

SECOND REGULAR SESSION

HOUSE BILL NO. 2350

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHAD (Sponsor) AND COOPER (Co-sponsor).

3506L.03I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 444.772, 444.773, and 444.774, RSMo, and to enact in lieu thereof three new sections relating to permits for mining.

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

Section A. Sections 444.772, 444.773, and 444.774, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 444.772, 444.773, and 444.774, to read as follows:

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

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

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

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

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

(4) Whether the applicant or any person associated with the applicant holds or has held any other permits pursuant to sections 444.500 to 444.790, and an identification of such permits;

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

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.

16 written consent from the operator to grant access to the commission or the director to the area
17 of land affected;

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

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

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23 **An incomplete or inaccurate application shall result in denial of the application and a**
24 **requirement that the applicant repeat the entire application process.**

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

27 4. **If public utilities are reported in the application, the applicant shall submit a**
28 **plan that specifies safe operations in proximity to the utility and a plan for remediation if**
29 **operations disrupt the service of any such utility. Failure to report public utilities shall**
30 **result in permanent denial of the application for that applicant.**

31 5. The application shall be accompanied by a bond, security or certificate meeting the
32 requirements of section 444.778, a geologic resources fee authorized under section 256.700,
33 RSMo, and a permit fee approved by the commission not to exceed one thousand dollars. The
34 commission may also require a fee for each site listed on a permit not to exceed four hundred
35 dollars for each site. If mining operations are not conducted at a site for six months or more
36 during any year, the fee for such site for that year shall be reduced by fifty percent. The
37 commission may also require a fee for each acre bonded by the operator pursuant to section
38 444.778 not to exceed twenty dollars per acre. If such fee is assessed, the per-acre fee on all
39 acres bonded by a single operator that exceed a total of two hundred acres shall be reduced by
40 fifty percent. In no case shall the total fee for any permit be more than three thousand dollars.
41 Permit and renewal fees shall be established by rule, except for the initial fees as set forth in this
42 subsection, and shall be set at levels that recover the cost of administering and enforcing sections
43 444.760 to 444.790, making allowances for grants and other sources of funds. The director shall
44 submit a report to the commission and the public each year that describes the number of
45 employees and the activities performed the previous calendar year to administer sections 444.760
46 to 444.790. For any operator of a gravel mining operation where the annual tonnage of gravel
47 mined by such operator is less than five thousand tons, the total cost of submitting an application
48 shall be three hundred dollars. The issued permit shall be valid from the date of its issuance until
49 the date specified in the mine plan unless sooner revoked or suspended as provided in sections
50 444.760 to 444.790. Beginning August 28, 2007, the fees shall be set at a permit fee of eight
51 hundred dollars, a site fee of four hundred dollars, and an acre fee of ten dollars, with a

52 maximum fee of three thousand dollars. Fees may be raised as allowed in this subsection after
53 a regulation change that demonstrates the need for increased fees.

54 [5.] 6. An operator desiring to have his or her permit amended to cover additional land
55 may file an amended application with the commission. Upon receipt of the amended application,
56 and such additional fee and bond as may be required pursuant to the provisions of sections
57 444.760 to 444.790, the director shall, if the applicant complies with all applicable regulatory
58 requirements, issue an amendment to the original permit covering the additional land described
59 in the amended application.

60 [6.] 7. An operation may withdraw any land covered by a permit, excepting affected land,
61 by notifying the commission thereof, in which case the penalty of the bond or security filed by
62 the operator pursuant to the provisions of sections 444.760 to 444.790 shall be reduced
63 proportionately.

64 [7.] 8. Where mining or reclamation operations on acreage for which a permit has been
65 issued have not been completed, the permit shall be renewed. The operator shall submit a permit
66 renewal form furnished by the director for an additional permit year and pay a fee equal to an
67 application fee calculated pursuant to subsection [4] 5 of this section, but in no case shall the
68 renewal fee for any operator be more than three thousand dollars. For any operator involved in
69 any gravel mining operation where the annual tonnage of gravel mined by such operator is less
70 than five thousand tons, the permit as to such acreage shall be renewed by applying on a permit
71 renewal form furnished by the director for an additional permit year and payment of a fee of three
72 hundred dollars. Upon receipt of the completed permit renewal form and fee from the operator,
73 the director shall approve the renewal. With approval of the director and operator, the permit
74 renewal may be extended for a portion of an additional year with a corresponding prorating of
75 the renewal fee.

76 [8.] 9. Where one operator succeeds another at any uncompleted operation, either by sale,
77 assignment, lease or otherwise, the commission may release the first operator from all liability
78 pursuant to sections 444.760 to 444.790 as to that particular operation if both operators have
79 been issued a permit and have otherwise complied with the requirements of sections 444.760 to
80 444.790 and the successor operator assumes as part of his or her obligation pursuant to sections
81 444.760 to 444.790 all liability for the reclamation of the area of land affected by the former
82 operator.

83 [9.] 10. The application for a permit shall be accompanied by a plan of reclamation that
84 meets the requirements of sections 444.760 to 444.790 and the rules and regulations promulgated
85 pursuant thereto, and shall contain a verified statement by the operator setting forth the proposed
86 method of operation, reclamation, and a conservation plan for the affected area including
87 approximate dates and time of completion, and stating that the operation will meet the

88 requirements of sections 444.760 to 444.790, and any rule or regulation promulgated pursuant
89 to them.

90 [10.] **11.** At the time that a permit application is deemed complete by the director, the
91 operator shall publish a notice of intent to operate a surface mine in any newspaper qualified
92 pursuant to section 493.050, RSMo, to publish legal notices in any county where the land is
93 located. If the director does not respond to a permit application within forty-five calendar days,
94 the application shall be deemed to be complete. Notice in the newspaper shall be posted once
95 a week for four consecutive weeks beginning no more than ten days after the application is
96 deemed complete. **The notice shall be printed and published in the qualified newspaper**
97 **with the largest circulation of all qualified newspapers in the immediate area wherein such**
98 **mining operations are proposed to be conducted, or if no such newspaper is available, then**
99 **in some qualified newspaper circulated in such county.** The operator shall also send notice
100 of intent to operate a surface mine by certified mail to the governing body of the counties or
101 cities in which the proposed area is located, and to the last known addresses of all record
102 landowners of contiguous real property or real property located adjacent to the [proposed mine
103 plan area] **property to be mined.** The notices shall include the name and address of the
104 operator, a legal description consisting of county, section, township and range, **the name or**
105 **number of the nearest public road, directions to the property from the nearest intersection**
106 **of public roads,** the number of acres involved, a statement that the operator plans to mine a
107 specified mineral during a specified time, [and] the address of the commission, **and a statement**
108 **identifying the site as a new site or an expansion of an existing site.** The notices shall also
109 contain a statement that any person with a direct, personal interest in one or more of the factors
110 the commission may consider in issuing a permit may request a public meeting, a public hearing
111 or file written comments to the director no later than fifteen days following the final public notice
112 publication date.

113 [11.] **12.** The commission may approve a permit application or permit amendment whose
114 operation or reclamation plan deviates from the requirements of sections 444.760 to 444.790 if
115 it can be demonstrated by the operator that the conditions present at the surface mining location
116 warrant an exception. The criteria accepted for consideration when evaluating the merits of an
117 exception or variance to the requirements of sections 444.760 to 444.790 shall be established by
118 regulations.

119 [12.] **13.** Fees imposed pursuant to this section shall become effective August 28, 2007,
120 and shall expire on December 31, 2013. No other provisions of this section shall expire.

121 **14.** No permit application wherein the mine plan calls for blasting shall be
122 approved under this section until the director, or his or her designee, holds a public
123 meeting with an opportunity to comment on the permit request.

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

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

3. If the recommendation of the director is for issuance of the permit, the director shall issue the permit without a public meeting or a hearing except that upon petition, received prior to the date of the notice of recommendation, from any person whose health, safety or livelihood will be unduly impaired by the issuance of this permit, a public meeting or a hearing may be held. If a public meeting is requested pursuant to this chapter [and the applicant agrees], the director shall, within thirty days after the time for such request has passed, order that a public meeting be held. The meeting shall be held in a reasonably convenient location for all interested parties. The applicant shall cooperate with the director in making all necessary arrangements for the public meeting. Within thirty days after the close of the public meeting, the director shall recommend to the commission approval or denial of the permit. If the public meeting does not resolve the concerns expressed by the public, any person whose health, safety or livelihood will be unduly impaired by the issuance of such permit may make a written request to the land reclamation commission for a formal public hearing. The land reclamation commission may grant a public hearing to formally resolve concerns of the public. Any public hearing before the commission shall address one or more of the factors set forth in this section.

4. In any hearing held pursuant to this section the burden of proof shall be on the applicant for a permit. If the commission finds, based on competent and substantial scientific evidence on the record, that an interested party's health, safety or livelihood will be unduly impaired by the issuance of the permit, the commission may deny such permit. If the commission finds, based on competent and substantial scientific evidence on the record, that the operator has demonstrated, during the five-year period immediately preceding the date of the permit application, a pattern of noncompliance at other locations in Missouri that suggests a reasonable likelihood of future acts of noncompliance, the commission may deny such permit. In determining whether a reasonable likelihood of noncompliance will exist in the future, the commission may look to past acts of noncompliance in Missouri, but only to the extent they

37 suggest a reasonable likelihood of future acts of noncompliance. Such past acts of
38 noncompliance in Missouri, in and of themselves, are an insufficient basis to suggest a
39 reasonable likelihood of future acts of noncompliance. In addition, such past acts shall not be
40 used as a basis to suggest a reasonable likelihood of future acts of noncompliance unless the
41 noncompliance has caused or has the potential to cause, a risk to human health or to the
42 environment, or has caused or has potential to cause pollution, or was knowingly committed, or
43 is defined by the United States Environmental Protection Agency as other than minor. If a
44 hearing petitioner or the commission demonstrates either present acts of noncompliance or a
45 reasonable likelihood that the permit seeker or the operations of associated persons or
46 corporations in Missouri will be in noncompliance in the future, such a showing will satisfy the
47 noncompliance requirement in this subsection. In addition, such basis must be developed by
48 multiple noncompliances of any environmental law administered by the Missouri department of
49 natural resources at any single facility in Missouri that resulted in harm to the environment or
50 impaired the health, safety or livelihood of persons outside the facility. For any permit seeker
51 that has not been in business in Missouri for the past five years, the commission may review the
52 record of noncompliance in any state where the applicant has conducted business during the past
53 five years. Any decision of the commission made pursuant to a hearing held pursuant to this
54 section is subject to judicial review as provided in chapter 536, RSMo. No judicial review shall
55 be available, however, until and unless 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 444.790 may engage in surface mining upon the lands described in the
3 permit upon the performance of and subject to the following requirements with respect to such
4 lands:

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

15 (2) As a means of controlling damaging erosion, the director may require the operator
16 to construct terraces or use such other measures and techniques as are necessary to control soil
17 erosion and siltation on reclaimed land. Such erosion control measures and techniques may also

18 be required on overburden stockpiles if the erosion is causing environmental damage outside the
19 permit area. In determining the grading requirements to restore barite pit areas, the sidewalls of
20 the excavation shall be graded to a point where it blends with the surrounding countryside, but
21 in no case should the contour be such that erosion and siltation be increased;

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

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

33 (5) Surface mining operations that remove and do not replace the lateral support shall
34 not, unless mutually agreed upon by the operator and the adjacent property owner, remove the
35 lateral support in the vicinity of any established right-of-way line of any public road, street or
36 highway closer than a distance equal to twenty-five feet plus one and one-half times the depth
37 of the unconsolidated material from such right-of-way line to the beginning of the excavation;
38 except that, unless granted a variance by the commission, the minimum distance is fifty feet.
39 The provisions of this subdivision shall apply to all existing surface mining operations beginning
40 August 28, 1990, except as provided in subsection 3 of section 444.770;

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

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

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

66 (9) The operator shall reclaim all affected lands except as otherwise provided in sections
67 444.760 to 444.790. The operator shall determine on company-owned land, and with the
68 landowners on leased land for leases that are entered into after August 28, 1990, which parts of
69 the affected land shall be reclaimed for forest, pasture, crop, horticultural, homesite, recreational,
70 industrial or other use including food, shelter, and ground cover for wildlife;

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

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

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

82 2. An operator shall commence the reclamation of the area of land affected by its
83 operation as soon as possible after the completion of surface mining of viable mineral reserves
84 in any portion of the permit area in accordance with the plan of reclamation required by
85 subsection [9] 10 of section 444.772, the rules and regulations of the commission, and the
86 conditions of the permit. Grading shall be completed within twelve months after mining of
87 viable mineral reserves is complete in that portion of the permit area based on the operator's prior
88 mining practices at that site. Mining shall not be deemed complete if the operator can provide
89 credible evidence to the director that viable mineral reserves are present. The seeding and

90 planting of supporting vegetation, as provided in the reclamation plan, shall be completed within
91 twenty-four months after with mining has been completed survival of such supporting vegetation
92 by the second growing season.

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

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

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

110 6. The commission may grant such additional time for meeting with the completion dates
111 required by sections 444.760 to 444.790 as are necessary due to an act of God, war, strike, riot,
112 catastrophe, or other good cause shown.

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