

FIRST REGULAR SESSION

SENATE BILL NO. 332

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUSE

Read 1st time January 21, 1999, and 1,000 copies ordered printed.

S1219.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 444.772 and 444.773, RSMo 1994, relating to environmental protection, and to enact in lieu thereof two new sections relating to the same subject.

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

Section A. Sections 444.772 and 444.773, RSMo 1994, are repealed and two new sections enacted in lieu thereof, to be known as sections 444.772 and 444.773, to read as follows: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 [under] **pursuant to** sections 444.500 to 444.789, 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 444.789 or any rule or regulation promulgated under them. Permit applications submitted by operators who mine an annual tonnage of less than ten thousand tons shall be required to include written

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

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

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

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

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

4. The application shall be accompanied by a bond, security or certificate meeting the requirements of section 444.778 and a basic permit fee of three hundred fifty dollars, plus acreage fee of thirty-five dollars for each acre or fraction thereof of the area of land to be affected by the operation, plus an annual fee of forty dollars for each site listed on the operator's permit application that will be mined during the permit year, which fees shall be paid before the permit required in this section shall be issued. A basic fee of one hundred dollars, plus an acreage fee of thirty-five dollars for each acre or fraction thereof of the area of land to be affected by the gravel mining operation shall be paid to the commission before the permit shall be issued for any operator involved in any gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand tons. The commission shall by rule or regulation, pursuant to section 444.530, initially establish the fees as listed in this section. The commission may also raise the permit fee to no more than five hundred dollars. The issued permit shall be valid for a period of one year from the date of its issuance unless sooner revoked or suspended as provided in sections 444.760 to 444.789.

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

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

7. Where mining or reclamation operations on acreage for which a permit has been issued have not been completed thereon during the permit year, the permit as to such acreage shall be renewed by applying on a permit renewal form furnished by the commission for an additional permit year and payment of a fee of three hundred fifty dollars plus forty dollars for each site listed on the permit renewal application that will be actively surface mined or reclaimed during the permit year. For any operator involved in any gravel mining operation where the annual

tonnage of gravel mined by such operator is less than five thousand tons, the permit as to such acreage shall be renewed by applying on a permit renewal form furnished by the commission for an additional permit year and payment of a fee of one hundred dollars. Such basic permit fee may be increased by the commission by rule or regulation not to exceed five hundred dollars, pursuant to section 444.767 to support the actual cost thereof of administering and enforcing the provisions of sections 444.760 to 444.789, making allowances for grants and other sources of funds and contingencies. Upon receipt of the permit renewal application and fee, from the operator, the director shall issue a renewal certificate.

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

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

10. At the time that a permit is applied for, the operator shall publish a notice of intent to operate a surface mine in any newspaper with a general circulation in the counties where the land is located. **Notice in the newspaper shall be posted once a week for four weeks beginning no more than ten days after the application is received. The operator shall also send notice of intent to operate a surface mine by certified mail to the governing body of the counties or cities in which the proposed area is located, and by mail to the last known addresses of all record owners of contiguous real property or real property located within one thousand feet of the proposed areas.** The [notice] **notices** shall include the name and address of the operator, a legal description consisting of county, section, township and range, the number of acres involved, a statement that the operator plans to mine a specified mineral during a specified time, and the address of the commission. **The notices shall also contain a statement that** any person with a direct, personal interest in one or more of the factors the commission [is required to] **may** consider in issuing a permit may make written comments to the director [during the fifteen-day public notice period] **no later than fifteen days following the four-week public notice period. Any such interested party shall be granted an opportunity to be heard at a public hearing after addressing a written**

request to the director pursuant to this section.

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

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 [fifteen days after the application is received] **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 [under] **pursuant to** that section, [he] **the director** shall recommend denial of the permit. The director shall consider any written comments when making [his] **a** 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 444.789, 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 hearing except that upon petition, received prior to the date of the notice of recommendation, from any person whose health, safety or livelihood is affected by noncompliance with any applicable laws or regulations, a hearing may be held.] **If a public hearing is requested pursuant to this chapter, the director shall conduct a hearing within thirty days after the time for such requests has passed. The hearing shall be held in a reasonably convenient location for all interested parties, to be determined by the director. The director shall publicize the time, date and location of the hearing in at least one newspaper of general circulation in the area and recommend to the commission approval or disapproval of the permit within fifteen days after the close of the hearing.**

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 upon competent and substantial evidence on the record, that an interested party's health, safety, livelihood, or use, value, or enjoyment of real property in which the interested party has a direct interest, will be unduly impaired by the issuance of the permit, the commission may deny such permit.** Any decision of the commission made pursuant to a hearing held [under] **pursuant to** this section is subject to judicial review as provided in chapter 536, RSMo. No judicial review shall be available, however, until and unless all administrative remedies are exhausted.



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