

FIRST REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 453

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES RANSDALL, BERKOWITZ AND WIGGINS (Co-sponsors).

Read 1<sup>st</sup> time January 18, 2001, and 1000 copies ordered printed.

Read 2<sup>nd</sup> time January 22, 2001, and referred to the Committee on Environment and Energy, February 8, 2001.

Reported from the Committee on Environment and Energy, February 26, 2001, with recommendation that the bill Do Pass.

Taken up for Perfection March 14, 2001. Bill ordered Perfected and printed, as amended.

TED WEDEL, Chief Clerk

1171L.01P

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### AN ACT

To repeal sections 292.606, 347.740, 351.127, 355.023, 356.233, 359.653, 400.9-508, 417.018, 444.765, 444.767, 444.770, 444.772, 444.773, 444.774, 444.775, 444.777, 444.778, 444.782, 444.784, 444.786, 444.787, 444.788 and 444.789, RSMo 2000, relating to environmental commissions and the collection of certain fees, and to enact in lieu thereof twenty-three new sections relating to the same subject.

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

Section A. Sections 292.606, 347.740, 351.127, 355.023, 356.233, 359.653, 400.9-508, 2 417.018, 444.765, 444.767, 444.770, 444.772, 444.773, 444.774, 444.775, 444.777, 444.778, 3 444.782, 444.784, 444.786, 444.787, 444.788 and 444.789, RSMo 2000, are repealed and 4 twenty-three new sections enacted in lieu thereof, to be known as sections 292.606, 347.740, 5 351.127, 355.023, 356.233, 359.653, 400.9-508, 417.018, 444.765, 444.767, 444.770, 444.772, 6 444.773, 444.774, 444.775, 444.777, 444.778, 444.782, 444.784, 444.786, 444.787, 444.788 and 7 444.789, to read as follows:

292.606. 1. Fees shall be collected for a period of [ten] **twenty** years from August 28, 2 1992. [The commission shall review the adequacy of the fees imposed in this section and shall 3 present its assessment to affected departments and the respective committees of jurisdiction of 4 the house and senate before December 1, 1994.]

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

5           2. (1) Any employer required to report under subsection 1 of section 292.605, except  
6 local governments and family-owned farm operations shall submit an annual fee to the  
7 commission of one hundred dollars along with the Tier II form. Owners or operators of  
8 petroleum retail facilities shall pay a fee of no more than fifty dollars for each such facility. Any  
9 person, firm or corporation selling, delivering or transporting petroleum or petroleum products  
10 and whose primary business deals with petroleum products or who is covered by the provisions  
11 of chapter 323, RSMo, if such person, firm or corporation is paying fees under the provisions of  
12 the federal hazardous materials transportation registration and fee assessment program, shall  
13 deduct such federal fees from those fees owed to the state under the provisions of this subsection.  
14 If the federal fees exceed or are equal to what would otherwise be owed under this subsection,  
15 such employer shall not be liable for state fees under this subsection. In relation to petroleum  
16 products "primary business" shall mean that the person, firm or corporation shall earn more than  
17 fifty percent of hazardous chemical revenues from the sale, delivery or transport of petroleum  
18 products. For the purpose of calculating fees, all grades of gasoline are considered to be one  
19 product, all grades of heating oils, diesel fuels, kerosenes, naphthas, aviation turbine fuel, and  
20 all other heavy distillate products except for grades of gasoline, are considered to be one product,  
21 and all varieties of motor lubricating oil are considered to be one product. For the purposes of  
22 this section "facility" shall mean all buildings, equipment, structures and other stationary items  
23 that are located on a single site or on contiguous or adjacent sites and which are owned or  
24 operated by the same person. If more than three hazardous substances or mixtures are reported  
25 on the Tier II form, the employer shall submit an additional twenty-dollar fee for each hazardous  
26 substance or mixture. Fees collected under this subdivision shall be for each hazardous chemical  
27 on hand at any one time in excess of ten thousand pounds or for extremely hazardous substances  
28 on hand at any one time in excess of five hundred pounds or the threshold planning quantity,  
29 whichever is less, or for explosives or blasting agents on hand at any one time in excess of one  
30 hundred pounds. However, no employer shall pay more than ten thousand dollars per year in  
31 fees. Except moneys acquired through litigation shall not apply to this cap;

32           (2) Employers engaged in transporting hazardous materials by pipeline except local gas  
33 distribution companies regulated by the Missouri public service commission shall pay to the  
34 commission a fee of two hundred fifty dollars for each county in which they operate;

35           (3) Payment of fees is due each year by March first. A late fee of ten percent of the total  
36 owed, plus one percent per month of the total, may be assessed by the commission;

37           (4) If, on March first of each year, fees collected under this section and natural resources  
38 damages made available pursuant to section 640.235, RSMo, exceed one million dollars, any  
39 excess over one million dollars shall be proportionately credited to fees payable in the  
40 succeeding year by each employer who was required to pay a fee and who did pay a fee in the

41 year in which the excess occurred. The limit of one million dollars contained herein shall be  
42 reviewed by the commission concurrent with the review of fees as required in subsection 1 of  
43 this section.

44 3. Local emergency planning committees receiving funds under section 292.604 shall  
45 coordinate with the commission and the department in chemical emergency planning, training,  
46 preparedness, and response activities. Local emergency planning committees receiving funds  
47 under section 260.394, RSMo, sections 292.602, 292.604, 292.605, 292.606, 292.615 and section  
48 640.235, RSMo, shall provide to the commission an annual report of expenditures and activities.

49 4. Fees collected by the department and all funds provided to local emergency planning  
50 committees shall be used for chemical emergency preparedness purposes as outlined in sections  
51 292.600 to 292.625 and the federal act, including contingency planning for chemical releases;  
52 exercising, evaluating, and distributing plans, providing training related to chemical emergency  
53 preparedness and prevention of chemical accidents; identifying facilities required to report;  
54 processing the information submitted by facilities and making it available to the public; receiving  
55 and handling emergency notifications of chemical releases; operating a local emergency planning  
56 committee; and providing public notice of chemical preparedness activities. Local emergency  
57 planning committees receiving funds under this section may combine such funds with other local  
58 emergency planning committees to further the purposes of sections 292.600 to 292.625, or the  
59 federal act.

60 5. The commission shall establish criteria and guidance on how funds received by local  
61 emergency planning committees may be used.

347.740. The secretary of state may collect an additional fee of five dollars on each and  
2 every fee required in this chapter. All fees collected as provided in this section shall be deposited  
3 in the state treasury and credited to the secretary of state's technology trust fund account. **The**  
4 **provisions of this section shall expire on December 31, 2009.**

351.127. The secretary of state may collect an additional fee of five dollars on each and  
2 every fee required in this chapter. All fees collected as provided in this section shall be deposited  
3 in the state treasury and credited to the secretary of state's technology trust fund account. **The**  
4 **provisions of this section shall expire on December 31, 2009.**

355.023. The secretary of state may collect an additional fee of five dollars on each and  
2 every fee required in this chapter. All fees collected as provided in this section shall be deposited  
3 in the state treasury and credited to the secretary of state's technology trust fund account. **The**  
4 **provisions of this section shall expire on December 31, 2009.**

356.233. The secretary of state may collect an additional fee of five dollars on each and  
2 every fee required in this chapter. All fees collected as provided in this section shall be deposited  
3 in the state treasury and credited to the secretary of state's technology trust fund account. **The**

4 **provisions of this section shall expire on December 31, 2009.**

359.653. The secretary of state may collect an additional fee of five dollars on each and  
2 every fee required in this chapter. All fees collected as provided in this section shall be deposited  
3 in the state treasury and credited to the secretary of state's technology trust fund account. **The**  
4 **provisions of this section shall expire on December 31, 2009.**

400.9-508. The secretary of state may collect an additional fee of five dollars on each  
2 and every fee paid to the secretary of state as required in chapter 400.9. All fees collected as  
3 provided in this section shall be deposited in the state treasury and credited to the secretary of  
4 state's technology trust fund account. **The provisions of this section shall expire on December**  
5 **31, 2009.**

417.018. The secretary of state may collect an additional fee of five dollars on each and  
2 every fee required in this chapter. All fees collected as provided in this section shall be deposited  
3 in the state treasury and credited to the secretary of state's technology trust fund account. **The**  
4 **provisions of this section shall expire on December 31, 2009.**

444.765. Wherever used or referred to in sections 444.760 to [444.789] **444.790**, unless  
2 a different 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  
10 operations shall obtain a permit for the total extent of affected lands with no exclusions as  
11 required under sections 444.760 to [444.789] **444.790**;

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

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

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

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

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

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

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

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

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

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

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

444.767. The commission may:

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

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

8 (3) Examine and pass on all applications and plans and specifications submitted by the  
9 operator for the method of operation and for the reclamation and conservation of the area of land  
10 affected by the operation;

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

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

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

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

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

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

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

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

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

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

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

444.770. 1. It shall be unlawful for any operator to engage in surface mining without  
2 first obtaining from the commission a permit to do so, in such form as is hereinafter provided,  
3 including any operator involved in any gravel mining operation where the annual tonnage of  
4 gravel mined by such operator is less than five thousand tons.

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

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

14 4. Any portion of a surface mining operation which is subject to the provisions of

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

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

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

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

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

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

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

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

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

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

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

19 (6) A description of the tract or tracts of land and the estimated number of acres thereof

20 to be affected by the surface mining of the applicant for the next succeeding twelve months; and

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

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

25 4. The application shall be accompanied by a bond, security or certificate meeting the  
26 requirements of section 444.778 and a [basic permit fee of three hundred fifty dollars, plus  
27 acreage fee of thirty-five dollars for each acre or fraction thereof of the area of land to be affected  
28 by the operation, plus an annual fee of forty dollars for each site listed on the operator's permit  
29 application that will be mined during the permit year, which fees shall be paid before the permit  
30 required in this section shall be issued. A basic fee of one hundred dollars, plus an acreage fee  
31 of thirty-five dollars for each acre or fraction thereof of the area of land to be affected by the  
32 gravel mining operation shall be paid to the commission before the permit shall be issued for any  
33 operator involved in any gravel mining operation where the annual tonnage of gravel mined by  
34 such operator is less than five thousand tons. The commission shall by rule or regulation,  
35 pursuant to section 444.530, initially establish the fees as listed in this section. The commission  
36 may also raise the permit fee to no more than five hundred dollars. The issued permit shall be  
37 valid for a period of one year from the date of its issuance unless sooner revoked or suspended  
38 as provided in sections 444.760 to 444.789] **permit fee approved by the commission not to  
39 exceed six hundred dollars. The commission may also require a fee for each site listed on  
40 a permit not to exceed three hundred dollars for each site. If mining operations are not  
41 conducted at a site for six months or more during any year, the fee for such site for that  
42 year shall be reduced by fifty percent. The commission may also require a fee for each acre  
43 bonded by the operator pursuant to section 444.778 not to exceed ten dollars per acre. If  
44 such fee is assessed, the per-acre fee on all acres bonded by a single operator that exceed  
45 a total of one hundred acres shall be reduced by fifty percent. In no case shall the total fee  
46 for any permit be more than two thousand five hundred dollars. Permit and renewal fees  
47 shall be established by rule and shall be set at levels that recover the cost of administering  
48 and enforcing sections 444.760 to 444.790, making allowances for grants and other sources  
49 of funds. The director shall submit a report to the commission and the public each year  
50 that describes the number of employees and the activities performed the previous calendar  
51 year to administer sections 444.760 to 444.790. For any operator of a gravel mining  
52 operation where the annual tonnage of gravel mined by such operator is less than five  
53 thousand tons, the total cost of submitting an application shall be three hundred dollars.  
54 The issued permit shall be valid from the date of its issuance until the date specified in the  
55 mine plan unless sooner revoked or suspended as provided in sections 444.760 to 444.790.**



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

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

66           7. Where mining or reclamation operations on acreage for which a permit has been  
67 issued have not been completed [thereon during the permit year, the permit as to such acreage  
68 shall be renewed by applying on a permit renewal form furnished by the commission for an  
69 additional permit year and payment of a fee of three hundred fifty dollars plus forty dollars for  
70 each site listed on the permit renewal application that will be actively surface mined or reclaimed  
71 during the permit year], **the permit shall be renewed. The operator shall submit a permit  
72 renewal form furnished by the director for an additional permit year and pay a fee equal  
73 to an application fee calculated pursuant to subsection 4 of this section, but in no case shall  
74 the renewal fee for any operator be more than two thousand five hundred dollars.** For any  
75 operator involved in any gravel mining operation where the annual tonnage of gravel mined by  
76 such operator is less than five thousand tons, the permit as to such acreage shall be renewed by  
77 applying on a permit renewal form furnished by the [commission] **director** for an additional  
78 permit year and payment of a fee of [one] **three** hundred dollars. [Such basic permit fee may be  
79 increased by the commission by rule or regulation not to exceed five hundred dollars, pursuant  
80 to section 444.767 to support the actual cost thereof of administering and enforcing the  
81 provisions of sections 444.760 to 444.789, making allowances for grants and other sources of  
82 funds and contingencies.] Upon receipt of the **completed** permit renewal [application] **form** and  
83 fee[,] from the operator, the director shall [issue a renewal certificate] **approve the renewal.**  
84 **With approval of the director and operator, the permit renewal may be extended for a  
85 portion of an additional year with a corresponding prorating of the renewal fee.**

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

92 reclamation of the area of land affected by the former operator.

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

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

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

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

444.773. 1. All applications for a permit shall be filed with the director, who shall

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

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

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

30         4. In any hearing held pursuant to this section the burden of proof shall be on the  
31 applicant for a permit. **If the commission finds, based on competent and substantial evidence**  
32 **on the record, that an interested party's health, safety or livelihood will be unduly impaired**  
33 **by the issuance of the permit, the commission may deny such permit. If the commission**  
34 **finds, based on competent and substantial evidence on the record, that the operator has**  
35 **had a history of noncompliance at other locations that suggests a reasonable likelihood of**  
36 **future acts of noncompliance, the commission may deny such permit. In determining**  
37 **whether a reasonable likelihood of noncompliance will exist in the future, the commission**

38 **may look to past acts of noncompliance, but only to the extent they suggest a reasonable**  
39 **likelihood of future acts of noncompliance. Past acts of noncompliance, in and of**  
40 **themselves, are an insufficient basis to suggest a reasonable likelihood of future acts of**  
41 **noncompliance. If a hearing petitioner demonstrates either present acts of noncompliance**  
42 **or a reasonable likelihood that the permit seeker or associated persons or corporations will**  
43 **be in noncompliance in the future, such a showing will satisfy the noncompliance**  
44 **requirement in this subsection. In addition, such basis must be developed by multiple**  
45 **noncompliances at any single facility that resulted in lasting harm to the environment or**  
46 **unduly impaired the health, safety or livelihood of persons outside the facility.** Any decision  
47 of the commission made pursuant to a hearing held [under] **pursuant to** this section is subject  
48 to judicial review as provided in chapter 536, RSMo. No judicial review shall be available,  
49 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 [444.789] **444.790** may engage in surface mining upon the lands described  
3 in the permit upon the performance of and subject to the following requirements with respect to  
4 such lands:

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

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

24 (3) In the surface mining of tar sands, the operator shall recover and collect all spent

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

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

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

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

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

56 (8) The operator shall cover the exposed face of a mineral seam where acid forming  
57 materials are present, to a depth of not less than two feet with earth that will support plant life  
58 or with a permanent water impoundment, terraced or otherwise so constructed as to prevent a  
59 constant inflow of water from any stream and to prevent surface water from flowing into such  
60 impoundment in such amounts as will cause runoff or spillage from said impoundment in a

61 volume which will cause kills of fish or animals downstream. The operator shall cover an  
62 exposed deposit of tar sands, including an exposed face thereof, to a depth of not less than two  
63 feet with earth that will support plant life, and in addition may cover such deposit or face with  
64 a permanent water impoundment as provided above; however, no water impoundment shall be  
65 so constructed as to allow a permanent layer of oil or other hydrocarbon to collect on the surface  
66 of such impoundment in an amount which will adversely affect fish, wildfowl and other wildlife  
67 in or upon such impoundment;

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

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

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

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

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

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

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

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

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

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

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

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

14           4. If the commission determines that the bond or any portion thereof should not be  
15 released, the commission shall issue an order to that effect with the reasons for the order and

16 shall give notice to the operator. A hearing shall be held by the commission as provided in  
17 section 444.789 if requested by the operator within thirty days of the date of notice of the order.  
18 At such hearing burden of proof shall be on the operator. After hearing, the commission shall  
19 enter such order as shall be appropriate and shall give notice to the operator.

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

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

444.778. 1. Any bond herein provided to be filed with the commission by the operator  
2 shall be in such form as the director prescribes, payable to the state of Missouri, conditioned that  
3 the operator shall faithfully perform all requirements of sections 444.760 to [444.789] **444.790**  
4 and comply with all rules of the commission made in accordance with the provisions of sections  
5 444.760 to [444.789] **444.790**. The bond shall be signed by the operator as principal, and by a  
6 good and sufficient corporate surety, licensed to do business in this state, as surety. The operator  
7 shall file with the commission a bond payable to the state of Missouri with surety in the penal  
8 sum of eight thousand dollars for each permit up to eight acres and five hundred dollars for each  
9 acre thereafter that is to be mined. In addition, for each acre or portion thereof where topsoil has  
10 been removed from the site, an additional bond of four thousand five hundred dollars per acre  
11 shall be posted with the commission for each acre or portion thereof which will be revegetated,  
12 conditioned upon the faithful performance of the requirements set forth in sections 444.760 to  
13 [444.789] **444.790** and of the rules and regulations of the commission. In lieu of a surety bond,  
14 the operator may furnish a bond secured by a personal certificate of deposit or irrevocable letter  
15 of credit in an amount equal to that of the required surety bond on conditions as prescribed by  
16 the commission. For any operator involved in any gravel mining operation where the annual  
17 tonnage of gravel mined by such operator is less than five thousand tons, such operator shall  
18 deposit a bond with the commission in the penal sum of five hundred dollars for each acre or  
19 portion thereof of land proposed thereafter by the operator to be subjected to surface mining for



20 the mining permit year.

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

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

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

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

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

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

          444.782. The attorney general, upon request of the commission, shall institute  
2 proceedings to have the bond of the operator forfeited for violation by the operator of any of the  
3 provisions of sections 444.760 to [444.789] **444.790**. Before making such request of the attorney  
4 general, the commission shall notify the operator in writing of the alleged violation or  
5 noncompliance and shall afford the operator the right to appear before the commission at a

6 hearing to be held not less than thirty days after the receipt of such notice by the operator. At the  
7 hearing the operator may present for the consideration of the commission, statements, documents  
8 and other information with respect to the alleged violation. After the conclusion of the hearing,  
9 the commission shall either withdraw the notice of violation or shall request the attorney general  
10 to institute proceedings to have the bond of the operator forfeited as to the land involved.

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

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

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

9 2. If the investigation shows that a surface mining operation for which a permit has been  
10 issued is being conducted contrary to or in violation of any provision of sections 444.760 to  
11 [444.789] **444.790** or any rule or regulation promulgated by the commission or any condition  
12 imposed on the permit or any condition of the bond, the director may by conference, conciliation  
13 and persuasion endeavor to eliminate the violation. If the violation is not eliminated, the director  
14 shall provide to the operator by registered mail a notice describing the nature of the violation,  
15 corrective measures to be taken to abate the violation, and the time period for abatement. Within  
16 fifteen days of receipt of this notice the operator may request an informal conference with the  
17 director to contest the notice. The director may modify, vacate or enforce the notice and shall

18 provide notice to the operator of his action within thirty days of the informal conference. If the  
19 operator fails to comply with the notice, as amended by the director, in the time prescribed within  
20 the notice, the director shall file a formal complaint with the commission for suspension or  
21 revocation of the permit, and for forfeiture of bond, or for appropriate corrective measures.  
22 When the director files a formal complaint, the commission shall cause to have issued and served  
23 upon the person complained against a written notice together with a copy of the formal  
24 complaint, which shall specify the provision of sections 444.760 to [444.789] **444.790** or the rule  
25 or regulation or the condition of the permit or of the bond of which the person is alleged to be  
26 in violation, a statement of the manner in, and the extent to which, the person is alleged to be in  
27 violation. The person complained against may, within fifteen days of receipt of the complaint,  
28 request a hearing before the commission. Such hearing shall be conducted in accordance with  
29 the provisions of section 444.789.

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

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

444.788. In the event the commission determines that any provisions of sections 444.760  
2 to [444.789] **444.790**, rules and regulations promulgated thereunder, permits issued, conditions  
3 of the bond, or any final order or determination made by the commission or the director is being  
4 violated, the commission may, either after judicial review or simultaneously with judicial review,  
5 cause to have instituted a civil action, either in the county where the violation occurs or in Cole  
6 County, for injunctive relief, for collection of the civil penalty and for forfeiture of bond. The  
7 attorney general shall bring such action, at the request of the commission, in the name of the state  
8 of Missouri.

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

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

5 3. The hearing shall be before the commission or the chairman of the commission may

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

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

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

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