

## CONFERENCE COMMITTEE SUBSTITUTE

FOR

## HOUSE COMMITTEE SUBSTITUTE

FOR

## HOUSE BILL NO. 246

## AN ACT

To repeal sections 444.765, 444.766, 444.770, and 444.774, RSMo, and to enact in lieu thereof four new sections relating to surface mining and gravel excavation.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 444.765, 444.766, 444.770, and 444.774, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 444.765, 444.766, 444.770, and 444.774, to read as follows:

444.765. Wherever used or referred to in sections 444.760 to 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

1 affected land. Sites which exceed the excluded areas by more  
2 than one acre for underground mining operations shall obtain a  
3 permit for the total extent of affected lands with no exclusions  
4 as required under sections 444.760 to 444.790;

5 (2) "Beneficiation", the dressing or processing of minerals  
6 for the purpose of regulating the size of the desired product,  
7 removing unwanted constituents, and improving the quality or  
8 purity of a desired product;

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

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

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

20 (6) "Director", the staff director of the land reclamation  
21 commission;

22 (7) "Department", the department of natural resources;

23 (8) "Excavation", any operation in which earth, minerals,  
24 or other material in or on the ground is moved, removed, or  
25 otherwise displaced for purposes of construction at the site of  
26 excavation, by means of any tools, equipment, or explosives and  
27 includes, but is not limited to, backfilling, grading, trenching,  
28 digging, ditching, drilling, well-drilling, auguring, boring,

1 tunneling, scraping, cable or pipe plowing, plowing-in,  
2 pulling-in, ripping, driving, demolition of structures, and the  
3 use of high-velocity air to disintegrate and suction to remove  
4 earth and other materials. For purposes of this section,  
5 excavation or removal of overburden for purposes of mining for a  
6 commercial purpose or for purposes of reclamation of land  
7 subjected to surface mining is not included in this definition.  
8 Neither shall excavations of sand and gravel by political  
9 subdivisions using their own personnel and equipment or private  
10 individuals for personal use be included in this definition;

11       [(8)] (9) "Fill dirt", material removed from its natural  
12 location through mining or construction activity, which is a  
13 mixture of unconsolidated earthy material, which may include some  
14 minerals, and which is used to fill, raise, or level the surface  
15 of the ground at the site of disposition, which may be at the  
16 site it was removed or on other property, and which is not  
17 processed to extract mineral components of the mixture. Backfill  
18 material for use in completing reclamation is not included in  
19 this definition;

20       [(9)] (10) "Land improvement", work performed by or for a  
21 public or private owner or lessor of real property for purposes  
22 of improving the suitability of the property for construction at  
23 an undetermined future date, where specific plans for  
24 construction do not currently exist;

25       [(10)] (11) "Mineral", a constituent of the earth in a  
26 solid state which, when extracted from the earth, is usable in  
27 its natural form or is capable of conversion into a usable form  
28 as a chemical, an energy source, or raw material for

1 manufacturing or construction material. For the purposes of this  
2 section, this definition includes barite, tar sands, and oil  
3 shales, but does not include iron, lead, zinc, gold, silver,  
4 coal, surface or subsurface water, fill dirt, natural oil or gas  
5 together with other chemicals recovered therewith;

6 [(11)] (12) "Mining", the removal of overburden and  
7 extraction of underlying minerals or the extraction of minerals  
8 from exposed natural deposits for a commercial purpose, as  
9 defined by this section;

10 [(12)] (13) "Operator", any person, firm or corporation  
11 engaged in and controlling a surface mining operation;

12 [(13)] (14) "Overburden", all of the earth and other  
13 materials which lie above natural deposits of minerals; and also  
14 means such earth and other materials disturbed from their natural  
15 state in the process of surface mining other than what is defined  
16 in subdivision (10) of this section;

17 [(14)] (15) "Peak", a projecting point of overburden  
18 created in the surface mining process;

19 [(15)] (16) "Pit", the place where minerals are being or  
20 have been mined by surface mining;

21 [(16)] (17) "Public entity", the state or any officer,  
22 official, authority, board, or commission of the state and any  
23 county, city, or other political subdivision of the state, or any  
24 institution supported in whole or in part by public funds;

25 [(17)] (18) "Refuse", all waste material directly connected  
26 with the cleaning and preparation of substance mined by surface  
27 mining;

28 [(18)] (19) "Ridge", a lengthened elevation of overburden

1 created in the surface mining process;

2        [(19)] (20) "Site" or "mining site", any location or group  
3 of associated locations separated by a natural barrier where  
4 minerals are being surface mined by the same operator;

5        [(20)] (21) "Surface mining", the mining of minerals for  
6 commercial purposes by removing the overburden lying above  
7 natural deposits thereof, and mining directly from the natural  
8 deposits thereby exposed, and shall include mining of exposed  
9 natural deposits of such minerals over which no overburden lies  
10 and, after August 28, 1990, the surface effects of underground  
11 mining operations for such minerals. For purposes of the  
12 provisions of sections 444.760 to 444.790, surface mining shall  
13 not include excavations to move minerals or fill dirt within the  
14 confines of the real property where excavation occurs or to  
15 remove minerals or fill dirt from the real property in  
16 preparation for construction at the site of excavation. No  
17 excavation of fill dirt shall be deemed surface mining regardless  
18 of the site of disposition or whether construction occurs at the  
19 site of excavation.

20        444.766. 1. No provision of sections 444.760 to 444.790  
21 shall apply to the excavation of minerals or fill dirt for the  
22 purposes of construction or land improvement as unrelated to the  
23 mining of minerals for a commercial purpose or reclamation of  
24 land subsequent to the surface mining of minerals.

25        2. No permit is required under sections 444.760 to 444.790  
26 for the purpose of moving minerals or fill dirt within the  
27 confines of real property where excavation occurs, or for  
28 purposes of removing minerals or fill dirt from the real property

1 as provided in this section.

2 (1) Excavations for construction pursuant to engineering  
3 plans and specifications prepared by an architect, professional  
4 engineer, or landscape architect licensed pursuant to chapter  
5 327, RSMo, or any excavation for construction performed under a  
6 written contract that requires excavation of minerals or fill  
7 dirt and establishes dates for completion of work and specifies  
8 the terms of payment for work, shall be presumed to be for the  
9 purposes of construction and shall not require a permit for  
10 surface mining.

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

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

21 (b) Minerals from the property are not used for commercial  
22 purposes on a frequent or ongoing basis; and

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

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

28 3. (1) If the director or his or her designee determines

1 that a surface mining permit is required for real property which  
2 is purported to be for purposes of construction or land  
3 improvement not requiring a surface mining permit under this  
4 section, such determination shall be sent in writing to the owner  
5 of the property by certified mail stating the reasons for such  
6 determination. Upon request of the person receiving the letter,  
7 an informal conference shall be scheduled with the director  
8 within fifteen calendar days to discuss the determination.  
9 Following the informal conference, the director shall issue a  
10 written determination regarding his or her findings of fact no  
11 later than thirty calendar days after the date of the conference.  
12 If the director agrees that a surface mining permit is required  
13 and the person disagrees with that decision, the person may make  
14 a written request for a hearing before the commission at its next  
15 regular meeting. Such written request shall be filed within  
16 thirty calendar days after receipt of the director's written  
17 determination, except when the thirtieth day would be later than  
18 the date of the next regularly scheduled commission meeting, the  
19 written request shall be filed at least seven days prior to the  
20 commission meeting unless the director and the person filing the  
21 request mutually agree to place the matter on the commission's  
22 agenda for a later meeting. The commission shall issue a written  
23 determination as to whether a surface mining permit is required  
24 under this state's law within thirty calendar days after the  
25 hearing. The written determination may be appealed as provided  
26 under this chapter.

27 (2) Until a final written determination has been issued  
28 under the process established under subdivision (1) of this

1 subsection, the person receiving a letter stating the reasons a  
2 mining permit is required may continue activity at the site in  
3 dispute. The commission may stay the director's determination.  
4 If the final written determination is that a permit is required,  
5 all fees otherwise provided by statute or rules of the commission  
6 shall apply. If the determination is that no permit is required,  
7 no permit fees shall be required by the director or the  
8 commission.

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

12 444.770. 1. It shall be unlawful for any operator to  
13 engage in surface mining without first obtaining from the  
14 commission a permit to do so, in such form as is hereinafter  
15 provided, including any operator involved in any gravel mining  
16 operation where the annual tonnage of gravel mined by such  
17 operator is less than five thousand tons, except as provided in  
18 subsection 2 of this section.

19 2. (1) A property owner or operator conducting gravel  
20 removal at the request of a property owner for the primary  
21 purpose of managing seasonal gravel accretion on property not  
22 used primarily for gravel mining, or a political subdivision who  
23 contracts with an operator for excavation to obtain sand and  
24 gravel material solely for the use of such political subdivision  
25 shall be exempt from obtaining a permit as required in subsection  
26 1 of this section. Such gravel removal shall be conducted solely  
27 on the property owner's or political subdivision's property and  
28 shall be in accordance with department guidelines, rules, and



regulations. The property owner shall notify the department before any person or operator conducts gravel removal from the property owner's property if the gravel is sold. Notification shall include the nature of the activity, name of the county and stream in which the site is located and the property owner's name. The property owner shall not be required to notify the department regarding any gravel removal at each site location for up to one year from the original notification regarding that site. The property owner shall renotify the department before any person or operator conducts gravel removal at any site after the expiration of one year from the previous notification regarding that site. At the time of each notification to the department, the department shall provide the property owner with a copy of the department's guidelines, rules, and regulations relevant to the activity reported. Said guidelines, rules and regulations may be transmitted either by mail or via the Internet.

(2) The annual tonnage of gravel mined by such property owner or operator conducting gravel removal at the request of a property owner shall be less than two thousand tons, with a site limitation of one thousand tons annually. Any operator conducting gravel removal at the request of a property owner that has removed two thousand tons of sand and gravel material within one calendar year shall have a watershed management practice plan approved by the commission in order to remove any future sand or gravel material the remainder of the calendar year. The application for approval shall be accompanied by an application fee equivalent to the fee paid under section 444.772 and shall

1 contain the name of the watershed from which the operator will be  
2 conducting sand and gravel removal, the location within the  
3 watershed district that the sand and gravel will be removed, and  
4 the description of the vehicles and equipment used for removal.  
5 Upon approval of the watershed management practice plan, the  
6 department shall provide a copy of the relevant commission  
7 regulations to the operator.

8 (3) No property owner or operator conducting gravel removal  
9 at the request of a property owner for the primary purpose of  
10 managing seasonal gravel accretion on property not used primarily  
11 for gravel mining shall conduct gravel removal from any site  
12 located within a distance, to be determined by the commission and  
13 included in the guidelines, rules, and regulations given to the  
14 property owner at the time of notification, of any building,  
15 structure, highway, road, bridge, viaduct, water or sewer line,  
16 and pipeline or utility line.

17 3. Sections 444.760 to 444.790 shall apply only to those  
18 areas which are opened on or after January 1, 1972, or to the  
19 extended portion of affected areas extended after that date. The  
20 effective date of this section for minerals not previously  
21 covered under the provisions of sections 444.760 to 444.790 shall  
22 be August 28, 1990.

23 **[3.] 4.** All surface mining operations where land is  
24 affected after September 28, 1971, which are under the control of  
25 any government agency whose regulations are equal to or greater  
26 than those imposed by section 444.774, are not subject to the  
27 further provisions of sections 444.760 to 444.790, except that  
28 such operations shall be registered with the land reclamation

1 commission.

2       [4.] 5. Any portion of a surface mining operation which is  
3 subject to the provisions of sections 260.200 to 260.245, RSMo,  
4 and the regulations promulgated thereunder, shall not be subject  
5 to the provisions of sections 444.760 to 444.790, and any bonds  
6 or portions thereof applicable to such operations shall be  
7 promptly released by the commission, and the associated permits  
8 canceled by the commission upon presentation to it of  
9 satisfactory evidence that the operator has received a permit  
10 pursuant to section 260.205, RSMo, and the regulations  
11 promulgated thereunder. Any land reclamation bond associated  
12 with such released permits shall be retained by the commission  
13 until presentation to the commission of satisfactory evidence  
14 that:

15       (1) The operator has complied with sections 260.226 and  
16 260.227, RSMo, and the regulations promulgated thereunder,  
17 pertaining to closure and postclosure plans and financial  
18 assurance instruments; and

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

22       [5.] 6. Notwithstanding the provisions of subsection 1 of  
23 this section, any political subdivision which uses its own  
24 personnel and equipment or any private individual for personal  
25 use may conduct in-stream gravel operations without obtaining  
26 from the commission a permit to conduct such an activity.

27       7. Any person filing a complaint of an alleged violation of  
28 this section, with the department, shall identify themselves by

name and telephone number, provide the date and location of the violation, and provide adequate information, as determined by the department, that there has been a violation. Any records, statements, or communications submitted by any person to the department relevant to the complaint shall remain confidential and used solely by the department to investigate such alleged violation.

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

(1) All ridges and peaks of overburden created by surface mining, except areas meeting the qualifications of subdivision (4) of this subsection, or where washing, cleaning or retaining ponds and reservoirs may be formed under subdivision (2) of this subsection, shall be graded to a rolling topography traversable by farm machinery, but such slopes need not be reduced to less than the original grade of that area prior to mining, and the slope of the ridge of overburden resulting from a box cut need not be reduced to less than twenty-five degrees from horizontal whenever the same cannot be practically incorporated into the land reclaimed for wildlife purposes pursuant to subdivision (4) of this subsection. In surface mining the operator shall remove all debris and materials not allowed by the reclamation plan before the bond or any portion thereof may be released;

(2) As a means of controlling damaging erosion, the director may require the operator to construct terraces or use

1 such other measures and techniques as are necessary to control  
2 soil erosion and siltation on reclaimed land. Such erosion  
3 control measures and techniques may also be required on  
4 overburden stockpiles if the erosion is causing environmental  
5 damage outside the permit area. In determining the grading  
6 requirements to restore barite pit areas, the sidewalls of the  
7 excavation shall be graded to a point where it blends with the  
8 surrounding countryside, but in no case should the contour be  
9 such that erosion and siltation be increased;

10 (3) In the surface mining of tar sands, the operator shall  
11 recover and collect all spent sands and other refuse yielded from  
12 the processing of tar sands, whether such spent sands and refuse  
13 are produced at the surface mine or elsewhere, in the manner  
14 prescribed by the commission as conditions of the permit, and  
15 shall finally dispose of such spent sands and refuse in the  
16 manner prescribed by the commission as conditions of the permit  
17 and in accordance with the provisions of sections 444.760 to  
18 444.790;

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

26 (5) Surface mining operations that remove and do not  
27 replace the lateral support shall not, unless mutually agreed  
28 upon by the operator and the adjacent property owner, remove the

1 lateral support in the vicinity of any established right-of-way  
2 line of any public road, street or highway closer than a distance  
3 equal to twenty-five feet plus one and one-half times the depth  
4 of the unconsolidated material from such right-of-way line to the  
5 beginning of the excavation; except that, unless granted a  
6 variance by the commission, the minimum distance is fifty feet.  
7 The provisions of this subdivision shall apply to all existing  
8 surface mining operations beginning August 28, 1990, except as  
9 provided in subsection [2] 3 of section 444.770;

10 (6) If surface mining is or has been conducted up to the  
11 minimum distance as defined in subdivision (5) of this subsection  
12 along an established right-of-way line of any public road, street  
13 or highway, a barrier or berm of adequate height shall be placed  
14 or constructed along the perimeter of the excavation. Adequate  
15 height shall mean a height of no less than three feet. Such  
16 barriers or berms shall not be required if barriers, berms or  
17 guardrails already exist on the adjoining right-of-way. Barriers  
18 or berms of adequate height may also be required by the  
19 commission when surface mining is or has been conducted up to the  
20 minimum distance as defined in subdivision (5) of this subsection  
21 along other property lines, but only as necessary to mitigate  
22 serious and obvious threats to public safety;

23 (7) The operator may construct earth dams to form lakes in  
24 pits resulting from the final cut in a mining area; except that,  
25 the formation of the lakes shall not interfere with underground  
26 or other mining operations or damage adjoining property and shall  
27 comply with the requirements of subdivision (8) of this  
28 subsection;

1           (8) The operator shall cover the exposed face of a mineral  
2 seam where acid-forming materials are present, to a depth of not  
3 less than two feet with earth that will support plant life or  
4 with a permanent water impoundment, terraced or otherwise so  
5 constructed as to prevent a constant inflow of water from any  
6 stream and to prevent surface water from flowing into such  
7 impoundment in such amounts as will cause runoff or spillage from  
8 said impoundment in a volume which will cause kills of fish or  
9 animals downstream. The operator shall cover an exposed deposit  
10 of tar sands, including an exposed face thereof, to a depth of  
11 not less than two feet with earth that will support plant life,  
12 and in addition may cover such deposit or face with a permanent  
13 water impoundment as provided above; however, no water  
14 impoundment shall be so constructed as to allow a permanent layer  
15 of oil or other hydrocarbon to collect on the surface of such  
16 impoundment in an amount which will adversely affect fish,  
17 wildfowl and other wildlife in or upon such impoundment;

18           (9) The operator shall reclaim all affected lands except as  
19 otherwise provided in sections 444.760 to 444.790. The operator  
20 shall determine on company-owned land, and with the landowners on  
21 leased land for leases that are entered into after August 28,  
22 1990, which parts of the affected land shall be reclaimed for  
23 forest, pasture, crop, horticultural, homesite, recreational,  
24 industrial or other use including food, shelter, and ground cover  
25 for wildlife;

26           (10) The operator, with the approval of the commission,  
27 shall sow, set out or plant upon the affected land, seeds,  
28 plants, cuttings of trees, shrubs, grasses or legumes. The

1 plantings or seedings shall be appropriate to the type of  
2 reclamation designated by the operator on company-owned land and  
3 with the owner on leased land for leases entered into after  
4 August 28, 1990, and shall be based upon sound agronomic and  
5 forestry principles;

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

13 (12) Such other requirements as the commission may  
14 prescribe by rule or regulation to conform with the purposes and  
15 requirements of sections 444.760 to 444.790.

16 2. An operator shall commence the reclamation of the area  
17 of land affected by its operation as soon as possible after the  
18 completion of surface mining of viable mineral reserves in any  
19 portion of the permit area in accordance with the plan of  
20 reclamation required by subsection 9 of section 444.772, the  
21 rules and regulations of the commission, and the conditions of  
22 the permit. Grading shall be completed within twelve months  
23 after mining of viable mineral reserves is complete in that  
24 portion of the permit area based on the operator's prior mining  
25 practices at that site. Mining shall not be deemed complete if  
26 the operator can provide credible evidence to the director that  
27 viable mineral reserves are present. The seeding and planting of  
28 supporting vegetation, as provided in the reclamation plan, shall



1 be completed within twenty-four months after with mining has been  
2 completed survival of such supporting vegetation by the second  
3 growing season.

4 3. With the approval of the director, the operator may  
5 substitute for all or any part of the affected land to be  
6 reclaimed, an equal number of acres of land previously mined and  
7 not reclaimed. If any area is so substituted the operator shall  
8 submit a map and reclamation plan of the substituted area, and  
9 this map and reclamation plan shall conform to all requirements  
10 with respect to other maps and reclamation plan required by  
11 section 444.772. The operator shall be relieved of all  
12 obligations pursuant to sections 444.760 to 444.790 with respect  
13 to the land for which substitution has been permitted. On leased  
14 land, the landowner shall grant written approval to the operator  
15 for substitutions made pursuant to this subsection.

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

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

28 6. The commission may grant such additional time for

1 meeting with the completion dates required by sections 444.760 to  
2 444.790 as are necessary due to an act of God, war, strike, riot,  
3 catastrophe, or other good cause shown.