

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 453

AN ACT

To repeal sections 292.606, 319.129, 319.131, 319.132, 319.133, 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 commerce, and to enact in lieu thereof twenty-eight new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 292.606, 319.129, 319.131, 319.132, 319.133, 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444.773, 444.774, 444.775, 444.777, 444.778, 444.782, 444.784, 444.786, 444.787, 444.788 and 444.789, RSMo 2000, are repealed and twenty-eight new sections enacted in lieu thereof, to be known as sections 292.606, 319.129, 319.131, 319.132, 319.133, 347.740, 351.127, 355.023, 356.233,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, 444.789 and 620.1580, to read as follows:

292.606. 1. Fees shall be collected for a period of [ten] twenty years from August 28, 1992. [The commission shall review the adequacy of the fees imposed in this section and shall present its assessment to affected departments and the respective

committees of jurisdiction of the house and senate before
December 1, 1994.]

2. (1) Any employer required to report under subsection 1 of section 292.605, except local governments and family-owned farm operations shall submit an annual fee to the commission of one hundred dollars along with the Tier II form. Owners or operators of petroleum retail facilities shall pay a fee of no more than fifty dollars for each such facility. Any person, firm or corporation selling, delivering or transporting petroleum or petroleum products and whose primary business deals with petroleum products or who is covered by the provisions of chapter 323, RSMo, if such person, firm or corporation is paying fees under the provisions of the federal hazardous materials transportation registration and fee assessment program, shall deduct such federal fees from those fees owed to the state under the provisions of this subsection. If the federal fees exceed or are equal to what would otherwise be owed under this subsection, such employer shall not be liable for state fees under this subsection. In relation to petroleum products "primary business" shall mean that the person, firm or corporation shall earn more than fifty percent of hazardous chemical revenues from the sale, delivery or transport of petroleum products. For the purpose of calculating fees, all grades of gasoline are considered to be one product, all grades of heating oils, diesel fuels, kerosenes, naphthas, aviation turbine fuel, and all other heavy distillate products except for grades of gasoline, are considered to be one product, and all varieties of motor lubricating oil are considered to be one product. For the purposes of this section

"facility" shall mean all buildings, equipment, structures and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person. If more than three hazardous substances or mixtures are reported on the Tier II form, the employer shall submit an additional twenty-dollar fee for each hazardous substance or mixture. Fees collected under this subdivision shall be for each hazardous chemical on hand at any one time in excess of ten thousand pounds or for extremely hazardous substances on hand at any one time in excess of five hundred pounds or the threshold planning quantity, whichever is less, or for explosives or blasting agents on hand at any one time in excess of one hundred pounds. However, no employer shall pay more than ten thousand dollars per year in fees. Except moneys acquired through litigation shall not apply to this cap;

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

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

(4) If, on March first of each year, fees collected under this section and natural resources damages made available pursuant to section 640.235, RSMo, exceed one million dollars, any excess over one million dollars shall be proportionately credited to fees payable in the succeeding year by each employer

who was required to pay a fee and who did pay a fee in the year in which the excess occurred. The limit of one million dollars contained herein shall be reviewed by the commission concurrent with the review of fees as required in subsection 1 of this section.

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

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

to 292.625, or the federal act.

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

319.129. 1. There is hereby created a special trust fund to be known as the "Petroleum Storage Tank Insurance Fund" within the state treasury which shall be the successor to the underground storage tank insurance fund. Moneys in such special trust fund shall not be deemed to be state funds. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not be transferred to general revenue at the end of each biennium.

2. The owner or operator of any underground storage tank, including the state of Missouri and its political subdivisions and public transportation systems, in service on August 28, 1989, shall submit to the department a fee of one hundred dollars per tank on or before December 31, 1989. The owner or operator of any underground storage tank who seeks to participate in the petroleum storage tank insurance fund, including the state of Missouri and its political subdivisions and public transportation systems, and whose underground storage tank is brought into service after August 28, 1998, shall transmit one hundred dollars per tank to the board with his or her initial application. Such amount shall be a one-time payment, and shall be in addition to the payment required by section 319.133. The owner or operator of any aboveground storage tank regulated by this chapter, including the state of Missouri and its political subdivisions and public transportation systems, who seeks to participate in

the petroleum storage tank insurance fund, shall transmit one hundred dollars per tank to the board with his or her initial application. Such amount shall be a one-time payment and shall be in addition to the payment required by section 319.133.

Moneys received pursuant to this section shall be transmitted to the director of revenue for deposit in the petroleum storage tank insurance fund.

3. The state treasurer may deposit moneys in the fund in any of the qualified depositories of the state. All such deposits shall be secured in a manner and upon the terms as are provided by law relative to state deposits. Interest earned shall be credited to the petroleum storage tank insurance fund.

4. The general administration of the fund and the responsibility for the proper operation of the fund, including all decisions relating to payments from the fund, are hereby vested in a board of trustees. The board of trustees shall consist of the commissioner of administration or the commissioner's designee, the director of the department of natural resources or the director's designee, the director of the department of agriculture or the director's designee, and eight citizens appointed by the governor with the advice and consent of the senate. Three of the appointed members shall be owners or operators of retail petroleum storage tanks, including one tank owner or operator of greater than one hundred tanks; one tank owner or operator of less than one hundred tanks; and one aboveground storage tank owner or operator. One appointed trustee shall represent a financial lending institution, and one appointed trustee shall represent the insurance underwriting

industry. One appointed trustee shall represent industrial or commercial users of petroleum. The two remaining appointed citizens shall have no petroleum-related business interest, and shall represent the nonregulated public at large. The members appointed by the governor shall serve four-year terms except that the governor shall designate two of the original appointees to be appointed for one year, two to be appointed for two years, two to be appointed for three years and two to be appointed for four years. Any vacancies occurring on the board shall be filled in the same manner as provided in this section.

5. The board shall meet in Jefferson City, Missouri, within thirty days following August 28, 1996. Thereafter, the board shall meet upon the written call of the chairman of the board or by the agreement of any six members of the board. Notice of each meeting shall be delivered to all other trustees in person or by registered mail not less than six days prior to the date fixed for the meeting. The board may meet at any time by unanimous mutual consent. There shall be at least one meeting in each quarter.

6. Six trustees shall constitute a quorum for the transaction of business, and any official action of the board shall be based on a majority vote of the trustees present.

7. The trustees shall serve without compensation but shall receive from the fund their actual and necessary expenses incurred in the performance of their duties for the board.

8. All staff resources for the Missouri petroleum storage tank insurance fund shall be provided by the department of natural resources or another state agency as otherwise

specifically determined by the board. The fund shall compensate the department of natural resources or other state agency for all costs of providing staff required by this subsection. Such compensation shall be made pursuant to contracts negotiated between the board and the department of natural resources or other state agency.

9. In order to carry out the fiduciary management of the fund, the board may select and employ, or may contract with, persons experienced in insurance underwriting, accounting, the servicing of claims and rate making, and legal counsel to defend third-party claims, who shall serve at the board's pleasure.

10. At the first meeting of the board, the board shall elect one of its members as chairman. The chairman shall preside over meetings of the board and perform such other duties as shall be required by action of the board.

11. The board shall elect one of its members as vice chairman, and the vice chairman shall perform the duties of the chairman in the absence of the latter or upon the chairman's inability or refusal to act.

12. The board shall determine and prescribe all rules and regulations as they relate to fiduciary management of the fund, pursuant to the purposes of sections 319.100 to 319.137. In no case shall the board have oversight regarding environmental cleanup standards for petroleum storage tanks.

13. No trustee or staff member of the fund shall receive any gain or profit from any moneys or transactions of the fund. This shall not preclude any eligible trustee from making a claim or receiving benefits from the petroleum storage tank insurance

fund as provided by sections 319.100 to 319.137.

14. The board may reinsure all or a portion of the fund's liability. Any insurer who sells environmental liability insurance in this state may, at the option of the board, reinsure some portion of the fund's liability.

15. The petroleum storage tank insurance fund shall expire on December 31, [2003] 2010, or upon revocation of federal regulation 40 CFR Parts 280 and 285, whichever occurs first, unless extended by action of the general assembly. After December 31, 2010, the board of trustees may continue to function for the sole purpose of completing payment of claims made prior to December 31, 2010.

319.131. 1. Any owner or operator of one or more petroleum storage tanks may elect to participate in the petroleum storage tank insurance fund to partially meet the financial responsibility requirements of sections 319.100 to 319.137. Subject to regulations of the board of trustees, owners or operators may elect to continue their participation in the fund subsequent to the transfer of their property to another party. Current or former refinery sites or petroleum pipeline or marine terminals are not eligible for participation in the fund.

2. The board shall establish an advisory committee which shall be composed of insurers and owners and operators of petroleum storage tanks. The advisory committee established pursuant to this subsection shall report to the board. The committee shall monitor the fund and recommend statutory and administrative changes as may be necessary to assure efficient operation of the fund. The committee, in consultation with the

board and the department of insurance, shall annually report to the general assembly on the availability and affordability of the private insurance market as a viable method of meeting the financial responsibilities required by state and federal law in lieu of the petroleum storage tank insurance fund.

3. (1) Except as otherwise provided by this section, any person seeking to participate in the insurance fund shall submit an application to the board of trustees and shall certify that the petroleum tanks meet or exceed and are in compliance with all technical standards established by the United States Environmental Protection Agency, except those standards and regulations pertaining to spill prevention control and countermeasure plans, and rules established by the Missouri department of natural resources and the Missouri department of agriculture. The applicant shall submit proof that the applicant has a reasonable assurance of the tank's integrity. Proof of tank integrity may include but not be limited to any one of the following: tank tightness test, electronic leak detection, monitoring wells, daily inventory reconciliation, vapor test or any other test that may be approved by the director of the department of natural resources or the director of the department of agriculture. The applicant shall submit evidence that the applicant can meet all applicable financial responsibility requirements of this section.

(2) A creditor, specifically a person who, without participating in and not otherwise primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily for the purpose of, or in connection with, securing

payment or performance of a loan or to protect a security interest in or lien on the tank or the property where the tank is located, or serves as trustee or fiduciary upon transfer or receipt of the property, may be a successor in interest to a debtor pursuant to this section, provided that the creditor gives notice of the interest to the insurance fund by certified mail, return receipt requested. Part of such notice shall include a copy of the lien, including but not limited to a security agreement or a deed of trust as appropriate to the property. The term "successor in interest" as provided in this section means a creditor to the debtor who had qualified real property in the insurance fund prior to the transfer of title to the creditor, and the term is limited to access to the insurance fund. The creditor may cure any of the debtor's defaults in payments required by the insurance fund, provided the specific real property originally qualified pursuant to this section. The creditor, or the creditor's subsidiary or affiliate, who forecloses or otherwise obtains legal title to such specific real property held as collateral for loans, guarantees or other credit, and which includes the debtor's aboveground storage tanks or underground storage tanks, or both such tanks shall provide notice to the fund of any transfer of creditor to subsidiary or affiliate. Liability pursuant to sections 319.100 to 319.137 shall be confined to such creditor or such creditor's subsidiary or affiliate. A creditor shall apply for a transfer of coverage and shall present evidence indicating, a lien, contractual right, or operation of law permitting such transfer, and may utilize the creditor's affiliate or subsidiary to hold legal title to the

specific real property taken in satisfaction of debts. Creditors may be listed as insured or additional insured on the insurance fund, and not merely as mortgagees, and may assign or otherwise transfer the debtor's rights in the insurance fund to the creditor's affiliate or subsidiary, notwithstanding any limitations in the insurance fund on assignments or transfer of the debtor's rights.

(3) Any person participating in the fund shall annually submit an amount established pursuant to subsection 1 of section 319.133 which shall be deposited to the credit of the petroleum storage tank insurance fund.

4. [The owner or operator] Any person making a claim pursuant to this section and sections 319.129 and 319.133 shall be liable for the first ten thousand dollars of the cost of cleanup associated with a release from a petroleum storage tank without reimbursement from the fund. The petroleum storage tank insurance fund shall assume all costs, except as provided in subsection 5 of this section, which are greater than ten thousand dollars but less than one million dollars per occurrence or two million dollars aggregate per year. The liability of the petroleum storage tank insurance fund is not the liability of the state of Missouri. The provisions of sections 319.100 to 319.137 shall not be construed to broaden the liability of the state of Missouri beyond the provisions of sections 537.600 to 537.610, RSMo, nor to abolish or waive any defense which might otherwise be available to the state or to any person. The presence of existing contamination at a site where a person is seeking insurance in accordance with this section shall not affect that

person's ability to participate in this program, provided the person meets all other requirements of this section. The board is hereby given authority to prioritize claims and expenditures for claims, in consultation with the department of natural resources. Any person who qualifies pursuant to sections 319.100 to 319.137 and who has requested approval of a project for remediation from the fund, which request has not yet been decided upon shall annually be sent a status report including an estimate of when the project may expect to be funded and other pertinent information regarding the request.

5. The fund shall provide coverage for third-party claims involving property damage or bodily injury caused by leaking petroleum storage tanks whose owner or operator is participating in the fund at the time the release occurs or is discovered. Coverage for third-party bodily injury shall not exceed one million dollars per occurrence. Coverage for third-party property damage shall not exceed one million dollars per occurrence. The fund shall not compensate an owner or operator for repair of damages to property beyond that required to contain and clean up a release of a regulated substance or compensate an owner or operator or any third party for loss or damage to other property owned or belonging to the owner or operator, or for any loss or damage of an intangible nature, including, but not limited to, loss or interruption of business, pain and suffering of any person, lost income, mental distress, loss of use of any benefit, or punitive damages.

6. The fund shall, within limits specified in this section, assume costs of third-party claims and cleanup of contamination

caused by releases from petroleum storage tanks. The fund shall provide the defense of eligible third-party claims including the negotiations of any settlement.

7. Nothing contained in sections 319.100 to 319.137 shall be construed to abrogate or limit any right, remedy, causes of action, or claim by any person sustaining personal injury or property damage as a result of any release from any type of petroleum storage tank, nor shall anything contained in sections 319.100 to 319.137 be construed to abrogate or limit any liability of any person in any way responsible for any release from a petroleum storage tank or any damages for personal injury or property damages caused by such a release.

8. (1) The fund shall provide moneys for cleanup of contamination caused by releases from petroleum storage tanks, the owner or operator of which is participating in the fund or the owner or operator of which has made application for participation in the fund by December 31, 1997, regardless of when such release occurred, provided that those persons who have made application are ultimately accepted into the fund. Applicants shall not be eligible for fund benefits until they are accepted into the fund. This section shall not preclude the owner or operator of petroleum storage tanks coming into service after December 31, 1997, from making application to and participating in the petroleum storage tank insurance fund.

(2) Notwithstanding the provisions of section 319.100 and the provisions of subdivision (1) of this section, the fund shall provide moneys for cleanup of contamination caused by releases from petroleum storage tanks owned by school districts all or

part of which are located in a county of the third classification without a township form of government and having a population of more than ten thousand seven hundred but less than eleven thousand inhabitants, and which make application for participation in the fund by August 28, 1999, regardless of when such release occurred. Applicants shall not be eligible for fund benefits until they are accepted into the fund, and costs incurred prior to that date shall not be eligible expenses.

9. (1) The fund shall provide moneys for cleanup of contamination caused by releases from underground storage tanks which contained petroleum and which have been taken out of use prior to December 31, 1997, provided such sites have been documented by or reported to the department of natural resources prior to December 31, 1997, and provided further that the fund shall make no reimbursements for expenses incurred prior to August 28, 1995. The fund shall also provide moneys for cleanup of contamination caused by releases from underground storage tanks which contained petroleum and which have been taken out of use prior to December 31, 1985, if the current owner of the real property where the tanks are located purchased such property before December 31, 1985, provided such sites are reported to the fund on or before June 30, 2000. The fund shall make no payment for expenses incurred at such sites prior to August 28, 1999. Nothing in sections 319.100 to 319.137 shall affect the validity of any underground storage tank fund insurance policy in effect on August 28, 1996.

(2) An owner or operator who submits a request as provided in this subsection is not required to bid the costs and expenses

associated with professional environmental engineering services. The board may disapprove all or part of the costs and expenses associated with the environmental engineering services if the costs are excessive based upon comparable service costs or current market value of similar services. The owner or operator shall solicit bids for actual remediation and cleanup work as provided by rules of the board.

10. The fund shall provide moneys for cleanup of contamination caused by releases from aboveground storage tanks utilized for the sale of products regulated by chapter 414, RSMo, which have been taken out of use prior to December 31, 1997, provided such sites have been documented by or reported to the department of natural resources prior to December 31, 1997, and provided further that the fund shall make no reimbursements for expenses incurred prior to July 1, 1997.

319.132. 1. The board shall assess a surcharge on all petroleum products within this state which are enumerated by section 414.032, RSMo. Except as specified by this section, such surcharge shall be administered pursuant to the provisions of [sections] subsections 1 to 3 of section 414.102, RSMo, and subsections 1 and 2 of section 414.152, RSMo. Such surcharge shall be imposed upon such petroleum products within this state and shall be assessed on each transport load, or the equivalent of an average transport load if moved by other means. All revenue generated by the assessment of such surcharges shall be deposited to the credit of the special trust fund known as the petroleum storage tank insurance fund. Any person who claims to have paid the surcharge in error may file a claim for a refund

with the board within three years of the payment. The claim shall be in writing and signed by the person or the person's legal representative. The board's decision on the claim shall be in writing and may be delivered to the person by first class mail. Any person aggrieved by the board's decision may seek judicial review by bringing an action against the board in the circuit court of Cole County pursuant to section 536.150, RSMo, no later than sixty days following the date the board's decision was mailed. The department of revenue shall not be a party to such proceeding.

2. The board shall assess and annually reassess the financial soundness of the petroleum storage tank insurance fund.

3. (1) The board shall set, [by rule,] in a public meeting with an opportunity for public comment, the rate of the surcharge that is to be assessed on each such transport load or equivalent but such rate shall be no more than [twenty-five] sixty dollars per transport load or an equivalent thereof. A transport load shall be deemed to be eight thousand gallons.

(2) The board may increase or decrease the surcharge, up to a maximum of sixty dollars, only after giving at least sixty days notice of its intention to alter the surcharge. The board must coordinate its actions with the department of revenue to allow adequate time for implementation of the surcharge change.

(3) If the fund's cash balance on the first day of any month exceeds the sum of its liabilities, plus ten percent, the transport load fee shall automatically revert to twenty-five dollars per transport load on the first day of the second month following this event.

(4) Moneys generated by this surcharge shall not be used for any purposes other than those outlined in sections 319.129 through 319.133 and section 319.138. Nothing in this subdivision shall limit the board's authority to contract with the department of natural resources pursuant to section 319.129 to carry out the purposes of the fund as determined by the board.

4. The board shall ensure that the fund retain a balance of at least twelve million dollars but not more than one hundred million dollars. If, at the end of any quarter, the fund balance is above one hundred million dollars, the treasurer shall notify the board thereof. The board shall suspend the collection of fees [under] pursuant to this section beginning on the first day of the first quarter following the receipt of notice. If, at the end of any quarter, the fund balance is below twenty million dollars, the treasurer shall notify the board thereof. The board shall reinstate the collection of fees [under] pursuant to this section beginning on the first day of the first quarter following the receipt of notice.

5. Railroad corporations as defined in section 388.010, RSMo, and airline companies as defined in section 155.010, RSMo, shall not be subject to the load fee described in this chapter nor permitted to participate in or make claims against the petroleum storage tank insurance fund created in section 319.129.

319.133. 1. The board shall, in consultation with the advisory committee established pursuant to subsection 2 of section 319.131, establish, by rule, the amount which each owner or operator who participates in the fund shall pay annually into the fund, but such amount shall not exceed the limits established

in this section.

2. Each participant shall annually pay an amount which shall be at least one hundred dollars per year but not more than three hundred dollars per year for any tank, as established by the board by rule.

3. No new registration [or participation] fee is required for a change of ownership of a petroleum storage tank. [The new owner shall pay the registration or participation fee at the next due date to continue eligibility.]

4. The board shall establish procedures where persons owning fifty or more petroleum storage tanks may pay any fee established pursuant to subsection 1 of this section in installments.

5. All rules applicable to the former underground storage tank insurance fund not inconsistent with the provisions of sections 319.100 to 319.137 shall apply to the petroleum storage tank insurance fund as of August 28, 1996.

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

417.018. The secretary of state may collect an additional fee of five dollars on each and every fee required in this

chapter. All fees collected as provided in this section shall be deposited in the state treasury and credited to the secretary of state's technology trust fund account. The 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 a different meaning clearly appears from the context, the following terms mean:

(1) "Affected land", the pit area or area from which overburden shall have been removed, or upon which overburden has been deposited after September 28, 1971. When mining is conducted underground, affected land means any excavation or removal of overburden required to create access to mine openings, except that areas of disturbance encompassed by the actual underground openings for air shafts, portals, adits and haul roads in addition to disturbances within fifty feet of any openings for haul roads, portals or adits shall not be considered affected land. Sites which exceed the excluded areas by more than one acre for underground mining operations shall obtain a permit for the total extent of affected lands with no exclusions as required under sections 444.760 to [444.789] 444.790;

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

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

(4) "Mineral", a constituent of the earth in a solid state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form as a chemical, an energy source, or raw material for manufacturing or

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

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

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

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

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

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

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

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

(12) "Surface mining", the mining of minerals for commercial purposes by removing the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed, and shall include mining of exposed

natural deposits of such minerals over which no overburden lies and, after August 28, 1990, the surface effects of underground mining operations for such minerals.

444.767. The commission may:

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

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

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

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

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

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

(7) Order forfeiture of any bond for failure to comply with any provisions of sections 444.760 to [444.789] 444.790 or any

corrective order of the commission or other order of the commission;

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

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

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

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

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

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

(14) Order, after hearing, an operator to adopt such corrective measures as are necessary 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 first obtaining from the commission a permit to do so, in such form as is hereinafter provided, including any operator involved in any gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand tons.

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

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

4. Any portion of a surface mining operation which is subject to the provisions of sections 260.200 to 260.245, RSMo, and the regulations promulgated thereunder, shall not be subject to the provisions of sections 444.760 to [444.789] 444.790, and any bonds or portions thereof applicable to such operations shall be promptly released by the commission, and the associated

permits canceled by the commission upon presentation to it of satisfactory evidence that the operator has received a permit [under] pursuant to section 260.205, RSMo, and the regulations promulgated thereunder. Any land reclamation bond associated with such released permits shall be retained by the commission until presentation to the commission of satisfactory evidence that:

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

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

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

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] 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 [444.789] 444.790 or any rule or regulation promulgated [under] pursuant to them. Permit applications submitted by operators who mine an annual tonnage of less than ten thousand tons shall be required to include written 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] permit fee approved by the commission not to exceed six hundred dollars. The commission may also require a fee for each site listed on a permit not to exceed three hundred dollars for each site. If mining operations are not conducted at a site for six months or more during any year, the fee for such site for that year shall be reduced by fifty percent. The commission may also require a fee for each acre bonded by the operator pursuant to section 444.778 not to exceed ten dollars per acre. If such fee is assessed, the per-

acre fee on all acres bonded by a single operator that exceed a total of one hundred acres shall be reduced by fifty percent. In no case shall the total fee for any permit be more than two thousand five hundred dollars. Permit and renewal fees shall be established by rule and shall be set at levels that recover the cost of administering and enforcing sections 444.760 to 444.790, making allowances for grants and other sources of funds. The director shall submit a report to the commission and the public each year that describes the number of employees and the activities performed the previous calendar year to administer sections 444.760 to 444.790. For any operator of a gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand tons, the total cost of submitting an application shall be three hundred dollars. The issued permit shall be valid from the date of its issuance until the date specified in the mine plan unless sooner revoked or suspended as provided in sections 444.760 to 444.790.

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]~~ 444.790, 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] 444.790 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], the permit shall be renewed. The operator shall submit a permit renewal form furnished by the director for an additional permit year and pay a fee equal to an application fee calculated pursuant to subsection 4 of this section, but in no case shall the renewal fee for any operator be more than two thousand five hundred dollars. 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] director for an additional permit year and payment of a fee of [one] three 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 completed permit renewal

[application] form and fee[,] from the operator, the director shall [issue a renewal certificate] approve the renewal. With approval of the director and operator, the permit renewal may be extended for a portion of an additional year with a corresponding prorating of the renewal fee.

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] 444.790 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] 444.790 and the successor operator assumes as part of his or her obligation [under] pursuant to sections 444.760 to [444.789] 444.790 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] 444.790 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] 444.790, and any rule or regulation promulgated [under] pursuant to them.

10. At the time that a permit [is applied for] application is deemed complete by the director, the operator shall publish a notice of intent to operate a surface mine in any newspaper [with

a general circulation in the counties] qualified pursuant to section 493.050, RSMo, to publish legal notices in any county where the land is located. If the director does not respond to a permit application within forty-five calendar days, the application shall be deemed to be complete. Notice in the newspaper shall be posted once a week for four consecutive weeks beginning no more than ten days after the application is deemed complete. 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 to the last known addresses of all record landowners of contiguous real property or real property located adjacent to the proposed mine plan area. 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] request a public meeting, a public hearing or file written comments to the director [during the fifteen-day public notice period] no later than fifteen days following the final public notice publication date.

11. The commission may approve a permit application or permit amendment whose operation[,] or reclamation [or conservation] plan deviates from the requirements of sections 444.760 to [444.789] 444.790 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] 444.790 shall be established by regulations.

12. Fees imposed pursuant to this section shall become effective August 28, 2001, 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 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 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 [444.789] 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 [is affected by noncompliance with any applicable laws or regulations,] 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 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 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 suggest a reasonable likelihood of future acts of noncompliance. Such acts of noncompliance in Missouri, in and of themselves, are an insufficient basis to suggest a reasonable likelihood of future acts of noncompliance. If a hearing petitioner or the commission demonstrates either present acts of noncompliance or a reasonable likelihood that the permit seeker or the operations of associated persons or corporations in Missouri will be in noncompliance in the future, such a showing will satisfy the noncompliance requirement in this subsection. In addition, such basis must be developed by multiple noncompliances of any environmental law administered by the Missouri Department of Natural Resources at any single facility that resulted in lasting harm to the environment or unduly impaired the health, safety or livelihood of persons outside the facility. For any permit seeker that has not been in business in Missouri for the past five years, the commission may review the record of noncompliance in any state where the applicant has conducted business during the past five years. 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.

444.774. 1. Every operator to whom a permit is issued pursuant to the provisions of sections 444.760 to [444.789] 444.790 may engage in surface mining upon the lands described in the permit upon the performance of and subject to the following requirements with respect to such lands:

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

(2) As a means of controlling damaging [runoff] erosion, the [commission] director may require the operator to construct terraces or use such other measures and techniques as are necessary to control soil erosion and siltation on reclaimed

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

(3) In the surface mining of tar sands, the operator shall recover and collect all spent sands and other refuse yielded from the processing of tar sands, whether such spent sands and refuse are produced at the surface mine or elsewhere, in the manner prescribed by the commission as conditions of the permit, and shall finally dispose of such spent sands and refuse in the manner prescribed by the commission as conditions of the permit and in accordance with the provisions of sections 444.760 to [444.789] 444.790;

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

(5) Surface mining operations that remove and do not replace the lateral support shall not, unless mutually agreed upon by the operator and the adjacent property owner, remove the lateral support in the vicinity of any established right-of-way line of any public road, street or highway closer than a distance

equal to twenty-five feet plus one and one-half times the depth of the unconsolidated material from such right-of-way line to the beginning of the excavation; except that, unless granted a variance by the commission, the minimum distance is fifty feet. The provisions of this subdivision shall apply to all existing surface mining operations beginning August 28, 1990, except as provided in subsection 2 of section 444.770;

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

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

(8) The operator shall cover the exposed face of a mineral

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

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

(10) The operator, with the approval of the commission, shall sow, set out or plant upon the affected land, seeds, plants, cuttings of trees, shrubs, grasses or legumes. The plantings or seedings shall be appropriate to the type of

reclamation designated by the operator on company-owned land and with the owner on leased land for leases entered into after August 28, 1990, and shall be based upon sound agronomic and forestry principles;

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

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

2. An operator shall commence the reclamation of the area of land affected by its operation as soon as possible after the [beginning] completion of surface mining of [that] viable mineral reserves in any portion of the permit area in accordance with the plan of reclamation required by [sections 444.760 to 444.789] subsection 9 of section 444.772, the rules and regulations of the commission, and the conditions of the permit[; and shall complete]. Grading shall be completed within twelve months after [the expiration date of the permit] mining of viable mineral reserves is complete in that portion of the permit area based on the operator's prior mining practices at that site. Mining shall not be deemed complete if the operator can provide credible evidence to the director that viable mineral reserves are present. The seeding and planting of supporting vegetation, as

provided in the reclamation plan, shall be completed within twenty-four months after [the expiration date of the permit] with mining has been completed survival of such supporting vegetation by the second growing season.

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

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

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

as specified in the reclamation plan.

6. The commission may grant such additional time for meeting with the completion dates required by sections 444.760 to [444.789] 444.790 as are necessary due to an act of God, war, 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 by the operator to the commission, either with the completion of the report referred to in section 444.774 or subsequent to such report, for release of the bond.

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

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

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

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

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

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

444.778. 1. Any bond herein provided to be filed with the commission by the operator shall be in such form as the director prescribes, payable to the state of Missouri, conditioned that the operator shall faithfully perform all requirements of

sections 444.760 to [444.789] 444.790 and comply with all rules of the commission made in accordance with the provisions of sections 444.760 to [444.789] 444.790. The bond shall be signed by the operator as principal, and by a good and sufficient corporate surety, licensed to do business in this state, as surety. The operator shall file with the commission a bond payable to the state of Missouri with surety in the penal sum of eight thousand dollars for each permit up to eight acres and five hundred dollars for each acre thereafter that is to be mined. In addition, for each acre or portion thereof where topsoil has been removed from the site, an additional bond of four thousand five hundred dollars per acre shall be posted with the commission for each acre or portion thereof which will be revegetated, conditioned upon the faithful performance of the requirements set forth in sections 444.760 to [444.789] 444.790 and of the rules and regulations of the commission. In lieu of a surety bond, the operator may furnish a bond secured by a personal certificate of deposit or irrevocable letter of credit in an amount equal to that of the required surety bond on conditions as prescribed by the commission. 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, such operator shall deposit a bond with the commission in the penal sum of five hundred dollars for each acre or portion thereof of land proposed thereafter by the operator to be subjected to surface mining for the mining permit year.

2. The bond shall remain in effect until the mined acreages have been reclaimed, approved and released by the commission.

Forfeiture of such bond may be cause for denial of future permit applications.

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

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

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

6. The commission shall have the power to reclaim, in keeping with the provisions of sections 444.760 to [444.789] 444.790, any affected land with respect to which a bond has been forfeited. The commission and any other agency and any

contractor under a contract with the commission shall have reasonable right of access to the land affected to carry out such reclamation. The operator shall also have the right of access to the land affected to carry out such reclamation and shall notify the landowner on lease holdings that such right exists.

7. Whenever an operator shall have completed all requirements [under] pursuant to the provisions of sections 444.760 to [444.789] 444.790 as to any affected land, he or she shall notify the commission thereof. If the commission determines that the operator has completed the requirements, the commission shall release the operator from further obligations regarding 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 proceedings to have the bond of the operator forfeited for violation by the operator of any of the provisions of sections 444.760 to [444.789] 444.790. Before making such request of the attorney general, the commission shall notify the operator in writing of the alleged violation or noncompliance and shall afford the operator the right to appear before the commission at a hearing to be held not less than thirty days after the receipt of such notice by the operator. At the hearing the operator may present for the consideration of the commission, statements, documents and other information with respect to the alleged violation. After the conclusion of the hearing, the commission shall either withdraw the notice of violation or shall request the attorney general 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 respecting the administration of sections 444.760 to [444.789] 444.790. Any act authorized to be done by the director may be performed by any employee of the commission when designated by the director. All forfeitures collected after January 1, 1972, as provided in sections 444.760 to [444.789] 444.790, shall be expended to reclaim and rehabilitate land affected in accordance with the provisions of sections 444.760 to [444.789] 444.790. Insofar as is reasonably practicable, the funds shall be expended upon the lands for which the permit was issued and for which the bond was given.

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

444.787. 1. The commission shall investigate surface mining operations in the state of Missouri. If the investigations show that surface mining is being or is going to be conducted without a permit in violation of sections 444.760 to [444.789] 444.790 or in violation of any revocation order, and the commission has not issued a variance, the commission shall request the attorney general to file suit in the name of the state of Missouri for an injunction and civil penalties not to

exceed one thousand dollars per day for each day, or part thereof, the violation has occurred. Suit may be filed either in the county where the violation occurs or in Cole County.

2. If the investigation shows that a surface mining operation for which a permit has been issued is being conducted contrary to or in violation of any provision of sections 444.760 to [444.789] 444.790 or any rule or regulation promulgated by the commission or any condition imposed on the permit or any condition of the bond, the director may by conference, conciliation and persuasion endeavor to eliminate the violation. If the violation is not eliminated, the director shall provide to the operator by registered mail a notice describing the nature of the violation, corrective measures to be taken to abate the violation, and the time period for abatement. Within fifteen days of receipt of this notice the operator may request an informal conference with the director to contest the notice. The director may modify, vacate or enforce the notice and shall provide notice to the operator of his action within thirty days of the informal conference. If the operator fails to comply with the notice, as amended by the director, in the time prescribed within the notice, the director shall file a formal complaint with the commission for suspension or revocation of the permit, and for forfeiture of bond, or for appropriate corrective measures. When the director files a formal complaint, the commission shall cause to have issued and served upon the person complained against a written notice together with a copy of the formal complaint, which shall specify the provision of sections 444.760 to [444.789] 444.790 or the rule or regulation or the

condition of the permit or of the bond of which the person is alleged to be in violation, a statement of the manner in, and the extent to which, the person is alleged to be in violation. The person complained against may, within fifteen days of receipt of the complaint, request a hearing before the commission. Such hearing shall be conducted in accordance with the provisions of section 444.789.

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

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

444.788. In the event the commission determines that any provisions of sections 444.760 to [444.789] 444.790, rules and regulations promulgated thereunder, permits issued, conditions of the bond, or any final order or determination made by the commission or the director is being violated, the commission may,

either after judicial review or simultaneously with judicial review, cause to have instituted a civil action, either in the county where the violation occurs or in Cole County, for injunctive relief, for collection of the civil penalty and for forfeiture of bond. The attorney general shall bring such action, at the request of the commission, in the name of the state of Missouri.

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

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

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

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

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

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

620.1580. 1. There is hereby established within the department of economic development the "Advisory Committee for Electronic Commerce". The purpose of the committee shall be to

advise the various agencies of the state of Missouri on issues related to electronic commerce.

2. The committee shall be composed of eleven members, who shall be appointed by the director of the department of economic development, as follows:

(1) One member shall be the director of the department of economic development;

(2) One member shall be an employee of the department of revenue;

(3) One member shall be an employee of the department of labor and industrial relations;

(4) Seven members shall be from the business community, with at least one such member being from an organization representative of industry, and with at least one such member being from an organization representative of independent businesses, and with at least one such member being from an organization representative of retail business, and with at least one such member being from an organization representative of local or regional commerce; and

(5) One member from the public at large.

3. The members of the committee shall serve for terms of two years duration, and may be reappointed at the discretion of the director of the department of economic development. Members of the committee shall not be compensated for their services, but shall be reimbursed for actual and necessary expenses incurred in the performance of their service on the committee.

4. The director of the department of economic development shall serve as chair of the committee and shall designate an

employee or employees of the department of economic development to staff the committee, or to chair the committee in the director's absence.

5. The committee shall meet at such places and times as are designated by the director of the department of economic development, but shall not meet less than twice per calendar year.