

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 824

93RD GENERAL ASSEMBLY

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Reported from the Committee on Conservation and Natural Resources April 8, 2005 with recommendation that House Committee Substitute for House Bill No. 824 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules April 12, 2005 with recommendation that House Committee Substitute for House Bill No. 824 Do Pass with no time limit for debate.

Taken up for Perfection April 20, 2005. House Committee Substitute for House Bill No. 824 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

1906L.02P

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## AN ACT

To repeal sections 444.765, 621.015, and 643.079, RSMo, and to enact in lieu thereof six new sections relating to environmental regulation.

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

Section A. Sections 444.765, 621.015, and 643.079, RSMo, are repealed and six new  
2 sections enacted in lieu thereof, to be known as sections 444.765, 444.766, 621.015, 621.250,  
3 640.013, and 643.079, to read as follows:

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

3 (1) "Affected land", the pit area or area from which overburden shall have been removed,  
4 or upon which overburden has been deposited after September 28, 1971. When mining is  
5 conducted underground, affected land means any excavation or removal of overburden required  
6 to create access to mine openings, except that areas of disturbance encompassed by the actual  
7 underground openings for air shafts, portals, adits and haul roads in addition to disturbances  
8 within fifty feet of any openings for haul roads, portals or adits shall not be considered affected  
9 land. Sites which exceed the excluded areas by more than one acre for underground mining

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

10 operations shall obtain a permit for the total extent of affected lands with no exclusions as  
11 required under sections 444.760 to 444.790;

12 (2) **"Beneficiation", the dressing or processing of minerals for the purpose of**  
13 **regulating the size of the desired product, removing unwanted constituents, and improving**  
14 **the quality or purity of a desired product;**

15 (3) **"Commercial purpose", the purpose of extracting minerals for their value in**  
16 **sales to other persons or for incorporation into a product;**

17 (4) "Commission", the land reclamation commission in the department of natural  
18 resources;

19 (5) **"Construction", construction, erection, alteration, maintenance, or repair of**  
20 **any facility including but not limited to any building, structure, highway, road, bridge,**  
21 **viaduct, water or sewer line, pipeline or utility line, and demolition, excavation, land**  
22 **clearance, and moving of minerals or fill dirt in connection therewith;**

23 [(3)] (6) "Director", the staff director of the land reclamation commission;

24 (7) **"Excavation", any operation in which earth, minerals, or other material in or**  
25 **on the ground is moved, removed, or otherwise displaced for purposes of construction at**  
26 **the site of excavation, by means of any tools, equipment, or explosives and includes, but is**  
27 **not limited to, backfilling, grading, trenching, digging, ditching, drilling, well-drilling,**  
28 **auguring, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in,**  
29 **ripping, driving, demolition of structures, and the use of high-velocity air to disintegrate**  
30 **and suction to remove earth and other materials. For purposes of this section, excavation**  
31 **or removal of overburden for purposes of mining for a commercial purpose or for**  
32 **purposes of reclamation of land subjected to surface mining is not included in this**  
33 **definition. Neither shall excavations of sand and gravel by political subdivisions using**  
34 **their own personnel and equipment or private individuals for personal use be included in**  
35 **this definition;**

36 (8) **"Fill dirt", material removed from its natural location through mining or**  
37 **construction activity, which is a mixture of unconsolidated earthy material, which may**  
38 **include some minerals, and which is used to fill, raise, or level the surface of the ground at**  
39 **the site of disposition, which may be at the site it was removed or on other property, and**  
40 **which is not processed to extract mineral components of the mixture. Backfill material for**  
41 **use in completing reclamation is not included in this definition;**

42 (9) **"Land improvement", work performed by or for a public or private owner or**  
43 **lessor of real property for purposes of improving the suitability of the property for**  
44 **construction at an undetermined future date, where specific plans for construction do not**  
45 **currently exist;**

46 [(4)] (10) "Mineral", a constituent of the earth in a solid state which, when extracted  
47 from the earth, is usable in its natural form or is capable of conversion into a usable form as a  
48 chemical, an energy source, or raw material for manufacturing or construction material. For the  
49 purposes of this section, this definition includes barite, tar sands, and oil shales, but does not  
50 include iron, lead, zinc, gold, silver, coal, surface or subsurface water, fill dirt, natural oil or gas  
51 together with other chemicals recovered therewith;

52 (11) **"Mining", the removal of overburden and extraction of underlying minerals**  
53 **or the extraction of minerals from exposed natural deposits for a commercial purpose, as**  
54 **defined by this section;**

55 [(5)] (12) "Operator", any person, firm or corporation engaged in and controlling a  
56 surface mining operation;

57 [(6)] (13) "Overburden", all of the earth and other materials which lie above natural  
58 deposits of minerals; and also means such earth and other materials disturbed from their natural  
59 state in the process of surface mining other than what is defined in subdivision [(4)] (10) of this  
60 section;

61 [(7)] (14) "Peak", a projecting point of overburden created in the surface mining process;

62 [(8)] (15) "Pit", the place where minerals are being or have been mined by surface  
63 mining;

64 (16) **"Public entity", the state or any officer, official, authority, board, or**  
65 **commission of the state and any county, city, or other political subdivision of the state, or**  
66 **any institution supported in whole or in part by public funds;**

67 [(9)] (17) "Refuse", all waste material directly connected with the cleaning and  
68 preparation of substance mined by surface mining;

69 [(10)] (18) "Ridge", a lengthened elevation of overburden created in the surface mining  
70 process;

71 [(11)] (19) "Site" or "mining site", any location or group of associated locations where  
72 minerals are being surface mined by the same operator;

73 [(12)] (20) "Surface mining", the mining of minerals for commercial purposes by  
74 removing the overburden lying above natural deposits thereof, and mining directly from the  
75 natural deposits thereby exposed, and shall include mining of exposed natural deposits of such  
76 minerals over which no overburden lies and, after August 28, 1990, the surface effects of  
77 underground mining operations for such minerals. **For purposes of the provisions of sections**  
78 **444.760 to 444.790, surface mining shall not include excavations to move minerals or fill**  
79 **dirt within the confines of the real property where excavation occurs or to remove minerals**  
80 **or fill dirt from the real property in preparation for construction at the site of excavation.**

81 **No excavation of fill dirt shall be deemed surface mining regardless of the site of**  
82 **disposition or whether construction occurs at the site of excavation.**

2 **444.766. No provision of sections 447.760 to 444.790 shall apply to the excavation**  
3 **of minerals or fill dirt for the purposes of construction or land improvement as unrelated**  
4 **to the mining of minerals for a commercial purpose or reclamation of land subsequent to**  
5 **the surface mining of minerals.**

6 **1. No permit is required under sections 444.760 to 444.790 for the purpose of**  
7 **moving minerals or fill dirt within the confines of real property where excavation occurs,**  
8 **or for purposes of removing minerals or fill dirt from the real property as provided in this**  
9 **section.**

10 **(1). Excavations for construction pursuant to engineering plans and specifications**  
11 **prepared by an architect, professional engineer, or landscape architect licensed pursuant**  
12 **to chapter 327, RSMo, or any excavation for construction performed under a written**  
13 **contract that requires excavation of minerals or fill dirt and establishes dates for**  
14 **completion of work and specifies the terms of payment for work, shall be presumed to be**  
15 **for the purposes of construction and shall not require a permit for surface mining.**

16 **(2). Excavations for purposes of land improvement where minerals removed from**  
17 **the site are excess minerals that cannot be used on-site for any practical purpose and at no**  
18 **time are subjected to crushing, screening, or other means of beneficiation with the exception**  
19 **of removal of tree limbs and stumps, shall be presumed to be for the purposes of land**  
20 **improvement and shall not require a permit for surface mining, provided that:**

21 **(a) The site has not been designated as a surface mine by the federal Mine Safety**  
22 **and Health Administration;**

23 **(b) Minerals from the property are not used for commercial purposes on a frequent**  
24 **or on-going basis; and**

25 **(c) A pit, peak, or ridge does not persist at the site as inconsistent with the purposes**  
26 **of land improvement.**

27 **(3). Permits shall not be required for the excavation of fill dirt, regardless of the site**  
28 **of disposition or whether construction occurs at the site of excavation.**

29 **2. (1) If the director or his or her designee determines that a surface mining permit**  
30 **is required for real property which is purported to be for purposes of construction or land**  
31 **improvement not requiring a surface mining permit under this section, such determination**  
32 **shall be sent in writing to the owner of the property by certified mail stating the reasons**  
33 **for such determination. Upon request of the person receiving the letter, an informal**  
34 **conference shall be scheduled with the director within fifteen calendar days to discuss the**  
**determination. Following the informal conference, the director shall issue a written**

35 **determination regarding his or her findings of fact no later than thirty calendar days after**  
36 **the date of the conference. If the director agrees that a surface mining permit is required**  
37 **and the person disagrees with that decision, the person may make a written request for a**  
38 **hearing before the commission at its next regular meeting. Such written request shall be**  
39 **filed within thirty calendar days after receipt of the director's written determination,**  
40 **except when the thirtieth day would be later than the date of the next regularly scheduled**  
41 **commission meeting, the written request shall be filed at least seven days prior to the**  
42 **commission meeting unless the director and the person filing the request mutually agree**  
43 **to place the matter on the commission's agenda for a later meeting. The commission shall**  
44 **issue a written determination as to whether a surface mining permit is required under this**  
45 **state's law within thirty calendar days after the hearing. The written determination may**  
46 **be appealed as provided under this chapter.**

47 **(2) Until a final written determination has been issued under the process**  
48 **established under subdivision (1) of this subsection, the person receiving a letter stating the**  
49 **reasons a mining permit is required may continue activity at the site in dispute. The**  
50 **commission may stay the director's determination. If the final written determination is**  
51 **that a permit is required, all fees otherwise provided by statute or rules of the commission**  
52 **shall apply. If the determination is that no permit is required, no permit fees shall be**  
53 **required by the director or the commission.**

54 **(3) The process set out in this subsection for determining whether a mining permit**  
55 **is required shall not be subject to the hearing requirements of section 444.789.**

621.015. The "Administrative Hearing Commission" is assigned to the office of  
2 administration. It shall consist of no more than three commissioners. The commissioners shall  
3 be appointed by the governor with the advice and consent of the senate. The term of each  
4 commissioner shall be for six years and until his successor is appointed, qualified and sworn.  
5 The commissioners shall be attorneys at law admitted to practice before the supreme court of  
6 Missouri, but shall not practice law during their term of office. Each commissioner shall receive  
7 annual compensation of fifty-one thousand dollars plus any salary adjustment provided pursuant  
8 to section 105.005, RSMo. Each commissioner shall also be entitled to actual and necessary  
9 expenses in the performance of his duties. The office of the administrative hearing commission  
10 shall be located in the City of Jefferson and it may employ necessary clerical assistance,  
11 compensation and expenses of the commissioners to be paid from appropriations [from general  
12 revenue] made for that purpose.

**621.250. 1. All authority to hear appeals granted in chapters 260, 444, 640, 643,**  
2 **and 644, RSMo, and to the hazardous waste management commission in chapter 260,**  
3 **RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water**

4 commission in chapter 640, RSMo, the air conservation commission in chapter 643, RSMo,  
5 and the clean water commission in chapter 644, RSMo, shall be transferred to the  
6 administrative hearing commission under this chapter. The authority to render final  
7 decisions after hearing on appeals heard by the administrative hearing commission shall  
8 remain with the commissions listed in this subsection.

9       2. Except as otherwise provided by law, any person or entity who is a party to, or  
10 who is affected by, any finding, order, decision, or assessment for which the authority to  
11 hear appeals was transferred to the administrative hearing commission in subsection 1 of  
12 this section shall be entitled to a hearing before the administrative hearing commission by  
13 the filing of a petition with the administrative hearing commission within thirty days after  
14 any such finding, order, decision, or assessment is placed in the United States mail or  
15 within thirty days of any such finding, order, decision, or assessment being delivered,  
16 whichever is earlier.

17       3. Any decision by the director of the department of natural resources that may be  
18 appealed to the commissions listed in subsection 1 of section 621.052 and shall contain a  
19 notice of the right of appeal in substantially the following language: "If you were  
20 adversely affected by this decision, you may appeal to have the matter heard by the  
21 administrative hearing commission. To appeal, you must file a petition with the  
22 administrative hearing commission within thirty days after the date this decision was  
23 mailed or the date it was delivered, whichever date was earlier. If any such petition is sent  
24 by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is  
25 sent by any method other than registered mail or certified mail, it will be deemed filed on  
26 the date it is received by the administrative hearing commission.". Within fifteen days  
27 after the administrative hearing commission renders its recommended decision, it shall  
28 transmit the record and a transcript of the proceedings, together with the administrative  
29 hearing commission's recommended decision to the commission having authority to issue  
30 a final decision. The decision of the commission shall be based only on the facts and  
31 evidence in the hearing record. The commission may adopt the recommended decision as  
32 its final decision. The commission may change a finding of fact or conclusion of law made  
33 by the administrative hearing commission, or may vacate or modify the recommended  
34 decision issued by the administrative hearing commission, only if the commission states in  
35 writing the specific reason for a change made under this subsection.

36       4. In the event the person filing the appeal prevails in any dispute under this  
37 section, interest shall be allowed upon any amount found to have been wrongfully collected  
38 or erroneously paid at the rate established by the director of the department of revenue  
39 under section 32.065, RSMo.

40           **5. Appropriations shall be made from the respective funds of the various**  
41 **commissions to cover the administrative hearing commission's costs associated with these**  
42 **appeals.**

43           **6. In all matters heard by the administrative hearing commission under this section,**  
44 **the burden of proof shall comply with section 640.012, RSMo. The hearings shall be**  
45 **conducted by the administrative hearing commission in accordance with the provisions of**  
46 **chapter 536, RSMo, and its regulations promulgated thereunder.**

**640.013. All authority to hear appeals granted in this chapter and chapters 260,**  
2 **444, 643, and 644, RSMo, and to the hazardous waste management commission in chapter**  
3 **260, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking**  
4 **water commission in this chapter, the air conservation commission in chapter 643, RSMo,**  
5 **and the clean water commission in chapter 644, RSMo, shall be transferred to the**  
6 **administrative hearing commission under chapter 621, RSMo. The authority to render**  
7 **final decisions after hearing on appeals heard by the administrative hearing commission**  
8 **shall remain with the commissions listed in this subsection.**

          643.079. 1. Any air contaminant source required to obtain a permit issued under sections  
2 643.010 to 643.190 shall pay annually beginning April 1, 1993, a fee as provided herein. For the  
3 first year the fee shall be twenty-five dollars per ton of each regulated air contaminant emitted.  
4 Thereafter, the fee shall be annually set by the commission by rule and shall be at least  
5 twenty-five dollars per ton of regulated air contaminant emitted but not more than forty dollars  
6 per ton of regulated air contaminant emitted in the previous calendar year. The fee shall be set  
7 at an amount consistent with the need to fund the reasonable cost of administering sections  
8 643.010 to 643.190, taking into account other moneys received pursuant to sections 643.010 to  
9 643.190. For the purpose of determining the amount of air contaminant emissions on which the  
10 fees authorized under this section are assessed, a facility shall be considered one source under  
11 the definition of subsection 2 of section 643.078, except that a facility with multiple operating  
12 permits shall pay the emission fees authorized under this section separately for air contaminants  
13 emitted under each individual permit.

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

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

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

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

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

28 4. Each air contaminant source with a permit issued under sections 643.010 to 643.190  
29 shall pay the fee for the first four thousand tons of each regulated air contaminant emitted each  
30 year but no air contaminant source shall pay fees on total emissions of regulated air contaminants  
31 in excess of twelve thousand tons in any calendar year. A permitted air contaminant source  
32 which emitted less than one ton of all regulated pollutants shall pay a fee equal to the amount per  
33 ton set by the commission. An air contaminant source which pays emission fees to a holder of  
34 a certificate of authority issued pursuant to section 643.140 may deduct such fees from any  
35 amount due under this section. The fees imposed in this section shall not be applied to carbon  
36 oxide emissions. The fees imposed in subsection 1 and this subsection shall not be applied to  
37 sulfur dioxide emissions from any Phase I affected unit subject to the requirements of Title IV,  
38 section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, et seq., any sooner than  
39 January 1, 2000. The fees imposed on emissions from Phase I affected units shall be consistent  
40 with and shall not exceed the provisions of the federal Clean Air Act, as amended, and the  
41 regulations promulgated thereunder. Any such fee on emissions from any Phase I affected unit  
42 shall be reduced by the amount of the service fee paid by that Phase I affected unit pursuant to  
43 subsection 8 of this section in that year. Any fees that may be imposed on Phase I sources shall  
44 follow the procedures set forth in subsection 1 and this subsection and shall not be applied  
45 retroactively.

46 5. Moneys collected under this section shall be transmitted to the director of revenue for  
47 deposit in appropriate subaccounts of the natural resources protection fund created in section  
48 640.220, RSMo. A subaccount shall be maintained for fees paid by air contaminant sources  
49 which are required to be permitted under Title V of the federal Clean Air Act, as amended, 42  
50 U.S.C. Section 7661, et seq., and used, upon appropriation, to fund activities by the department  
51 to implement the operating permits program authorized by Title V of the federal Clean Air Act,  
52 as amended. Another subaccount shall be maintained for fees paid by air contaminant sources  
53 which are not required to be permitted under Title V of the federal Clean Air Act as amended,  
54 and used, upon appropriation, to fund other air pollution control program activities. Another  
55 subaccount shall be maintained for service fees paid under subsection 8 of this section by Phase  
56 I affected units which are subject to the requirements of Title IV, section 404, of the federal  
57 Clean Air Act Amendments of 1990, as amended, 42 U.S.C. 7651, and used, upon appropriation,



58 to fund air pollution control program activities. The provisions of section 33.080, RSMo, to the  
59 contrary notwithstanding, moneys in the fund shall not revert to general revenue at the end of  
60 each biennium. Interest earned by moneys in the subaccounts shall be retained in the  
61 subaccounts. The [minimum and maximum limits for] per ton fees established under subsection  
62 1 of this section may be adjusted annually, consistent with the need to fund the reasonable costs  
63 of the program, by the same percentage as the percentage change in the general price level as  
64 measured by the Consumer Price Index for all Urban Consumers for the United States, or its  
65 successor index, as defined and officially recorded by the United States Department of Labor or  
66 its successor agency, **but shall not be less than twenty-five dollars per ton of regulated air**  
67 **contaminant not more than forty dollars per ton of regulated air contaminant.** The first  
68 adjustment shall apply to moneys payable on April 1, 1994, and shall be based upon the general  
69 price level for the twelve month period ending on August thirty-first of the previous calendar  
70 year.

71 6. The department may initiate a civil action in circuit court against any air contaminant  
72 source which has not remitted the appropriate fees within thirty days. In any judgment against  
73 the source, the department shall be awarded interest at a rate determined pursuant to section  
74 408.030, RSMo, and reasonable attorney's fees. In any judgment against the department, the  
75 source shall be awarded reasonable attorney's fees.

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

78 8. Any Phase I affected unit which is subject to the requirements of Title IV, section 404,  
79 of the federal Clean Air Act, as amended, 42 U.S.C. 7651, shall pay annually beginning April  
80 1, 1993, and terminating December 31, 1999, a service fee for the previous calendar year as  
81 provided herein. For the first year, the service fee shall be twenty-five thousand dollars for each  
82 Phase I affected generating unit to help fund the administration of sections 643.010 to 643.190.  
83 Thereafter, the service fee shall be annually set by the commission by rule, following public  
84 hearing, based on an annual allocation prepared by the department showing the details of all  
85 costs and expenses upon which such fees are based consistent with the department's reasonable  
86 needs to administer and implement sections 643.010 to 643.190 and to fulfill its responsibilities  
87 with respect to Phase I affected units, but such service fee shall not exceed twenty-five thousand  
88 dollars per generating unit. Any such Phase I affected unit which is located on one or more  
89 contiguous tracts of land with any Phase II generating unit that pays fees under subsection 1 or  
90 subsection 2 of this section shall be exempt from paying service fees under this subsection. A  
91 "contiguous tract of land" shall be defined to mean adjacent land, excluding public roads,  
92 highways and railroads, which is under the control of or owned by the permit holder and operated  
93 as a single enterprise.

94           9. The department of natural resources shall determine the fees due pursuant to this  
95 section by the state of Missouri and its departments, agencies and institutions, including two- and  
96 four-year institutions of higher education. The director of the department of natural resources  
97 shall forward the various totals due to the joint committee on capital improvements and the  
98 directors of the individual departments, agencies and institutions. The departments, as part of  
99 the budget process, shall annually request by specific line item appropriation funds to pay said  
100 fees and capital funding for projects determined to significantly improve air quality. If the  
101 general assembly fails to appropriate funds for emissions fees as specifically requested, the  
102 departments, agencies and institutions shall pay said fees from other sources of revenue or funds  
103 available. The state of Missouri and its departments, agencies and institutions may receive  
104 assistance from the small business technical assistance program established pursuant to section  
105 643.173.