

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 239
91ST GENERAL ASSEMBLY

Reported from the Committee on Conservation, State Parks, and Mining, February 26, 2001, with recommendation that the House Committee Substitute for House Bill No. 239 Do Pass.

TED WEDEL, Chief Clerk

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AN ACT

To repeal sections 444.765, 444.767, 444.770, 444.772, 444.773, 444.774, 444.775, 444.777, 444.778, 444.782, 444.784, 444.786, 444.787, 444.788 and 444.789, RSMo 2000, relating to land reclamation, and to enact in lieu thereof fifteen new sections relating to the same subject.

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

Section A. Sections 444.765, 444.767, 444.770, 444.772, 444.773, 444.774, 444.775, 444.777, 444.778, 444.782, 444.784, 444.786, 444.787, 444.788 and 444.789, RSMo 2000, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 444.765, 444.767, 444.770, 444.772, 444.773, 444.774, 444.775, 444.777, 444.778, 444.782, 444.784, 444.786, 444.787, 444.788 and 444.789, to read as follows:

444.765. Wherever used or referred to in sections 444.760 to [444.789] **444.790**, unless a different meaning clearly appears from the context, the following terms mean:

(1) "Affected land", the pit area or area from which overburden shall have been removed, or upon which overburden has been deposited after September 28, 1971. When mining is conducted underground, affected land means any excavation or removal of overburden required to create access to mine openings, except that areas of disturbance encompassed by the actual underground openings for air shafts, portals, adits and haul roads in addition to disturbances within fifty feet of any openings for haul roads, portals or adits shall not be considered affected land. Sites which exceed the excluded areas by more than one acre for underground mining operations shall obtain a permit for the total extent of affected lands with no exclusions as

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

11 required under sections 444.760 to [444.789] **444.790**;

12 (2) "Commission", the land reclamation commission in the department of natural
13 resources;

14 (3) "Director", the staff director of the land reclamation commission;

15 (4) "Mineral", a constituent of the earth in a solid state which, when extracted from the
16 earth, is usable in its natural form or is capable of conversion into a usable form as a chemical,
17 an energy source, or raw material for manufacturing or construction material. For the purposes
18 of this section, this definition includes barite, tar sands, and oil shales, but does not include iron,
19 lead, zinc, gold, silver, coal, surface or subsurface water, fill dirt, natural oil or gas together with
20 other chemicals recovered therewith;

21 (5) "Operator", any person, firm or corporation engaged in and controlling a surface
22 mining operation;

23 (6) "Overburden", all of the earth and other materials which lie above natural deposits
24 of minerals; and also means such earth and other materials disturbed from their natural state in
25 the process of surface mining **other than what is defined in subdivision (4) of this section**;

26 (7) "Peak", a projecting point of overburden created in the surface mining process;

27 (8) "Pit", the place where minerals are being or have been mined by surface mining;

28 (9) "Refuse", all waste material directly connected with the cleaning and preparation of
29 substance mined by surface mining;

30 (10) "Ridge", a lengthened elevation of overburden created in the surface mining
31 process;

32 (11) "Site" or "mining site", any location or group of associated locations where minerals
33 are being surface mined by the same operator;

34 (12) "Surface mining", the mining of minerals for commercial purposes by removing the
35 overburden lying above natural deposits thereof, and mining directly from the natural deposits
36 thereby exposed, and shall include mining of exposed natural deposits of such minerals over
37 which no overburden lies and, after August 28, 1990, the surface effects of underground mining
38 operations for such minerals.

444.767. The commission may:

2 (1) Adopt and promulgate rules and regulations pursuant to section 444.530 and chapter
3 536, RSMo, respecting the administration of sections 444.760 to [444.789] **444.790** and in
4 conformity therewith;

5 (2) Encourage and conduct investigation, research, experiments and demonstrations, and
6 collect and disseminate information relating to strip mining and reclamation and conservation
7 of lands and waters affected by strip mining;

8 (3) Examine and pass on all applications and plans and specifications submitted by the

9 operator for the method of operation and for the reclamation and conservation of the area of land
10 affected by the operation;

11 (4) Make investigations and inspections which are necessary to ensure compliance with
12 the provisions of sections 444.760 to [444.789] **444.790**;

13 (5) Conduct hearings [under] **pursuant to** sections 444.760 to [444.789] **444.790** and
14 may administer oaths or affirmations and subpoena witnesses to the inquiry;

15 (6) Order, after hearing, the revocation of any permit and to cease and desist operations
16 for failure to comply with any of the provisions of sections 444.760 to [444.789] **444.790** or any
17 corrective order of the commission;

18 (7) Order forfeiture of any bond for failure to comply with any provisions of sections
19 444.760 to [444.789] **444.790** or any corrective order of the commission or other order of the
20 commission;

21 (8) Cause to be instituted in any court of competent jurisdiction legal proceedings for
22 injunction or other appropriate relief to enforce the provisions of sections 444.760 to [444.789]
23 **444.790** and any order of the commission promulgated thereunder;

24 (9) Retain, employ, provide for, and compensate, within the limits of appropriations
25 made for that purpose, such consultants, assistants, deputies, clerks, and other employees on a
26 full- or part-time basis as may be necessary to carry out the provisions of sections 444.760 to
27 [444.789] **444.790** and prescribe the times at which they shall be appointed and their powers and
28 duties;

29 (10) Study and develop plans for the reclamation of lands that have been strip mined
30 prior to September 28, 1971;

31 (11) Accept, receive and administer grants or other funds or gifts from public and private
32 agencies and individuals, including the federal government, for the purpose of carrying out any
33 of the functions of sections 444.760 to [444.789] **444.790**, including the reclamation of lands
34 strip mined prior to August 28, 1990. The commission may promulgate such rules and
35 regulations or enter into such contracts as it may deem necessary for carrying out the provisions
36 of this subdivision;

37 (12) Budget and receive duly appropriated moneys for expenditures to carry out the
38 provisions and purposes of sections 444.760 to [444.789] **444.790**;

39 (13) Prepare and file a biennial report with the governor and members of the general
40 assembly;

41 (14) Order, after hearing, an operator to adopt such corrective measures as are necessary
42 to comply with the provisions of sections 444.760 to [444.789] **444.790**.

444.770. 1. It shall be unlawful for any operator to engage in surface mining without
2 first obtaining from the commission a permit to do so, in such form as is hereinafter provided,

3 including any operator involved in any gravel mining operation where the annual tonnage of
4 gravel mined by such operator is less than five thousand tons.

5 2. Sections 444.760 to [444.789] **444.790** shall apply only to those areas which are
6 opened on or after January 1, 1972, or to the extended portion of affected areas extended after
7 that date. The effective date of this section for minerals not previously covered under the
8 provisions of sections 444.760 to [444.789] **444.790** shall be August 28, 1990.

9 3. All surface mining operations where land is affected after September 28, 1971, which
10 are under the control of any government agency whose regulations are equal to or greater than
11 those imposed by section 444.774, are not subject to the further provisions of sections 444.760
12 to [444.789] **444.790**, except that such operations shall be registered with the land reclamation
13 commission.

14 4. Any portion of a surface mining operation which is subject to the provisions of
15 sections 260.200 to 260.245, RSMo, and the regulations promulgated thereunder, shall not be
16 subject to the provisions of sections 444.760 to [444.789] **444.790**, and any bonds or portions
17 thereof applicable to such operations shall be promptly released by the commission, and the
18 associated permits canceled by the commission upon presentation to it of satisfactory evidence
19 that the operator has received a permit [under] **pursuant to** section 260.205, RSMo, and the
20 regulations promulgated thereunder. Any land reclamation bond associated with such released
21 permits shall be retained by the commission until presentation to the commission of satisfactory
22 evidence that:

23 (1) The operator has complied with sections 260.226 and 260.227, RSMo, and the
24 regulations promulgated thereunder, pertaining to closure and post-closure plans and financial
25 assurance instruments; and

26 (2) The operator has commenced operation of the solid waste disposal area or sanitary
27 landfill as those terms are defined in chapter 260, RSMo.

28 5. Notwithstanding the provisions of subsection 1 of this section, any political
29 subdivision which uses its own personnel and equipment or any private individual for personal
30 use may conduct in-stream gravel operations without obtaining from the commission a permit
31 to conduct such an activity.

444.772. 1. Any operator desiring to engage in surface mining shall make written
2 application to the director for a permit.

3 2. Application for permit shall be made on a form prescribed by the commission and
4 shall include:

5 (1) The name of all persons with any interest in the land to be mined;

6 (2) The source of the applicant's legal right to mine the land affected by the permit;

7 (3) The permanent and temporary post-office address of the applicant;

8 (4) Whether the applicant or any person associated with the applicant holds or has held
9 any other permits [under] **pursuant to** sections 444.500 to [444.789] **444.790**, and an
10 identification of such permits;

11 (5) The written consent of the applicant and any other persons necessary to grant access
12 to the commission or the director to the area of land affected under application from the date of
13 application until the expiration of any permit granted under the application and thereafter for
14 such time as is necessary to assure compliance with all provisions of sections 444.500 to
15 [444.789] **444.790** or any rule or regulation promulgated [under] **pursuant to** them. Permit
16 applications submitted by operators who mine an annual tonnage of less than ten thousand tons
17 shall be required to include written consent from the operator to grant access to the commission
18 or the director to the area of land affected;

19 (6) A description of the tract or tracts of land and the estimated number of acres thereof
20 to be affected by the surface mining of the applicant for the next succeeding twelve months; and

21 (7) Such other information that the commission may require as such information applies
22 to land reclamation.

23 3. The application for a permit shall be accompanied by a map in a scale and form
24 specified by the commission by regulation.

25 4. The application shall be accompanied by a bond, security or certificate meeting the
26 requirements of section 444.778 and a [basic permit fee of three hundred fifty dollars, plus
27 acreage fee of thirty-five dollars for each acre or fraction thereof of the area of land to be affected
28 by the operation, plus an annual fee of forty dollars for each site listed on the operator's permit
29 application that will be mined during the permit year, which fees shall be paid before the permit
30 required in this section shall be issued. A basic fee of one hundred dollars, plus an acreage fee
31 of thirty-five dollars for each acre or fraction thereof of the area of land to be affected by the
32 gravel mining operation shall be paid to the commission before the permit shall be issued for any
33 operator involved in any gravel mining operation where the annual tonnage of gravel mined by
34 such operator is less than five thousand tons. The commission shall by rule or regulation,
35 pursuant to section 444.530, initially establish the fees as listed in this section. The commission
36 may also raise the permit fee to no more than five hundred dollars. The issued permit shall be
37 valid for a period of one year from the date of its issuance unless sooner revoked or suspended
38 as provided in sections 444.760 to 444.789] **permit fee approved by the commission not to**
39 **exceed six hundred dollars. The commission may also require a fee for each site listed on**
40 **a permit not to exceed three hundred dollars for each site. If mining operations are not**
41 **conducted at a site for six months or more during any year, the fee for such site for that**
42 **year shall be reduced by fifty percent. The commission may also require a fee for each acre**
43 **bonded by the operator pursuant to section 444.778 not to exceed ten dollars per acre. If**

44 such fee is assessed, the per- acre fee on all acres bonded by a single operator that exceed
45 a total of one hundred acres shall be reduced by fifty percent. In no case shall the total fee
46 for any permit be more than two thousand five hundred dollars. Permit and renewal fees
47 shall be established by rule and shall be set at levels that recover the cost of administering
48 and enforcing sections 444.760 to 444.790, making allowances for grants and other sources
49 of funds. The director shall submit a report to the commission and the public each year
50 that describes the number of employees and the activities performed the previous calendar
51 year to administer sections 444.760 to 444.790. For any operator of a gravel mining
52 operation where the annual tonnage of gravel mined by such operator is less than five
53 thousand tons, the total cost of submitting an application shall be three hundred dollars.
54 The issued permit shall be valid from the date of its issuance until the date specified in the
55 mine plan unless sooner revoked or suspended as provided in sections 444.760 to 444.790.

56 5. An operator desiring to have his or her permit amended to cover additional land may
57 file an amended application with the commission. Upon receipt of the amended application, and
58 such additional fee and bond as may be required [under] pursuant to the provisions of sections
59 444.760 to [444.789] 444.790, the director shall, if the applicant complies with all applicable
60 regulatory requirements, issue an amendment to the original permit covering the additional land
61 described in the amended application.

62 6. An operation may withdraw any land covered by a permit, excepting affected land,
63 by notifying the commission thereof, in which case the penalty of the bond or security filed by
64 the operator pursuant to the provisions of sections 444.760 to [444.789] 444.790 shall be reduced
65 proportionately.

66 7. Where mining or reclamation operations on acreage for which a permit has been
67 issued have not been completed [thereon during the permit year, the permit as to such acreage
68 shall be renewed by applying on a permit renewal form furnished by the commission for an
69 additional permit year and payment of a fee of three hundred fifty dollars plus forty dollars for
70 each site listed on the permit renewal application that will be actively surface mined or reclaimed
71 during the permit year], the permit shall be renewed. The operator shall submit a permit
72 renewal form furnished by the director for an additional permit year and pay a fee equal
73 to an application fee calculated pursuant to subsection 4 of this section, but in no case shall
74 the renewal fee for any operator be more than two thousand five hundred dollars. For any
75 operator involved in any gravel mining operation where the annual tonnage of gravel mined by
76 such operator is less than five thousand tons, the permit as to such acreage shall be renewed by
77 applying on a permit renewal form furnished by the [commission] director for an additional
78 permit year and payment of a fee of [one] three hundred dollars. [Such basic permit fee may be
79 increased by the commission by rule or regulation not to exceed five hundred dollars, pursuant

80 to section 444.767 to support the actual cost thereof of administering and enforcing the
81 provisions of sections 444.760 to 444.789, making allowances for grants and other sources of
82 funds and contingencies.] Upon receipt of the **completed** permit renewal [application] **form** and
83 fee[,] from the operator, the director shall [issue a renewal certificate] **approve the renewal.**
84 **With approval of the director and operator, the permit renewal may be extended for a**
85 **portion of an additional year with a corresponding prorating of the renewal fee.**

86 8. Where one operator succeeds another at any uncompleted operation, either by sale,
87 assignment, lease or otherwise, the commission may release the first operator from all liability
88 [under] **pursuant to** sections 444.760 to [444.789] **444.790** as to that particular operation if both
89 operators have been issued a permit and have otherwise complied with the requirements of
90 sections 444.760 to [444.789] **444.790** and the successor operator assumes as part of his **or her**
91 obligation [under] **pursuant to** sections 444.760 to [444.789] **444.790** all liability for the
92 reclamation of the area of land affected by the former operator.

93 9. The application for a permit shall be accompanied by a plan of reclamation that meets
94 the requirements of sections 444.760 to [444.789] **444.790** and the rules and regulations
95 promulgated pursuant thereto, and shall contain a verified statement by the operator setting forth
96 the proposed method of operation, reclamation, and a conservation plan for the affected area
97 including approximate dates and time of completion, and stating that the operation will meet the
98 requirements of sections 444.760 to [444.789] **444.790**, and any rule or regulation promulgated
99 [under] **pursuant to** them.

100 10. At the time that a permit [is applied for] **application is deemed complete by the**
101 **director**, the operator shall publish a notice of intent to operate a surface mine in any newspaper
102 [with a general circulation in the counties] **qualified pursuant to section 493.050, RSMo, to**
103 **publish legal notices in any county** where the land is located. **If the director does not respond**
104 **to a permit application within forty-five calendar days, the application shall be deemed to**
105 **be complete. Notice in the newspaper shall be posted once a week for four consecutive**
106 **weeks beginning no more than ten days after the application is deemed complete. The**
107 **operator shall also send notice of intent to operate a surface mine by certified mail to the**
108 **governing body of the counties or cities in which the proposed area is located, and to the last**
109 **known addresses of all record landowners of contiguous real property or real property**
110 **located adjacent to the proposed mine plan area.** The [notice] **notices** shall include the name
111 and address of the operator, a legal description consisting of county, section, township and range,
112 the number of acres involved, a statement that the operator plans to mine a specified mineral
113 during a specified time, and the address of the commission. **The notices shall also contain a**
114 **statement that** any person with a direct, personal interest in one or more of the factors the
115 commission [is required to] **may** consider in issuing a permit may [make] **request a public**

116 **meeting, a public hearing or file** written comments to the director [during the fifteen-day public
117 notice period] **no later than fifteen days following the final public notice publication date.**

118 11. The commission may approve a permit application or permit amendment whose
119 operation[,] **or** reclamation [or conservation] plan deviates from the requirements of sections
120 444.760 to [444.789] **444.790** if it can be demonstrated by the operator that the conditions present
121 at the surface mining location warrant an exception. The criteria accepted for consideration when
122 evaluating the merits of an exception or variance to the requirements of sections 444.760 to
123 [444.789] **444.790** shall be established by regulations.

124 **12. Fees imposed pursuant to this section shall become effective August 28, 2001, and**
125 **shall expire on December 31, 2007. No other provisions of this section shall expire.**

444.773. 1. All applications for a permit shall be filed with the director, who shall
2 promptly investigate the application and make a recommendation to the commission within
3 [fifteen days after the application is received] **four weeks after the public notice period**
4 **provided in section 444.772 expires** as to whether the permit should be issued or denied. If the
5 director determines that the application has not fully complied with the provisions of section
6 444.772 or any rule or regulation promulgated [under] **pursuant to** that section, [he] **the director**
7 shall recommend denial of the permit. The director shall consider any written comments when
8 making his **or her** recommendation to the commission on the issuance or denial of the permit.

9 2. If the recommendation of the director is to deny the permit, a hearing as provided in
10 sections 444.760 to [444.789] **444.790**, if requested by the applicant within fifteen days of the
11 date of notice of recommendation of the director, shall be held by the commission.

12 3. If the recommendation of the director is for issuance of the permit, the director shall
13 issue the permit without **a public meeting or** a hearing except that upon petition, received prior
14 to the date of the notice of recommendation, from any person whose health, safety or livelihood
15 [is affected by noncompliance with any applicable laws or regulations,] **will be unduly impaired**
16 **by the issuance of this permit, a public meeting or** a hearing may be held. **If a public meeting**
17 **is requested pursuant to this chapter and the applicant agrees, the director shall, within**
18 **thirty days after the time for such request has passed, order that a public meeting be held.**
19 **The meeting shall be held in a reasonably convenient location for all interested parties. The**
20 **applicant shall cooperate with the director in making all necessary arrangements for the**
21 **public meeting. Within thirty days after the close of the public meeting, the director shall**
22 **recommend to the commission approval or denial of the permit. If the public meeting does**
23 **not resolve the concerns expressed by the public, any person whose health, safety or**
24 **livelihood will be unduly impaired by the issuance of such permit may make a written**
25 **request to the land reclamation commission for a formal public hearing. The land**
26 **reclamation commission may grant a public hearing to formally resolve concerns of the**

27 **public. Any public hearing before the commission shall address one or more of the factors**
28 **set forth in this section.**

29 4. In any hearing held pursuant to this section the burden of proof shall be on the
30 applicant for a permit. **If the commission finds, based on competent and substantial evidence**
31 **on the record, that an interested party's health, safety or livelihood will be unduly impaired**
32 **by the issuance of the permit, the commission may deny such permit. If the commission**
33 **finds, based on competent and substantial evidence on the record, that the operator has had**
34 **a history of noncompliance at other locations that suggests a reasonable likelihood of future**
35 **acts of noncompliance, the commission may deny such permit. In determining whether a**
36 **reasonable likelihood of noncompliance will exist in the future, the commission may look**
37 **to past acts of noncompliance, but only to the extent they suggest a reasonable likelihood**
38 **of future acts of noncompliance. Past acts of noncompliance, in and of themselves, are an**
39 **insufficient basis to suggest a reasonable likelihood of future acts of noncompliance. If a**
40 **hearing petitioner demonstrates either present acts of noncompliance or a reasonable**
41 **likelihood that the permit seeker or associated persons or corporations will be in**
42 **noncompliance in the future, such a showing will satisfy the noncompliance requirement**
43 **in this subsection. In addition, such basis must be developed by multiple noncompliances**
44 **at any single facility that resulted in lasting harm to the environment or unduly impaired**
45 **the health, safety or livelihood of persons outside the facility.** Any decision of the commission
46 made pursuant to a hearing held [under] **pursuant to** this section is subject to judicial review as
47 provided in chapter 536, RSMo. No judicial review shall be available, however, until and unless
48 all administrative remedies are exhausted.

 444.774. 1. Every operator to whom a permit is issued pursuant to the provisions of
2 sections 444.760 to [444.789] **444.790** may engage in surface mining upon the lands described
3 in the permit upon the performance of and subject to the following requirements with respect to
4 such lands:

5 (1) All ridges and peaks of overburden created by surface mining, except areas [where
6 lakes may be formed under subdivision (7) of subsection 1 of this section] **meeting the**
7 **qualifications of subdivision (4) of this subsection**, or where washing, cleaning or retaining
8 ponds and reservoirs may be formed under subdivision (2) of subsection 1 of this section, shall
9 be graded to a rolling topography traversable by farm machinery, but such slopes need not be
10 reduced to less than the original grade of that area prior to mining, and the slope of the ridge of
11 overburden resulting from a box cut need not be reduced to less than twenty-five degrees from
12 horizontal whenever the same cannot be practically incorporated into the land reclaimed for
13 wildlife purposes [under] **pursuant to** subdivision (4) of **this** subsection [1 of this section]. In
14 surface mining the operator shall remove all debris and materials not allowed by the reclamation

15 plan before the bond or any portion thereof may be released;

16 (2) As a means of controlling damaging [runoff] **erosion**, the [commission] **director** may
17 require the operator to construct terraces or use such other measures and techniques as are
18 necessary to control soil erosion and siltation on reclaimed land. **Such erosion control measures**
19 **and techniques may also be required on overburden stockpiles if the erosion is causing**
20 **environmental damage outside the permit area.** In determining the grading requirements to
21 restore barite pit areas, the sidewalls of the excavation shall be graded to a point where it blends
22 with the surrounding countryside, but in no case should the contour be such that erosion and
23 siltation be increased;

24 (3) In the surface mining of tar sands, the operator shall recover and collect all spent sands
25 and other refuse yielded from the processing of tar sands, whether such spent sands and refuse are
26 produced at the surface mine or elsewhere, in the manner prescribed by the commission as
27 conditions of the permit, and shall finally dispose of such spent sands and refuse in the manner
28 prescribed by the commission as conditions of the permit and in accordance with the provisions
29 of sections 444.760 to [444.789] **444.790**;

30 (4) Up to and including twenty-five percent of the total acreage to be reclaimed each year
31 need not be graded to a rolling topography if the land is reclaimed for wildlife purposes as
32 required by the commission, except that all peaks and ridges shall be leveled off to a minimum
33 width of thirty feet or one-half the diameter of the base of the pile at the original ground surface
34 whichever is less;

35 (5) Surface mining operations that remove and do not replace the lateral support shall not,
36 unless mutually agreed upon by the operator and the adjacent property owner, remove the lateral
37 support in the vicinity of any established right-of-way line of any public road, street or highway
38 closer than a distance equal to twenty-five feet plus one and one-half times the depth of the
39 unconsolidated material from such right-of-way line to the beginning of the excavation; except
40 that, unless granted a variance by the commission, the minimum distance is fifty feet. The
41 provisions of this subdivision shall apply to all existing surface mining operations beginning
42 August 28, 1990, except as provided in subsection 2 of section 444.770;

43 (6) If surface mining is or has been conducted up to the minimum distance as defined in
44 subdivision (5) of **this** subsection [1 of this section] along an established right-of-way line of any
45 public road, street or highway, a barrier or berm of adequate height shall be placed or constructed
46 along the perimeter of the excavation. Adequate height shall mean a height of no less than three
47 feet. Such barriers or berms shall not be required if barriers, berms or guardrails already exist on
48 the adjoining right-of-way. Barriers or berms of adequate height may also be required by the
49 commission when surface mining is or has been conducted up to the minimum distance as defined
50 in subdivision (5) of **this** subsection [1 of this section] along other property lines, but only as

51 necessary to mitigate serious and obvious threats to public safety;

52 (7) The operator may construct earth dams to form lakes in pits resulting from the final
53 cut in a mining area; except that, the formation of the lakes shall not interfere with underground
54 or other mining operations or damage adjoining property and shall comply with the requirements
55 of subdivision (8) of **this** subsection [1 of this section];

56 (8) The operator shall cover the exposed face of a mineral seam where acid forming
57 materials are present, to a depth of not less than two feet with earth that will support plant life or
58 with a permanent water impoundment, terraced or otherwise so constructed as to prevent a
59 constant inflow of water from any stream and to prevent surface water from flowing into such
60 impoundment in such amounts as will cause runoff or spillage from said impoundment in a
61 volume which will cause kills of fish or animals downstream. The operator shall cover an
62 exposed deposit of tar sands, including an exposed face thereof, to a depth of not less than two
63 feet with earth that will support plant life, and in addition may cover such deposit or face with a
64 permanent water impoundment as provided above; however, no water impoundment shall be so
65 constructed as to allow a permanent layer of oil or other hydrocarbon to collect on the surface of
66 such impoundment in an amount which will adversely affect fish, wildfowl and other wildlife in
67 or upon such impoundment;

68 (9) The operator shall reclaim all affected lands except as otherwise provided in sections
69 444.760 to [444.789] **444.790**. The operator shall determine on company-owned land, and with
70 the landowners on leased land for leases that are entered into after August 28, 1990, which parts
71 of the affected land shall be reclaimed for forest, pasture, crop, horticultural, homesite,
72 recreational, industrial or other use including food, shelter, and ground cover for wildlife;

73 (10) The operator, with the approval of the commission, shall sow, set out or plant upon
74 the affected land, seeds, plants, cuttings of trees, shrubs, grasses or legumes. The plantings or
75 seedlings shall be appropriate to the type of reclamation designated by the operator on
76 company-owned land and with the owner on leased land for leases entered into after August 28,
77 1990, and shall be based upon sound agronomic and forestry principles;

78 (11) Surface mining operations conducted in the flood plains of streams and rivers, and
79 subject to periodic flooding, may be exempt from the grading requirements contained in this
80 section if it can be demonstrated to the commission that such operations will be unsafe to pursue
81 or ineffective in achieving reclamation required in this section because of the periodic flooding;

82 (12) Such other requirements as the commission may prescribe by rule or regulation to
83 conform with the purposes and requirements of sections 444.760 to [444.789] **444.790**.

84 2. An operator shall commence the reclamation of the area of land affected by its
85 operation as soon as possible after the [beginning] **completion** of surface mining of [that] **viable**
86 **mineral reserves in any portion of the permit** area in accordance with the plan of reclamation

87 required by [sections 444.760 to 444.789] **subsection 9 of section 444.772**, the rules and
88 regulations of the commission, and the conditions of the permit[; and shall complete]. Grading
89 **shall be completed** within twelve months after [the expiration date of the permit] **mining of**
90 **viable mineral reserves is complete in that portion of the permit area based on the**
91 **operator's prior mining practices at that site. Mining shall not be deemed complete if the**
92 **operator can provide credible evidence to the director that viable mineral reserves are**
93 **present.** The seeding and planting of supporting vegetation, **as provided in the reclamation**
94 **plan**, shall be completed within twenty-four months after [the expiration date of the permit] with
95 **mining has been completed** survival of such supporting vegetation by the second growing
96 season.

97 3. With the approval of the [commission] **director**, the operator may substitute for all or
98 any part of the affected land to be reclaimed, an equal number of acres of land previously mined
99 and not reclaimed. If any area is so substituted the operator shall submit a map **and reclamation**
100 **plan** of the substituted area, and this map **and reclamation plan** shall conform to all
101 requirements with respect to other maps **and reclamation plan** required by section 444.772. The
102 operator shall be relieved of all obligations [under] **pursuant to** sections 444.760 to [444.789]
103 **444.790** with respect to the land for which substitution has been permitted. **On leased land, the**
104 **landowner shall grant written approval to the operator for substitutions made pursuant to**
105 **this subsection.**

106 4. The operator shall file a report with the commission within sixty days after the date of
107 expiration of a permit stating the exact number of acres of land affected by the operation, the
108 extent of the reclamation already accomplished, and such other information as may be required
109 by the commission.

110 5. The operator shall ensure that all affected land where vegetation is to be reestablished
111 is covered with enough topsoil or other approved material in order to provide a proper rooting
112 medium. **No topsoil or other approved material is required to be placed on areas described**
113 **in subdivision (4) of subsection 1 of this section or on any areas to be reclaimed for**
114 **industrial uses as specified in the reclamation plan.**

115 6. The commission may grant such additional time for meeting with the completion dates
116 required by sections 444.760 to [444.789] **444.790** as are necessary due to an act of God, war,
117 strike, riot, catastrophe, or other good cause shown.

444.775. 1. Prior to release of the bond or any portion thereof, application shall be made
2 by the operator to the commission, either with the completion of the report referred to in section
3 444.774 or subsequent to such report, for release of the bond.

4 2. The commission shall cause to have investigated the status of reclamation on land for
5 which a release application has been filed.

6 3. If **the director or** the commission determines that the bond, or any portion thereof,
7 should be released, an order may be so issued without hearing. If an owner of the land that has
8 been affected by surface mining files a petition in opposition to the release of the bond within
9 thirty days of the receipt date of the application for release, a hearing may be held, if the bond
10 release criteria does not meet permit standards. A hearing may also be held if the [staff of the
11 commission] **director**, within thirty days of the receipt date of the application for release,
12 recommends denial of the application following its investigation. In such cases, the commission
13 may hold a hearing as provided in section 444.789 and enter such order as shall be appropriate.

14 4. If the commission determines that the bond or any portion thereof should not be
15 released, the commission shall issue an order to that effect with the reasons for the order and shall
16 give notice to the operator. A hearing shall be held by the commission as provided in section
17 444.789 if requested by the operator within thirty days of the date of notice of the order. At such
18 hearing burden of proof shall be on the operator. After hearing, the commission shall enter such
19 order as shall be appropriate and shall give notice to the operator.

20 5. All final decisions or orders of the commission shall be subject to judicial review as
21 provided for in chapter 536, RSMo. No judicial review shall be available, however, until and
22 unless all administrative remedies are exhausted.

 444.777. Commission members and authorized representatives of the commission may
2 at all reasonable times enter upon any lands that have been or are being surface mined for the
3 purpose of inspection to determine whether the provisions of sections 444.760 to [444.789]
4 **444.790** have been complied with. No person shall refuse entry or access requested for purposes
5 of inspection, to any member of the commission or authorized representative who presents
6 appropriate credentials, nor obstruct or hamper any such person in carrying out the inspection.
7 A suitably restricted search warrant, describing the place to be searched and showing probable
8 cause in writing and upon written oath or affirmation by any member of the commission or
9 authorized representative, shall be issued by any circuit judge or associate circuit judge in the
10 county where the search is to be made.

 444.778. 1. Any bond herein provided to be filed with the commission by the operator
2 shall be in such form as the director prescribes, payable to the state of Missouri, conditioned that
3 the operator shall faithfully perform all requirements of sections 444.760 to [444.789] **444.790**
4 and comply with all rules of the commission made in accordance with the provisions of sections
5 444.760 to [444.789] **444.790**. The bond shall be signed by the operator as principal, and by a
6 good and sufficient corporate surety, licensed to do business in this state, as surety. The operator
7 shall file with the commission a bond payable to the state of Missouri with surety in the penal sum
8 of eight thousand dollars for each permit up to eight acres and five hundred dollars for each acre
9 thereafter that is to be mined. In addition, for each acre or portion thereof where topsoil has been

10 removed from the site, an additional bond of four thousand five hundred dollars per acre shall be
11 posted with the commission for each acre or portion thereof which will be revegetated,
12 conditioned upon the faithful performance of the requirements set forth in sections 444.760 to
13 [444.789] **444.790** and of the rules and regulations of the commission. In lieu of a surety bond,
14 the operator may furnish a bond secured by a personal certificate of deposit or irrevocable letter
15 of credit in an amount equal to that of the required surety bond on conditions as prescribed by the
16 commission. For any operator involved in any gravel mining operation where the annual tonnage
17 of gravel mined by such operator is less than five thousand tons, such operator shall deposit a
18 bond with the commission in the penal sum of five hundred dollars for each acre or portion
19 thereof of land proposed thereafter by the operator to be subjected to surface mining for the
20 mining permit year.

21 2. The bond shall remain in effect until the mined acreages have been reclaimed,
22 approved and released by the commission. Forfeiture of such bond may be cause for denial of
23 future permit applications.

24 3. A bond filed as above prescribed shall not be canceled by the surety except after not
25 less than ninety days' notice to the commission and, in any case, not as to the acreage affected
26 prior to the expiration of the notice period.

27 4. If the license to do business in this state of any surety upon a bond filed with the
28 commission pursuant to sections 444.760 to [444.789] **444.790** shall be suspended, revoked, or
29 canceled, or if the surety should act to cancel the bond, the operator, within sixty days after
30 receiving notice thereof from the commission, shall substitute for such surety a good and
31 sufficient corporate surety licensed to do business in this state or a bond secured by a certificate
32 of deposit. Upon failure of the operator to make substitution of surety as herein provided, the
33 commission shall have the right to suspend the permit of the operator until such substitution has
34 been made.

35 5. The commission shall give written notice to the operator of any violation of sections
36 444.760 to [444.789] **444.790** or noncompliance with any of the rules and regulations
37 promulgated by the commission hereunder and if corrective measures, approved by the
38 commission, are not commenced within ninety days, the commission may proceed as provided
39 in section 444.782 to request forfeiture of the bond.

40 6. The commission shall have the power to reclaim, in keeping with the provisions of
41 sections 444.760 to [444.789] **444.790**, any affected land with respect to which a bond has been
42 forfeited. The commission and any other agency and any contractor under a contract with the
43 commission shall have reasonable right of access to the land affected to carry out such
44 reclamation. The operator shall also have the right of access to the land affected to carry out such
45 reclamation and shall notify the landowner on lease holdings that such right exists.

46 7. Whenever an operator shall have completed all requirements [under] **pursuant to** the
47 provisions of sections 444.760 to [444.789] **444.790** as to any affected land, he **or she** shall notify
48 the commission thereof. If the commission determines that the operator has completed the
49 requirements, the commission shall release the operator from further obligations regarding the
50 affected land and the penalty of the bond shall be reduced proportionately.

 444.782. The attorney general, upon request of the commission, shall institute
2 proceedings to have the bond of the operator forfeited for violation by the operator of any of the
3 provisions of sections 444.760 to [444.789] **444.790**. Before making such request of the attorney
4 general, the commission shall notify the operator in writing of the alleged violation or
5 noncompliance and shall afford the operator the right to appear before the commission at a
6 hearing to be held not less than thirty days after the receipt of such notice by the operator. At the
7 hearing the operator may present for the consideration of the commission, statements, documents
8 and other information with respect to the alleged violation. After the conclusion of the hearing,
9 the commission shall either withdraw the notice of violation or shall request the attorney general
10 to institute proceedings to have the bond of the operator forfeited as to the land involved.

 444.784. The commission may adopt and promulgate reasonable rules and regulations
2 respecting the administration of sections 444.760 to [444.789] **444.790**. Any act authorized to
3 be done by the director may be performed by any employee of the commission when designated
4 by the director. All forfeitures collected after January 1, 1972, as provided in sections 444.760
5 to [444.789] **444.790**, shall be expended to reclaim and rehabilitate land affected in accordance
6 with the provisions of sections 444.760 to [444.789] **444.790**. Insofar as is reasonably
7 practicable, the funds shall be expended upon the lands for which the permit was issued and for
8 which the bond was given.

 444.786. Any person required by sections 444.760 to [444.789] **444.790** to have a permit
2 who engages in the mining of minerals without previously securing a permit to do so as prescribed
3 by sections 444.760 to [444.789] **444.790**, is guilty of a misdemeanor, and upon conviction
4 thereof shall be fined not less than fifty dollars nor more than one thousand dollars. Each day of
5 operation without the permit required by sections 444.760 to [444.789] **444.790** will be deemed
6 a separate violation.

 444.787. 1. The commission shall investigate surface mining operations in the state of
2 Missouri. If the investigations show that surface mining is being or is going to be conducted
3 without a permit in violation of sections 444.760 to [444.789] **444.790** or in violation of any
4 revocation order, and the commission has not issued a variance, the commission shall request the
5 attorney general to file suit in the name of the state of Missouri for an injunction and civil
6 penalties not to exceed one thousand dollars per day for each day, or part thereof, the violation
7 has occurred. Suit may be filed either in the county where the violation occurs or in Cole County.

8 2. If the investigation shows that a surface mining operation for which a permit has been
9 issued is being conducted contrary to or in violation of any provision of sections 444.760 to
10 [444.789] **444.790** or any rule or regulation promulgated by the commission or any condition
11 imposed on the permit or any condition of the bond, the director may by conference, conciliation
12 and persuasion endeavor to eliminate the violation. If the violation is not eliminated, the director
13 shall provide to the operator by registered mail a notice describing the nature of the violation,
14 corrective measures to be taken to abate the violation, and the time period for abatement. Within
15 fifteen days of receipt of this notice the operator may request an informal conference with the
16 director to contest the notice. The director may modify, vacate or enforce the notice and shall
17 provide notice to the operator of his action within thirty days of the informal conference. If the
18 operator fails to comply with the notice, as amended by the director, in the time prescribed within
19 the notice, the director shall file a formal complaint with the commission for suspension or
20 revocation of the permit, and for forfeiture of bond, or for appropriate corrective measures. When
21 the director files a formal complaint, the commission shall cause to have issued and served upon
22 the person complained against a written notice together with a copy of the formal complaint,
23 which shall specify the provision of sections 444.760 to [444.789] **444.790** or the rule or
24 regulation or the condition of the permit or of the bond of which the person is alleged to be in
25 violation, a statement of the manner in, and the extent to which, the person is alleged to be in
26 violation. The person complained against may, within fifteen days of receipt of the complaint,
27 request a hearing before the commission. Such hearing shall be conducted in accordance with the
28 provisions of section 444.789.

29 3. After due consideration of the hearing record, or upon failure of the operator to request
30 a hearing by the date specified in the complaint, the commission shall issue and enter such final
31 order and make such final determination as it shall deem appropriate under the circumstances.
32 Included in such order and determination may be the revocation of any permit and to cease and
33 desist operations. The commission shall immediately notify the respondent of its decision in
34 writing by certified mail.

35 4. Any final order or determination or other final action by the commission shall be
36 approved in writing by at least four members of the commission. The commission shall not issue
37 any permit to any person who has had a permit revoked until the violation that caused the
38 revocation is corrected to the satisfaction of the commission. Any final order of the commission
39 can be appealed in accordance with chapter 536, RSMo.

 444.788. In the event the commission determines that any provisions of sections 444.760
2 to [444.789] **444.790**, rules and regulations promulgated thereunder, permits issued, conditions
3 of the bond, or any final order or determination made by the commission or the director is being
4 violated, the commission may, either after judicial review or simultaneously with judicial review,

5 cause to have instituted a civil action, either in the county where the violation occurs or in Cole
6 County, for injunctive relief, for collection of the civil penalty and for forfeiture of bond. The
7 attorney general shall bring such action, at the request of the commission, in the name of the state
8 of Missouri.

444.789. 1. Any hearing [under] **pursuant to** this section shall be of record and shall be
2 a contested case.

3 2. Parties to such a hearing may make oral argument, introduce testimony and evidence,
4 and cross-examine witnesses.

5 3. The hearing shall be before the commission or the chairman of the commission may
6 designate one commission member as hearing officer, or may appoint a member in good standing
7 of the Missouri Bar as hearing officer to hold the hearing and make recommendations to the
8 commission, but the commission shall make the final decision thereon and any member
9 participating in the decision shall review the record before making the decision.

10 4. In any such hearing any member of the commission may issue in the name of the
11 commission notice of hearing and subpoenas as provided for in section 536.077, RSMo.

12 5. The rules of discovery that apply to any civil case shall apply to hearings held by the
13 commission.

14 **6. The administrative procedures in this section shall not apply to the public**
15 **meetings pursuant to section 444.773.**