectric fluid.
M006 PCB transformers that have been drained of all free-flowing liquids.
M007 PCB transformers that have been flushed with solvent as prescribed in 40 CFR 761.60(b)(1)(i)(B). *[40 CFR 761.60(b)(1)(i)(B), July 1, 1989, is incorporated by reference.]*
M008 Capacitors contaminated with PCBs.
M009 Soil, solids, sludges, dredge materials, clothing, rags or other debris contaminated with PCBs.
M010 PCB-contaminated solvent. (Note: Any PCB-contaminated solvent that meets the definition of hazardous waste shall further be identified by the appropriate EPA identification number.)
M011 Other PCB material.
M012 Other PCB units.

(B) Manifests. No Missouri PCB facility shall accept a consignment of PCB material, PCB units or both unless it is accompanied by a hazardous waste manifest that meets the requirements of this section. All consignments of PCB material, PCB units or both originating from a Missouri PCB facility shall be accompanied by a hazardous waste manifest that meets the requirements of this section.

1. If a consignment is destined for a Missouri PCB facility, then an EPA Form 8700-22/MDNR-HWG-10 (Missouri Hazardous Waste Manifest) (see 10 CSR 25-7.270) or its equivalent shall be completed and used according to the Missouri Hazardous Waste Manifest Instructions and the supplemental instructions for PCB manifests. The manifests and instructions are available from the department;

2. If a consignment originates from a Missouri PCB facility and is destined for a facility located in a state which does not regulate PCBs, then an EPA form 8700-22/MDNR-HWG-10 (Missouri Hazardous Waste Manifest) or its equivalent shall be completed and used according to the Missouri Hazardous Waste Manifest Instructions and the supplemental instructions for PCB manifests. The manifests and instructions are available from the department;

3. If a consignment originates from a Missouri PCB facility and is destined for a facility located in a state which regulates PCBs and the receiving state requires the use of a particular version of the Uniform Hazardous Waste Manifest (EPA Form 8700-22 or its equivalent), then the receiving state's manifest shall be used and completed according to the receiving state's manifest instructions;

4. The manifest shall include the following information:

A. The consignor's name, business address and phone number;

B. The transporter(s) name(s), phone number(s) and Missouri identification number(s);

C. The designated facility's name, site address and phone number;

D. The proper United States Department of Transportation (DOT) description of the consignment;

E. The number and type of containers;

F. The total quantity of the consignment expressed in standard units of weight or volume;

G. The appropriate PCB identification number(s) from subsection *[(3)(A)]***(4)(A)** of this rule;

H. A prominent display of the words "PCB Manifest" in item 15 of the manifest; and

I. The original, dated signatures of the consignor, transporter(s) and facility operator;

5. Consignments of PCB material, PCB units or both shall be manifested separately from shipments of hazardous waste even if being conveyed by the same transporter to the same designated facility; and

6. The owner/operator of a Missouri PCB facility who ships PCB material, PCB units or both off-site for treatment, storage or disposal shall comply with the following requirements:

A. The owner/operator of a Missouri PCB facility shall contract with the designated facility to return the completed manifest to the Missouri PCB facility within thirty-five (35) days after the date the waste was accepted by the initial transporter;

B. An owner/operator of a Missouri PCB facility who does not receive a copy of the PCB manifest with a handwritten signature of the owner/operator of the designated facility within thirty-five (35) days of the date the waste was accepted by the initial transporter shall contact the transporter, the owner/operator of the designated facility, or both, to determine the status of the consignment;

C. An owner/operator of a Missouri PCB facility who has not received the completed manifest with the handwritten signature of the owner/operator of the designated facility within thirty-five (35) days from the date the waste was accepted by the initial transporter shall submit a completed exception report to the department within forty-five (45) days from the date the waste was accepted by the initial transporter; and

D. The exception report shall include the following: the name, address and telephone number of the Missouri PCB facility; the name, address and telephone number and Missouri transporter

license number for each transporter; the name, address and telephone number of the designated facility; the manifest document numbers followed by the date of shipment; the waste description and the PCB identification number(s); the total quantity of PCB material, PCB units, or both, and the appropriate abbreviation for units of measure as follows: G—gallons (liquids only); P—pounds; T—tons (2,000 lbs.); Y—cubic yards; L—liters (liquid only); K—kilograms; M—metric tons (1,000 kg); N—cubic meters; the following certification statement, signed and dated by an authorized representative of the Missouri PCB facility: "I have personally examined and am familiar with the information submitted on this form. I hereby certify that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information which includes fine and imprisonment;" a legible copy of the manifest document originated by the Missouri PCB facility and signed by the initial transporter which was retained by the Missouri PCB facility and for which the Missouri PCB facility does not have confirmation of delivery; and a cover letter signed by the facility owner/operator or his/her authorized representative explaining the efforts taken to locate the PCB material, PCB units or both and the results of those efforts.

(C) The facility shall return a copy of the PCB manifest to the transporter immediately upon receipt of the consignment and shall return a copy to the consignor within thirty-five (35) days of receipt. The facility's manifest copy shall be maintained on-site for a period of three (3) years following receipt of a consignment. The period of record retention shall extend upon the written request of the department or automatically during the course of any unresolved enforcement action regarding the regulated activity.

(D) Reporting Requirements. The owner/operator of a PCB facility shall submit the following reports to the department:

1. The owner/operator shall submit an annual report by July 15 of each year that covers the previous calendar year. The annual report shall be prepared in accordance with 40 CFR 761.180(b). *[40 CFR 761.180(b), July 1, 1989, is incorporated by reference.]*

2. The owner/operator shall complete and submit, within forty-five (45) days after the end of each calendar quarter, a quarterly report that includes the following information:

A. The name, address and phone number of the facility;

B. The quarter for which the report is prepared;

C. A summary of the total quantity of PCB material and PCB units (designated by PCB identification number) received during the quarter. For the purpose of this report, any dielectric fluid drained from electrical equipment shall be designated as M001 or M004, as applicable;

D. A summary of the total quantity of PCB material and PCB units (designated by PCB identification number) generated on-site;

E. A summary of the total quantity of PCB material and PCB units (designated by PCB identification number) treated on-site and the method of treatment;

F. A summary of the total quantity of PCB material and PCB units (designated by PCB identification number) transferred to other treatment, storage or disposal facilities. A summary shall be prepared for each individual facility utilized and shall include a list of shipping dates and the method of final disposition;

G. A summary of the total quantity of PCB material and PCB units (designated by PCB identification number) retained at the facility at the end of the reporting quarter;

H. In chronological order, a copy of each PCB manifest received during the reporting quarter;

I. In chronological order, all completed manifests utilized for off-site shipments during that calendar quarter; and

J. A certification which reads: "CERTIFICATION: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete for the quarterly accounting of PCB material so handled, and the operations of the facility referenced herein. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." The original signature of the owner/operator shall follow this certification.

(E) Operating Record. The owner/operator of a PCB facility shall maintain a written operating record. This subsection sets forth record keeping requirements for storage and transfer operations. A PCB facility shall also comply with the applicable record keeping requirements set forth in sections (7) and (8) of this rule. The information required in this subsection shall be recorded, as it becomes available, and maintained in the operating record of the facility until closure of the facility.

1. When PCB material is transferred from a PCB article or PCB container to a PCB container (for example, bulk tank or drum), the owner/operator shall record the following information:

A. The date of transfer;

B. The quantity of PCB material transferred;

C. The appropriate PCB identification number or some other reference to the type of material and PCB concentration;

D. Identification of the container into which the PCBs were transferred; and

E. The manifest document number from the manifest that accompanied the consignment or some other type of cross reference to the manifest document number.

2. When PCB material is transferred from a bulk tank to a tank truck, the owner/operator shall record information that indicates—

A. The date transported;

B. The tank identification and tank level or the quantity of PCB material removed from the tank; and

C. The manifest document number(s) associated with the off-site shipment(s).

[(4)] **(5)** Transporter Requirements.

(A) Consignments of PCB material, PCB units or both which are destined for or originate from a Missouri PCB facility shall be conveyed by a hazardous waste transporter licensed by the state in accordance with 10 CSR 25-6. The transporter's current license application or renewal shall specify that the applicant intends to transport PCB material, PCB units or both.

(B) A transporter shall not accept a consignment of PCB material, PCB units or both destined for or originating from a Missouri PCB facility unless the consignment is accompanied by a PCB manifest.

(C) PCB units not in PCB containers shall be inspected by the transporter prior to acceptance to ensure that the unit is intact and not leaking. The transporter shall not accept a leaking PCB unit unless the unit is in a nonleaking PCB container.

(D) In addition to existing state and federal requirements, the department may require that specific safety equipment, spill control equipment and spill cleanup procedures be utilized by PCB transporters.

[(5)] **(6)** Provisionally Regulated PCB Facilities.

(A) A PCB facility that meets the following criteria is defined as a provisionally regulated PCB facility:

1. The facility accepts only PCB waste numbers M002 and M003 for treatment and storage;

2. The quantity of PCB material accumulated on-site never exceeds ten thousand pounds (10,000 lbs);

3. The quantity of large PCB units accumulated on-site never exceeds fifty (50) units; and

4. The treatment processes conducted at the facility are limited to decontamination of PCB units that contained less than five hundred parts per million (500 ppm) PCBs.

(B) The owners/operators of provisionally regulated PCB facilities shall comply with the following:

1. Notification. The facility owner/operator shall submit a notification letter to the department prior to commencing operation as a PCB facility. The notification letter shall include the following information:

A. The facility name, address and telephone number; and

B. A description of the existing and proposed treatment and storage methods and capacities;

2. Manifesting. PCB articles that are transported to a facility for the purpose of servicing need not be accompanied by a manifest; and

3. Owners/operators of PCB-contaminated metals reclamation incinerators shall meet the minimum technical standards in subsection *[(11)]***(12)**(A) of this rule.

(C) A provisionally regulated PCB facility which does not provide adequate environmental protection as determined by the department may be required to meet any or all of the requirements of this rule.

(D) The owner/operator of a provisionally regulated PCB facility who fails to operate within the criteria of subsection *[(5)]***(6)**(A) of this rule or who fails to comply with the requirements of subsection *[(5)]***(6)**(B) of this rule may be required to meet any or all of the requirements of this rule.

[(6)] **(7)** Mobile Treatment Units.

(A) For the purpose of the rule, mobile treatment units (MTUs) are defined as follows:

1. Mobile treatment processes that utilize a physical or chemical treatment unit for the purpose of reclassifying a transformer pursuant to 40 CFR 761.30(a)(2)(v) as incorporated in this rule; or

2. Any other mobile treatment process that requires EPA approval pursuant to 40 CFR 761.60(e).

(B) MTUs are exempt from sections *[(3), (7), (8) and (9)]***(4), (8), (9), and (10)** of this rule provided that—

1. The owner/operator of an EPA approved MTU submits a copy of the MTU's EPA approval to the department at least thirty (30) days prior to initial operation in Missouri;

2. The owner/operator of a MTU that does not require an EPA approval submits a detailed description of his/her process at least thirty (30) days prior to initial operation in Missouri;

3. The owner/operator of a MTU that is not providing a transformer reclassification service cannot operate for more than twenty (20) consecutive working days at any given job site without prior written approval of the department;

4. The owner/operator of a MTU that is providing a transformer reclassification service cannot operate at any given job site for more than one hundred eighty (180) days without prior written approval from the department; and

5. The owner/operator submits a site-specific notification to the department prior to treatment of PCBs at any given job site. The site-specific notification shall include the following information:

A. The client's name, address and phone number;

B. The approximate quantity of PCBs to be processed by the MTU;

C. The approximate PCB concentration of the PCB material prior to treatment; and

D. The location of the job site.

[(7)] **(8)** Standards for Owners/Operators of PCB Facilities. The owner/operator of a permitted Missouri PCB facility shall comply with this section. This section sets forth standards for a Missouri PCB facility permit which modify and add to the requirements of 40 CFR Part 264 incorporated by reference in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2), which apply in this rule. For those subsections marked *Reserved* in which no modification or addition is indicated, the requirements of 10 CSR 25-7.264 and those 40 CFR parts incorporated by reference in 10 CSR 25-7.264 apply.

(A) Applicability. This subsection sets forth standards which modify or add to the requirements in 40 CFR Part 264 Subpart A, incorporated in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(A). This section does not apply to an owner/operator of a provisionally regulated PCB facility or mobile treatment unit provided that the owner/operator maintains compliance with section *[(5)]***(6)** or *[(6)]***(7)** of this rule, respectively.

(B) General Facility Standards. This subsection sets forth standards which modify or add to 40 CFR Part 264 Subpart B, incorporated in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(B). In addition to the requirements in 40 CFR 264.13(a)(1), as incorporated in 10 CSR 25-7.264, the waste analysis, at a minimum, shall contain all the information which must be known to treat, store, dispose of or broker the waste in accordance with the requirements of this rule, the PCB facility permit conditions and 40 CFR Part 761.

(C) Preparedness and Prevention. *(Reserved)*

(D) Contingency Plan and Emergency Procedures. *(Reserved)*

(E) Manifest System, *[Recordkeeping]* **Record Keeping** and Reporting. The owner/operator shall comply with the requirements in section (3) of this rule.

(F) Groundwater Protection. *(Reserved)*

(G) Closure and Post-Closure. This subsection sets forth standards which modify or add to those requirements in 40 CFR Part 264 Subpart G incorporated in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(G). The most recent closure and post-closure estimates prepared in accordance with this subsection shall be submitted annually to the department by March 1.

(H) Financial Assurance Requirements. *(Reserved)*

(I) Use and Management of Containers. This subsection sets forth standards which modify or add to those requirements in 40 CFR Part 264 Subpart I incorporated in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(I).

1. The term container as used in this subsection shall mean PCB article, PCB container or both.

2. The storage area shall meet the requirements in 40 CFR 761.65(b)**.** *[, 40 CFR 761.65(b), July 1, 1989 is incorporated by reference.]*

3. The temporary storage exemptions in 40 CFR 761.65(c)(1) are not allowed for permitted PCB facilities.

(J) Tank Systems. *(Reserved)*

(K) Surface Impoundments. The management of PCB material, PCB units or both in a surface impoundment is prohibited.

(L) Waste Piles. The management of PCB material, PCB units or both in a waste pile is prohibited.

(M) Land Treatment. The management of PCB material, PCB units or both in a land treatment unit or facility is prohibited.

(N) Landfills. This subsection sets forth standards which modify or add to the requirements in 40 CFR Part 264 Subpart N incorporated by reference in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(N). Landfilling of PCB material containing free liquids is prohibited.

(O) PCB Incinerators. This subsection sets forth standards applicable to PCB incinerators which modify or add to those requirements in 40 CFR Part 264 Subpart O, incorporated by reference in 10 CSR 25-7.264(1) and modified in 10 CSR 25-7.264(2)(O).

1. The provisions of 40 CFR 264.340(b), as incorporated in 10 CSR 25-7.264, shall not apply in this rule.

2. The requirements of 40 CFR 264.343(a)(1), as incorporated in 10 CSR 25-7.264, are modified to require an incinerator burning PCBs to achieve a destruction and removal efficiency (DRE) of ninety-nine and nine thousand nine hundred ninety-nine ten-thousandths percent (99.9999%).

3. The provisions of 40 CFR 264.343(a)(2) as incorporated in 10 CSR 25-7.264 shall not apply in this rule.

4. Combustion criteria for PCB liquids and combustion gases entering a secondary chamber shall be either of the following:

A. Maintenance of the introduced liquids for a two (2)-second dwell time at twelve hundred degrees Celsius, plus or minus one hundred degrees Celsius (1,200°C *[(]*± 100°C*)]* and three percent (3%) excess oxygen in the stack gas; or

B. Maintenance of the introduced liquids for a one and one-half (1 1/2) second dwell time at sixteen hundred degrees Celsius, plus or minus one hundred degrees Celsius, (1,600°C *[(]*± 100°C*)]*) and two percent (2%) excess oxygen in the stack gas.

5. Combustion efficiency shall be at least ninety-nine and nine-tenths percent (99.9%), computed as follows: Combustion efficiency equals the concentration of carbon dioxide divided by the sum of the concentration of carbon dioxide and the concentration of carbon monoxide multiplied by one hundred

$$\frac{C_{CO_2}}{C_{CO_2} + C_{CO}} \times 100$$

where
C_{CO_2} = the concentration of carbon dioxide; and
where
C_{CO} = the concentration of carbon monoxide.

6. The provisions of 40 CFR 264.344(a)(2), as incorporated in 10 CSR 25-7.264 shall not apply in this rule.

(P) Health Profiles. *(Reserved)*

(Q) *(Reserved)*

(R) *(Reserved)*

(S) *(Reserved)*

(T) *(Reserved)*

(U) *(Reserved)*

(V) *(Reserved)*

(W) *(Reserved)*

(X) Miscellaneous Units. This subsection sets forth requirements which modify or add to the requirements in 10 CSR 25-7.264(2)(X).

1. Permit conditions will be based upon successful process demonstrations. The process demonstrations shall define the maximum PCB concentration and type of PCB material and PCB units that can be treated.

2. The final concentrations of treated PCB material must be less than two parts per million (2 ppm) PCB.

[(8)] **(9)** Interim Status Standards for Owners/Operators of PCB Facilities. The requirements set forth in 40 CFR Part 265, incorporated by reference in 10 CSR 25-7.265(1) and modified in 10 CSR 25-7.265(2) apply in this rule. This section sets forth standards for interim status PCB facilities which modify and add to the requirements of 40 CFR Part 265 incorporated by reference in 10 CSR 25-7.265(1) and modified in 10 CSR 25-7.265(2). This section does not apply to an owner/operator of a provisionally regulated PCB facility or mobile treatment unit provided that the owner/operator maintains compliance with section *[(5)]***(6)** or *[(6)]***(7)** of this rule, respectively. For those subsections marked *Reserved* in which no modification or addition is indicated, the requirements of 10 CSR 25-7.265 and those 40 CFR parts incorporated by reference in 10 CSR 25-7.265 apply in this rule.

(A) General. Within one hundred eighty (180) days after the effective date of this rule, the owner/operator shall complete, sign and submit a PCB facility permit application or a closure plan prepared in accordance with 10 CSR 25-13.010*[(8)]***(9)**(G) to the director.

(B) General Facility Standards. *(Reserved)*

(C) Preparedness and Prevention. *(Reserved)*

(D) Contingency Plan and Emergency Procedures. *(Reserved)*

(E) Manifest System, Record Keeping and Reporting. The owner/operator shall comply with the requirements in section (3) of this rule.

(F) Groundwater Monitoring. *(Reserved)*

(G) Closure and Post-Closure. *(Reserved)*

(H) Financial Requirements. (Reserved)

(I) Use and Management of Containers. (*Reserved)*

(J) Tank Systems. *(Reserved)*

(K) Surface Impoundments. The management of PCB material, PCB units or both in surface impoundments is prohibited.

(L) Waste Piles. The management of PCB material, PCB units or both in waste piles is prohibited.

(M) Land Treatment. The management of PCB material, PCB units or both in a land treatment unit or facility is prohibited.

(N) Landfills. *(Reserved)*

(O) Incinerators. *(Reserved)*

(P) Thermal Treatment. *(Reserved)*

(Q) Chemical, Physical and Biological Treatment. *(Reserved)*

[(9)] **(10)** PCB Facility Permitting. The requirements in 40 CFR Part 270, incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2) apply in this rule. This section sets forth standards for a Missouri PCB facility permit which modify and add to the requirements of 40 CFR Part 270 incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2). This section does not apply to an owner/operator of a provisionally regulated PCB facility or a mobile treatment unit provided that the owner/operator maintains compliance with section *[(5)]***(6)** or *[(6)]***(7)** of this rule, respectively. For those subsections marked *Reserved* in which no modification or addition is indicated, the requirements of 10 CSR 25-7.270 and those 40 CFR *[P]***p**arts incorporated by reference in 10 CSR 25-7.270 apply in this rule.

(A) General Information. This subsection sets forth standards which modify or add to the requirements in 40 CFR Part 270 Subpart A, incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2)(A). The owner/operator shall submit a Missouri PCB facility application on a form provided by the department.

(B) Permit Application. This subsection sets forth standards which modify or add to the requirements in 40 CFR Part 270 Subpart B, incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2)(B).

1. The requirements for qualifying for interim status are set forth in paragraph *[(9)]***(10)**(G)2. of this rule.

2. The waste analysis plan required by 40 CFR 270.14(b)(3), as incorporated in 10 CSR 25-7.270, shall be prepared in accordance with subsection *[(7)]***(8)**(B).

3. These requirements are in addition to the specific information requirements for incinerators in 40 CFR 270.19 as incorporated in 10 CSR 25-7.270.

A. 40 CFR 270.19(a), as incorporated in 10 CSR 25-7.270, shall not apply in this rule.

B. In addition to the requirements of 40 CFR 270.19(c)(5) as incorporated in 10 CSR 25-7.270, methods and results of monitoring for the following parameters shall be submitted from any previously-conducted trial burns: oxygen (O_2); carbon dioxide (CO_2); oxides of nitrogen (NO_X); hydrochloric acid (HCl); total chlorinated organic content (RCl); PCBs; and total particulate matter.

(C) Permit Conditions. *(Reserved)*

(D) Changes to Permit. *(Reserved)*

(E) Expiration and Continuance of Permits. *(Reserved)*

(F) Special Forms of Permits. This subsection sets forth standards which modify or add to the requirements in 40 CFR Part 270

Subpart F incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2)(F).

1. In addition to the requirements of 40 CFR 270.62(b)(2), as incorporated in 10 CSR 25-7.270, the applicant shall conduct monitoring for the following parameters: a) oxygen (O_2); b) carbon monoxide (CO); c) carbon dioxide (CO_2); d) oxides of nitrogen (NO_X); e) hydrochloric acid (HCl); f) total chlorinated organic content (RCl); g) PCBs; and h) total particulate matter.

(G) Interim Status. This subsection sets forth standards which modify or add to those requirements in 40 CFR Part 270 Subpart G, incorporated by reference in 10 CSR 25-7.270(1) and modified in 10 CSR 25-7.270(2)(G).

1. A PCB facility that meets the requirements of this subsection may continue to operate without a PCB permit if the facility remains in compliance with the interim status requirements in this subsection.

2. A PCB facility shall qualify for interim status if the facility—

A. Was in operation on August 13, 1986;

B. Filed a letter of intent with the department before December 12, 1986 to construct, alter or operate the facility; and

C. Is in compliance with section *[(8)]***(9)** of this rule.

[(10)] **(11)** Public Participation. The public participation requirements and variance and appeal procedures in 10 CSR 25-8.124 apply in this rule.

[(11)] **(12)** Minimum Operating Requirements for Specific Units.

(A) *[PCB-Contaminated Metals Reclamation Incinerators. This subsection shall apply to owners/operators of PCB-contaminated metals reclamation incinerators.]* **Scrap Metal Recovery Ovens and Smelters.**

1. *[PCB units shall be drained of all free-flowing liquids prior to thermal processing.]* **Scrap metal recovery ovens and smelters that are used to reclaim PCB-contaminated metals shall be operated in accordance with 40 CFR 761.72.**

[2. Minimum technical standards. The thermal treatment unit shall meet the following criteria: the temperature in the afterburner shall be equal to or greater than one thousand degrees Celsius (1000°C) and the combustion gas shall be retained in the afterburner for a period of at least one and one-half (1 1/2) seconds.

3. The owner/operator shall demonstrate compliance with the performance standards set forth in paragraph (11)(A)2. of this rule upon request of the department.]

(B) *(Reserved)*

*AUTHORITY: sections 260.370, [RSMo Supp. 1997] 260.395 and 260.396, RSMo [1994] **2000**. Original rule filed Aug. 14, 1986, effective Jan. 1, 1987. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Feb. 1, 2001.*

PUBLIC COST: The rule applies to any PCB material and PCB units, as defined in the rule. It also applies to PCB-contaminated waste shipped or managed at a Missouri PCB facility. Although some of the changes contained in the federal rule are more stringent and may result in increased costs of managing PCB materials, they are already in effect under federal law. Therefore, any increased costs to comply with the rule changes are already being incurred for purposes of compliance with the changes to the federal rule. Therefore, this proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE COST: The rule applies to any PCB material and PCB units, as defined in the rule. It also applies to PCB-contaminated waste shipped or managed at a Missouri PCB facility. Although some of the changes contained in the federal rule are more stringent and may result in increased costs of managing PCB materials, they are already in effect under federal law. Therefore, any increased costs to comply with the rule changes are already being incurred for purposes of compliance with the changes to the federal rule. Therefore, this proposed amendment will not cost private entities more than $500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille, 319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on April 20, 2001. Faxed or E-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 15—Hazardous Substance Environmental Remediation (Voluntary Cleanup Program)

PROPOSED AMENDMENT

10 CSR 25-15.010 Hazardous Substance Environmental Remediation (Voluntary Cleanup Program). The commission is deleting the form that follows this rule in the *Code of State Regulations*.

PURPOSE: This amendment removes a form from publication following this rule. The form titled "Transporter's Used Oil Shipment Record" was mistakenly included for publication in the most recent amendment of this rule. The form does not relate to operation of the Voluntary Cleanup Program and is correctly published in 10 CSR 25-11.279.

*AUTHORITY: sections 260.370, [RSMo Supp. 1997 and] 260.567, 260.569, 260.571 and 260.573, RSMo [1994] **2000**. Original rule filed Jan. 5, 1994, effective Aug. 28, 1994. Amended: Filed June 1, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 1, 2001.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than $500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille, 319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

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Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 16—Universal Waste

PROPOSED AMENDMENT

10 CSR 25-16.273 Standards for Universal Waste Management. The commission is amending sections (1) and (2).

PURPOSE: Periodically, department staff review each rule to determine whether updates, clarifications, corrections, or substantive changes are needed. Since the most recent time this rule was amended, staff members have identified various necessary corrections and clarifications to the text of this rule. The proposed corrections and clarifications are intended to ensure that the rule is both accurate and concise. Also, this rule needs to be periodically updated to incorporate by reference the most current edition of the ***Code of Federal Regulations*** *(CFR), published annually on July 1. Currently, this rule incorporates by reference the 1997 CFR, which includes changes through July 1, 1997. Updating this rule to incorporate by reference the 2000 edition of the CFR will ensure that this rule is both consistent with, and current through, the most recent edition of the CFR. This amendment would add to the rule all changes made to 40 CFR part 273, the corresponding part of the federal regulations, between July 1, 1997 and July 1, 2000. One of the changes to the federal Universal Waste Rule during this time period was the addition of lamps as a universal waste. Although lamps were already classified as a state-only universal waste in this rule, which is the state equivalent of the universal waste rule, amendments to the rule are necessary to ensure that it is consistent with the requirements specific to lamps contained in the federal rule. These changes are included in the proposed amendment.*

(1) The regulations set forth in 40 CFR part 273, July 1, *[1997]* **2000**, are incorporated by reference. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 25-3.260(1)(A) shall apply in this rule in addition to any other modifications set forth in section (2) of this rule. Where conflicting rules exist in 10 CSR 25, the more stringent shall control.

(2) Small and large quantity handlers of universal waste, universal waste transporters, universal waste collection programs and owners/operators of a universal waste destination facility shall comply with the requirements noted in this section in addition to requirements set forth in 40 CFR part 273 incorporated in this rule. (Comment: This section has been organized such that Missouri additions or changes to a particular federal subpart are noted in the corresponding subsection of this section. For example, the requirements to be added to 40 CFR part 273 subpart A are found in subsection (2)(A) of this rule.)

(A) General. In addition to the requirements in 40 CFR part 273 subpart A, the following regulations also apply:

1. Scope.

A. In addition to the requirements in 40 CFR 273.1(a), incorporated into this rule, this part establishes requirements for mercury switches as described in subparagraph (2)(A)4.A. of this rule, **and** mercury-containing thermometers and manometers as described in subparagraph (2)(A)4.B. of this rule *[and mercury-containing lamps as described in subparagraph (2)(A)4.C. of this rule]*.

B. This rule does not apply to an owner/operator for that portion of or process at the facility which is in compliance with all requirements for the universal waste in question and of an R2 Missouri-certified resource recovery facility recycling universal waste as described in 10 CSR 25-9.020(3)(A)3.;

2. Applicability—batteries.

A. The additional state specific requirements described in this rule do not apply to batteries as described in 40 CFR 273.2;

3. Applicability—pesticides.

A. 40 CFR 273.3(a)(2) is modified as follows: Stocks of other unused pesticide products that are collected and managed as part of a universal waste pesticide collection program, as defined in paragraph (2)(A)*[6.]***9.** of this rule.

(I) 40 CFR 273.3(c) is not incorporated in this rule, and this subparagraph describes when pesticides become wastes:

(a) A pesticide becomes a waste on the date the generator of a recalled pesticide agrees to participate in the recall;

(b) **A pesticide becomes a waste on the date** *[T]***t**he person conducting a recall decides to discard the pesticide; and

(c) An unused pesticide product as described in 40 CFR 273.3(a)(2) becomes a waste on the date the generator permanently removes it from service.

B. The words "or reclamation" in 40 CFR 273.3(d)(1)(ii) are not incorporated in this rule;

4. Applicability—mercury switches, mercury-containing thermometers and manometers*[, mercury-containing lamps]*.

A. Mercury switches.

(I) The requirements of this rule apply to persons managing mercury switches, defined as a device used to open, close or divert an electrical circuit that contains metallic mercury in an ampule and mercury-containing ampules that have been removed from these devices, except those listed in part A.(II) of this paragraph.

(II) The requirements of this rule do not apply to persons managing the following mercury switches:

(a) Mercury switches that are not yet wastes under 10 CSR 25-4.261. Part A.(III) of this paragraph describes when mercury switches become wastes;

(b) Mercury switches that are not hazardous waste. A mercury switch is a hazardous waste if it exhibits one (1) or more of the characteristics identified in 10 CSR 25-4.261.

(III) Generation of waste mercury switches.

(a) A used mercury switch becomes a waste on the date it is discarded or permanently removed from service.

(b) An unused mercury switch becomes a waste on the date the handler discards it or permanently removes it from service.

B. Mercury-containing thermometers and manometers.

(I) The requirements of this rule apply to persons managing mercury-containing thermometers and manometers, defined as instruments used to measure temperature or pressure that contain metallic mercury in *[a]* glass tubes with sealed, capillary bores and the mercury-containing tubes that have been removed from these devices, except those listed in part B.(II) of this paragraph.

(II) The requirements of this rule do not apply to persons managing the following mercury-containing thermometers and manometers:

(a) Mercury-containing thermometers and manometers that are not yet wastes under 10 CSR 25-4.261. Part B.(III) of this paragraph describes when mercury-containing thermometers and manometers become wastes;

(b) Mercury-containing thermometers and manometers that are not hazardous waste. A mercury-containing ther-

mometer and manometer is a hazardous waste if it exhibits one (1) or more of the characteristics identified in 10 CSR 25-4.261.

(III) Generation of waste mercury-containing thermometers and manometers.

(a) A used mercury-containing thermometer or manometer becomes waste on the date it is discarded or permanently removed from service.

(b) An unused mercury-containing thermometer or manometer becomes a waste on the date the handler discards it or permanently removes it from service*[.]***;**

[C. Mercury-containing lamps.

(I) The requirements of this rule apply to persons managing mercury-containing lamps, defined as light emitting bulbs that contain mercury including fluorescent, high-pressure sodium, mercury vapor and metal halide lamps, except those listed in part C.(II) of this paragraph.

(II) The requirements of this rule do not apply to persons managing the following mercury-containing lamps:

(a) Mercury-containing lamps that are not yet wastes under 10 CSR 25-4.261. Part C.(III) of this paragraph describes when mercury-containing lamps become wastes.

(b) Mercury-containing lamps that are not hazardous waste. A mercury-containing lamp is a hazardous waste if it exhibits one (1) or more of the characteristics identified in 10 CSR 25-4.261.

(III) Generation of waste mercury-containing lamps.

(a) A used mercury-containing lamp becomes a waste on the date it is discarded or permanently removed from service.

(b) An unused mercury-containing lamp becomes a waste on the date the handler discards it or permanently removes it from service;]

5. *(Reserved)*

6. *(Reserved)*

7. *(Reserved)*

[5.] **8.** Applicability—household and conditionally exempt small quantity generator waste.

A. In addition to the requirements of 40 CFR *[273.5(a)(1)]* **273.8(a)(1)** incorporated in this rule, household hazardous wastes which are of the same type as universal wastes defined at 40 CFR *[273.6]* **273.9** as amended by *[(2)(A)6.]* **(2)(A)9.** of this rule, and which are segregated from the solid waste stream must either be managed in compliance with this rule or 10 CSR 25-4.261(2)(A)9.;

[6.] **9**. Definitions.

A. Universal waste—In lieu of the definition of "Universal waste" in 40 CFR *[273.6]* **273.9**, the following definition shall apply: "Universal waste" means batteries as described in 40 CFR 273.2, pesticides as described in 40 CFR 273.3 as modified by paragraph (2)(A)3. of this rule, mercury switches as described in subparagraph (2)(A)4.A. of this rule, thermostats as described in 40 CFR 273.4, as incorporated in this rule, mercury-containing thermometers and manometers as described in subparagraph (2)(A)4.B. of this rule *[and mercury-containing lamps as described in subparagraph (2)(A)4.C. of this rule]*.

B. Universal Waste Pesticide Collection Program—a Missouri universal waste pesticide collection program is any site where stocks of unused pesticide products are collected and managed. The collection program may accept unused pesticide products from both small and large quantity handlers of universal waste pesticides, universal waste transporters and other universal waste pesticide collection programs. The collection program must operate in compliance with the Department of Natural Resources' Standard Procedures for Pesticide Collection Programs in Missouri and submit a Letter of Intent to the director of the Hazardous Waste Program at least fourteen (14) days prior to accepting unused pesticide products. The Letter of Intent shall contain all of the following:

(I) The name of the organization/agency sponsoring the collection program;

(II) Name, telephone number and address of a contact person responsible for operating the collection program;

(III) Location of the collection program;

(IV) Date and time of the collection.

(B) Standards for Small Quantity Handlers of Universal Wastes. In addition to the requirements in 40 CFR part 273 subpart B, the following regulations also apply except that additional state specific requirements do not apply to batteries as described in 40 CFR 273.2, as incorporated in this rule:

1. In addition to the requirements of 40 CFR 273.11, a small quantity handler of universal waste is prohibited from accepting universal waste pesticides from other universal waste pesticide handlers unless the receiving small quantity handler operates a universal waste pesticide collection program as defined in paragraph *[(2)(A)6.]* **(2)(A)9.** of this rule;

2. The requirements of 40 CFR 273.13(c) for small quantity handlers of universal waste thermostats, as incorporated in this rule, shall also apply to small quantity handlers of universal waste mercury switches and universal waste mercury-containing thermometers and manometers. Throughout 40 CFR 273.13(c), as incorporated in this rule, the word "thermostat" or "thermostats" shall be replaced with the phrase "thermostat, mercury switch, or thermometers and manometers," as appropriate;

3. In addition to the requirements of 40 CFR 273.14, as incorporated in this rule, universal waste mercury switches (i.e., each switch, or a container in which the switches are contained) must be labeled or marked clearly with any one (1) of the following phrases: "Universal Waste—Mercury Switch(es)," or "Waste Mercury Switch(es)," or "Used Mercury Switch(es)";

4. In addition to the requirements of 40 CFR 273.14, as incorporated in this rule, universal waste thermometers or manometers (i.e., each item, or a container in which the items are contained) must be labeled or marked clearly with any one (1) of the following phrases as is applicable to the waste: "Universal Waste—Mercury-Containing Thermometer(s) or Manometer(s)," or "Waste Mercury-Containing Thermometer(s) or Manometer(s)," or "Used Mercury-Containing Thermometer(s) or Manometer(s)*[.]*";

[5. In addition to the requirements of 40 CFR 273.14, as incorporated in this rule, universal waste mercury-containing lamps (i.e., each lamp, or a container in which the lamps are contained) must be labeled or marked clearly with any one of the following phrases: "Universal Waste—Mercury-Containing Lamp(s)," or "Waste Mercury-Containing Lamp(s)," or "Used Mercury-containing Lamp(s)";]

[6.] **5.** The phrase "or received from another handler" in 40 CFR 273.15(a) in regards to universal waste pesticides is not incorporated in this rule;

[7.] **6.** In 40 CFR 273.18(a), with respect to universal waste pesticides, remove the phrase "another universal waste handler" and replace it with "a Missouri-certified resource recovery facility, a universal waste pesticide collection program";

[8.] **7.** In addition to the requirements of 40 CFR 273.18(a) through (c) as modified in paragraphs *[(2)(B)6.]* **(2)(B)5.** through *[(2)(B)8.]* **(2)(B)7.** and incorporated in this rule, in regards to universal waste pesticides, if a shipment of universal waste pesticides is rejected by the Missouri-certified resource recovery facility or destination facility, the originating handler must either:

A. Receive the waste back when notified that the shipment has been rejected; or

B. Send the pesticides to another Missouri-certified resource recovery facility or to a destination facility which agrees to take the waste;

[9.] **8.** 40 CFR 273.18(d) through (g) is not incorporated in this rule in regards to universal waste pesticides;

[10.] **9.** The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 273.20, as incorporated in this rule. The state may not assume authority from the EPA to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies.

(C) Standards for Large Quantity Handlers of Universal Wastes. In addition to the requirements in 40 CFR part 273 subpart C, the following regulations also apply:

1. In addition to the requirements of 40 CFR 273.31, a large quantity handler of universal waste is prohibited from accepting universal waste pesticides from other universal waste pesticide handlers unless the receiving large quantity handler operates a universal waste pesticide collection program as defined in paragraph *[(2)(A)6.]* **(2)(A)9.** of this rule;

2. A large quantity handler of universal waste who manages recalled universal waste pesticides as described in 40 CFR 273.3(a)(1) as modified by 10 CSR 25-16.273(2)(A)3. and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify EPA for those recalled universal waste pesticides under this section;

3. The requirements of 40 CFR 273.33(c) for large quantity handlers of universal waste thermostats, as incorporated in this rule, shall also apply to large quantity handlers of universal waste mercury switches and mercury-containing thermometers and manometers. Throughout 40 CFR 273.33(c), as incorporated in this rule, the word "thermostat" or "thermostats" shall be replaced with the phrase "thermostat, mercury switch, thermometer and manometer," or "thermostats, mercury switches, thermometers and manometers," as appropriate;

4. In addition to the requirements in 40 CFR 273.33, a large quantity handler of universal waste must manage universal waste **thermostats, mercury switches, thermometers, manometers and** mercury-containing lamps in a way that prevents releases of any universal waste or components of universal waste to the environment, as follows:

[A. Contain and store unbroken lamps in a manner that minimizes breakage;

B. Place any mercury-containing lamp that shows evidence of damage or leakage in a container. The container must be closed, structurally sound, compatible with the contents of the lamp, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;]

[C.] **A.** Ensure that a mercury clean-up system is readily available to immediately transfer any mercury-contaminated residue resulting from breakage, spills or leaks into a container that meets the requirements of 40 CFR 262.34;

[D.] **B**. Ensure that the area in which containers are stored is ventilated;

[E. Ensure that employees handling universal waste mercury-containing lamps are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of spillage or released material into appropriate containers;]

5. In addition to the requirements of 40 CFR 273.34, as incorporated in this rule, universal waste mercury switches (i.e., each switch, or a container in which the switches are contained) must be labeled or marked clearly with any one (1) of the following phrases: "Universal Waste—Mercury Switch(es)," or "Waste Mercury Switch(es)," or "Used Mercury Switch(es)";

6. In addition to the requirements of 40 CFR 273.34, as incorporated in this rule, universal waste thermometers and manometers (i.e., each item, or a container in which the items are contained) must be labeled or marked clearly with any one (1) of the following phrases as is applicable to the waste: "Universal Waste—Mercury-Containing Thermometer(s) or Manometer(s)**,"** or "Waste Mercury-Containing Thermometer(s) or Manometer(s)," or "Used Mercury-Containing Thermometer(s) or Manometer(s)";

[7. In addition to the requirements of 40 CFR 273.34, as incorporated in this rule, universal waste mercury-containing lamps (i.e., each lamp, or a container in which the lamps are contained) must be labeled or marked clearly with any one (1) of the following phrases: "Universal Waste—Mercury-Containing Lamp(s)," or "Waste Mercury-Containing Lamp(s)," or "Used Mercury-Containing Lamp(s)";]

[8.] **7.** In 40 CFR 273.35(a) and (b), the phrases "or received from another handler" are not incorporated in this rule in regards to universal waste pesticides;

[9.] **8.** In 40 CFR 273.35(c)(1) through (c)(6), the phrases "or is received" and "or was received" are not incorporated in this rule in regards to universal waste pesticides;

[10.] **9.** In 40 CFR 273.38(a), with respect to pesticide, remove the phrase "another universal waste handler" and replace it with "a Missouri-certified resource recovery facility, a universal waste pesticide collection program";

[11.] **10.** In addition to the requirements of 40 CFR 273.38(a) through (c) incorporated by reference and modified by this section, if a shipment of universal waste pesticides from a large quantity generator is rejected by the Missouri-certified resource recovery facility or destination facility, the original handler must either:

A. Receive waste back when notified that the shipment has been rejected; or

B. Send the waste to another Missouri-certified resource recovery facility or to a destination facility which agrees to take the waste;

[12.] **11.** 40 CFR 273.38(d) through (f) is not incorporated in this rule with regards to universal waste pesticides;

[13.] **12.** 40 CFR 273.39(c)(1) is not incorporated in this rule in regards to universal waste pesticides;

[14.] **13.** The substitution of terms in 10 CSR 25-3.260(1)(A) does not apply in 40 CFR 273.40, as incorporated in this rule. The state may not assume authority from the EPA to receive notifications of intent to export or to transmit this information to other countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. This modification does not relieve the regulated person of the responsibility to comply with the Resource Conservation and Recovery Act (RCRA) or other pertinent export control laws and regulations issued by other agencies.

*AUTHORITY: section 260.370, RSMo [Supp. 1997] **2000**. Original rule filed June 1, 1998, effective Jan. 30, 1999. Amended: Filed Feb. 1, 2001.*

*PUBLIC COST: Each of the federal rules proposed for incorporation by reference in this amendment is largely less stringent and more flexible than current regulations. Consequently, even though there are some provisions that are more stringent, the Environmental Protection Agency has determined each rule to result in a net savings, rather than resulting in any increased costs, either to implementing agencies or to the regulated community. This determination is discussed in the Regulatory Impact Analysis section of the **Federal Register** notice corresponding to adoption of*

the final rule and/or in the associated Economic Impact Analysis prepared by the EPA and referred to in the Regulatory Impact Analysis. Therefore, this proposed amendment will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE COST: Any requirements or standards contained in this rule are optional and only applicable to generators or transporters who choose to manage a waste as a universal waste. Therefore, this proposed amendment will not cost private entities more than $500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on April 12, 2001 at the Hotel DeVille, 319 West Miller Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on March 29, 2001. Faxed or E-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on April 20, 2001. Faxed or E-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Public Drinking Water Program
Chapter 13—Grants and Loans

PROPOSED AMENDMENT

10 CSR 60-13.010 Grants for Public Water Supply Districts and Small Municipal Water Supply Systems. The department is amending the Purpose statement and sections (1)–(4) and adding sections (5) and (6).

PURPOSE: This amendment adds criteria for providing grants for source water protection under the Conservation Reserve Enhancement Program (CREP). Applicants for this funding must have a department-approved source water protection program.

The process for evaluating grant applications is amended to include the Water and Wastewater Coordination Committee's pre-application process and the statutory requirement for applicants to obtain primary funding before applying for assistance under this rule. Grant applicants must show they meet or have a plan to meet technical, managerial, and financial (TMF) capacity requirements.

A provision is added that allows the state to require reimbursement of the grant funds if the grant recipient is sold to an entity other than a political subdivision of the state.

*PURPOSE: This rule establishes the department's grant application procedures [and a means of administering the state funds appropriated] **requirements and** for construction of **projects at** public water supply **districts and rural community water** systems, **and providing source water protection grants to support the Conservation Reserve Enhancement Program**.*

(1) Pre-Application Requirements. A pre-application for a grant shall be submitted on forms provided by the department and shall be accompanied by a preliminary engineering report. The pre-application shall contain a brief project description and such information as the department may find necessary to begin coordination with the Missouri water and wastewater review committee or its successor and with other primary funding programs or agencies.

[(1)] **(2)** *[Grant]* Application Requirements.

(A) *[An]* **As required by section 640.615, RSMo, the applicant must first apply with the agency or other financial source which is to furnish the primary financial assistance, and after the amount of that assistance has been determined, an** application for a grant **under this rule may be made to and processed by the department. The application** shall be submitted on forms provided by the department. The application shall be supported by the necessary documents and forms from other state and federal grant or lending agencies or private lending agencies to enable the department to establish eligibility **and need** for grant funds.

(B) The project for which the grant application is submitted shall comply with appropriate state and local laws, rules and ordinances.

(C) These grants are to be considered secondary sources of funding and, as such, shall in no case exceed one thousand four hundred dollars ($1,400) per contracted connection *[or]***,** fifty percent (50%) of the total project cost, **or $500,000,** whichever is less.

(D) The grant application shall contain the **following** information *[listed in paragraphs (1)(D)1.–6. of this rule]*:

1. The preliminary engineering cost study for the proposed project including, but not limited to, the following items: development and administration costs; land, structures, right-of-way costs; legal costs; engineering costs; interest costs; equipment costs; contingencies; other costs; and total project costs;

2. The engineering report for the proposed project which is in accordance with accepted engineering practices. The current "Design Guide for Community Water Systems" and "Ten State Standards" and applicable rules should be considered for design standards;

[2.] **3.** Bonded indebtedness **or other indebtedness** of the district or community, including: outstanding general obligation and revenue bonds; the purpose of each indebtedness; the amount of each indebtedness; the amortization period; the date payments are due; amount of installment; and the interest rate;

[3.] **4.** The financial condition of the district or community, including: the total assessed value of agricultural, commercial and industrial property, vacant lots and residential property; total annual revenue anticipated from this assessed property; **water user charges;** other sources of income available to finance the project; and cash on hand. The latest audit with an update would satisfy the requirements of this paragraph;

[4.] **5.** The information required to determine the cost per contracted connection;

[5.] **6.** The median annual *[gross]* **household** income of the residents in the district or community as determined in the latest **federal** census; *[and]*

[6.] **7.** Information required to determine the ratio of the contracted users to the potential users*[.]***; and**

8. An evaluation of the applicant's technical, managerial, and financial (TMF) capacity on forms provided by the department. An applicant that does not meet the TMF capacity requirements established in 10 CSR 60-3.030 shall submit a plan outlining the steps the applicant will take to meet the requirements. The plan shall show the applicant will meet TMF requirements before the project is complete or within one (1) year of the award of the grant unless the department determines that a longer period of time is necessary.

*[(2)]***(3)** Grant Priorities.

(A) Priorities for grants for public water supply districts and rural community water systems shall be established by the department.

(B) *[The establishment of priorities and d]***D**etermination of relative need will be coordinated with appropriate federal grant and lending agencies and with appropriate state agencies. **Preference may be given to projects needing a grant in order to obtain state or federal drinking water loan assistance. It is the intent of the department to maximize the effective use of state and federal grant and loan funds.**

*[(3)]***(4)** Approval and Payment of Grants.

(A) The applicant shall be notified by the department when the grant application has been approved.

(B) Installment payments of the grant **for construction projects** shall be made at the request of the applicant and shall be based on expenditures outlined in paragraph *[(1)(D)1.]* **(2)(E)1.** of this rule. Payments will be made in equal installments as *[listed in paragraphs (3)(B)1.–4 of this rule—]* **follows:**

1. A first installment will be made when not less than twenty-five percent (25%) of the construction of the project is completed;

2. A second installment will be made when not less than fifty percent (50%) of the construction of the project is completed;

3. A third installment will be made when not less than seventy-five percent (75%) of the construction of the project is completed; and

4. A fourth installment will be made after the project is completed, appropriate receipts and expenditures have been submitted and approved by the department, **a consultant's statement of work completion has been received, and** a final inspection has been performed by department personnel and construction is approved by the department.

(C) Any cost of work completed after the department's final inspection approval shall not be an eligible project cost.

(D) An audit to verify expenditures of grant funds may be made by the department after the completion of each approved project.

(5) If at any time during the first twenty (20) years of the design life of the facility(ies) funded under this rule the facility is sold, either outright or on a contract for deed, to other than a political subdivision of the state, the state may require reimbursement of the grant funds. The total amount of the grant funds to be reimbursed shall be based on a twenty (20)-year straight-line depreciation. Grant funds to be reimbursed, shall become due and payable upon transfer of ownership of the facility(ies).

(6) Grants for Conservation Reserve Enhancement Program Participants.

(A) Program Description and Definition of Terms.

1. The Conservation Reserve Enhancement Program (CREP) is a state-federal partnership program targeted to address specific water quality, soil erosion and wildlife habitat issues related to agricultural use. The CREP uses financial incentives to encourage farmers to voluntarily enroll in contracts to remove lands from agricultural production and, instead, to implement approved conservation reserve practices.

2. Approved conservation reserve practices in this program are: introduced grasses and legumes, native grasses, hardwood tree planting, wildlife habitat, contour grass strips, filter strips, riparian buffers, and wetland restoration.

3. The purpose of the grants provided under this section (6) is to provide an additional cash incentive ("rental enhancement payment") to farmers to encourage participation in CREP. The rental enhancement payment is a per-acre cash payment to participating farmers for land enrolled in the CREP that is in addition to other payments or financial assistance from federal or state funds and is a percentage of the annual base rental payment.

4. The annual base rental payment is the average weighted soil rental rate for the three (3) predominant soil types on the acreage offered. The U.S. Department of Agriculture maintains this information on a county-by-county basis for the entire country.

(B) Application Requirements.

1. As required by section 640.615, RSMo, the applicant must first apply with the agency or other financial source which is to furnish the primary financial assistance. After the amount of that assistance has been determined, an application for a grant shall be submitted on forms provided by the department. The application shall be supported by the necessary documents and forms from other state and federal grant or lending agencies or private lending agencies to enable the department to establish eligibility and need for grant funds.

2. The application shall contain:

A. The number of acres being protected;

B. The source for the local match;

C. A letter from the local soil conservation district approving the proposed practices to be implemented including a reasonable time line for completion;

D. A legal description of the project; and

E. The name and address of the farmer(s) (subrecipients) proposing the practices.

3. The project for which the grant application is submitted shall comply with appropriate state and local laws, rules and ordinances. These projects shall be limited to those areas with a source water protection program approved by the department.

4. These grants are to be considered secondary sources of funding and, as such, shall in no case exceed one thousand four hundred dollars ($1,400) per contracted connection, fifty percent (50%) of the total project cost, or $500,000, whichever is less.

5. A local match for the rental enhancement payment grant is expected. The department expects rental enhancement payment grants not to exceed five percent (5%) of the annual base rental payment and expects this to be matched with an equal amount of other nonfederal funding. Funding priority will be given to those applicants that offer the highest percentage of matching funds. If matching funds are not available, the applicant may request a reduction or waiver of the match requirement, in which case the rental enhancement payment grant shall not exceed ten percent (10%) of the annual base rental payment.

(C) Approval and Payment of Grants.

1. The applicant shall be notified by the department when the grant application has been approved.

2. Payments will be made to the recipient in a lump sum after completion of the approved practice. These grant payments shall be made immediately available to the farmer (subrecipient) implementing the practices. Grant payments to the recipient may be combined to cover multiple subrecipients.

(D) If a subrecipient fails to carry out the terms and conditions of the CREP contract, the state may require reimbursement of the rental enhancement payment portion of the grant with interest.

*AUTHORITY: section 640.615, RSMo [1994] **2000**. This rule was previously filed as 10 CSR 60-2.020 Sept. 21, 1973, effective Oct. 1, 1973. Amended: Filed May 4, 1979, effective Sept. 14, 1979. Amended: Filed April 14, 1981, effective Oct. 11, 1981. Rescinded and readopted: Filed Feb. 2, 1983, effective July 1, 1983. Emergency amendment filed July 3, 1989, effective July 27, 1989, expired Nov. 23, 1989. Amended: Filed July 3, 1989, effective Nov. 23, 1989. Amended: Filed Jan. 19, 2001.*

PUBLIC COST: This proposed amendment is anticipated to cost the Department of Natural Resources an average of approximately $646,697 annually during the first five years the rule is in effect

and approximately $46,697 annually thereafter. This proposed amendment is anticipated to cost 10 community water systems applying for a construction grant a total of about $2,563 annually and 5 public water supply districts applying for a construction grant a total of about $1,313 annually.

Also, 53 community water systems and 5 public water supply districts are eligible to participate in the CREP grant opportunity established by this amendment. The CREP is anticipated to cost the 53 community water systems about $550,926 as an annual average ($10,394.82 × 53 systems) during the first five years the rule is in effect and five public water supply districts about $51,974 as an annual average ($10,394.82 × 5 systems) during the first five years the rule is in effect.

No water systems are required to participate in the grant programs established by this rule. Participation, and therefore any costs incurred, is voluntary on the part of the water systems.

PRIVATE COST: This proposed amendment is anticipated to cost private entities less than $500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: An information meeting and public hearing will be held at 11:00 a.m., April 10, 2001, at the Public Drinking Water Program, 101 Adams Street, Jefferson City, Missouri. In preparing your comments, please include the regulatory citation and the ***Missouri Register*** *page number. Please explain why you agree or disagree with the proposed change, and include alternative options or language.*

Written comments must be postmarked or received by April 17, 2001. Comments may be mailed or faxed to: Linda McCarty, Public Drinking Water Program, PO Box 176, Jefferson City, MO 65102. The fax number is (573) 751-3110.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title:	10
Division:	60
Chapter:	13
Type of Rulemaking:	Proposed Amendment
Rule Number and Name:	10 CSR 60-13.010 Grants for Public Water Supply Districts and Small Municipal Water Supply Systems

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Class of Political Subdivision	Estimated Annualized Cost of Compliance in the Aggregate, FY2002-2006[1]	Estimated Annualized Cost of Compliance in the Aggregate, FY2007 and subsequent years[2]
Department of Natural Resources	$ 646,697	$ 46,697
Community Water Systems[3] serving less than 10,000 people and choosing to apply for a construction grant (about 10 annually)[4]	$2,563	$ 2,563
Public Water Supply Districts choosing to apply for a construction grant (about 5 annually)[5]	$ 1,313	$ 1,313
Community Water Systems choosing to participate in CREP (53 total systems)[6]	$ 550,926	$ 0
Public Water Supply Districts choosing to participate in CREP (5 total systems)[7]	$ 51,974	$ 0

[1] The estimated cost does not take into account inflationary factors. It is anticipated that the CREP grants will be awarded during the first five years of the rule, so that block of time is listed separately. An annualized estimated cost, rather than a five-year cost, is provided for this time period to facilitate the review required at the end of the first full first year.

[2] The rule is expected to be in effect in perpetuity. Because the duration of the rule cannot be accurately estimated, an annualized estimated cost is provided. The cost estimate does not take into account inflationary factors, which are unknown.

[3] Community water system is defined at 10 CSR 60-2.015(2)(C)9. and in federal regulations at 40 CFR 141.2. Cities, public water supply districts, trailer parks, and subdivisions are types of community water systems. Community water systems and public water supply districts are both types of public water systems. Only publicly-owned public water systems (municipalities and public water supply districts) are eligible for grant funds of any kind under this rule.

[4,5,6,7] No water systems are required to participate in this grant program. All costs to water systems are discretionary unless they choose to receive a grant.

III. WORKSHEET

A. Department of Natural Resources.

1. Estimated cost of CREP rental enhancement grant.

50,000 eligible acres x average $80 rental rate per acre per year x 15 years x 5% state match / 5 years = $600,000 average annualized cost for state match during the anticipated five-year application period.

2. Estimated cost to implement and administer construction grants and CREP grants. 0.9 FTE environmental engineer = $46,697 (salary, fringe, indirect)

B. Community Water Systems.
1. Cost to fill out the preapplication for a construction grant = 10 systems x 10 hours x $25/hr = $2,500 annually.
2. Cost to develop and submit TMF compliance plan = .25 systems x 10 hours x $25/hr = $62.50 annual average.
3. Cost of applying for CREP rental enhancement grant = 53 systems x 10 hours x $25/hr / 5 years = $2,650 annually.
4. Cost of providing match for the CREP rental enhancement grant.
   a) 50,000 eligible acres x average $80 rental rate per acre per year x 15 years rental commitment x 5% local match = $3,000,000 local match for CREP rental enhancement grant.
   b) $3,000,000 local match / 5 years = $600,000 average annual cost during the anticipated five-year application period for all 58 eligible water systems.
   c) Community water system cost for local match = $600,000 / 58 eligible systems x 53 community water systems = $548,275.86 average annual cost for 53 CWS.

C. Public Water Supply Districts.
1. Cost to fill out the preapplication for a construction grant = 5 systems x 10 hours x $25/hr = $1,250 annually.
2. Cost to develop and submit TMF compliance plan = .25 systems x 10 hours x $25/hr = $62.50 annual average.
3. Cost of applying for CREP grant = 5 systems x 10 hours x $25/hr / 5 years = $250 annually.
4. Cost of providing match for the CREP rental enhancement grant.
   a) 50,000 eligible acres x average $80 rental rate per acre per year x 15 years rental commitment x 5% local match = $3,000,000 local match for CREP rental enhancement grant.
   b) $3,000,000 local match / 5 years = $600,000 average annual cost during the anticipated five-year application period for all 58 eligible water systems.
   c) Public water supply district cost for local match = $600,000 / 58 eligible systems x 5 public water supply districts = $51,724.14 average annual cost for 5 PWSD.

IV. ASSUMPTIONS

1. From 1974 through 1995, the department awarded rural water grants to 300 small communities and public water supply districts under this rule. The department assumes that this average of about 15 construction grants awarded per year will continue. Based on historical data, the department assumes that about 2/3 of the applicants will be community water systems and 1/3 will be public water supply districts.

2. The department estimates that it will take an applicant about ten hours to provide the preapplication form and supporting documents at a cost of about $25 per hour including benefits.

3. The department assumes that providing the preliminary engineering report will not add to the costs incurred by an applicant because this report is already required under 10 CSR 60-13.010 for construction projects.

4. The department assumes that the existing TMF forms developed for other rules will be used for this rule. The department assumes that it will take an environmental engineer about four hours per application to evaluate the TMF forms provided by the grant applicants, based on permit reviews for continuing operating authority TMF.

5. The department estimates, based on historical data tracking systems not making substantial progress toward compliance, that an average of one applicant every two years may not initially meet TMF requirements and will have to develop a TMF plan. The department assumes that half of these applicants will be community water systems and half will be public water supply districts.

6. The department assumes that all 58 public water systems eligible for a CREP rental enhancement payment grant will apply for the grant. The department assumes that these applications will be made within the first five years of the rule's effective date.

7. The department assumes that it will incur costs equivalent to 0.9 FTE of an environmental engineer for development and implementation of the CREP rental enhancement grant program, and to process the preapplications and TMF information for the construction grants.

8. The department assumes that the cost of processing CREP grant payments will be absorbed by the ongoing grant payment process.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Public Drinking Water Program
Chapter 13—Grants and Loans

PROPOSED AMENDMENT

10 CSR 60-13.020 Drinking Water Revolving Fund Loan Program. The commission is amending sections (2) and (4) and adding section (5).

PURPOSE: This amendment adds requirements for a direct loan program and clarifies applicability of the public participation, water use ordinance and state prevailing wage requirements to privately-owned public water systems.

(2) Requirements for Loan Recipients. This section applies to recipients of loans from the Drinking Water Revolving Fund established in section 640.107, RSMo as a subfund of the Water and Wastewater Loan Fund. The recipient must satisfy more stringent requirements if required to do so by federal, state or local statutes, policies, rules, ordinances or orders.

(E) Public Participation. The public must be allowed an opportunity to exchange ideas with the applicant during project development. Public participation must be preceded by timely distribution of information and must occur sufficiently in advance of decision making to allow the recipient to assimilate public views into action. At a minimum, the recipient must provide the *[following]* opportunities for public participation **listed in this subsection, except that Public Service Commission (PSC)-regulated utilities must proceed through appropriate procedures established by the PSC***[:]***.**

1. A public meeting shall be conducted to discuss the alternative engineering solutions*[;]***.**

2. Prior to approval of the draft user charge ordinance, a public meeting shall be conducted to address the proposed user charge rates. Public notice of the meeting should be published at least thirty (30) days prior to the meeting date in one (1) or more local newspapers, as needed to cover the project service area. The recipient shall prepare a transcript, recording or other complete record of the proceeding along with proof of publication and submit it to the department and make it available at no more than cost to anyone who requests it. A copy of the record should be available for public review*[; and]***.**

3. Public participation requirements for environmental review are in 10 CSR 60-13.030.

(G) Additional Preclosing Requirements. After the department has entered into a binding commitment with the applicant, the following requirements must be met before loan closing can occur. All documents and information necessary to provide assistance must be submitted to the department in sufficient time to allow adequate time for review and must be approved sixty (60) days prior to the loan closing date established by the department. The department may extend deadlines if justified.

1. Final document submittal. The following documents must be submitted to and approved by the department:

A. Resolution identifying the authorized representative by name. Applicants for assistance under the DWRF shall provide a resolution by the governing body designating a representative authorized to file the application for assistance, reimbursement requests and act in behalf of the applicant in all matters related to the project;

B. Any and all changes to the proposed project schedule;

C. Draft engineering contract as described in subsection (2)(L) of this rule;

D. Plans and specifications certified by a registered professional engineer licensed in Missouri;

E. Certification of easements and real property acquisition. Recipients of assistance under the DWRF loan program shall have obtained title or option to the property or easements for the project prior to loan closing;

F. Draft user charge and water use ordinances as described in paragraph (2)(G)3. of this rule; and

G. Other information or documentation deemed necessary by the applicant or the department to ensure the proper expenditure of DWRF funds.

2. Projects serving multiple water systems. Prior to closing, if the project serves two (2) or more public water systems, the applicant shall submit executed agreements or contracts between the public water systems for the financing, construction and operation of the proposed facilities. At a minimum, the agreement or contract shall include:

A. The operation and maintenance responsibilities of each party upon which the costs are allocated;

B. The formula by which the costs are allocated; and

C. The manner in which the costs are allocated.

3. User charge (water rate) ordinance.

A. **For non-PSC-regulated utilities:**

(I) Loan recipients are required to maintain, for the useful life of the project, user charge ordinances approved by the department. User charge ordinances, at a minimum, shall be adopted prior to financing and implemented by the initiation of operation of the financed project. A copy of the enacted ordinances shall be submitted prior to initiation of operation*[.]***;**

*[B.]***(II)** The user charge system shall be designed to produce adequate revenues required for the operation and maintenance, including a reserve for equipment replacement. A one hundred ten percent (110%) debt service reserve may be required. Each user charge system shall—

*[(I)]***(a)** Be based upon actual use;

*[(II)]***(b)** Include an adequate financial management system that will accurately account for revenues generated by the system, debt service and loan fee costs and expenditures for operation and maintenance, including replacement based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration;

*[(III)]***(c)** Provide for an annual review of charges; and

*[(IV)]***(d)** Be based on an approved rate guidance, such as the American Waterworks Association guidance*[.]***; and**

*[C.]***(III)** The loan recipient shall provide certification that the rates were derived using an acceptable rate method.

B. PSC-regulated utilities shall comply with the requirements of the PSC in developing and implementing their user charge ordinances but shall ensure that sufficient rates and charges are in effect to satisfy bond covenants throughout the term of the loan.

4. Water use ordinance. Applicants dependent on user fees for debt payment or operation and maintenance expenses shall have in place an enforceable water use ordinance prior to loan closure. The water use ordinance shall address water system responsibilities and customer responsibility relating to installation and maintenance of water meters and water lines; easements; alternative sources of water; and provisions for breach of contract and liquidated damages. The water use ordinance is intended to be an effective business tool for the efficient management of the water system.

5. Additional requirements for privately-owned public water systems. Privately-owned public water systems must provide documentation from the Missouri Department of Economic Development showing an allocation under Missouri's private activity bond cap and must obtain any necessary approvals from the Public Service Commission.

(M) Specifications. The construction specifications must contain the following:

1. Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product or service to be procured. The description, in competitive procurement, shall not contain features which unduly restrict competition unless the features are necessary to test or demonstrate a specific thing or to provide for interchangeability of parts and equipment. The description shall include a statement of the qualitative nature of the material, product or service to be

procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use;

2. The recipient shall avoid the use of detailed product specifications if at all possible;

3. When in the judgment of the recipient it is impractical or uneconomical to make a clear and accurate description of the technical requirements, recipients may use a brand name or equal description as a means to define the performance or other salient requirements of a procurement. The recipient need not establish the existence of any source other than the named brand. Recipients must state clearly in the specification the salient requirements of the named brand which must be met by offerers;

4. Sole source restriction. A specification shall not require the use of structures, materials, equipment or processes which are known to be available only from a sole source, unless the department determines that the recipient's engineer has adequately justified in writing to the department that the proposed use meets the particular project's minimum needs;

5. Experience clause restriction. The general use of experience clauses requiring equipment manufacturers to have a record of satisfactory operation for a specified period of time or of bonds or deposits to guarantee replacement in the event of failure is restricted to special cases where the recipient's engineer adequately justifies any such requirement in writing. Where this justification has been made, submission of a bond or deposit shall be permitted instead of a specified experience period. The period of time for which the bond or deposit is required shall not exceed the experience period specified;

6. Domestic products procurement law. In accordance with sections 34.350–34.359, RSMo, the bid documents shall require all manufactured goods or commodities used or supplied in the performance of any contract or subcontract awarded on a loan project to be manufactured, assembled or produced in the United States, unless obtaining American-made products would increase the cost of the contract by more than ten percent (10%);

7. Bonding. On construction contracts exceeding one hundred thousand dollars ($100,000), the bid documents shall require each bidder to furnish a bid guarantee equivalent to five percent (5%) of the bid price. In addition, the bid documents must require the successful bidder to furnish performance and payment bonds, each of which shall be in an amount not less than one hundred percent (100%) of the contract price;

8. State wage determination. The bid documents shall contain the current prevailing wage determination issued by the Missouri Department of Labor and Industrial Relations, Division of Labor Standards**, if otherwise required by law**;

9. Small, minority, women's and labor surplus area businesses.

A. The recipient shall take affirmative steps and the bid documents shall require the bidders to take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, construction and services.

B. If the contractor awards subagreements, then the contractor is required to take the affirmative steps in this paragraph (2)(M)9.

C. Affirmative steps shall include the following:

(I) Including qualified small, minority and women's businesses on solicitation lists;

(II) Assuring that small, minority and women's businesses are solicited whenever they are potential sources;

(III) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority and women's businesses;

(IV) Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority and women's businesses;

(V) Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the United States Department of Commerce as appropriate;

10. Debarment/suspension. The recipient agrees to deny participation in services, supplies or equipment to be procured for this project to any debarred or suspended firms or affiliates in accordance with Executive Order 12549. The recipient acknowledges that doing business with any party listed on the List of Debarred, Suspended or Voluntarily Excluded Persons may result in disallowance of project costs under the assistance agreement;

11. Right of entry to the project site shall be provided for representatives of the department, Environmental Improvement and Energy Resources Authority (EIERA) and U.S. Environmental Protection Agency so they may have access to the work wherever it is in preparation or progress; and

12. The specifications must include the following statement: "The owner shall make payment to the contractor in accordance with section 34.057, RSMo."

(4) Leveraged Loans.

(A) This section describes the leveraged loan process and contains additional requirements for recipients of a leveraged loan under the Drinking Water Revolving Fund established in section 640.107, RSMo as a subfund of the Water and Wastewater Loan Fund. All other requirements also apply, including administrative fees in subsection (2)(B) of this rule**, except for section (5) which applies specifically to DWRF direct loans**.

(5) DWRF Direct Loans.

(A) General.

1. This section describes the process and requirements for direct loans awarded under this rule. All other requirements also apply, including administrative fees in subsection (2)(B) of this rule, except for subsection (2)(A) and section (4) of this rule which pertain to leveraged loans.

2. This rule sets out the general format for the direct loan program. The commission and the department shall have the authority to make specific refinements, variations or additional requirements as may be necessary or desirable in connection with the efficient operation of the direct loan program.

3. The department may make direct loans by purchasing the general obligation bonds, revenue bonds, short-term notes or other acceptable obligation of any qualified applicant for the planning, design and/or construction of an eligible project. These loans shall not exceed the total eligible project costs described in subsection (2)(S) of this rule less any amounts finalized by any means other than through the direct loan program. The department is not required to offer direct loans to drinking water revolving fund loan program applicants.

(B) Interest Rate.

1. The target interest rate (TIR) for all direct loan assistance provided under this rule will be not less than zero percent (0%) nor more than market rate as determined by the Twenty-Five Revenue Bond Index published by the Bond Buyers Index of Twenty Bonds rounded to the nearest one-tenth (0.1) of one percent (1%). The department will use the Twenty-Five Revenue Bond Index most recently published prior to the date on which the project assistance is provided for all loans except those secured by general obligation bonds. For these transactions, the rate published immediately preceding filing with the state auditor's office will be used.

2. Interest on the unpaid balance will begin accruing on the last day of the month in which a construction advance is made and will be compounded at the end of each month after that until such time as the construction loan along with all interest accrued is paid in full.

(C) Letter of Intent. The department will issue a letter of intent to make a direct loan when the application documents are approved and the commission approves the project for receipt of loan funds. The letter of intent shall state the amount of funds reserved for the project, the requirements to qualify for receipt of loan funds and the schedule for the applicant to meet all requirements. The department may terminate this letter of intent for failure to meet the schedule requirements or

conditions of the letter of intent. The amount of assistance stated in the letter of intent may be adjusted to reflect actual costs and the availability of funds.

(D) Construction Loans. The department may award construction loans to qualified applicants in order to provide interim financing during construction of their project. Construction loans may contain clauses and provisions determined by the department to be necessary to protect the interests of the state.

1. With exception of substate revolving funds, the construction loan will remain in force throughout the construction period. However, it must be paid in full no later than the closing deadline provided in the construction loan agreement.

2. If the department is to provide long-term financing under this rule, then the construction loan must contain an agreement by the department and the recipient that the department will purchase the recipient's general obligation, revenue bonds or other acceptable debt obligation after construction is completed. If a construction loan is awarded, the permanent financing amount will be limited in amount to the sum of the payments drawn from the construction loan for eligible project costs plus interest accrued on the construction loan plus the reasonable costs of issuance which can be financed under Missouri statutes.

3. Unless specifically addressed in the loan documents, the recipient may request construction loan payments no more often than monthly. The maximum construction advance shall be the sum of all eligible costs incurred to date. Each payment request shall include the following information:

A. Completed reimbursement request form;

B. Construction pay estimates signed by the construction contractor, the recipient and the resident inspector, if applicable;

C. Invoices for other eligible services, equipment and supplies for the project; and

D. Any other information deemed necessary by the department to insure proper project management and expenditure of public funds.

4. If the department is satisfied that the payment request accurately reflects the eligible cost incurred to date on the project, the department will request that a state payment check be issued to the recipient.

(E) The department may require the recipient to contract with a trustee or paying agent to provide all or part of the following services:

1. Make joint assistance payments to the recipients and their contractors;

2. Ensure that payments are only released to those recipient's whose contractors have a project contract approved by the department;

3. Ensure that none of the recipient's contractors receive more in assistance payments than approved by the department; and

4. Maintain financial records of credits and debits for the construction project.

(F) Purchase of Obligations. The department shall purchase revenue bonds, general obligation bonds or other acceptable debt obligations from the recipient no later than the closing deadline contained in the construction loan agreement. In addition to the requirements of this rule, the department may require the recipient to include those assurances and clauses in the loan agreements and bond resolutions as deemed necessary to protect the interest of the state.

(G) Amortization Schedules. The department shall use the following guidelines to establish amortization schedules for obligations purchased under this rule:

1. The bonds, notes or other debt obligations shall be fully amortized in no more than twenty (20) years after initiation of operation;

2. The payment frequency on any debt obligations shall be no less than annual with the first payment no later than one (1) year after the initiation of operation;

3. The amortization schedule may either be straight line or declining schedules for the term of the debt obligation; and

4. Repayment of principal shall begin not later than one (1) year after initiation of operation.

(H) If at any time during the loan period the facility(ies) financed under this rule is sold, either outright or on contract for deed, the loan becomes due and payable upon transfer unless otherwise approved by the department.

AUTHORITY: sections 640.100 and 640.107, RSMo [Supp. 1998] 2000. Emergency rule filed July 15, 1998, effective July 25, 1998, expired Feb. 25, 1999. Original rule filed Aug. 17, 1998, effective April 30, 1999. Amended: Filed Jan. 19, 2001.

PUBLIC COST: This proposed amendment is anticipated to cost state agencies or political subdivisions less than $500 in the aggregate.

PRIVATE COST: This proposed amendment is anticipated to cost private entities less than $500 in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: An information meeting and public hearing will be held at 11:00 a.m., April 10, 2001, at the Public Drinking Water Program, 101 Adams Street, Jefferson City, Missouri. In preparing your comments, please include the regulatory citation and the **Missouri Register** page number. Please explain why you agree or disagree with the proposed change, and include alternative options or language.*

Written comments must be postmarked or received by April 17, 2001. Comments may be mailed or faxed to: Linda McCarty, Public Drinking Water Program, PO Box 176, Jefferson City, MO 65102. The fax number is (573) 751-3110.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Public Drinking Water Program
Chapter 13—Grants and Loans

PROPOSED RULE

10 CSR 60-13.025 State Loan Program

PURPOSE: This rule establishes requirements for loans from state funding for financing construction improvements at public water systems.

(1) General Requirements.

(A) The department may make direct loans to public water systems by purchasing the general obligation bonds, revenue bonds, short-term notes or other acceptable obligation of any qualified applicant for the planning, design or construction, or any combination of these, of an eligible project.

(B) In addition to the requirements of this rule, the department may require the recipient to include those assurances and clauses in the loan agreements and bond resolutions as deemed necessary to protect the interest of the state and comply with applicable state and federal requirements.

(C) If at any time during the loan period the facility(ies) financed under this rule is sold, either outright or on contract for deed, the loan becomes due and payable upon transfer unless otherwise approved by the department.

(D) This rule sets out the general format for loans from state funds. The commission and the department shall have the authority to make specific refinements, variations or additional requirements as may be necessary or desirable in connection with the efficient operation of the loan process.

(E) If at any time during the loan period the facility financed under this rule is sold, either outright or on contract for deed, the loan becomes due and payable upon transfer unless otherwise approved by the department.

(2) Eligibility.

(A) Eligible Systems. Public water supply districts and rural community water systems located in Missouri are eligible to apply. Eligibility to apply does not guarantee assistance or eligibility for assistance.

(B) Eligible Projects.

1. Assistance may be provided for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which will facilitate compliance with national primary drinking water regulations applicable to the system or otherwise significantly further the health protection objectives of the federal Safe Drinking Water Act (SDWA).

2. Projects to address federal SDWA health standards identified in the intended use plan or in the loan priority point criteria that have been exceeded and projects to prevent future violations of the rules are eligible for funding. These include projects to maintain compliance with existing regulations for contaminants with acute health effects (such as the Surface Water Treatment Rule, the Total Coliform Rule, and nitrate standard) and regulations for contaminants with chronic health effects (such as Lead and Copper Rule, Phases I, II, and V Rules, and safety standards for total trihalomethanes, arsenic, barium, cadmium, chromium, fluoride, mercury, selenium, combined radium-226, -228, and gross alpha particle activity).

3. Projects to address imminent federal SDWA health standards (identified in the annual intended use plan) that have been exceeded or to prevent future violations of the anticipated rules are eligible for funding.

4. Projects to replace aging infrastructure are eligible if they are needed to maintain compliance or further the public health protection objectives of the federal SDWA. Examples of these include projects to:

A. Rehabilitate or develop sources to replace contaminated sources or sources of inadequate capacity;

B. Install or upgrade treatment facilities if, in the department's opinion, the project would improve the quality of drinking water to comply with primary or secondary standards;

C. Install or upgrade storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering the water system or improve water pressure to safe levels; and

D. Install or replace transmission and distribution pipes to prevent contamination caused by leaks or breaks in the pipe, or improve water pressure to safe levels.

5. Projects to consolidate water supplies (for example, when individual homes or other public water supplies have a water supply that is contaminated, or the system is unable to maintain compliance for financial or managerial reasons) are eligible for loan assistance.

6. The purchase of a portion of another system's capacity is eligible for a loan if it is the most cost-effective solution.

(3) Application Procedures.

(A) Applicants must have previously submitted a preliminary project proposal on forms provided by the department by the deadline established by the department and have received an invitation from the department to apply for financial assistance.

(B) Applications must be postmarked or received by the Public Drinking Water Program by the calendar date established in the annual application package as the application deadline. The department may extend this deadline if insufficient applications are received to use all of the funds expected to be available. Applicants shall provide:

1. A completed application form provided by the department;

2. Documentation that they have a chief operator certified at the appropriate level, or expect to have prior to loan award;

3. Documentation that they have an emergency operating plan, or expect to have prior to loan award;

4. Any additional information requested by the department for priority point award or project evaluation;

5. Any additional information request by the department to determine the applicant's compliance history and technical, managerial and financial capacity; and

6. Any additional information for determination of financial capability of the applicant. This may include but is not limited to: changes in economic growth, changes in population growth, depreciation, existing debt, revenues, project costs, and effects of the project on user charge rates.

(C) Unsuccessful applicants requesting funds during a given fiscal year who have completed the requirements in subsection (3)(B) of this rule shall be considered for funding the next fiscal year and need not reapply.

(D) By submission of its application, the applicant certifies and warrants that the applicant has not, nor will through the loan amortization period, violate any of its bond covenants.

(4) Evaluation and Priority Point Award.

(A) Projects will be assigned priority points in accordance with the Drinking Water Revolving Fund (DWRF) loan priority point criteria approved by the commission under 10 CSR 60-13.020(1)(E)1. Projects will be listed in priority order according to the number of priority points assigned to the project. Projects accumulating the same total number of priority points will be ranked using the tie-breaking criteria in the DWRF loan priority point criteria.

(B) The department shall prepare and seek public comment on an annual intended use plan that includes the list of proposed projects. The commission may hold one or more public meetings or public hearings on the intended use plan for loans. Any applicant aggrieved by his/her standing may appeal to the commission during the public comment process.

(C) No direct loan assistance shall be provided to a public water system that does not have the technical, managerial, and financial (TMF) capacity to ensure compliance with the federal SDWA, unless the owner or operator of the system agrees to undertake feasible and appropriate changes to ensure that the system has TMF capacity.

(D) No direct loan assistance shall be provided to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance unless use of the assistance will ensure compliance.

(5) Loan Fees. The department may charge annual loan fees not to exceed one percent (1%) of the outstanding loan balance of each loan. These fees are intended to reimburse the department for the costs of loan origination, loan servicing and administration of the program. In addition to this fee, additional administrative fees may be assessed by the department at the time the administration fee is calculated for failure by a recipient to submit approved documents to the department (examples include but may not be limited to: operation and maintenance manuals, plan of operation, enacted user charge and water-use ordinances and executed contract documents) in accordance with the time frames provided under the agreement entered into by the recipient. The additional fee will be an additional one-tenth percent (.1%) per month that the document remains delinquent. The additional fee will be collected only during the year in which the document is not submitted.

(6) Interest Rates.

(A) The interest rate charged by the department on direct loans will not be less than zero percent (0%) nor more than market rate as determined by the Twenty-Five Revenue Bond Index published by the Bond Buyers Index of Twenty Bonds rounded to the nearest one-tenth (0.1) of one percent (1%). The department will use the Twenty-Five Revenue Bond Index most recently published prior to the date on which the project assistance is provided for all loans except those secured by general obligation bonds. For these transactions, the rate published immediately preceding filing with the State Auditor's Office will be used.

(B) Interest on construction loans will begin accruing on the last day of the month in which a construction advance is made and will

be compounded at the end of each month after that until such time as the construction loan along with all interest accrued is paid in full.

(7) Amortization Schedules. The department shall use the following guidelines to establish amortization schedules for obligations purchased under this rule:

(A) The bonds, notes or other debt obligations shall be fully amortized in no more than twenty (20) years after initiation of operation;

(B) The payment frequency on any debt obligations shall be no less than semiannual with the first payment no later than one (1) year after the initiation of operation;

(C) The amortization schedule may either be straightline or declining schedules for the term of the debt obligation; and

(D) Repayment of principal shall begin not later than one (1) year after initiation of operation.

(E) If the department is the bond owner, the participant's bonds may be called and reissued.

(8) Requirements for Loan Recipients.

(A) Project Design. Design of projects for community water systems shall conform with accepted engineering practices. A preliminary design submittal, including the design criteria and facilities layout sheet, may be required at approximately the twenty percent (20%) design stage.

(B) Public Participation. The public must be allowed an opportunity to exchange ideas with the applicant during project development. Public participation must be preceded by timely distribution of information and must occur sufficiently in advance of decision making to allow the recipient to assimilate public views into action.

1. A public meeting shall be conducted to discuss the alternative engineering solutions.

2. Prior to approval of the draft user charge ordinance, a public meeting shall be conducted to address the proposed user charge rates. Public notice of the meeting should be published at least thirty (30) days prior to the meeting date in one (1) or more local newspaper, as needed to cover the project service area. The recipient shall prepare a transcript, recording or other complete record of the proceeding along with proof of publication and submit it to the department and make it available at no more than cost to anyone who requests it. A copy of the record should be available for public review.

(C) Binding Commitment. In order for the department to offer to enter into a binding commitment, all documents and information required here must be submitted to the department at least sixty (60) days prior to the applicant's binding commitment deadline established by the department.

1. Engineering report.

A. Engineering reports must be in accordance with accepted engineering practices and applicable rules. References such as the current Design Guide for Community Water Systems and Ten State Standards should be considered as design standards.

B. The most feasible, economic and environmentally sound alternatives for providing safe drinking water must be studied and evaluated.

C. An estimate of the average user charge including documentation of the basis of the estimate must be included.

D. An assessment of the environmental conditions and impact of the proposed project on the environment is required.

2. Detailed project budget.

3. Project schedule.

A. Construction start defined as date of issuance of notice to proceed.

B. Construction completion.

C. Initiation of operation.

D. Project completion.

(D) Loan Closing. After the department has entered into a binding commitment with the applicant and the requirements of subsections (8)(B) and (8)(C) have been met, the following additional requirements must be met before loan closing can occur. All documents and information must be submitted to the department in sufficient time to allow adequate time for review and must be approved sixty (60) days prior to the loan closing date established by the department. The department may extend deadlines if justified.

1. Final document submittal. The following documents must be submitted to and approved by the department:

A. Resolution identifying the authorized representative by name. Applicants for assistance shall provide a resolution by the governing body designating a representative authorized to file the application for assistance, reimbursement requests and act in behalf of the applicant in all matters related to the project;

B. Any and all changes to the proposed project schedule;

C. Draft engineering contract as described in this rule;

D. Plans and specifications certified by a registered professional engineer licensed in Missouri;

E. Certification of easements and real property acquisition. Recipients of assistance shall have obtained title or option to the property or easements for the project prior to loan closing;

F. Draft user charge and water use ordinances as described in this rule; and

G. Other information or documentation deemed necessary by the applicant or the department to ensure the proper expenditure of loan funds.

2. Projects serving multiple water systems. Prior to closing, if the project serves two (2) or more public water systems, the applicant shall submit executed agreements or contracts between the public water systems for the financing, construction and operation of the proposed facilities. At a minimum, the agreement or contract shall include:

A. The operation and maintenance responsibilities of each party upon which the costs are allocated;

B. The formula by which the costs are allocated; and

C. The manner in which the costs are allocated.

3. User charge (water rate) ordinance.

A. Loan recipients are required to maintain, for the useful life of the project, user charge ordinances approved by the department. User charge ordinances, at a minimum, shall be adopted prior to financing and implemented by the initiation of operation of the financed project. A copy of the enacted ordinances shall be submitted prior to initiation of operation.

B. The user charge system shall be designed to produce adequate revenues required for the operation and maintenance, including a reserve for equipment replacement. It shall be proportional and based upon actual use. A one hundred ten percent (110%) debt service reserve may be required. Each user charge system shall include an adequate financial management system that will accurately account for revenues generated by the system, debt service and loan fee costs and expenditures for operation and maintenance, including replacement based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration. The user charge system shall provide that the costs of operation and maintenance not directly attributable to users be distributed equally among the users. The system shall provide for an annual review of charges.

4. Additional requirements for privately-owned public water systems. Privately-owned public water systems must provide documentation from the Missouri Department of Economic Development showing an allocation under Missouri's private activity bond cap and must obtain any necessary approvals from the Public Service Commission.

(E) Operation and Maintenance.

1. Plan of operation.

A. If required by the department, the recipient of assistance for construction of public water systems must make provision satisfactory to the department for the development of a plan of operation designed to assure operational efficiency be achieved as quickly as possible. A plan of operation must be submitted by fifty

percent (50%) construction completion and approved by ninety percent (90%) construction completion.

B. The recipient will ensure that the schedule of tasks as outlined in the approved plan of operation is implemented and completed in accordance with the schedules and prior to final inspection of the project. Plan of operations must be approved by the official project start-up date.

2. Operation and maintenance manual. The recipient must make provision satisfactory to the department for assuring effective operation and maintenance of the constructed project throughout its design life. If required by the department, recipients of assistance for construction of mechanical facilities must make provision satisfactory to the department to develop for approval an operation and maintenance manual in accordance with departmental guidelines. A draft operation and maintenance manual must be submitted by fifty percent (50%) construction completion. At ninety percent (90%) construction, the final operation and maintenance manual must be approved.

3. Start-up training. At fifty percent (50%) construction completion, a start-up training proposal (if required) and proposed follow-up services contract must be submitted. This contract must be approved by ninety percent (90%) construction completion.

4. Personnel. The recipient must make provision satisfactory to the department for assuring that operator(s) and maintenance personnel are hired in accordance with an approved schedule.

5. System certification. One (1) year after initiation of operation of the constructed public water system, the recipient shall certify to the department whether or not the public water system meets the project performance standards. Any statement of noncompliance must be accompanied by a corrective action report containing an analysis of the cause of the project's inability to meet performance standards, actions necessary to bring it into compliance and reasonably scheduled date for positive certification of the project. Timely corrective action shall be executed by the recipient.

(F) Accounting and Audits. Applicants are required to have a dedicated source for repayment of any loans and an adequate financial management system and audit procedure for the project which provides efficient and effective accountability and control of all property, funds and assets related to the project. The applicant's financial system is subject to state or federal audits to assure fiscal integrity of public funds.

1. Each recipient is expected to have an adequate accounting system for the project which provides efficient and effective accountability and control of all property, funds and assets.

A. The recipient is responsible for maintaining a financial management system which will adequately provide for an accurate, current and complete disclosure of the financial results of each loan project. Accounting for project funds will be in accordance with generally accepted government accounting principles and practices, consistently applied, regardless of the source of funds.

B. An acceptable accounting system includes books and records showing all financial transactions related to the construction project. The system must document all receipt and disbursement transactions. It also must group them by type of account (for example, asset, revenue, expense, etc.) and by individual expense account (for example, personnel salaries and wages, subcontract costs, etc.). The recipient shall maintain books, records, documents and other evidence and accounting procedures and practices, sufficient to reflect properly the amount, receipt and disposition by the recipient for all assistance received for the project and the total costs of the project of whatever nature incurred for the performance of the project for which the assistance was awarded. Minimum standards for an adequate accounting system include—

(I) The accounting system should be on a double entry basis with a general ledger in which all transactions are recorded in detail or in summary from subordinate accounts;

(II) Recording of transactions pertaining to the construction project should be all inclusive, timely, verifiable and supported by documentation;

(III) The system must disclose the receipt and use of all funds received in support of the project;

(IV) Responsibility for all project funds must be placed with a project manager;

(V) Responsibility for accounting and control must be segregated from project operations. The accounting system and related procedures should be documented for consistent application;

(VI) The accrual basis of accounting is strongly recommended for construction projects as it provides an effective measure of costs and expenditures;

(VII) Inventories of property and equipment should be maintained in subordinate records controlled by the general ledger and should be verified by physical inventory at least biennially;

(VIII) The accounting system must identify all project costs and differentiate between eligible and ineligible costs;

(IX) Accounts should be set up in a way to identify each organizational unit, function or task providing services to the construction project;

(X) An important project management objective of the system is the derivation of information regarding actual versus budgeted costs by project task and performing organization; and

(XI) Financial reports should be prepared monthly to provide project managers with a timely, accurate status of the construction project and costs incurred.

2. Audits. The recipient must comply with the provisions of OMB Circular A-128 governing the audit of state and local government.

(G) Record Retention Requirements.

1. Construction-related activities. At a minimum, the recipient must retain all financial, technical and administrative records related to the planning, design and construction of the project for a minimum period of seven (7) years following receipt of the final construction payment or the recipient's acceptance of construction, whichever is later. Records shall be available to state officials for audit purposes during normal business hours during that period.

2. Post-construction financing activities. At a minimum, the recipient must retain all financial and administrative records related to post-construction project financing for a minimum period of seven (7) years following full repayment of assistance.

(H) Minimum Requirements for Architectural or Engineering Contracts.

1. The subagreement must:

A. Be necessary for and directly related to the accomplishment of the project;

B. Be a lump sum or cost plus fixed fee contract in the form of a bilaterally executed written agreement;

C. Be for monetary consideration;

D. Not be in the nature of a grant or gift;

E. State a time frame for performance;

F. State a cost which cannot be exceeded except by amendment; and

G. State provisions for payment.

2. The nature, scope and extent of work to be performed during construction should include, but not be limited to, the following:

A. Preparing a plan of operation if required by the department that meets the requirements of this rule;

B. Preparing an operation and maintenance manual if required by the department that meets the requirements of this rule;

C. Assisting the recipient in letting bids;

D. Assisting the recipient in reviewing and analyzing construction bids and making recommendations for award;

E. Inspecting during construction to ensure conformance with the construction contract documents unless waived by the department; and

F. Assisting with facility operation for purposes of certifying that the facility is operating properly one (1) year after start-up.

3. The final approved executed engineering contract must be submitted prior to the first reimbursement request.

(I) Procurement of Engineering Services.

1. Contracts for architectural, engineering and land surveying services shall be negotiated on the basis of demonstrated competence, qualifications for the type of services required and at fair and reasonable prices. The procedures and procurement requirements in sections 8.285–8.291, RSMo apply unless the applicant elects to use the design/build option described in this rule.

2. Use of the same architect or engineer during construction. If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for the project and wishes to retain that firm or individual during construction of the project, the recipient may do so without further public notice and evaluation of qualifications, provided the recipient selected the firm using, at a minimum, the procedures in sections 8.285–8.291, RSMo.

(J) Specifications. The construction specifications must contain the following:

1. Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product or service to be procured. The description, in competitive procurement, shall not contain features which unduly restrict competition unless the features are necessary to test or demonstrate a specific thing or to provide for interchangeability of parts and equipment. The description shall include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use;

2. The recipient shall avoid the use of detailed product specifications if at all possible;

3. When in the judgment of the recipient it is impractical or uneconomical to make a clear and accurate description of the technical requirements, recipients may use a brand name or equal description as a means to define the performance or other salient requirements of a procurement. The recipient need not establish the existence of any source other than the named brand. Recipients must state clearly in the specification the salient requirements of the named brand which must be met by offerers;

4. Sole source restriction. A specification shall not require the use of structures, materials, equipment or processes which are known to be available only from a sole source, unless the department determines that the recipient's engineer has adequately justified in writing to the department that the proposed use meets the particular project's minimum needs;

5. Experience clause restriction. The general use of experience clauses requiring equipment manufacturers to have a record of satisfactory operation for a specified period of time or of bonds or deposits to guarantee replacement in the event of failure is restricted to special cases where the recipient's engineer adequately justifies any such requirement in writing. Where this justification has been made, submission of a bond or deposit shall be permitted instead of a specified experience period. The period of time for which the bond or deposit is required shall not exceed the experience period specified;

6. Domestic products procurement law. In accordance with sections 34.350–34.359, RSMo, the bid documents shall require all manufactured goods or commodities used or supplied in the performance of any contract or subcontract awarded on a loan project to be manufactured, assembled or produced in the United States, unless obtaining American-made products would increase the cost of the contract by more than ten percent (10%) and in accordance with section 71.140, RSMo, preference shall be given to Missouri products;

7. Bonding. On construction contracts exceeding one hundred thousand dollars ($100,000), the bid documents shall require each bidder to furnish a bid guarantee equivalent to five percent (5%) of the bid price. In addition, the bid documents must require the successful bidder to furnish performance and payment bonds, each of which shall be in an amount not less than one hundred percent (100%) of the contract price;

8. State wage determination. The bid documents shall contain the current prevailing wage determination issued by the Missouri Department of Labor and Industrial Relations, Division of Labor Standards, if otherwise required by law;

9. Right of entry to the project site shall be provided for representatives of the department and the Environmental Improvement and Energy Resources Authority so they may have access to the work wherever it is in preparation or progress; and

10. The specifications must include the following statement: "The owner shall make payment to the contractor in accordance with section 34.057, RSMo."

(K) Construction Equipment and Supplies Procurement. This section describes the minimum procurement requirements which the recipient must use unless the applicant elects to use the design/build option described in subsection (8)(L) of this rule.

1. Small purchases. A small purchase is the procurement of materials, supplies and services when the aggregate amount involved in any one (1) transaction does not exceed twenty-five thousand dollars ($25,000). The small purchase limitation of twenty-five thousand dollars ($25,000) applies to the aggregate total of an order, including all estimated handling and freight charges, overhead and profit to be paid under the order. In arriving at the aggregate amount involved in any one (1) transaction, all items which should properly be grouped together must be included. Department approval and a minimum of three (3) quotes must be obtained prior to purchase.

2. Bidding requirements. This paragraph applies to procurement of construction equipment, supplies and construction services in excess of twenty-five thousand dollars ($25,000) awarded by the recipient. No contract shall be awarded until the department has approved the formal advertising and bidding.

A. Formal advertising.

(I) Adequate public notice. The recipient will cause adequate notice to be given of the solicitation by publication in newspapers of general circulation beyond the recipient's locality (preferable statewide), construction trade journals or plan rooms, inviting bids on the project work and stating the method by which bidding documents may be obtained or examined.

(II) Adequate time for preparing bids. A minimum of thirty (30) days shall be allowed between the date when public notice, publication, insertion or document availability in a plan room is first published and the date by which bids must be submitted. Bidding documents shall be available to prospective bidders from the date when the notice is first published or provided.

B. Bid document requirements and procedure.

(I) The recipient shall prepare a reasonable number of bidding documents (Invitations for Bids) and shall furnish them upon request on a first-come, first-served basis. The recipient shall maintain a complete set of bidding documents and shall make them available for inspection and copying by any party. The bidding documents shall include, at a minimum:

(a) A completed statement of the work to be performed or equipment to be supplied and the required completion schedule;

(b) The terms and conditions of the contract to be awarded;

(c) A clear explanation of the method of bidding and the method of evaluation of bid prices and the basis and method for award of the contract or rejection of all bids;

(d) Responsibility requirements and criteria which will be employed in evaluating bidders;

(e) The recipient shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening;

(f) If a recipient desires to amend any part of the bidding documents during the period when bids are being prepared, addenda shall be communicated in writing to all firms which have obtained bidding documents in time to be considered before the bid opening time. All addenda must be approved by the department prior to award of the contract;

(g) A firm which has submitted a bid shall be allowed to modify or withdraw its bid before the time of bid opening;

(h) The recipient shall provide for a public opening of bids at the place, date and time announced in the bidding documents. Bids received after the announced opening time shall be returned unopened;

(i) Award shall be to the lowest, responsive, responsible bidder. After bids are opened, the recipient shall evaluate them in accordance with the methods and criteria set forth in the bidding documents. The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed contract. A responsible contractor is one that has financial resources, technical qualifications, experience, organization and facilities adequate to carry out the contract or a demonstrated ability to obtain these. The recipient may reserve the right to reject all bids. Unless all bids are rejected for good cause, award shall be made to the lowest, responsive, responsible bidder. The recipient shall have established protest provisions in the specifications. These provisions shall not include the department as a participant in the protest procedures. If the recipient intends to make the award to a firm which did not submit the lowest bid, the recipient shall prepare a written statement before any award, explaining why each lower bidder was deemed nonresponsible or nonresponsive and shall retain the statements in its files. The recipient shall not reject a bid as nonresponsive for failure to list or otherwise indicate the selection of subcontractor(s) or equipment unless the recipient has clearly stated in the solicitation documents that the failure to list shall render a bid nonresponsive and shall cause rejection of a bid; and

(j) Departmental concurrence with contract award must be obtained prior to actual contract award. Recipients shall notify the department in writing of each proposed construction contract which has an aggregate value over twenty-five thousand dollars ($25,000). The recipient shall notify the department within ten (10) calendar days after the bid opening for each construction subagreement. The notice shall include:

I. Proof of advertising;

II. Tabulation of bids;

III. The bid proposal from the bidder that the recipient wishes to accept, including justification if the recommended successful bidder is not also the lowest bidder;

IV. Recommendation of award;

V. Any addenda not submitted previously and bidder acknowledgment of all addenda;

VI. Copy of the bid bond;

VII. One (1) set of as-bid specifications;

VIII. Revised financial capability worksheet and certification if bids exceed prebid estimates by more than fifteen percent (15%); and

IX. Site certification, if not previously submitted.

(L) Design/Build Projects. Applicants may elect to use the design/build method of procuring design and construction services in lieu of the procurement methods described in subsection (8)(K) of this rule.

1. Additional application requirements. The applicant must provide the department with:

A. A legal opinion of the applicant's counsel stating that the design/build procurement method is not in violation of any state or local statutes, charters, ordinances or rules pertaining to the applicant; and

B. A bid package that is sufficiently detailed to ensure that the bids received for the design/build work are complete, accurate, comparable and will result in the most cost-effective operable facility which meets the design requirements of the department. The "Design Guide for Community Water Systems" or the "Ten State Standards" shall be considered for design standards. The prebid package shall contain, at a minimum, the clauses in paragraphs (8)(J)6.–8. of this rule, if applicable.

2. Bidding procedures. Bidding shall be conducted in accordance with the procedures described in paragraph (8)(K)2. of this rule.

3. Contract type. Design/build contracts shall be lump sum contracts for the cost associated with design and construction. No increases to contract price for design and construction services shall be permitted. Recipients are encouraged to incorporate facility operations into the contract. When included in the contract, the cost of operations for an established time period may be included in the criteria for evaluating bids and selecting the lowest, responsible, responsive bidder.

4. Review and oversight. The recipient shall procure engineering services to oversee the design work performed by the design/build contractor and to provide resident inspection of construction. The department may require the recipient to submit plans, specifications and documentation during design and construction as necessary to ensure that the facility meets state standards for design and construction.

5. Department approvals and permits. Prior to construction start, the recipient must obtain approval of the construction plans and specifications and obtain a construction permit from the department.

(M) Conflict of Interest.

1. No employee, officer or agent of the recipient shall participate in the selection, award or administration of a subagreement supported by state or federal funds if a conflict of interest, real or apparent, would be involved. This conflict would arise when—

A. Any employee, officer or agent of the recipient, any member of their immediate families or their partners have a financial or other interest in the firm selected for a contract; or

B. An organization which may receive or has been awarded a subagreement employs, or is about to employ, any employee, officer or agent of the recipient, any member of their immediate families or their partners.

2. The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of substantial monetary value from contractors, potential contractors or other parties to subagreements.

(N) Changes in Contract Price or Time. The contract price or time may be changed only by a change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by the methods set forth in the following:

1. Unit prices.

A. Unit prices previously approved are acceptable for pricing changes of original bid items. However, when changes in quantities exceed fifteen percent (15%) of the original bid quantity and the total dollar change of that bid item is greater than twenty-five thousand dollars ($25,000), the recipient shall review the unit price to determine if a new unit price should be negotiated.

B. Unit prices of new items shall be negotiated;

2. A lump sum to be negotiated; and

3. Cost reimbursement. The actual cost for labor, direct overhead, materials, supplies, equipment and other services necessary to complete the work plus an amount to cover the cost of general overhead and profit.

(O) Progress Payments to Contractors.

1. Recipients should make prompt progress payments to prime contractors and prime contractors should make prompt progress payments to subcontractors and suppliers for eligible construction, supplies and equipment costs.

A. For purposes of this section, progress payments are defined as follows:

(I) Payments for work in place; and

(II) Payments for materials or equipment which have been delivered to the construction site or which are stockpiled in the vicinity of the construction site in accordance with the terms of the contract, when conditional or final acceptance is made by or for the recipient. The recipient shall assure that items for which progress payments have been made are adequately insured and are protected through appropriate security measures.

2. Appropriate provisions regarding progress payments must be included in each contract and subcontract.

3. Retention from progress payments. The recipient may retain a portion of the amount otherwise due the contractor. The amount the recipient retains shall be in accordance with section 34.057, RSMo.

(P) Classification of Costs.

1. Eligible project costs. Loans shall not exceed the total eligible project costs described in this subsection (8)(P) less any amounts financed by any means other than through the direct loan program. All project costs will be eligible if they are reasonable and cost effective and are necessary for the approved project, including required mitigation. Eligible costs include, at a minimum:

A. Engineering services and other services incurred in planning and in preparing the design drawings and specifications for the project. These services and their related expenses can be reimbursed based on actual invoices to be submitted after loan closing or by means of an allowance. For invoice reimbursement, the department must have a copy of the executed engineering contract for planning and design of the project. Allowance reimbursement for these services will be based on a percentage of the total eligible construction contract amounts at bid opening as determined from Table 1 or 2 (as applicable) plus land, equipment, materials and supplies identified or referenced in the approved engineering report. For phased or segmented projects, incremental allowance calculations and corresponding reimbursements may be made;

B. The reasonable cost of engineering services incurred during the building and initial operation phase of the project to ensure that it is built in conformance with the design drawings and specifications. A registered professional engineer licensed in Missouri or a person under the direction and continuing supervision of a registered professional engineer licensed in Missouri must provide inspection of construction for the purpose of assuring and certifying compliance with the approved plans and specifications. Eligible construction phase and initial operation phase service are limited to—

(I) Office engineering;

(II) Construction surveillance;

(III) Stakeout surveying;

(IV) As-built drawings;

(V) Special soils/materials testing;

(VI) Operation and maintenance manual;

(VII) Follow-up services and the cost of start-up training for operators of mechanical facilities constructed by the project to the extent that these costs are incurred prior to this department's final inspection. Costs shall be limited to on-site operator training tailored to the facilities constructed or on- or off-site training may be provided by the equipment manufacturer if this training is properly procured;

(VIII) User charge ordinance; and

(IX) Plan of operation;

C. Abandoning costs. The reasonable and necessary cost of abandoning drinking water facilities no longer in use. Generally, these costs will be limited to the demolition and disposal of the structures, and abandoning unused wells owned by the recipient in accordance with 10 CSR 23-3.110, and final grading and seeding of the site;

D. Change orders and the costs of meritorious contractor claims for increased costs under subagreements as follows:

(I) Within the allowable scope of the project;

(II) Costs of equitable adjustments due to differing site conditions;

(III) Settlements, arbitration awards and court judgments which resolve contractor claims shall be allowable only to the extent that they are not due to the mismanagement of the recipient;

E. Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the water works;

F. The costs of site screening necessary to comply with environmental studies and facilities plans or necessary to screen adjacent properties;

G. Equipment, materials and supplies.

(I) The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.

(II) Cost of shop equipment installed at the public water system necessary to the operation of the works.

(III) The costs of necessary safety equipment, provided the equipment meets applicable federal, state, local or industry safety requirements.

(IV) The costs of mobile equipment necessary for the operation of the overall public water system, or for the maintenance of equipment. These items include: portable standby generators; large portable emergency pumps; trailers and other vehicles having as their purpose the transportation or application, or both, of liquid or dewatered water treatment plant residuals; and replacement parts identified and approved in advance;

H. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the department;

I. Land, easements or rights of way when the acquisition of real property or interests therein is integral to the project and the purchase is from a willing seller. Eligibility shall be limited to fair market value;

J. Force account work for construction oversight and engineering planning and design. If force account is used for planning and design, all engineering services during construction must be provided through force account;

K. The cost of preparing an environmental impact statement if required under 10 CSR 60-13.030;

L. Costs of issuance, capitalized interest, EIERA application fees, and contracted project administration costs; and

M. Debt service reserve deposits.

3. Noneligible costs include, but are not limited to:

A. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers;

B. The cost of general purpose vehicles for the transportation of the recipient's employees;

C. Costs allowable in subparagraph (8)(P)2.I. of this rule that are in excess of just compensation based on the appraised value;

D. Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies, and any permit fees necessary for the normal operation of the constructed facility;

E. Preparation of applications and permits required by federal, state or local regulations or procedures;

F. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government;

G. Personal injury compensation or damages arising out of the project;

H. Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations or procedures;

I. Costs outside the scope of the approved project;

J. Costs for which grant or loan payment have been or will be received from another state or federal agency;

K. Force account work except that listed in subparagraph (8)(P)2.J. of this rule; and

L. Costs associated with acquisition of easements and land except that listed in subparagraph (8)(P)2.I.

Table 1—Maximum Eligible Amount for Facilities Planning and Design

Construction Cost	Allowance as a Percentage of Construction Cost*
$ 100,000 or less	14.49
120,000	14.11
150,000	13.66
175,000	13.36
200,000	13.10
250,000	12.68
300,000	12.35
350,000	12.08
400,000	11.84
500,000	11.46
600,000	11.16
700,000	10.92
800,000	10.71
900,000	10.52
1,000,000	10.36
1,200,000	10.09
1,500,000	9.77
1,750,000	9.55
2,000,000	9.37
2,500,000	9.07
3,000,000	8.83
3,500,000	8.63
4,000,000	8.47
5,000,000	8.20
6,000,000	7.98
7,000,000	7.81
8,000,000	7.66
9,000,000	7.52
10,000,000	7.41
12,000,000	7.22
15,000,000	6.99
17,500,000	6.83
20,000,000	6.70
25,000,000	6.48
30,000,000	6.31
35,000,000	6.17
40,000,000	6.06
50,000,000	5.86
60,000,000	5.71
70,000,000	5.58
80,000,000	5.47
90,000,000	5.38
100,000,000	5.30
120,000,000	5.16
150,000,000	4.99
175,000,000	4.88
200,000,000	4.79

Table 2—Maximum Eligible Amount—Design Only

Construction Cost	Allowance as a Percentage of Construction Cost*
$ 100,000 or less	8.57
120,000	8.38
150,000	8.16
175,000	8.01
200,000	7.88
250,000	7.67
300,000	7.50
350,000	7.36
400,000	7.24
500,000	7.05
600,000	6.89
700,000	6.77
800,000	6.66
900,000	6.56
1,000,000	6.43
1,200,000	6.34
1,500,000	6.17
1,750,000	6.05
2,000,000	5.96
2,500,000	5.80
3,000,000	5.67
3,500,000	5.57
4,000,000	5.48
5,000,000	5.33
6,000,000	5.21
7,000,000	5.12
8,000,000	5.04
9,000,000	4.96
10,000,000	4.90
12,000,000	4.79
15,000,000	4.67
17,500,000	4.58
20,000,000	4.51
25,000,000	4.39
30,000,000	4.29
35,000,000	4.21
40,000,000	4.14
50,000,000	4.03
60,000,000	3.94
70,000,000	3.87
80,000,000	3.81
90,000,000	3.75
100,000,000	3.71
120,000,000	3.63
150,000,000	3.53
175,000,000	3.46
200,000,000	3.41

* Interpolate between values

Note: These tables shall not be used to determine the compensation for facilities planning or design services. The compensation for facilities planning or design services should be based upon the nature, scope and complexity of the services required by the community.

(Q) Trustee or Paying Agent. The department may require the recipient to contract with a trustee or paying agent to provide all or part of the following services:

1. Make joint assistance payments to the recipient and their contractors;

2. Ensure that payments are only released to those recipients whose contractors have a project contract approved by the department;

3. Ensure that none of the recipient's contractors receive more in assistance payments than approved by the department; and

4. Maintain financial records of credits and debits for the construction project.

(9) Construction Loans.

(A) The department may award construction loans to qualified applicants in order to provide interim financing during construction of their project. Construction loans will contain clauses and provisions determined by the department to be necessary to protect the interests of the state.

(B) With exception of substate revolving funds and projects receiving financing through the leveraged loan program, the construction loan will remain in force throughout the construction period. However, it must be paid in full in accordance with the closing deadline provided in the construction loan agreement.

(C) If the department is to provide long-term financing under this rule, then the construction loan must contain an agreement by the department and the recipient that the department will purchase the recipient's general obligation, revenue bonds or other acceptable debt obligation after construction is completed. If a construction loan is awarded, the permanent financing amount will be limited in amount to the sum of the payments drawn from the construction loan for eligible project costs plus interest accrued on the construction loan plus the reasonable costs of issuance which can be financed under Missouri statutes.

(D) Unless specifically addressed in the loan documents, the recipient may request construction loan payments no more often than monthly. The maximum construction advance shall be the sum of all eligible costs incurred to date. Each payment shall include the information listed here and any other information deemed necessary by the department to ensure proper project management and expenditure of public funds:

1. Completed reimbursement request form;

2. Construction pay estimates signed by the construction contractor, the recipient and the resident inspector, if applicable; and

3. Invoices for other eligible services, equipment and supplies for the project.

(E) If the department is satisfied that the payment request accurately reflects the eligible cost incurred to date on the project, the department will request that a state payment check be issued to the recipient.

(F) The department shall purchase revenue bonds, general obligation bonds or other acceptable debt obligations from the loan recipient by the closing deadline contained in the construction loan agreement.

(10) Project Bypass, Project Removal and Modification of Funding. This section applies to loan applicants on a fundable priority list. In order to assure best use of the loan funds in a reasonably expeditious manner, projects may be bypassed or removed from a fundable priority list or loan amounts may be modified. The department will confer and negotiate with affected applicants prior to making or recommending decisions on project bypass, project removal or modification of loan amounts.

(A) Project Bypass.

1. Eligibility for bypass. A project may be bypassed if the project is not, in the opinion of the department, making satisfactory progress toward satisfying requirements for assistance.

2. Bypass criteria.

A. Any project on the fundable priority list may be bypassed if the applicant fails to submit the documents required for assistance at least sixty (60) days prior to the beginning of the quarter for which the assistance is anticipated.

B. Individual schedules developed by the department may be used to determine whether a project is making satisfactory progress during the fiscal year. A project may be bypassed for failure to meet the schedule.

3. Bypass procedures.

A. Bypassed projects will be removed from the fundable priority list and, if the application is still valid, will be placed on a project list, in priority order, for funding consideration in the next fiscal year.

B. Funds recovered through project bypass will be considered uncommitted and available for distribution to the next priority project.

(B) Project Removal. Projects may be removed from the fundable priority list at the request of the applicant, upon a finding by the department that the project is ineligible for direct loan assistance, upon a finding that the applicant's credit is not adequate for participation in the direct loan program, or if, after the second intended use plan cycle, the applicant has not closed on the loan. If an applicant is removed, it may reapply only after it has secured its debt issuance authorization.

(C) Modification of Funding. In order to maximize use of the aggregate funds available to the state for drinking water infrastructure improvements, the commission may remove projects or modify funding amounts upon a finding by the department that the applicant is eligible for funding from other government programs (such as USDA Rural Development, the Department of Economic Development's Community Development Block Grant Program, or the Environmental Improvement and Energy Resources Authority) or when deemed necessary by the department based on bids received. The department will coordinate with the other funding agencies to arrive at equitable and workable funding options for the applicant. The department reserves the right to limit the maximum loan amount awarded.

AUTHORITY: sections 640.100 and 640.140, RSMo 2000. Original rule filed Jan. 19, 2001.

PUBLIC COST: The Missouri Department of Natural Resources anticipates implementing this loan program in conjunction with the loan programs established under 10 CSR 60-13.020, using existing staff. All potential costs to public water systems are discretionary, since they are not required to apply for a loan. It is assumed that approximately 20 community water systems and 10 public water supply districts may apply annually for a loan under this rule at an annualized cost of about $7,500.

PRIVATE COST: This rule is anticipated to cost private entities less than $500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: An information meeting and public hearing will be held at 11:00 a.m., April 10, 2001, at the Public Drinking Water Program, 101 Adams Street, Jefferson City, Missouri. In preparing your comments, please include the regulatory citation and the ***Missouri Register*** *page number. Please explain why you agree or disagree with the proposed change, and include alternative options or language.*

Written comments must be postmarked or received by April 17, 2001. Comments may be mailed or faxed to: Linda McCarty, Public Drinking Water Program, PO Box 176, Jefferson City, MO 65102. The fax number is (573) 751-3110.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title: 10 Department of Natural Resources
Division: 60 Public Drinking Water Program
Chapter: 13 Grants and Loans
Type of Rulemaking: Proposed Rule
Rule Number and Name: 10 CSR 60-13.025 State Loan Program

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate Shown as an Annualized Cost[2]
Community Water Systems[3]	$5,000
Public Water Supply Districts[4]	$2,500
AGGREGATE ANNUALIZED COST	$7,500

[1]The cost for the first full fiscal year of implementation is listed separately in order to perform the analysis required by section 536.200, RMSo.

[2]Because the rule is anticipated to be in effect in perpetuity, the cost of compliance in the aggregate for the lifetime of the rule cannot be accurately estimated. The total annualized aggregate cost is expected to remain constant for the duration of the rule, except that the estimated cost does not take into account inflationary factors beyond 2001.

[3,4]This rule implements the loan program allowed under section 640.615, RSMo for community water systems located in rural areas and public water supply districts. No water systems are required to participate in the loan program. All costs to water systems are discretionary.

III. WORKSHEET

20 community water systems x 10 hours x $25/hour = $5000
10 public water supply districts x 10 hours x $25/hour = $2500

IV. ASSUMPTIONS

1. Based on experience with existing loan programs, approximately 20 applications annually from communit water systems and 10 from public water supply districts are assumed. The estimated proportion of community water systems and public water supply district.
2. It is assumed that loan recipients' expenditures will be included in their loan application and recovered through increased local water rates, except for loan application costs. An average of ten hours per application, at an average salary and benefits of $25 per hour, is assumed.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax

PROPOSED RULE

12 CSR 10-103.370 Manufactured Homes

PURPOSE: Sections 144.044 and 700.010, RSMo create a partial tax exemption for new manufactured homes and an exclusion for qualifying used manufactured homes. This rule interprets the tax law as it applies to the sale of manufactured homes. This rule also identifies charges included as part of the retail sale price of the manufactured home.

(1) In general, the retail sale of a new manufactured home is considered to be a sale of sixty percent (60%) tangible personal property and forty percent (40%) service. The sixty percent (60%) portion of the sale price is subject to tax. The sale of a used manufactured home upon which Missouri tax has already been paid is not subject to tax. The sale of a used manufactured home on which Missouri tax has not already been paid is subject to tax on one hundred percent (100%) of the sale price.

(2) Definition of Terms.

(A) Dealer—any person, other than a manufacturer, who sells or offers for sale four (4) or more manufactured homes, recreational vehicles or modular units in any twelve (12)-month period.

(B) Manufactured home—a factory built structure designed as a dwelling unit with or without permanent foundation, equipped with the necessary service connections and made to be readily moveable on its own running gear. A modular unit is not a manufactured home and is subject to the same tax rules that apply to a building constructed by a contractor.

(C) Setup—the services performed and the materials used to perform the service for the purchaser at the occupancy site including but not limited to, moving, blocking, leveling, anchoring, supporting and assembling multiple or expandable units.

(3) Basic Application of Tax.

(A) Dealers selling new manufactured homes must collect and remit tax on sixty percent (60%) of the gross receipts from these sales. The dealer must provide the buyer of a new manufactured home a signed receipt confirming that tax has been paid.

(B) The owner of a new manufactured home must produce a signed receipt for the tax on the purchase price of the new manufactured home when applying for title. If the owner fails to present a signed receipt, the owner must remit the tax due on the new manufactured home prior to title being issued.

(C) The sale of a used manufactured home upon which Missouri tax has already been paid is not subject to Missouri tax. The sale of a used manufactured home upon which Missouri tax has not been previously paid is subject to tax on one hundred percent (100%) of the purchase price unless the used manufactured home meets the requirements of section 700.111, RSMo.

(D) The transfer of the ownership of or title to a manufactured home involving the assumption of the obligation to pay for the home is considered a sale at retail of the manufactured home subject to tax unless Missouri tax has been previously paid.

(E) The new manufactured home dealer is responsible for collecting tax on sixty percent (60%) of the retail sale price. The retail sale price includes additional tangible personal property installed by the manufacturer and the installed price of the following items of tangible personal property if installed by the dealer:

1. Central air conditioning;
2. Dishwasher;
3. Range or cook top;
4. Oven;
5. Microwave oven;
6. Refrigerator;
7. Washer and dryer;
8. Skirting;
9. Anchors and other stabilizing devices;
10. Blocks;
11. Shims;
12. Steps;
13. Gutters;
14. Decks;
15. Awnings; and
16. Plumbing and electrical parts and supplies necessary for installation and hookup of plumbing and electrical apparatus. Any other tangible personal property added by a dealer should be separately stated and taxed at one hundred percent (100%) of the sale price.

(F) A dealer may elect to separately state charges for delivery, setup and installation. These charges would not be subject to tax because the dealer is performing a service. The dealer should pay tax, at the time of purchase, on any materials used in performing these services. Setup and installation can include but are not limited to adding a deck to the home or pouring concrete slabs as a foundation for the home.

(G) The dealer should pay tax, at the time of purchase, on items that are attached to a used manufactured home on which Missouri tax was previously paid. The dealer should purchase items attached to a used manufactured home on which Missouri sales tax has not been paid under a sale for resale exclusion.

(4) Examples.

(A) A customer purchases a new manufactured home from a dealer for $40,000, including delivery, setup and installation. The manufacturer includes an installed stove, refrigerator, and washer/dryer. The cost of delivery, setup and installation is $5,000. If the dealer includes delivery, setup and installation in the retail sales price, tax is due on 60% of $40,000. If the dealer separately states delivery, setup and installation charges from the retail sales price, tax is due on 60% of $35,000. If the dealer separately states these charges, the dealer should pay tax on its purchase of any materials used for the delivery, setup and installation of the manufactured home. The customer should retain his paid receipt to verify tax paid when making application for license/title/registration of the manufactured home.

(B) A dealer took a manufactured home in trade from a customer. The original owner paid Missouri tax. The dealer sells the used manufactured home. No tax is due on the used manufactured home because tax was paid on the original purchase of the home.

(C) A dealer sold a new manufactured home including a stove and refrigerator added by the dealer. As an incentive, the dealer included a personal computer. The computer should be separately stated from the manufactured home sale price and taxed at 100%. The installed price of the stove and refrigerator can be included in the manufactured home sale price and tax is due on 60% of that price. The dealer may issue a resale exemption certificate when purchasing these items.

(D) A dealer hires a contractor to add patios and garages to the site for customers who purchase new manufactured homes. These charges can be separately stated from the manufactured home sale price without being taxed. The contractor should pay tax on any supplies used to build the patios and garages because the contractor is the final user and consumer of these supplies.

AUTHORITY: section 144.270, RSMo 2000. Original rule filed Jan. 24, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than $500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105-0629. To be considered, comments must be received within thirty days after the publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions

PROPOSED RULE

12 CSR 10-110.300 Common Carriers

PURPOSE: Sections 144.030.2(3), (10), (11), (20) and (30), RSMo, exempt from taxation certain materials, parts and equipment used by common carriers. This rule explains what qualifies for the exemptions.

(1) In general, materials, replacement parts, and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property are not subject to tax. Pumping machinery and equipment used to propel products delivered by pipelines engaged as common carriers are not subject to tax. Railroad rolling stock used in transporting persons or property in interstate commerce is not subject to tax. Motor vehicles licensed for a gross weight of twenty-four thousand (24,000) pounds or trailers used by common carriers solely in the transportation of persons or property in interstate commerce are not subject to tax.

(2) Definition of Terms.

(A) Common carrier—any person that holds itself out to the public as engaging in the transportation of passengers or property for hire. A common carrier is required by law to transport passengers or property for others without refusal if the fare or charge is paid. To qualify as a common carrier, a carrier must be registered as a common carrier with all agencies that require such registration, such as the United States Department of Transportation.

(B) Contract carrier—any person under individual contracts or agreements that engages in transportation of passengers or property for hire or compensation. A contract carrier is a carrier that meets the special needs of certain customers to transport its passengers or property.

(C) Directly upon—used in a direct manner without anything intervening and with a certain degree of physical immediacy.

(D) Motor vehicle—any vehicle, truck, truck-tractor, motor bus, or any self-propelled vehicle and trailers or semi-trailers used upon the highways of the state in transportation of property or passengers.

(E) Private carrier—any person engaged in the transportation of passengers or its property, but not as a common carrier or a contract carrier.

(F) Watercraft—any boat or craft, including a vessel, used or capable of being used as a means of transport on waters.

(3) Basic Application of Exemption.

(A) Railroad Rolling Stock. Sales of railroad rolling stock are exempt provided that it is used in transporting persons or property in interstate commerce. The sale of flanged wheel equipment used to repair and maintain the railroad track used in interstate commerce is also exempt. Railroad rolling stock for use solely in intrastate commerce is not exempt.

(B) Aircraft. Sales of aircraft to common carriers for storage or for use in interstate commerce are not subject to sales tax.

(C) Pipeline Pumping Equipment. Sales of machinery and equipment used to propel products by pipelines engaged as common carriers are exempt. The exemption does not apply to contract carriers or to private carriers. All other machinery and equipment such as pipelines, connecting lines, communication equipment, monitoring equipment, accessory equipment, such as fuel tanks to provide fuel for pumping engines, and manifolds used to connect pumping equipment to the main lines are subject to tax.

(D) Power Take-Off Units. Equipment on motor vehicles used by common carriers which is exempt from tax includes power take-off (PTO) units which are attached to the transmission of the power unit of the vehicle and all materials and replacement parts for the power take-off units.

(E) Materials. Materials and replacement parts for motor vehicles, watercraft, railroad rolling stock or aircraft which are used by common carriers and which qualify for the exemption from tax include, but are not limited to, grease, motor oil, antifreeze, fuel additives, cleaners, paint for body work and radio repair parts purchased for use on the vehicle.

(F) Barges. The purchase of barges used primarily in the transportation of property or cargo on interstate waterways is exempt from tax.

(G) Tools. Tools purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property are not subject to tax.

(4) Examples.

(A) A manufacturer registered as a common carrier maintains a fleet of trucks to transport finished products to various distribution centers throughout the United States. The manufacturer advertises that it will transport goods belonging to others on return trips from the distribution centers and advertises that service. The purchase of the manufacturer's fleet of trucks and repair parts for the fleet are not taxable.

(B) A manufacturer maintains a fleet of trucks to transport finished products to various distribution centers throughout the United States. The manufacturer also negotiates with other companies to transport goods on return trips from the distribution centers. The purchase of the manufacturer's fleet of trucks and repair parts for the fleet are taxable because the manufacturer is not a common carrier.

(C) A common carrier purchases a cab and chassis. The cab and chassis will be used only in intrastate commerce as a common carrier. The purchase of the cab and chassis is taxable. The common carrier subsequently purchases a dump bed to add to the cab and chassis. The dump bed is exempt from tax because it is materials or equipment used in the manufacture of a motor vehicle to be used by a common carrier.

(D) The sale of a switch engine to be used to move railroad cars around a switching yard, if part of an interstate rail system, is not subject to tax.

(E) An airline purchases equipment to test engine parts that have been removed from the plane and brought to their repair facility. The equipment purchased would be exempt from tax.

(F) The owner of a Missouri furniture store is registered as a common carrier, but does not hold itself out to the general public as a common carrier. It uses its truck only to deliver furniture sold to customers residing in and outside Missouri. The owner installs new brakes on the truck. Even though the owner is registered as a common carrier, the brakes are taxable because the furniture store is operating as a private carrier.

(G) A charter company only provides bus transportation by contract for private groups for tours of the Southeastern United States.

The charter company purchases new tires. The tires are taxable because the business is a contract carrier.

(H) A railroad purchases a flanged wheel mechanized tie replacement machine for repairing broken rail segments on an interstate system. The purchase of the machine is exempt.

AUTHORITY: section 144.270, RSMo 2000. Original rule filed Jan. 24, 2001.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than $500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than $500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*