

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration**

PROPOSED AMENDMENT

10 CSR 40-6.020 General Requirements for Coal Exploration, Permits. The commission is amending the Purpose and sections (5) and (7).

PURPOSE: The purpose for this amendment is to correct omissions and rule references.

PURPOSE: This rule [brings Missouri's regulations into line with the federal language] sets forth the requirements for coal exploration permits pursuant to 444.810 and 444.845, RSMo.

(5) Requirements for Commercial Use or Sale. Except as provided in this section, any person who extracts coal for commercial use or sale during coal exploration operations shall obtain a surface coal mining and reclamation operations permit for those operations from the director under 10 CSR 40-6.010[,] and 10 CSR 40-6.030[, 10 CSR 40-6.050] through [and including 10 CSR 40-6.090 and 10 CSR 40-6.110.] **10 CSR 40-6.120.** No surface coal mining and reclamation operations permit is required if the director or commission makes a prior **written** determination that the commercial use or sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time. **The person conducting the exploration shall file an application for such determination with the director or commission.** The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(7) Bonding for Coal Exploration Permits.

(A) Permits for exploration where two hundred fifty (250) tons of coal or less will be removed shall be bonded at the rate of five thousand dollars (\$5,000) per permit. Bonds shall be of the type allowed in 10 CSR 40-7.011/(3)/(6).

AUTHORITY: section 444.530, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Nov. 10, 1980, effective Feb. 11, 1981. Rescinded and readopted: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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Division 40—Land Reclamation Commission
Chapter 6—Permitting Requirements for Surface and
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PROPOSED AMENDMENT

10 CSR 40-6.030 Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information. The commission is amending sections (1) and (2).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts, reflect recent changes in the federal rules and to correct rule references.

(1) Identification of Interests.

(C) For each person who owns or controls the applicant under the definition of owned or controlled and owns or controls in 10 CSR 40-6.010(2)(E), as applicable **each application shall contain—**

1. The person's name, address, Social Security number and employer identification number;
2. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;
3. The title of the person's position, date position was assumed and, when submitted under 10 CSR 40-6.070(13)(E), date of departure from the position;
4. Each additional name and identifying number, including employer identification number, federal or state permit number and the Mine Safety and Health Administration (MSHA) number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and
5. The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(D) For any surface coal mining operation owned or controlled by [either] the applicant [or by any person who owns or controls the applicant] under the definition of owned or controlled and owns or controls in 10 CSR 40-6.010(2)(E), [the operation's] **each application shall contain—**

1. Name, address, identifying numbers, including employer identification number, federal or state permit number and the MSHA number, the date of issuance of the MSHA number and the regulatory authority; and
2. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(I) The applicant shall submit this information required by sections (1) and (2) of this rule in any prescribed format that is issued by the [director] **Office of Surface Mining Reclamation and Enforcement (OSMRE).**

(2) Compliance Information. Each application shall contain—

[(C) A listing of each violation notice received by the applicant or any subsidiary, affiliate or persons controlled by or under common control with the applicant in connection with any surface coal mining operation during the three (3)-year period before the application date, for violations of any law, rule of the United States or of any state law, rule enacted pursuant to federal law, rule or of any provision of the act pertaining to air or water environmental protection and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. The application shall also contain a statement regarding each violation notice or cessation order reported, including:

1. The date of issuance, the MSHA number and identity of the issuing regulatory authority, department or agency;
2. The name of the person to whom the violation notice was issued;
3. A brief description of the particular violation alleged in the notice;
4. The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including but not limited to, proceedings initiated by any person identified in subsection (2)(C) to obtain administration or judicial review of the violations;
5. The current status of the proceedings and of the violation notice;
6. The actions, if any, taken by the applicant to abate the violation; and
7. Any identifying numbers for the operation, including the federal or state permit number and the MSHA number; and]

(C) A list of all violation notices received by the applicant during the three (3)-year period preceding the application date, and a list of all unabated cessation orders and unabated violation notices received prior to the date of the application by any surface coal mining and reclamation operation that is deemed or presumed to be owned or controlled by the applicant under the definition of "owned or controlled" and "owns or controls" in 10 CSR 40-6.010(2)(E) of this chapter. For each notice of violation issued pursuant to 10 CSR 40-8.030(7) or under the federal or state program for which the abatement period has not expired, the applicant must certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

1. Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;
2. Brief description of the violation alleged in the notice;
3. The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (C) of this section to obtain administrative or judicial review of the violation;
4. The current status of the proceedings and of the violation notice; and
5. The actions, if any, taken by any person identified in subsection (C) of this section to abate the violation.

AUTHORITY: section 444.530, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed Sept. 15, 1994, effective April 30, 1994. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
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PROPOSED AMENDMENT

10 CSR 40-6.040 Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources. The commission is amending sections (5) and (16).

PURPOSE: The purpose for this amendment is to make minor clarifications.

(5) Geology Description.

(B) Test Borings and Core Samples.

1. Test borings or core samples from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined, or any aquifer below the lowest coal seam which may be adversely affected, to provide the following data in the description:

- A. Location of subsurface water, if encountered;
- B. Logs of drill holes showing the lithologic characteristics and thickness of each stratum and each coal seam;
- C. Physical properties of each stratum within the overburden;
- D. Chemical analysis of each stratum within the overburden and the stratum immediately below the lowest coal seam to be mined to identify, at a minimum, those horizons which contain potential acid-, toxic-forming or alkalinity-producing materials; and
- E. Analyses of the coal seam for acid- or toxic-forming materials, including, but not limited to, an analysis of the total sulfur, pyrite and marcasite and pyritic sulfur content.

2. If required by the commission or director, test borings or core samplings shall be collected and analyzed to greater depths

within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance.

3. An applicant may request that the requirement for a statement of the results of the test borings or core samplings be waived by the director. The waiver may be granted only if the director makes a written determination that the statement is unnecessary because other equivalent information is accessible to him/her in a satisfactory form.

(16) Prime Farmland Investigation.

(C) Application Contents—Reconnaissance Inspection.

1. All permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The director or commission in consultation with the [United States Soil Conservation Service] **United States Natural Resources Conservation Service** shall determine the nature and extent of the required reconnaissance inspection.

2. If the reconnaissance inspection establishes that prime farmland does exist within the proposed permit area, but that it has not been historically used as cropland, the applicant may submit a request for negative determination.

3. If the reconnaissance inspection indicates that land within the proposed permit area may be prime farmland historically used for croplands, the applicant shall determine if a soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no soil survey exists, the applicant shall have a soil survey made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. Soil surveys of the detail used by the [United States Soil Conservation Service] **United States Natural Resources Conservation Service** for operational conservation planning shall be used to identify and locate prime farmland soils. If the soil survey indicates that prime farmland soils are present within the proposed permit area, 10 CSR 40-6.060(4) shall apply.

AUTHORITY: section 444.530, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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PROPOSED AMENDMENT

**10 CSR 40-6.050 Surface Mining Permit Application—
Minimum Requirements for Reclamation and Operations Plan.**
The commission is amending sections (1), (5), (7), (9), (11) and (17).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts, reflect recent changes in the federal rules and to make minor clarifications.

(1) Responsibilities. It is the responsibility of—

(5) Operations Plan—Maps and Plans. Each application shall contain maps and plans of the proposed mine plan and adjacent areas as follows:

(B) The following shall be shown for the proposed permit area unless specifically required for the mine plan area or adjacent area by the requirements of this section:

1. Buildings, utility corridors and facilities to be used;
2. The area of land to be affected within the proposed mine plan area according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond will be posted under 10 CSR 40-7;
4. Each coal storage, cleaning and loading area;
5. Each topsoil, spoil, coal waste and noncoal waste storage area. Except for topsoil and spoil, the narrative should be in accordance with the appropriate section(s) of 10 CSR 40-3.080;
6. Each water diversion, collection, conveyance, treatment storage and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control in accordance with 10 CSR 40-3.080(1)-(6);
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each [sedimentation pond] **siltation structure**, permanent water impoundment, coal processing waste bank and coal processing waste dam and embankment in accordance with section (11) and fill area for the disposal of excess spoil in accordance with section (16).

(C) Maps, plans and cross-sections required under paragraphs (5)(B)4., 5., 6., 10. and 11. of this rule shall be prepared by or under the direction of and certified by a qualified registered professional engineer [or a professional geologist experienced in the design and construction of impoundments], with assistance from experts in related fields such as land surveying and landscape architecture except that—

1. Maps, plans and cross-sections for [sedimentation ponds] **siltation structures** may only be prepared by a qualified registered professional engineer; and
2. Spoil disposal facilities, maps, plans and cross-sections may only be prepared by a qualified registered engineer.

(7) Fish and Wildlife Plan.

(D) Each fish and wildlife plan shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of

these resources will be achieved where practicable. This description shall—

1. Be consistent with the requirements of this section and **10 CSR 40-3.100/./;**

2. Apply, at a minimum, to species and habitats identified under subsection (7)(C); and

3. Include—

A. Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and power lines, species and habitats and the monitoring of surface water quality and quantity; and

B. Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(9) Reclamation Plan—Protection of Hydrologic Balance.

(C) The description shall include:

1. A plan for the control, in accordance with 10 CSR 40-3 of surface and ground water drainage into, through and out of the proposed mine plan area; and

2. A plan for the treatment, where required under 10 CSR 40-3 and 10 CSR 40-4 and the regulatory program, of surface and ground water drainage from the area to be disturbed by the proposed activities and proposed quantitative limits on pollutants in discharges subject to 10 CSR 40-3.040(2), according to the more stringent of the following:

A. 10 CSR 40-3 and 10 CSR 40-4 and the regulatory program; or

B. Other applicable state and federal laws;

3. A plan for the restoration of the approximate recharge capacity of the mine plan area in accordance with 10 CSR 40-3.040(11)(12);

4. A plan for the collection, recording and reporting of ground and surface water quality and quantity data, according to 10 CSR 40-3.040(12)(13); and

5. If the determination of the probable hydrologic consequences (PHC) required by subsection (9)(D) of this rule indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid- or toxic-forming material is present that may result in the contamination of ground or surface water supplies, then information supplemental to that required under 10 CSR 40-6.040(6) and (7), shall be provided to evaluate this PHC and to plan remedial and reclamation activities. This supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows or analysis of other water quality or quantity characteristics.

(D) The description shall include a determination of the probable hydrologic consequences of the proposed surface mining activities, on the proposed mine plan area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese and any other parameters required by the director.

1. The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

2. The PHC determination shall include findings on:

A. Whether adverse impacts may occur to the hydrologic balance;

B. Whether acid- or toxic-forming materials are present that could result in the contamination of surface or ground water supplies;

C. Whether the proposed operation may approximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose;

D. What impact the proposed operation will have on—

(I) Sediment yield from the disturbed area;

(II) Acidity, total suspended and dissolved solids and other important water quality parameters of local impact;

(III) Flooding or stream flow alteration;

(IV) Ground and surface water availability; and

(V) Other characteristics as required by the regulatory authority.

[(E)] 3. An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated PHC determination shall be required.

(E) Cumulative Hydrologic Impact Assessment.

1. The director shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface and ground water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The director may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

2. An application for a permit revision shall be reviewed by the director to determine whether a new or updated CHIA shall be required.

(11) Reclamation Plan—Ponds, Impoundments, Banks, Dams and Embankments.

(A) General. Each application shall include a general plan **and a detailed plan** for each proposed *[sedimentation pond]* **siltation structure**, water impoundment and coal processing waste bank, dam or embankment within the proposed mine plan area.

1. Each general plan shall—

A. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer *[or a professional geologist]* with assistance from experts in related fields such as land surveying and landscape architecture;

B. Contain a description, map and cross-section of the structure and its location;

C. Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

D. Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

E. Contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The commission or director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins; and

F. Contain the calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times under 10 CSR 40-3.040(6)(C)1. and 3.

2. **Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA).** Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration (MSHA), 30 CFR 77.216(a), shall—

A. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying and landscape architecture;

B. Include any geotechnical investigation, design and construction requirements for the structure;

C. Describe the operation and maintenance requirements for each structure; and

D. Describe the timetable and plans to remove each structure, if appropriate.

3. Each detailed design plan for a structure that does not meet the size or other criteria of [30 CFR 77.216(a)] **10 CSR 40-6.050(11)(A)2.** shall—

A. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer and all coal processing waste dams and embankments covered by 10 CSR 40-3.080(9)–(11) shall be certified by a qualified registered professional engineer;

B. Include any design and construction requirements for the structure, including any required geotechnical information;

C. Describe the operation and maintenance requirements for each structure; and

D. Describe the timetable and plans to remove each structure, if appropriate.

(B) [Sedimentation Ponds] **Siltation Structures.** [Sedimentation ponds] **Siltation structures**, whether temporary or permanent, shall be designed in compliance with the requirements of 10 CSR 40-3.040(6). Any [sedimentation pond] **siltation structure** or earthen structure which will remain on the proposed mine plan area as a permanent water impoundment shall also be designed to comply with the requirements of 10 CSR 40-3.040(9)/(10). Each plan, at a minimum, shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 30 CFR 77.216-2.

(C) **Permanent and Temporary Impoundments.** Permanent and temporary impoundments shall be designed to comply with the requirements of 10 CSR 40-3.040(10). Each plan for an **impoundment meeting the size or other criteria of the Mine Safety and Health Administration** shall comply with the requirements of [the MSHA,] 30 CFR 77.216-1 and 30 CFR 77.216-2. **The plan required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall be submitted to the director as part of the permit application in accordance with subsection (11)(A).**

(F) [If the structure is twenty feet (20') or higher or impounds more than twenty (20) acre-feet,] **If the structure meets the Class B or C criteria for dams in TR-60, or meets the size or other criteria of 30 CFR 77.216(a),** each plan under subsections (11)(B), (C) and (E) of this rule shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

(17) **Transportation Facilities.**

(B) **Class I and II Road Certification.** The plans and drawings for each Class I and II road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer [for a qualified registered professional land surveyor], experienced in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

AUTHORITY: section 444.530, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For

intervening history, please consult the Code of State Regulations. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

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10—DEPARTMENT OF NATURAL RESOURCES Division 40—Land Reclamation Commission Chapter 6—Permitting Requirements for Surface and Underground Coal Mining and Reclamation Operations and Coal Exploration

PROPOSED AMENDMENT

10 CSR 40-6.060 Requirements for Permits for Special Categories of Surface Coal Mining and Reclamation Operations. The commission is amending subsections (4)(C), (4)(D) and (4)(E).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts, reflect recent changes in the federal rules and make minor corrections.

(4) **Prime Farmlands.**

(C) **Application Contents—Prime Farmland.** All permit applications for areas in which prime farmland has been identified within the proposed permit area shall include the following:

1. A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in the United States Department of Agriculture Handbooks 436 *Soil Taxonomy* (United States Soil Conservation Service, 1975), as amended on March 22, 1982 and October 5, 1982, and 18 *Soil Survey Manual* (United States Soil Conservation Service, 1951), as amended on December 18, 1979, May 7, 1980, May 9, 1980, September 11, 1980, June 9, 1981, June 29, 1981 and November 16, 1982. The [United States Soil Conservation Service (SCS)] **United States Natural Resources Conservation Service (NRCS)** establishes the standards of the National Cooperative Soil Survey and maintains a *National Soils Handbook* which gives current acceptable procedures for conducting soil surveys. This *National Soils Handbook* is available for review at area and state [SCS] (NRCS) offices.

A. United States Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they exist on November 23, 1987. Notices of changes made to these publications will be periodically published in the *Federal Register*. The handbooks are on file and available for inspection at the Land

Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102. Copies of these documents are also available from the superintendent of documents, United States Government Printing Office, Washington, DC 20402, Stock Nos. 001-000-02597-0 and 001-000-00688-6, respectively. In addition, these documents are available for inspection at the national, state and area offices of the */SCS/ (NRCS)*, United States Department of Agriculture and through the Federal Register Library, 1100 L Street, NW., Washington, D.C. Incorporation by reference provisions were approved by the director of the *Federal Register* on June 29, 1981.

B. The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the United States */SCS/ (NRCS)*, including, but not limited to, soil horizon depths, pH and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the state conservationist, United States */SCS/ (NRCS)*. The director may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil reconstruction standards of 10 CSR 40-4.030;

2. A plan for soil reconstruction, replacement and stabilization for the purpose of establishing the technological capability of the mine operator to comply with the requirements of 10 CSR 40-4.030;

3. Scientific data, such as agricultural school studies, for areas with comparable soils, climate and management that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area;

4. The productivity prior to mining, including the average yield of food, fiber, forage or wood products obtained under a high level of management; and

5. United States */SCS/ (NRCS)* forms MO-LTP-1 and MO-LTP-2 shall be submitted as part of the application.

(D) Consultation With the Secretary of Agriculture.

1. The secretary of agriculture has responsibilities with respect to prime farmland soils and has assigned the prime farmland responsibilities arising under the Act to the chief of the United States */SCS/ NRCS*. The United States */SCS/ NRCS* shall carry out consultation and review through the state conservationist located in each state.

2. The state conservationist shall provide to the director a list of prime farmland soils, their location, physical and chemical characteristics, crop yields and associated data necessary to support adequate prime farmland soil descriptions.

3. The state conservationist shall assist the director in describing the nature and extent of the reconnaissance inspection required in 10 CSR 40-6.040(16)(C).

4. Before any permit is used for areas that include prime farmland, the director shall consult with the state conservationist. The state conservationist shall provide for the review of, and comment on, the proposed method of soil reconstruction in the plan submitted under paragraph (4)(C)2., of this rule. If the state conservationist considers those methods to be inadequate, s/he shall suggest revisions to the director which result in more complete and adequate reconstruction.

(E) Issuance of Permit. A permit for the mining and reclamation of prime farmland may be granted by the director if s/he first finds, in writing, upon the basis of a complete application, that—

1. The approved proposed postmining land use of these prime farmlands will be cropland;

2. The permit incorporates as specific conditions the contents of the plan submitted under subsection (1)(B) of this rule, after

consideration of any revisions to that plan suggested by the state conservationist under paragraph (1)(C)4. of this rule;

3. The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management;

4. The proposed operations will be conducted in compliance with the requirements of 10 CSR 40-4.030 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the Land Reclamation Program; and

5. The aggregate total prime farmland acreage has not decreased from that which existed prior to mining. **Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation nonprime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.**

AUTHORITY: section 444.810, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 10—DEPARTMENT OF NATURAL RESOURCES

Division 40—Land Reclamation Commission

Chapter 6—Permitting Requirements for Surface and Underground Coal Mining and Reclamation Operations and Coal Exploration

PROPOSED AMENDMENT

10 CSR 40-6.070 Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions. The commissions is amending sections (3), (4), (5), (8) and (10).

PURPOSE: The purpose for this amendment is to correct rule reference and make minor clarifications.

(3) Opportunity for Submission of Written Comments *[or]* on Permit Applications.

(B) These comments shall be submitted to the commission and director within *[sixty (60)] thirty (30)* days after the *[application]*

is filed.] last publication of the newspaper advertisement required by subsection (2)(A) of this rule.

(4) Right to File Written Objections.

(A) Any person whose interests are or may be adversely affected or an officer or head of any federal, state or local government agency or authority shall have the right to file written objections to an initial, **renewed**, or revised application for a permit within *[sixty (60)] thirty (30) days* after the *[application is filed.] last publication of the newspaper advertisement required by subsection (2)(A) of this rule.*

(5) Informal Conferences.

(B) Except as provided in subsection (5)(C) of this rule, if an informal conference is requested in accordance with subsection (5)(A) of this rule, the director shall hold an informal conference within thirty (30) days following the receipt of the request. The informal conference shall be conducted according to the following:

1. If requested under paragraph (5)(A)2. of this rule, the informal conference shall be held in the locality of the proposed mining;

2. The date, time and location of the informal conference shall be advertised by the director in a newspaper of general circulation in the locality of the proposed mine at least two (2) weeks prior to the scheduled conference;

3. If requested in writing by a conference requestor, within a reasonable time prior to the conference, the director shall arrange with the applicant to grant parties to the conference access to the mine plan area for the purpose of gathering information relevant to the conference; and

4. The conference shall be conducted by the director, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or *[stereographic] stenographic* record shall be made of the conference proceeding, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties to the conference until final release of the applicant's performance bond pursuant to 10 CSR 40-7.

(8) Criteria for Permit Approval or Denial. No permit or revision application shall be approved, unless the application affirmatively demonstrates, and the director finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that—

(C) The assessment of the probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance, as described in 10 CSR 40-6.050(9)/(C) (E), has been made by the commission or director and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed mine plan area;

(10) Permit Approval or Denial Actions.

(D) If no *[formal] informal* conference has been held, the director shall give his/her written findings to the permit applicant, approving, modifying or denying the application in whole or in part and stating the specific reason in the decision.

AUTHORITY: sections 444.530 and 444.810, RSMo [1998] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promul-

gate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration**

PROPOSED AMENDMENT

10 CSR 40-6.090 Permit Reviews, Revisions and Renewals and Transfer, Sale and Assignment of Rights Granted Under Permits. The commission is amending sections (4), (6) and (7).

PURPOSE: The purpose for this amendment is to make corrections to rule references and minor clarifications.

(4) Permit Revisions.

(B) The application for revision shall be filed in accordance with the following:

1. The permittee shall submit the application to the director within the time provided for by 10 CSR 40-6.010(4)(B)3.; and

2. The scale or extent of permit application information requirements and procedures, including notice and hearings, applicable to revision requests shall be *[that necessary for review] sufficient to demonstrate compliance with all applicable rules*. Any application for a revision which proposes significant alterations in the operations described in the materials submitted in the application for the original permit under 10 CSR 40-6.030, 10 CSR 40-6.040, 10 CSR 40-6.050, 10 CSR 40-6.060, 10 CSR 40-6.100, 10 CSR 40-6.110 or 10 CSR 40-6.120 or in the conditions of the original permit, at a minimum, shall be subject to the requirements of 10 CSR 40-6.070 and 10 CSR 40-6.080.

(6) Permit Renewals—Completed Applications.

(A) Contents. Complete applications for renewals of a permit shall be made within the time prescribed by 10 CSR 40-6.010(4)(B)/3./2. Renewal applications shall be in a form with contents required by the director in accordance with paragraph (6)(B)2. of this rule, including at a minimum, the following:

1. A statement of the name and address of the permittee, the term of the renewal requested, the permit number and a description of any changes to the matters set forth in the original application for a permit or prior permit renewal;

2. A copy of the newspaper notice and proof of publication of same under 10 CSR 40-6.070(2)(A); and

3. Evidence that a liability insurance policy under 10 CSR 40-7.050 will be provided by the applicant for the proposed period of renewal.

(7) Permit Renewals—Terms. Any permit renewal shall be for a term not to exceed the period of the original permit established under 10 CSR 40-6.070/(11)/(12).

AUTHORITY: sections 444.530 and 444.810, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration

PROPOSED AMENDMENT

10 CSR 40-6.100 Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information. The commission is amending sections (1) and (2).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts and reflect recent changes in the federal rules.

(1) Identification of Interests.

(I) The applicant shall submit the information, required by this section and section (2) of this rule, in any prescribed format that is issued by the [director.] Office of Surface Mining Reclamation and Enforcement (OSMRE).

(2) Compliance Information. Each application shall contain—

[(C) A listing of each violation notice received by the applicant or any subsidiary, affiliate or persons controlled by or under common control with the applicant in connection with any surface coal mining operation during the three (3)-year period before the application date, for violations of any law, rule of the United States or of any state law, rule enacted pursuant to federal law, rule or of any provision of the act pertaining to air or water environmental protection and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface

coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. The application shall also contain a statement regarding each violation notice, or cessation order reported, including:

1. The date of issuance, the MSHA number and identity of the issuing regulatory authority, department or agency;

2. The name of the person to whom the violation notice was issued;

3. A brief description of the particular violation alleged in the notice;

4. The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (2)(C) to obtain administrative or judicial review of the violations;

5. The current status of the proceedings and of the violation notice;

6. The actions, if any, taken by the applicant to abate the violation; and

7. Any identifying numbers for the operation, including the federal or state permit number and the MSHA number; and]

(C) For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violations notices received by the applicant during the three (3)-year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

1. Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

2. A brief description of the violation alleged in the notice;

3. The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (C) of this section to obtain administrative or judicial review of the violation;

4. The current status of the proceedings and of the violation notice; and

5. The actions, if any, taken by any person identified in subsection (C) of this section to abate the violation; and

AUTHORITY: section 444.810, RSMo [1994] Supp. 1999. Original rule filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to

promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration**

PROPOSED AMENDMENT

10 CSR 40-6.120 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan. The commission is amending sections (5), (7), (12), (14) and (15).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts, reflect recent changes in the federal rules; and to correct omissions and rule references.

(5) Reclamation Plan—Protection of Hydrologic Balance.

(E) *[Need] Cumulative Hydrologic Impact Assessment.*

1. The director shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface and ground water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The director may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

2. An application for a permit revision shall be reviewed by the director to determine whether a new or updated CHIA shall be required.

(7) Reclamation Plan—Ponds, Impoundments, Banks, Dams and Embankments.

(A) General. Each application shall include a general plan and a detailed plan for each proposed *[sedimentation pond] siltation structure*, water impoundment and coal processing waste bank, dam or embankment within the proposed mine plan area.

1. Each general plan shall—

A. Be prepared by or under the direction of and certified by a qualified registered professional engineer or by a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture;

B. Contain a description, map and cross-section of the structure and its location;

C. Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

D. Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

E. Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The commission or director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

2. **Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA).** Each detailed design plan for a structure that meets or exceeds the size or other criteria of the *[Mine Safety and Health Administration (MSHA)]*, 30 CFR 77.216(a) shall—

A. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying and landscape architecture;

B. Include any geotechnical investigation, design and construction requirements for the structure;

C. Describe the operation and maintenance requirements for each structure; and

D. Describe the timetable and plans to remove each structure, if appropriate.

3. Each detailed design plan for a structure that does not meet the size or other criteria of *[30 CFR 77.216(a)] 10 CSR 40-6.120(7)(A)2.* shall—

A. Be prepared by or under the direction of and certified by a qualified registered professional engineer and all coal processing waste dams and embankments covered by 10 CSR 40-3.230(9)–(11) shall be certified by a qualified registered engineer;

B. Include any design and construction requirements for the structure, including any required geotechnical information;

C. Describe the operation and maintenance requirements for each structure; and

D. Describe the timetable and plans to remove each structure, if appropriate.

(B) *[Sedimentation Ponds] Siltation Structures.*

1. *[Sedimentation ponds] Siltation structures*, whether temporary or permanent, shall be designed in compliance with the requirements of 10 CSR 40-3.200(6). Any *[sedimentation pond] siltation structure* or earthen structure, which will remain on the proposed mine plan area as a permanent water impoundment shall also be designed to comply with the requirements of 10 CSR 40-3.200(9)/(10).

2. Each plan, at a minimum, shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(C) Permanent and Temporary Impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 10 CSR 40-3.200(10). Each plan for an **impoundment meeting the size or other criteria of the Mine Safety and Health Administration** shall comply with the requirements of *[the MSHA,]* 30 CFR 77.216-1 and 30 CFR 77.216-2. **The plan required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall be submitted to the director as part of the permit application in accordance with subsection (7)(A).**

(F) *[If the structure is twenty feet (20') or higher or impounds more than twenty (20) acre-feet,]* **If the structure meets the Class B or C criteria for dams in TR-60, or meets the size or other criteria of 30 CFR 77.216(a),** each plan under subsections (7)(B), (C) and (E) of this rule shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures and

long-term seepage conditions. The plan also shall contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

(12) Fish and Wildlife Plan.

(D) Each fish and wildlife plan shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall—

1. Be consistent with the requirements of this section and **10 CSR 40-3.250**;

2. Apply at a minimum, to species and habitats identified under subsection (12)(C); and

3. Include—

A. Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and power lines and the monitoring of surface water quality and quantity; and

B. Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(14) Operations Plans—Maps and Plans. Each application shall contain maps, plans and cross-sections of the proposed mine plan and adjacent areas as follows:

(B) The following shall be shown for the proposed permit area unless specifically required for the mine plan area or adjacent area by the requirements of this subsection:

1. Buildings, utility corridors and facilities to be used;

2. The area of land to be affected within the proposed mine plan area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 10 CSR 40-7;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal preparation waste, underground development waste and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife-related environmental values;

9. Each explosive storage and handling facility;

10. Location of each *[sedimentation pond]* **siltation structure**, permanent water impoundment, coal processing waste bank and coal processing waste dam and embankment, in accordance with 10 CSR 40-6.120(7) and disposal areas for underground development waste and excess spoil, in accordance with 10 CSR 40-6.120(10);

11. Each profile, at cross-sections specified by the commission or director of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and subsidence monitoring point; and

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities; and

(C) Maps, plans and cross-sections required under paragraphs (14)(B)5., 6., 10. and 11. of this rule shall be prepared by or under the direction of and certified by a qualified professional engineer or professional geologist experienced in the design and construction of impoundments with assistance from experts in related fields, such as land surveying and landscape architecture, except that—

1. Maps, plans and cross-sections for *[sedimentation ponds]* **siltation structures** may only be prepared by a qualified registered engineer; and

2. Excess spoil and underground development waste facilities' maps, plans and cross-sections may be prepared by a qualified registered professional engineer.

(15) Transportation Facilities.

(B) Class I and II Road Certification. The plans and drawings for each *[c]*Class I and II road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, *[or a qualified registered professional land surveyor,]* experienced in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

AUTHORITY: section 444.810, RSMo [1994] Supp. 1999. Original rule filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed Dec. 15, 1987, effective April 1, 1988. Amended: Filed March 2, 1989, effective May 15, 1989. Amended: Filed May 2, 1989, effective Aug. 1, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 7—Bond and Insurance Requirements for
Surface Coal Mining and Reclamation Operations

PROPOSED AMENDMENT

10 CSR 40-7.011 Bond Requirements. The commission is amending subsections (6)(A) and (D).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts and reflect recent changes in the federal rules.

(6) Types of Bonds. The director may accept surety bonds, personal bonds and self-bonding.

(A) Surety bonds shall be subject to the following conditions:

1. The surety bond shall be submitted on a form provided by the director;

2. No bond of a surety company will be accepted unless the bond shall not be cancelable for any reason whatsoever, including, but not limited to, nonpayment of premium, bankruptcy or insolvency of the permittee or issuance of notices of violations or cessation orders and assessment of penalties with respect to the operations covered by the bond, except that surety bond coverage for lands not disturbed may be canceled if the surety provides written notification and the director is in agreement. The director shall advise the surety, within thirty (30) days after receipt of a notice to cancel bond, whether the bond may be canceled on an undisturbed area;

3. A surety company's bond shall not be accepted in excess of ten percent (10%) of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant;

4. The total amount of the bonds issued by a surety on behalf of any permittee shall not exceed thirty percent (30%) of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant;

5. The surety shall be licensed to conduct a surety business in Missouri;

6. Both the surety and the permittee shall be primarily liable for completion of pit reclamation, with the surety's liability being limited to the penalty amount of the bond;

7. The bond shall provide that—

A. The surety will give prompt notice to the permittee and the director of any notice received or action filed alleging the insolvency or bankruptcy of the surety or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business; and

B. In the event the surety becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately to the permittee and the director;

8. The bond shall provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage in violation of subsection (2)(A). The director shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed sixty (60) days. During this period, the director or his/her authorized agent shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program and the law. The notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a pattern of willful violation under 10 CSR 40-7.031(1)(A)6. and need not be reported as a past violation in permit applications under 10 CSR 40-6.030(2) or 10 CSR 40-6.100(2). If a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued requiring immediate compliance with 10 CSR 40-3.150(4). **Mining operations shall not resume until the director has determined that an acceptable bond has been posted.** The operator shall also immediately begin to conduct

reclamation operations in accordance with the reclamation plan; and

9. The bond shall be forfeitable upon revocation of the underlying permit.

(D) Self-Bonding.

1. Definitions. For the purposes of this section only—

A. Current assets means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one (1) year or within the normal operating cycle of the business;

B. Current liabilities means obligations which are reasonably expected to be paid or liquidated within one (1) year or within the normal operating cycle of the business;

C. Fixed assets means plant and equipment, but does not include land or coal in place;

D. Liabilities means obligations to transfer assets or provide services to other entities in the future as a result of past transactions;

E. Net worth means total assets minus total liabilities and is equivalent to owners' equity; and

F. Tangible net worth means net worth minus intangibles such as goodwill and rights to patents or royalties.

2. The commission may accept a self-bond if the following conditions are met:

A. The applicant designates an agent for service of process in the state;

B. The applicant has been in continuous operation as a business entity the five (5) years preceding the application. The commission may accept the bond of a joint venture with fewer than five (5) years of continuous operation if each member has been in continuous operation for the five (5) years preceding the application;

C. The applicant submits financial information in sufficient detail to show one (1) of the following:

(I) The applicant has a current Moody's Investor Service or Standard and Poor's rating for its most recent bond issuance of A or higher;

(II) The applicant has a tangible net worth of at least ten (10) million dollars, a ratio of total liabilities to net worth of two and one-half (2 1/2) times or less and a ratio of current assets to current liabilities of 1.2 times or greater; *and* **or**

(III) The applicant's fixed assets in the United States total at least twenty (20) million dollars and the applicant has a ratio of total liabilities to net worth of two and one-half (2 1/2) times or less and a ratio of current assets to current liabilities of 1.2 times or greater; and

D. The applicant submits—

(I) Financial statements for the last complete fiscal year, accompanied by a report prepared by an independent certified public accountant, in conformity with generally accepted accounting principles, containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion; and

(II) Financial statements for completed quarters in the current fiscal year and additional information that may be requested by the director.

3. The commission may accept a written guarantee for an applicant's self-bond from a third-party guarantor with a long-term vested interest in the surface coal mining operation, if the guarantor meets the conditions of paragraph (5)(D)2. as if it were the applicant. The applicant must still meet the requirements of subparagraphs (5)(D)2.A., B. and D. of this rule. Copies of documents demonstrating that interest must be submitted to the director. The written guarantee shall provide for the following:

A. If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide to the commission funds, up to the bond amount, sufficient to complete the reclamation plan;

B. The guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the director at least ninety (90) days in advance of the cancellation date and the director accepts the cancellation; and

C. The cancellation may be accepted by the director only if the applicant obtains suitable replacement bond before the cancellation or if the covered lands have not been disturbed.

4. The total amount of the outstanding and proposed self-bonds for surface coal mining and reclamation operations shall not exceed twenty-five percent (25%) of the applicant's or third-party guarantor's tangible net worth in the United States, as determined by a certified public accountant.

5. For a self-bond, the guarantor shall execute an indemnity agreement according to the following:

A. The indemnity agreement shall be executed and signed by all persons and parties who are to be bound by it, including the parent [*corporate guarantor, a third-party*] and nonparent [*corporate guarantor, or both,*] corporations, and shall bind each jointly and severally. If the applicant is a partnership, joint venture or a syndicate, the agreement shall bind the partner or party who has a beneficial interest, directly or indirectly, in the applicant;

B. Corporations applying for a self-bond, and parent and nonparent corporations guaranteeing a permittee's self-bond, shall submit an indemnity agreement signed by two (2) corporate officers who are authorized to bind the corporations. A copy of the authorization shall be provided to the director along with an affidavit certifying that the agreement is valid under all applicable federal and state laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement; and

C. Pursuant to 10 CSR 40-7.031(3), the applicant, parent [*or*] and nonparent [*corporate guarantor*] corporation shall be required to complete the approved reclamation plan for the lands in default or to pay to the regulatory authority an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under state law, the indemnity agreement when under forfeiture shall operate as a judgement against those parties liable under the indemnity agreement.

6. Self-bonded permittees and third-party guarantors shall submit an update of the information required under subparagraphs (5)(D)2.C. and D. within ninety (90) days after the close of their fiscal years.

7. If the financial conditions of the permittee or the third-party guarantor change so that the criteria of this section are not satisfied, the permittee shall notify the director immediately and post an alternate bond in the same amount as the self-bond.

8. Upon notification that the conditions of the permittee no longer satisfy this section, the permittee shall be deemed to be without bond coverage in violation of subsection (2)(A). The director shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed sixty (60) days. During this period, the director or his/her authorized agent shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program and the law. The notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a pattern of willful violation under 10 CSR 40-7.031(1)(F)2. and need not be reported as a past violation in permit applications under 10 CSR 40-6.030(2) or 10 CSR 40-6.100(2). If a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued requiring immediate compliance with 10 CSR 40-3.150(4). **Mining operations shall not resume until the director has determined that an acceptable bond has been posted.**

9. The bond shall be forfeitable upon revocation of the underlying permit.

AUTHORITY: section 444.810, RSMo [1994] Supp. 1999. Original rule filed Dec. 9, 1982, effective April 11, 1983. For intervening history, please consult the Code of State Regulations. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 7—Bond and Insurance Requirements for
Surface Coal Mining and Reclamation Operations**

PROPOSED AMENDMENT

10 CSR 40-7.021 Duration and Release of Reclamation Liability. The commission is amending sections (1)–(3).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts and reflect recent changes in the federal rules and state law.

(1) Period of Liability.

(C) A regulatory authority may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation or increment, when the regulatory authority determines in writing that under the—

1. Initial program all requirements imposed under 10 CSR 40-2, 10 CSR 40-3, 10 CSR 40-4 and 10 CSR 40-8 have been successfully completed; or

2. Permanent program all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the regulatory authority has made a final decision in accordance with this chapter to release the performance bond fully.

(D) Following a termination under subsection (1)(C) of this rule, the regulatory authority shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to in subsection (1)(C) of this rule was based upon fraud, collusion or misrepresentation of a material fact.

(2) Criteria and Schedule for Release of Reclamation Liability. Except as described in subsection (2)(E), reclamation liability shall be released in three (3) phases.

(A) An area shall qualify for release of Phase I liability upon completion of backfilling and grading, topsoiling, drainage control and initial seeding of the disturbed area. Phase I bond shall be retained on unreclaimed temporary structures, such as roads, [sediment ponds] siltation structures, diversions and stockpiles, on an acre-for-acre basis.

(B) An area shall qualify for release of Phase II liability when—

1. A permanent vegetative cover that meets the approved reclamation plan and is sufficient to control erosion is in place and no further augmentation of the vegetation is necessary;

2. With respect to woodlands and wildlife areas, the stocking of trees and shrubs has been established in accordance with 10 CSR 40-3.120(7) or 10 CSR 40-3.270(7);

3. The lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of section 444.855.2(10), RSMo, 10 CSR 40-3 and 10 CSR 40-4, the regulatory program or the permit; and

4. A plan for achieving Phase III release has been approved for the area requested for release and the plan has been incorporated into the permit, except for the prime farmland soils in which case the soil productivity for prime farmlands shall have been returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding areas under equivalent management practices as determined from the soil survey performed pursuant to 10 CSR 40-4.030[;].

[5. A regulatory authority may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation or increment, when the regulatory authority determines in writing that under the—

A. Initial program all requirements imposed under 10 CSR 40-2, 10 CSR 40-3, 10 CSR 40-4 and 10 CSR 40-8 have been successfully completed; or

B. Permanent program all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the regulatory authority has made a final decision in accordance with this chapter to release the performance bond fully; and

6. Following a termination under paragraph (2)(B)5. of this rule, the regulatory authority shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to in paragraph (2)(B)5. of this rule was based upon fraud, collusion or misrepresentation of a material fact.]

(3) Procedures for Obtaining Release of Reclamation Liability.

(C) At the time of final or Phase III bond release submittal, the operator shall include evidence that an affidavit has been recorded with the recorder of deeds in the county where the mined land is located generally describing the parcel or parcels of land where operations such as underground mining, auger mining, covering of slurry ponds, or other underground activities occurred which could impact or limit future use of that land. This requirement shall be applicable to mined land where Phase I reclamation was completed on or after September 1, 1992.

(D) Notarized Statement of Accomplished Reclamation. The permittee shall include in the application for reclamation liability release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Surface Coal Mining Law, the regulatory program, and the approved reclamation

plan. Such certification shall be submitted for each application and each phase of bond release.

AUTHORITY: section 444.810, RSMo [1994] Supp. 1999. Original rule filed Dec. 9, 1982, effective April 11, 1983. Amended: Filed June 27, 1986, effective Oct. 27, 1986. Amended: Filed Aug. 4, 1987, effective Nov. 23, 1987. Rescinded and readopted: Filed Sept. 15, 1988, effective Jan. 15, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy, state Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 40—Land Reclamation Commission Chapter 8—Definitions and General Requirements

PROPOSED AMENDMENT

10 CSR 40-8.010 Definitions. The commission is amending section (1).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts, reflect recent changes in the federal rules; and to correct grammatical errors and make clarifications.

(1) Definitions.

(A) As used throughout 10 CSR 40-3—10 CSR 40-9, the following terms have the specified meaning except where otherwise indicated:

1. Acid drainage means water with a pH of less than six (6) and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations;

2. Acid-forming materials mean earth materials that contain sulfide minerals or other materials which, if exposed to air, water or weathering processes, form acids that may create acid drainage;

3. Act means the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87);

4. Adjacent area means land located outside the affected area, permit area or mine area, depending on the context in which adjacent area is used, where air, surface or ground water, fish, wildlife, vegetation or other resources may be adversely impacted

by surface coal mining and reclamation operations including probable impacts from underground workings;

5. Affected area means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new and existing roads used to gain access to, or for hauling coal to or from surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any area upon which are sited structures, facilities or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. Public roads may be included in the affected area and regulated on a case-by-case basis, as determined by the extent of mining-related use;

6. Agricultural use means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing and watering of livestock and the cropping, cultivation and harvesting of plants;

7. Anthracite means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society for Testing and Materials (ASTM) under the title, *Standard Specification for Classification of Coals by Rank*, ASTM D 388-77, on pages 220-224. Table I which classifies the coals by rank is presented on page 223. This publication is incorporated by reference as it exists on February 11, 1980;

8. Applicant means any person seeking a permit from the commission or director to conduct surface coal mining and reclamation operations or a revision or renewal of the permit;

9. Approximate original contour means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all highwalls, spoil piles and coal refuse **piles eliminated. Permanent water impoundments** may be permitted where it is determined that they comply with [10 CSR 40-3.049(9) and (16)] **10 CSR 40-3.040(10) and (17)** and 10 CSR 40-3.130;

10. Aquifer means a zone, stratum or group of strata that can store and transmit water in sufficient quantities for a specific use;

11. Auger mining means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface;

12. Best technology currently available means equipment, devices, systems, methods or techniques which will—

A. Prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and

B. Minimize, to the extent possible, disturbance and adverse impact on fish, wildlife and related environmental values and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods or techniques which are currently available anywhere even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of [sedimentation ponds] **siltation structures** in accordance with 10 CSR 40-3. Within the constraints of the permanent program, the commission and director will determine the best technology currently available on a case-by-case basis;

13. Buffer zone means a boundary which establishes a limit of mining-related disturbance beyond which a variance to the regulations must be obtained before disturbance;

14. Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of anthracite in paragraph (1)(A)7.;

15. Coal exploration means the field gathering of—

A. Surface or subsurface geologic, physical or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

B. Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of the regulatory program;

16. Coal mine waste means coal processing waste and underground development waste;

17. Coal preparation area means that portion of the permitted area used for the beneficiation of raw coal and structures related to the beneficiation process, such as the washer, tippie, crusher, slurry pond(s), gob pile and all waste material directly connected with the cleaning, preparation and shipping of coal, but does not include subsurface coal waste disposal areas;

18. Coal preparation area reclamation means the reclamation of the coal preparation area by disposal or burial, or both, of coal waste according to the approved reclamation plan, the replacement of topsoil and initial seeding;

19. Coal processing plant or coal preparation plant means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; and roads, railroad and other transport facilities;

20. Coal processing waste means earth materials which are separated and wasted from the product coal during the cleaning, concentrating or other processing or preparation of coal;

21. Coal processing waste bank means a surface deposit of coal mine waste that does not impound water, slurry or other liquid or semiliquid material;

22. Combustible material means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise;

23. Commission means the Land Reclamation Commission created by section 444.520, RSMo;

24. Compaction means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort, such as from repeated application of wheel, track or roller loads from heavy equipment;

25. Cropland means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes and includes row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops;

26. Cumulative impact area means the area, including the permit area within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and ground water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

A. The proposed operation;

B. All existing operations;

C. Any operations for which a permit application has been submitted to the Land Reclamation Program; and

D. All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available;

27. Department means the Department of the Interior;

28. Director means the director of the Land Reclamation Commission;

29. Director of the office means the director of the Office of Surface Mining Reclamation and Enforcement or the representative of the director of the office;

30. Disturbed area means an area where vegetation, topsoil or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond required by 10 CSR 40-7 is released;

31. Diversion means a channel, embankment or other man-made structure constructed to divert water from one (1) area to another;

32. Downslope means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor;

33. Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert or store water, support roads or railways or for other similar purposes;

34. Ephemeral stream means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table;

35. Existing structure means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a state program;

36. Federal lands means any land, including mineral interest, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands;

37. Federal lands program means a program established by the secretary pursuant to */S/*section 523 of the Act to regulate surface coal mining and reclamation operations on federal lands;

38. Federal program means a program established by the secretary pursuant to */S/*section 504 of the Act to regulate coal exploration and surface coal mining and reclamation operations on non-federal and non-Indian lands within a state in accordance with the Act and 30 CFR 736;

39. Fugitive dust means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include: emissions from haul roads; wind erosion of exposed surfaces, storage piles and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported or redistributed;

40. Groundwater means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated;

41. Half-shrub means a perennial plant with a woody base whose annually produced stems die back each year;

42. Head-of-hollow fill means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty degrees ($>20^\circ$) or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten degrees ($>10^\circ$). In fills with less than two hundred fifty thousand ($<250,000$) cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface

of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area;

43. Highwall means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities;

44. Historically used for cropland means—

A. Lands that have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the acquisition, including purchase, lease or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations;

B. Lands determined on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five (5)-year-in-ten (10) criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

C. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land;

45. Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation and changes in ground and surface water storage;

46. Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface and returns to the atmosphere as vapor by means of evaporation and transpiration;

47. Imminent danger to the health and safety of the public means the existence of any condition or practice, or any violation of a permit or other requirements of the law in a surface coal mining and reclamation operation, which condition, practice or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists, if a rational person subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement;

48. Impounding structure means a dam, embankment or other structure used to impound water, slurry or other liquid or semiliquid material;

49. Impoundment means all water, sediment, slurry or other liquid or semiliquid holding structures and depressions, either naturally formed or artificially built;

50. *In situ* processes means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching or other chemical or physical processing of coal. The term includes, but is not limited to, *in situ* gasification, *in situ* leaching, slurry mining, solution mining, bore-hole mining and fluid recovery mining;

51. Intermittent stream means a stream or reach of a stream that—

A. Drains a watershed of at least one (1) square mile; or

B. Is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge;

52. Land use means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one (1) of the following

categories to another shall be considered as a change to an alternative land use which is subject to approval in the permit and plan:

A. Cropland means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes and includes row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories;

B. Pasture means land used primarily for the long-term production of adapted, domesticated, forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included;

C. Prime farmland means an area which has been historically used for crop production, as defined previously, and which has prime farmland soils as defined by the United States Department of Agriculture, Soil Conservation Service (**now known as the Natural Resources Conservation Service**) in 7 CFR 657;

D. Woodland means land used or managed for the long-term production of wood, wood fiber or wood-derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included;

E. Residential includes single- and multi-family housing, mobile home parks and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use;

F. Industrial/commercial means land used for—

(I) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining and fabricated metal products manufactured. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all railroad or other transportation facilities; and

(II) Retail or trade of goods or services, including hotels, motels, stores, restaurants and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities;

G. Recreation means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps and amusement areas, as well as areas for less intensive uses such as hiking, canoeing and other undeveloped recreational uses;

H. Fish and wildlife habitat means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife;

I. Water includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control and water supply; and

J. Undeveloped land means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession;

53. Law, the law, this law, state surface coal mining and reclamation law or surface coal mining law means sections 444.800–444.940, RSMo;

54. Mine plan area means the same as the permit area. Other terms defined in this rule which relate closely to mine plan area are—

A. Affected area, which will always be within or the same as the permit area; and

B. Adjacent area, which may surround or extend beyond the affected area, permit area or mine plan area;

55. Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth;

56. Noxious plants means species that have been included on official state lists of noxious plants;

57. Office means the Office of Surface Mining Reclamation and Enforcement (OSMRE) established under Title II of the Act;

58. Operator means any person engaged in coal mining;

59. Other treatment facilities means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and that are utilized—

A. *[to]* To prevent additional contributions of dissolved or suspended solids to stream flow or runoff outside the permit area; or

B. To comply with all applicable state and federal water quality laws and regulations;

60. Outslope means the face of the spoil or embankment sloping downward from the highest elevation to the toe;

61. Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit excluding topsoil;

62. Perennial stream means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream;

63. Performance bond means a surety bond, personal bond or a combination of them, by which a permittee assures faithful performance of all the requirements of the regulatory program and the requirements of the permit and reclamation plan;

64. Permanent diversion means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention in the permit and plan and other appropriate state and federal agencies;

65. Permit means a permit to conduct surface coal mining and reclamation operations or coal exploration operations issued by the commission pursuant to the regulatory program;

66. Permit area means the area of land indicated on the approved map submitted by the operator with his/her application, which area of land shall be covered by the operator's bond and shall be readily identifiable by appropriate markers on the site;

67. Permittee means a person holding a permit or required by this law to hold a permit issued by the commission or director pursuant to this law to conduct surface coal mining and reclamation operations and coal exploration;

68. Person means any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company trust, estate, political subdivision or any agency, board, department or bureau of the state or federal government, or any other legal entity which is recognized by law as the subject of rights and duties;

69. Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person:

A. Who uses any resource of economic, recreational, aesthetic or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the commission or director; or

B. Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the commission or director;

70. Plan means the reclamation plan submitted by an applicant as a condition precedent to receiving a permit;

71. Precipitation event means a quantity of water resulting from drizzle, rain, snow, sleet or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these rules, precipitation event also includes that quantity of water emanating from snow cover as snow melts in a limited period of time;

72. Previously mined area means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 10 CSR 40 Chapters 3-8;

73. Prime farmland means land *[which historically has been used for cropland and]* which meets the technical criteria established by the *[s/Secretary of /a/Agriculture in 7 CFR 657 (FR Vol. 4, No. 21) [on the basis of factors such as moisture, availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics]* and which has historically been used for cropland as that phrase is defined above;

74. Public office means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours;

75. Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation;

76. Reclamation means those actions taken to restore mined land, as required by the regulatory program, to postmining land use approved in the permit and plan;

77. Reclamation plan means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations;

78. Recurrence interval means the interval of time in which a precipitation event is expected to occur once on the average. For example, the ten (10)-year, twenty-four (24)-hour precipitation event would be that twenty-four (24)-hour precipitation event expected to occur on the average once in ten (10) years;

79. Reference area means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved in the permit and plan. Reference areas must be representative of geology, soil, slope and vegetation in the permit area;

80. Refuse pile means a surface deposit of coal mine waste that does not impound water, slurry or other liquid or semiliquid material;

81. Regional director means a regional director of the office or a regional director's representative;

82. Regulatory authority means the Land Reclamation Commission, the director, or their designated representatives and employees unless otherwise specified in these rules;

[82./83. Regulatory program means the law and all regulations adopted pursuant to the law and submitted to and approved by the secretary of the office;

[83./84. Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber and grazing lands;

[84./85. Road means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, and surface. The term includes access and haul roads constructed, used, reconstructed, improved or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal-hauling vehicles to and from transfer, processing or storage areas. The term does not include ramps and routes of travel with-

in the immediate mining area or within spoil or coal mine waste disposal areas.

A. Class I road means a road that is utilized for transportation of coal.

B. Class II road means any road, other than a Class I road, planned to be used over a six (6)-month period or longer.

C. Class III road means any road, other than a Class I road, planned to be used over a period of fewer than six (6) months;

[85./86. Safety factor means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices;

[86./87. Secretary of the office means the secretary of the interior or the secretary's representative;

[87. Sedimentation pond means a primacy sediment control structure designed, constructed and maintained in accordance with 10 CSR 40-3.040(6) and including, but not limited to, barrier, dam or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that those secondary sedimentation structures drain to the sedimentation pond;]

88. Significant, imminent environmental harm to land, air or water resources means an environmental harm is—

A. An adverse impact on land, air or water resources, which resources include, but are not limited to, plant and animal life;

B. Imminent, if a condition, practice or violation exists which—

(I) Is causing harm; or

(II) May reasonably be expected to cause harm at any time before the end of the reasonable abatement time that would be set under section 444.855.2, RSMo; and

C. Significant if that harm is appreciable and not immediately repairable;

89. Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility, it also means a primacy sediment control structure designed, constructed and maintained in accordance with 10 CSR 40-3.040(6) and including, but not limited to, barrier, dam or excavated depression which slows down water runoff to allow sediment to settle out. A siltation structure shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that those secondary sedimentation structures drain to the siltation structure;

[89./90. Slope means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (for example, 1v:5h (20%)). It may also be expressed as a percent or in degrees;

[90./91. Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are—

A. A horizon. The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant and leaching of soluble or suspended particles is typically the greatest;

B. B horizon. The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron or aluminum than the A or C horizon; and

C. C horizon. The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity;

[91.] 92. Soil survey means a field and other investigation resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies and interprets those soils for use. Soil surveys must meet the standards of the National Cooperative Soil Surveys incorporated by reference in 10 CSR 40-6.060(4)(B)1.;

[92.] 93. Spoil means overburden that has been removed during surface coal mining operations;

[93.] 94. Stabilize means to control movement of soil, spoil piles or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating;

[94.] 95. Steep slope means any slope of more than twenty degrees (20°) or a lesser slope as may be designated in the permit and plan after consideration of soil, climate and other characteristics of a region;

[95.] 96. Substantially disturb means, for purposes of coal exploration, to significantly impact upon land, air or water resources by blasting; removal of vegetation, topsoil or overburden; construction of roads or other access routes; placement of excavated earth or waste material on the natural land surface or other activities; or to remove more than two hundred fifty (250) tons of coal;

[96.] 97. Surface coal mining operations means—

A. Activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground coal mine. The activities include excavation for the purpose of obtaining coal, including common methods such as contour, strip, auger, mountaintop removal, box cut, open pit and area mining, the uses of explosives and blasting, and *in situ* distillation or retorting, leaching or other chemical or physical processing and the cleaning, concentrating or other processing or preparation, loading of coal for interstate commerce at or near the minesite; provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed sixteen and two-thirds percent (16 2/3%) of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 444.845, RSMo; and provided further that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

B. Areas upon which the activities described in subparagraph (1)(A)/14.A.98. of this rule occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities, and for haulage and excavation, working, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or material on the surface, resulting from or incident to those activities;

[97.] 98. Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary or incidental to the reclamation of these operations. This term includes the term surface coal mining operations;

[98.] 99. Surface mining activities means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location;

[99.] 100. Suspended solids or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic

materials, carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for wastewater and analyses (40 CFR 136);

[100.] 101. Temporary diversion means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved in the permit and plan to remain after reclamation as part of the approved post/-mining land use;

[101.] 102. Ton means two thousand pounds (2,000 lbs.) *avoirdupois* (.90718 metric ton);

[102.] 103. Topsoil means the A soil horizon layer of the three (3) major soil horizons;

[103.] 104. Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water;

[104.] 105. Toxic mine drainage means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure or impair biota commonly present in the area that might be exposed to it;

[105.] 106. Underground development waste means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone or related materials that are excavated, moved and disposed of during development and preparation of areas incident to underground mining activities;

[106.] 107. Underground mining activities means a combination of—

A. Surface operations incident to underground extraction of coal or *in situ* processing, such as construction, use, maintenance and reclamation of roads, aboveground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

B. Underground operations such as underground construction, operation and reclamation of shafts, adits, underground support facilities, *in situ* processing and underground mining, hauling, storage and blasting;

[107.] 108. Valley fill means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty degrees (20°) or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten degrees (10°); and

[108.] 109. Water table means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

AUTHORITY: sections 444.530 and 444.810, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed June 2, 1988, effective Aug. 25, 1988. Amended: Filed Sept. 15, 1988, effective Jan. 15, 1989. Amended: Filed May 2, 1989, effective Aug. 1, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state,

Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 8—Definitions and General Requirements**

PROPOSED AMENDMENT

10 CSR 40-8.030 Permanent Program Inspection and Enforcement. The commission is amending sections (1), (6), (10) and (12).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts, reflect recent changes in the federal rules and to correct misspellings and make other clarifications.

(1) Inspections by the Commission or Director.

(F) Abandoned site means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that—

1. All surface and underground coal mining and reclamation activities at the site have ceased;

2. The regulatory authority **or office** has issued at least one (1) notice of violation and either—

A. Is unable to serve the notice despite diligent efforts to do so; or

B. The notice was served and has progressed to a failure-to-abate cessation order;

3. The regulatory authority is taking action to ensure—

A. That the permittee and operator, and owners and controllers of the permittee and operator will be precluded from receiving future permits while violations continue at the site; and

B. Pursuant to sections 444.870.5, 444.870.6, 444.885.3 or 444.885.5 of the Surface Coal Mining Law, that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where, after evaluating the circumstances, it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

4. Where the site is, or was, permitted or bonded—

A. The permit has expired or been [removed, or permit revocation proceedings have been initiated and are being pursued diligently] **revoked**; and

B. The regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, the performance bond.

(G) In lieu of the inspection frequency established in subsections [(5)](1)(A) and (B) of this rule, the regulatory authority shall inspect each abandoned site [as necessary to monitor for changes of environmental conditions or operational status at the site. Before ceasing to perform inspections at the fre-

quency required by subsections (5)(A) and (B) of this rule at an abandoned site, the regulatory authority shall—] on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

[1. Evaluate the environmental conditions and operational status of the site; and

2. Document in writing the inspection frequency necessary to comply with subsection (5)(G) of this rule and the reasons for selecting that frequency.]

1. In selecting an alternate inspection frequency authorized under the subsection above, the regulatory authority shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (G)2. of this section. Following the inspection and public notice, the regulatory authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

A. How the site meets each of the criteria under the definition of an abandoned site under subsection (F) of this section and thereby qualifies for a reduction in inspection frequency;

B. Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that currently pose, or may reasonably be expected to pose, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

C. The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

D. The degree to which erosion and sediment control is present and functioning;

E. The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

F. The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and

G. Based on a review of the complete and partial inspection report record for the site during at least the last two (2) consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

2. Provide the public notice and opportunity to comment required under subparagraph (G).1. of this section as follows:

A. The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a thirty (30)-day period in which to submit written comments.

B. The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and the address of the regulatory authority where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

(6) Enforcement of Cessation Orders.

(A) Issuance of Cessation Orders for Imminent Danger or Harm.

1. An authorized representative of the commission immediately shall order a cessation of surface coal mining and reclamation operations or of the relevant portion of them, if s/he finds any

condition or practice, or any violation of the regulatory program or any condition of a permit imposed under the program which—

A. Creates an imminent danger to the health or safety of the public; or

B. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

2. Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can be reasonably expected to cause significant environmental harm to land, air or water resources, unless these operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting these operations has filed a timely and complete application for a permit to conduct the operations.

3. If the cessation ordered under paragraph [(7)](6)(A)1. of this [section] rule will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the commission shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(B) Cessation Order in Situations of a Failure to Abate a Notice of Violation or Notice of Delinquent Reclamation.

1. An authorized representative of the commission immediately shall order a cessation of coal exploration or surface coal mining and reclamation operations, or of the relevant portion of them, when a notice of violation has been issued under subsection (7)(A) of this rule and the permittee to whom it was issued fails to abate the violation within the abating period fixed by the authorized representative or subsequently extended by the commission or director.

2. The director shall order a cessation of coal exploration or surface coal mining and reclamation operations, or the relevant portion, if a permittee fails to abate a notice of delinquent reclamation within the period established for abatement.

3. A cessation order issued under this subsection shall require the person to whom it is issued to take all steps the authorized representative of the commission deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(10) Formal Review of Citations.

(A) A person issued a notice of violation or cessation order under sections (6) and (7) of this rule, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing with the commission, under this rule within thirty (30) days after receiving notice of the action.

(12) Inability to Comply.

(C) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under 10 CSR 40-8.040 and of the duration of the suspension of a permit under [subsection (8)(E)] **10 CSR 40-7.031**.

AUTHORITY: section 444.810, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed May 12, 1980, effective Sept. 12, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed Aug. 13, 1982, effective Nov. 11, 1982. Amended: Filed Dec. 9, 1982, effective April 11, 1983. Amended: Filed June 3, 1985, effective Oct. 28, 1985. Amended: Filed June 27, 1986, effective Oct. 27, 1986. Amended: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended:

Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 40—Land Reclamation Commission Chapter 8—Definitions and General Requirements

PROPOSED AMENDMENT

10 CSR 40-8.050 Small Operators' Assistance. The commission is amending the Purpose and sections (1), (2), (5) and (9).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts and reflect recent changes in the federal rules.

PURPOSE: This rule [brings Missouri's regulations into line with federal language] sets forth the requirements for the Small Operator's Assistance Program pursuant to 444.530 and 444.810, RSMo.

(1) Definition. Qualified laboratory means a designated public agency, private firm, institution or analytical laboratory [which can prepare] that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified in section (5) of this rule under the Small Operators' Assistance Program and which meets the standards of section (6) of this rule.

(2) Eligibility for Assistance. An applicant is eligible for assistance if s/he—

(A) Intends to apply for a permit pursuant to the law;

(B) Establishes that his/her probable total [actual and] attributable annual production from all locations [during any consecutive twelve (12)-month period either during the term of his/her permit or during the first five (5) years after issuance of his/her permit, whichever period is shorter,] on which the operator is issued the surface coal mining and reclamation permit, will not exceed three hundred thousand (300,000) tons. Production from the following operations shall be attributed to the applicant:

1. The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a [five] ten percent (5) 10% interest;

2. The *pro rata* share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than *[five] ten percent (15) 10%* of the applicant's operation;

3. All coal produced by operations owned by persons who, directly or indirectly, control the applicant by reason of direction of the management; and

4. All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them;

(5) Program Services and Data Requirements.

(A) To the extent possible with available funds, the director or commission shall select and pay a qualified laboratory to make the determination and statement **and provide other services** referenced in subsection (5)(B) of this rule for eligible operators who request assistance.

(B) The director or commission shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the director or commission shall be sufficient to satisfy the requirements for—

1. The determination of the probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas **including the engineering analysis and designs necessary for the determination** in accordance with 10 CSR 40-6.050(9)(C) and any other applicable provisions of this chapter; *[and]*

2. The **drilling and** statement of the results of test borings or core samplings for the proposed permit area in accordance with 10 CSR 40-6.040(5) and 10 CSR 40-6.110(5), and any other applicable provisions of this chapter; *./;*

3. **The development of cross-section maps and plans required by 10 CSR 40-6.040(15);**

4. **The collection of archaeological and historic information and related plans required by 10 CSR 40-6.040(3)(B) and 10 CSR 40-6.050(14) and any other archaeological and historic information required by the regulatory authority;**

5. **Pre-blast surveys required by 10 CSR 40-6.050(4); and**

6. **The collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 10 CSR 40-6.050(7) and information and plans for any other environmental values required by the regulatory authority under the Act.**

(9) Applicant Liability.

(A) *[The applicant shall reimburse the director or commission for the cost of the laboratory services performed pursuant to this section if]* **A coal operator who has received assistance pursuant to section (5) of this rule, shall reimburse the director or commission for the cost of the services rendered if—**

1. The applicant submits false information, fails to submit a permit application within one (1) year from the date of receipt of the approved laboratory report or fails to mine after obtaining a permit;

2. The director or commission finds that the *[applicant's] operator's* actual and attributed annual production of coal for all locations exceeds *[one] three* hundred thousand *[(100,000)]* **(300,000)** tons during *[any consecutive twelve (12)-month period either during the term of the permit for which assistance is provided or during the first five (5) years after issuance of the permit, whichever is shorter]* **the twelve (12) months immediately following the date on which the operator is issued the surface coal mining and reclamation permit; or**

3. The permit is sold, transferred or assigned to another person and the transferee's total actual and attributed production exceeds the *[one] three* hundred thousand *[(100,000)]*

(300,000)-ton annual production limit during *[any consecutive twelve (12)-month period of the remaining term of the permit]* **the twelve (12) months immediately following the date on which the permit was originally issued.** Under this section, the applicant and its successor are jointly and severally obligated to reimburse the director or commission.

AUTHORITY: section 444.530, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Aug. 13, 1982, effective Nov. 11, 1982. Rescinded and readopted: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 8—Definitions and General Requirements**

PROPOSED AMENDMENT

10 CSR 40-8.070 Applicability and General Requirements. The commission is amending section (2).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts and reflect recent changes in the federal rules.

(2) Applicability. 10 CSR 40-3—10 CSR 40-9 apply to all coal exploration and surface coal mining and reclamation operations, except the following:

(C) This subsection implements the exemption contained in section 444.815.6(3) of the Surface Coal Mining Law concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 2/3%) of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

1. As used in subsection (2)(C), the following terms have the meanings specified, except where otherwise indicated:

A. Cumulative measurement period means the period of time over which both cumulative production and cumulative revenue are measured—

(I) For purposes of determining the beginning of the cumulative measurement period, subject to regulatory authority approval, the operator must select and consistently use one (1) of the following:

(a) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977; or

(b) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier; and

(II) For annual reporting purposes pursuant to paragraph (2)(C)/10/11. of this rule, the end of the period for which cumulative production and revenue is calculated is either for mining areas where—

(a) Coal or other minerals were extracted prior to ~~November~~ **October 1, 1990, September 30, 1992** and every ~~October 31~~ **September 30** after that; or

(b) Extraction of coal or other minerals commenced on or after November 1, 1990, the last day of the calendar quarter during which coal extraction commenced and each anniversary of that day after commencement;

B. Cumulative production means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by paragraph (2)(C)8. of this rule;

C. Cumulative revenue means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period;

D. Mining area means an individual excavation site or pit from which coal, other minerals and overburden are removed; and

E. Other minerals means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

2. Collection of information procedures are described in the following:

A. The collections of information contained in paragraphs (2)(C)3., 4., 5., 7. and 10. of this rule have been approved by the Land Reclamation Commission. The information will be used to determine the initial and continuing applicability of the incidental mining exemption to a particular mining operation. Response is required to obtain and maintain the incidental mining exemption in accordance with section 444.815.6(3) of the Surface Coal Mining Law; and

B. Public reporting burden for this collection of information is estimated to average one (1) hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Director, Land Reclamation Program, P.O. Box 176, Jefferson City, MO 65102.

3. Application requirements and procedures shall be completed as described in the following:

A. New operations.

(I) Any person who plans to commence or continue coal extraction after November 30, 1990, in reliance on the incidental mining exemption, shall file a complete application for exemption with the regulatory authority for each mining area.

(II) Following incorporation of an exemption application approval process into a regulatory program, a person may not commence coal extraction based upon the exemption until the regulatory authority approves the application, except as provided in part (2)(C)3.E.(III) of this rule;

B. Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to November 30, 1990 may continue mining operations for sixty (60) days after (January 29, 1991) the

effective date (November 30, 1990). Coal extraction may not continue after the sixty (60)-day period unless that person files an administratively complete application for exemption with the regulatory authority. If an administratively complete application is filed within sixty (60) days, the person may continue extracting coal in reliance on the exemption beyond the sixty (60)-day period until the regulatory authority makes an administrative decision on the application;

C. Additional information. The regulatory authority shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information;

D. Public comment period. Following publication of the newspaper notice required by subparagraph (2)(C)4.I. of this rule, the regulatory authority shall provide a period of no less than thirty (30) days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections;

E. Exemption determination.

(I) No later than ninety (90) days after filing of an administratively complete application, the regulatory authority shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(II) The determination of exemption shall be based upon information contained in the application and any other information available to the regulatory authority at that time.

(III) If the regulatory authority fails to provide an applicant with the determination as specified in part (2)(C)3.E.(I) of this rule, an applicant who has not begun may commence coal extraction pending a determination on the application unless the regulatory authority issues an interim finding, together with reasons for this finding, that the applicant may not begin coal extraction; and

F. Administrative review.

(I) Any adversely affected person may request administrative review of a determination under subparagraph (2)(C)3.E. of this rule within thirty (30) days of the notification of the determination in accordance with procedures established under Chapter 536, RSMo.

(II) A petition for administrative review filed under Chapter 536, RSMo shall not suspend the effect of a determination under subparagraph (2)(C)3.E. of this rule.

4. An application for exemption, at a minimum, shall include:

A. The name and address of the applicant;

B. A list of the minerals sought to be extracted;

C. Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

D. Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

E. Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

F. The basis for all annual production, revenue and fair market value estimates;

G. A description, including county, township, if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

H. An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

I. Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the regulatory

authority (the public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation);

J. The representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that also will be extracted during the conduct of mining activities;

K. A map of appropriate scale which clearly identifies the mining area;

L. A general description of mining and mineral processing activities for the mining area;

M. A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for the minerals;

N. If the other minerals are to be commercially used by the applicant, a description specifying the use;

O. For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required, the following information also must be submitted:

(I) Any relevant documents the operator has received from the regulatory authority documenting its exemption from the requirements of the surface coal mining law;

(II) The cumulative production of the coal and other minerals from the mining area; and

(III) Estimated tonnages of stockpiled coal and other minerals; and

P. Any other information pertinent to the qualification of the operation as exempt.

5. Public availability of information is defined and shall be handled as described in the following:

A. Except as provided in subparagraph (2)(C)5.B. of this rule, all information submitted to the regulatory authority under subsection (2)(C) shall be made available immediately for public inspection and copying at the local offices of the regulatory authority having jurisdiction over the mining operations claiming exemption until at least three (3) years after expiration of the period during which the subject mining area is active;

B. The regulatory authority may keep information submitted to the regulatory authority under this part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this rule; and

C. Information requested to be held as confidential under subparagraph (2)(C)5.B. of this rule shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

6. Requirements for exemption.

A. Activities are exempt from the requirements of the surface coal mining law if all of the following are satisfied:

(I) The cumulative production of coal extracted from the mining area determined annually as described in this rule does not exceed sixteen and two-thirds percent (16 2/3%) of the total cumulative production of coal and other minerals removed during that period for purposes of a bona fide sale or reasonable commercial use;

(II) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of a bona fide sale or reasonable commercial use; and

(III) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not

exceed fifty percent (50%) of the total cumulative revenue derived from the coal and other minerals removed for purposes of a bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

B. Persons seeking or that have obtained an exemption from the requirements of the surface coal mining law shall comply with the following:

(I) Each other mineral upon which an exemption under this rule is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve (12) months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate this standard; and

(II) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

7. A person conducting activities covered by this rule shall—

A. Maintain on-site or at other locations available to the commission and its representatives and the secretary information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages and a copy of the exemption application and exemption approved by the regulatory authority;

B. Notify the regulatory authority upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

C. Conduct operations in accordance with the approved application or when authorized to extract coal under subparagraph (2)(C)3.B. or part (2)(C)3.E.(III) of this rule prior to submittal or approval of an exemption application in accordance with the standards of this rule.

8. Authorized representatives of the commission and the secretary shall have the right to conduct inspections of operations claiming exemption under this subsection.

A. Each authorized representative of the commission and the secretary conducting an inspection under subsection (2)(C)—

(I) Shall have a right of entry to, upon and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

(II) At reasonable times and without delay, may have access to and copy any records relevant to the exemption; and

(III) Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.

B. No search warrant shall be required with respect to any activity under subparagraphs (2)(C)7.D. and E. of this rule, except that a search warrant may be required for entry into a building.

9. Stockpiling of minerals shall be conducted as described in the following:

A. Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use—

(I) Up to an amount equaling a twelve (12)-month supply of the coal required for future sale, transfer or use as calculated, based upon the average annual sales, transfer and use from the mining area over the two (2) preceding years; or

(II) For a mining area where coal has been extracted for a period of fewer than two (2) years, up to an amount that would represent a twelve (12)-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month; and

B. Other minerals.

(I) The commission shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this rule if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(II) The commission may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this rule if—

(a) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

(b) Except as provided in part (2)(C)9.B.(III) of this rule, the stockpiled other minerals do not exceed a twelve (12)-month supply of the mineral required for future sales as approved by the regulatory authority on the basis of the exemption application.

(III) The commission may allow an operator to utilize tonnages of stockpiled other minerals beyond the twelve (12)-month limit established in part (2)(C)9.B.(II) of this rule if the operator can demonstrate to the regulatory authority's satisfaction that the additional tonnage is required to meet future business obligations of the operator, as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(IV) The commission may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by parts (2)(C)9.B.(II) and (III) of this rule, based on additional information available to the commission.

10. Revocation and enforcement shall be conducted as described in the following:

A. Commission responsibility. The commission shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to paragraph (2)(C)11. of this rule, an on-site inspection and any other information available to the commission;

B. If the commission has reason to believe that a specific mining area was not exempt under the provisions of this rule or counterpart provisions of the state regulatory program at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the regulatory authority shall notify the operator that the exemption may be revoked and the reason(s) for relocation. The exemption will be revoked unless the operator demonstrates to the regulatory authority within thirty (30) days that the mining area in question should continue to be exempt;

C. If the commission finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the commission shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the commission shall immediately notify the operator and intervenors;

D. Any adversely affected person may request administrative review of a decision whether to revoke an exemption within thirty (30) days of the notification of that decision in accordance with procedures established under Chapter 536, RSMo;

E. A petition for administrative review filed under Chapter 536, RSMo shall not suspend the affect of a decision whether to revoke an exemption; and

F. Direct enforcement.

(I) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the *[commission] regulatory program* which occurred prior to the revocation of the exemption.

(II) An operator who does not conduct activities in accordance with the terms of an approved exemption, and knows or should know the activities are not in accordance with the approved exemption shall be subject to direct enforcement action

for violations of the *[commission] regulatory program* which occur during the period of these activities.

(III) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of the *[commission] regulatory program* with regard to conditions, areas and activities existing at the time of revocation or denial.

11. Reporting requirements.

A. Following approval by the commission of an exemption for a mining area, the person receiving the exemption, for each mining area, shall file a written report annually with the commission containing the information specified in subparagraph (2)(C)11.B. of this rule.

(I) The report shall be filed no later than thirty (30) days after the end of the twelve (12)-month period as determined in accordance with the definition of cumulative measurement period in paragraph (2)(C)1. of this rule.

(II) The information in the report shall cover—

(a) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding twelve (12)-month period; and

(b) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

B. For each period and mining area covered by the report, the report shall specify—

(I) The number of tons of extracted coal sold in bona fide sales and total revenue derived from the sales;

(II) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of the coal;

(III) The number of tons of coal stockpiled;

(IV) The number of tons of other commercially valuable minerals extracted and sold in bona fide sale and total revenue derived from the sales;

(V) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of the minerals; and

(VI) The number of tons of other commercially valuable minerals removed and stockpiled by the operator; *[and]*

(D) Coal-Related Structures.

1. Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of 10 CSR 40-3 or 10 CSR 40-4, except that—

A. An existing structure which meets the performance standards of 10 CSR 40-3 or 10 CSR 40-4 but does not meet the design requirements of 10 CSR 40-3 or 10 CSR 40-4 may be exempt from meeting those design requirements but only as approved in the permit and plan after obtaining the information required by 10 CSR 40-6.050(3), 10 CSR 40-6.120(3) and after making the findings required in 10 CSR 40-6.070(9);

B. If the performance standards of 10 CSR 40-2 are at least as stringent as the comparable performance standards of 10 CSR 40-3 or 10 CSR 40-4, an existing structure which meets the performance standards of 10 CSR 40-2 may be exempt from meeting the design requirements of 10 CSR 40-3 or 10 CSR 40-4 but only as approved in the permit and plan process after obtaining the information required by 10 CSR 40-6.050(3), 10 CSR 40-6.120(3) and after making the findings required in 10 CSR 40-6.070(9);

C. An existing structure which meets a performance standard of 10 CSR 40-2 which is less stringent than the comparable performance standards of 10 CSR 40-3 or 10 CSR 40-4 or which does not meet a performance standard of 10 CSR 40-3 or 10 CSR 40-4 for which there was no equivalent performance standard in 10

CSR 40-2 shall be modified or reconstructed to meet the design standards of 10 CSR 40-3 or 10 CSR 40-4 pursuant to a compliance plan approved in the permit and plan as required in 10 CSR 40-6.050(3), 10 CSR 40-6.120(3) and according to the findings required by 10 CSR 40-6.070(9); and

D. An existing structure which does not meet the performance standards of 10 CSR 40-2, and which the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the design standards of 10 CSR 40-3 or 10 CSR 40-4 prior to issuance of the permit.

2. The exemptions provided in 10 CSR 40-8.070(2)(D) shall not apply to the requirements—

A. For existing and new waste piles used either temporarily or permanently as dams or embankments; and

B. To restore the approximate original contour of the land/./;

(E) The commission or director shall make a written determination whether the operation is exempt under this section within sixty (60) days of the receipt of the exemption request. The commission or director shall provide public notice in a newspaper of general circulation in the general vicinity of the proposed operations. Prior to the time a determination is made, a person may submit, and the commission or director shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal/./;

(F) The commission may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or portion thereof, when:

1. The commission or director determines in writing that under the initial program, all requirements imposed under 10 CSR 40-2, 10 CSR 40-3, 10 CSR 40-4 and 10 CSR 40-8 have been successfully completed; or

2. The commission or director determines in writing that all requirements imposed under 10 CSR 40 chapters 3 through 8 have been successfully completed; and

3. The operator has properly applied for, and obtained release of Phase III reclamation liability in accordance with 10 CSR 40-7.021(3) through (5); and

(G) Following a termination of jurisdiction under subsection (2)(F) of this rule, the commission shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the determination made under subsection (2)(F) of this rule, or the release of Phase III reclamation liability referred to under paragraph (2)(F)2. of this rule was based upon fraud, collusion, or misrepresentation of a material fact.

AUTHORITY: section 444.810, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30

CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 9—Abandoned Mine Reclamation Fund;
Abandoned Mine Reclamation and Restoration**

PROPOSED AMENDMENT

10 CSR 40-9.020 Reclamation—General Requirements The commission is amending subsection (1)(D).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts and reflect recent changes in the federal rules.

(1) Land and water are eligible for reclamation activities if—

(C) There is no continuing responsibility for reclamation by the operator, permittee or agent of the permittee under statutes of the state or federal government, or the state as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the fund will be sought under 30 CFR 886 and 30 CFR 888; *and*

(D) Notwithstanding subsections (1)(A)–(C) of this rule, coal lands and waters damaged and abandoned after August 3, 1977, by coal mining processes are also eligible for reclamation activities if—

1. They were mined for coal or affected by coal mining processes; and

2. The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and ending on or before November 21, 1980, and that funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

3. The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition during the period beginning on August 4, 1977 and ending on or before November 5, 1990, and that the surety of such mining operator became insolvent during such period, and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

4. The commission finds in writing that the site meets the eligibility requirements of this section and the priority objectives stated in subsections (4)(A) and (B) of this rule and that the reclamation priority of the site is the same or more urgent than the reclamation priority for other lands and waters eligible pursuant to this section. Priority will be given to those sites

which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community; [and]

(E) Monies available from sources outside the fund or which are ultimately recovered from responsible parties involving lands eligible pursuant to subsection (1)(D) of this rule, shall either be used to offset the cost of the reclamation or transferred to the fund if not required for further reclamation activities at the permitted site[.]; and

(F) If reclamation of a site covered by an interim or permanent program permit is carried out under the state reclamation program, the permittee of the site shall reimburse the abandoned mine land reclamation fund for the cost of the reclamation that is in excess of any bond forfeited to ensure reclamation. In performing reclamation under subsection (1)(D) of this rule, the commission shall not be held liable for any violations of any performance standards or reclamation requirements specified in Chapter 444, RSMo 1994 nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Chapter 444, RSMo 1994.

AUTHORITY: section 444.810, RSMo [1994] Supp. 1999. Original rule filed June 11, 1981, effective Oct. 13, 1981. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 100—Petroleum Storage Tank Insurance Fund
Board of Trustees
Chapter 2—Definitions**

PROPOSED AMENDMENT

10 CSR 100-2.010 Definitions. The board is amending the Purpose.

PURPOSE: This amendment corrects the Purpose statement.

PURPOSE: This rule defines certain terms used in this [chapter] division.

AUTHORITY: section 319.129, RSMo, [Supp. 1998] Supp. 1999. Original rule filed April 1, 1999, effective Nov. 30, 1999. Amended: Filed March 31, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Executive Director of the Petroleum Storage Tank Insurance Fund, P.O. Box 836, Jefferson City, MO 65102. To be accepted, written comments must be postmarked by midnight on May 31, 2000. Faxed correspondence will be accepted; E-mail correspondence will not be accepted. No public hearing is scheduled.

Please direct all inquiries to the Executive Director of the Petroleum Storage Tank Insurance Fund Board at (573) 522-2352.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 100—Petroleum Storage Tank Insurance Fund
Board of Trustees
Chapter 5—Claims**

PROPOSED AMENDMENT

10 CSR 100-5.010 Claims for Cleanup Costs. The board is amending section (4).

PURPOSE: This amendment adds on additional category of sites which may receive benefits from the Petroleum Storage Tank Insurance Fund. It also makes two technical corrections to the previously published rule.

(4) Fund participants or beneficiaries may receive monies from the fund for the following sites:

(C) A site where a release occurred as a result of the operation of one (1) or more petroleum storage tanks, cleanup began or will begin after August 28, 1989, and the tank(s) from which the release occurred was/were taken out of use prior to December 31, 1997, provided such site was documented by or reported to the Department of Natural Resources prior to December 31, 1997.

1. For the purposes of this subsection, evidence of a site being documented by or reported to the Department of Natural Resources may include, but is not limited to:

- A. Completion of a tank registration form;
- B. Completion of the notification form circulated by the Department of Natural Resources in 1995–1997;
- C. A letter, sent via U.S. mail or overnight delivery service, identifying the location of the site and indicating the existence or prior existence of tanks on the site;
- D. A written message transmitted via facsimile, identifying the location of the site and indicating the existence or prior existence of tanks on the site;
- E. A Site Assessment Report or similar report, submitted to the department, identifying the site as one where tanks were previously operated; or
- F. Any other similar documentation which is determined by the board to provide reasonable evidence of such fact.

2. Costs incurred prior to August 28, 1995, are not eligible.

3. Fund beneficiaries may be required by the board to provide evidence that the site was documented by or reported to the Department of Natural Resources prior to December 31, 1997.; and

4. Fund beneficiaries must get cleanup costs approved in advance, as described in this rule;

(D) A site described in subsection (4)(B) or (4)(C), except the release occurred and was being remediated prior to August 28, 1989.

1. Fund participants **and beneficiaries** must get cleanup costs approved in advance, as described in this rule.

2. Costs incurred prior to August 28, 1996 are not eligible.; **and**

(E) A site where underground storage tanks which contained petroleum were taken out of use prior to December 31, 1985, and the current owner purchased such site before December 31, 1985, provided such site is reported to the fund on or before June 30, 2000. For the purposes of this subsection, current owner shall mean the person who owns a site at the time it is reported to the Petroleum Storage Tank Insurance Fund.

1. Fund beneficiaries must get cleanup costs approved in advance, as described in this rule.

2. Costs incurred prior to August 28, 1999, are not eligible.

AUTHORITY: sections 319.129, 319.131 and 319.132, RSMo [Supp. 1998] Supp. 1999. Original rule filed April 1, 1999, effective Nov. 30, 1999. Amended: Filed March 31, 2000.

PUBLIC COST: This proposed amendment is estimated to cost public entities \$473,700 in fiscal year 2000 and \$1.9 million in the aggregate for implementation of the new rule. A detailed fiscal note has been filed with the secretary of state and is published with this proposed amendment.

PRIVATE COST: This proposed amendment is estimated to cost private entities \$200,657 in fiscal year 2000 and \$806,800 in the aggregate for implementation of the new rule. A detailed fiscal note has been filed with the secretary of state and is published with this proposed amendment.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Executive Director of the Petroleum Storage Tank Insurance Fund, P.O. Box 836, Jefferson City, Missouri 65102. To be accepted, written comments must be postmarked by midnight on May 31, 2000. Faxed correspondence will be accepted; E-mail correspondence will not be accepted. No public hearing is scheduled.

Please direct all inquiries to the Executive Director of the Petroleum Storage Tank Insurance Fund Board at (573) 522-2352.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBERTitle: Department of Natural ResourcesDivision: Petroleum Storage Tank Insurance Fund Board of TrusteesChapter: Claims for Cleanup CostsType of Rulemaking: Proposed Rule AmendmentRule Number and Name: 10 CSR 100-5.010 Claims for Cleanup Costs

II. SUMMARY OF FISCAL IMPACT: The Petroleum Storage Tank Insurance Fund is impacted by this amendment, because the Board expects to make payments for cleanup of additional sites as a result of the amendment. The amendment is necessary as a result of legislative amendment to the statute governing the Fund, CCS SCS HCS HB603, enacted in 1999.

Affected Agency or Political Subdivision	Estimated Cost of Compliance (FY 2000)	Aggregate Cost for the life of the rule through Dec 2003
Petroleum Storage Tank Insurance Board	\$473,700	\$1.9 million

III. WORKSHEET

- The amount of money projected to be paid for cleanup as a result of these additional sites being eligible for Fund benefits is as follows:

FY00 \$450,000
 FY01 \$450,000
 FY02 \$450,000
 FY03 \$250,000
 FY04 \$200,000

- The Petroleum Storage Insurance Fund has contracted with a third party to process claims. The contract provisions call for an hourly fee of \$75 for professional services, \$30 per hour for clerical or quasi-professional services. It is estimated that 15 professional hours and 2 clerical hours will be required to process each additional claim allowed by HB603 and this rule amendment.

Cost per claim = (15 hrs x \$75/hr) + (2 hrs x \$30/hr) = \$1185

FY00: 20 claims x \$1185 = \$23,700
 FY01: 20 claims x \$1185 = \$23,700
 FY02: 20 claims x \$1185 = \$23,700
 FY03: 10 claims x \$1185 = \$11,850
 FY04: 10 claims x \$1185 = \$11,850

IV. ASSUMPTIONS

- This rule, 10 CSR 100-5.010, becomes effective September 30, 2000.

2. Because the duration of this rule can be estimated to coincide with the sunset provisions of the Fund, an aggregate cost for the duration of the rule is provided.
3. Fiscal year 2000 dollars are used to estimate the costs, and, since inflation cannot be accurately predicted, no adjustments are made for inflation.
4. The Board's costs for FY04 are assumed to be one-half a fiscal year, or six months, to December 2003.
5. Estimates assume a constant regulatory context which requires no reporting or standards beyond those currently required.
6. Estimates assume that there will be no new or sudden changes in technology which would influence costs.
7. Projected claim payments are based on the Fund's historical experience with claim payments; current data on properties where the owner/operator has made a claim, but has not yet completed cleanup; and notices already received by the Fund from persons who wish to make their properties eligible for Fund benefits under HB603.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBERTitle: Department of Natural ResourcesDivision: Petroleum Storage Tank Insurance Fund Board of TrusteesChapter: Claims for Cleanup CostsType of Rulemaking: Proposed Rule AmendmentRule Number and Name: 10 CSR 100-5.010 – Claims for Cleanup Costs

II. SUMMARY OF FISCAL IMPACT: Private entities who are Fund beneficiaries and who may file a claim for benefits as a result of this amendment will incur some cost for the time and paperwork involved in filing a claim, and will incur a cost for the first \$10,000 in cleanup expenses, which the Fund is prevented by law from paying.

EXPENDITURE OF MONEY OR REDUCTION IN INCOME-

Table 1. Costs of 10 CSR 100-5.010 Claims for Cleanup Costs

Classification by types of the business entities which would likely be affected	Number in Class	Cost of Compliance FY2000	Aggregate Annualized Cost
Property Owners who may choose to file a claim	80	\$200,657	\$806,800

III. WORKSHEET

- The number of claims projected to be filed as a result of this amendment is based on the Fund's historical experience and the number of persons who have already given notice of their desire to make their property eligible.
- It is estimated that a claimant will spend approximately one hour completing a claim form and compiling invoices to submit to the Fund for payment. It is assumed that the average salary for an individual filing a claim is \$24,000, and a multiplier of 2.5 is used to estimate the costs of overhead, profits, etc. associated with such an employee. It is assumed there are 2080 working hours per year.

$$(24,000 \times 2.5)/2080 = \$28.85 \text{ per hour}$$

Paper and postage costs are estimated at \$4.00 per claim. This results in a cost for time and materials of \$32.85 per claim.

FY00:	20 x \$32.85 = \$ 657
Aggregate:	80 x \$32.85 = \$6800

- The cost of the deductible is estimated as follows:

FY00:	20 x \$10,000 = \$200,000
Aggregate:	80 x \$10,000 = \$800,000

IV. ASSUMPTIONS:

1. This amendment to 10 CSR 100-5.010 becomes effective September 30, 2000.
2. Because the duration of this rule can be estimated to coincide with the sunset provisions of the Fund, an aggregate cost for the duration of the rule is provided.
3. Fiscal year 2000 dollars are used to estimate the costs, and, since inflation cannot be accurately predicted, no adjustments are made for inflation.
4. Estimates assume a constant regulatory and legislative context.
5. It is assumed that the entire deductible of \$10,000 will be incurred by the entity filing the claim in the same fiscal year that the claim is filed.