



Rules of
Department of Natural Resources
Division 40—Missouri Mining Commission
Chapter 9—Abandoned Mine Reclamation Fund;
Abandoned Mine Reclamation and Restoration

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Title 10—DEPARTMENT OF NATURAL RESOURCES

Division 40—Missouri Mining Commission

Chapter 9—Abandoned Mine Reclamation Fund; Abandoned Mine Reclamation and Restoration

10 CSR 40-9.010 Abandoned Mine Reclamation Fund

PURPOSE: This rule sets forth requirements for the abandoned mine reclamation fund pursuant to sections 444.810, 444.915, 444.920, 444.925, 444.930, and 444.940.2., RSMo.

(1) Definitions. For the purposes of 10 CSR 40-9, the following terms have been defined:

(A) Abandoned mine reclamation fund or fund means a separate fund established by section 444.810(11), RSMo (1986), to which monies granted by the director of the office under an approved state reclamation program and other monies are deposited in the fund;

(B) Emergency means an extreme danger which presents a high probability of considerable physical harm to persons, property or the environment before the danger can be abated under normal program operation procedures;

(C) Expended means that monies have been paid out by the state for work that has been accomplished or services rendered;

(D) Extreme danger means a condition which could reasonably be expected to cause considerable physical harm to persons, property or the environment and to which persons or improvements on real property are currently exposed;

(E) Federal abandoned mine reclamation fund or federal fund is a trust fund established on the books of the United States Treasury for the purpose of accumulating revenue designated for reclamation of abandoned mine lands, and other activities authorized by the Act;

(F) Office means the Office of Surface Mining and Enforcement of the Department of the Interior;

(G) Reclamation activities means restoration, reclamation, abatement, control or prevention of adverse effects of mining;

(H) State reclamation plan means a plan submitted by the state and approved by the office under 30 CFR 884 for the reclamation of land and water adversely affected by past mining; and

(I) State reclamation program means a program established by the state for the reclamation of land and water adversely affected by past mining, including the state reclamation

plan and annual application for grants under the state reclamation plan.

(2) Revenue to the abandoned mine reclamation fund includes:

(A) Amounts granted to the state by the office for purposes of conducting the approved state reclamation plan;

(B) Monies collected by the state from charges for uses of lands acquired or reclaimed with monies from the fund under 10 CSR 40-9.050;

(C) Monies recovered by the state through the satisfaction of liens filed against privately-owned lands reclaimed with monies from the fund under 10 CSR 40-9.060;

(D) Monies recovered by the state from the sale of lands acquired with monies from the fund under 10 CSR 40-9.050; and

(E) Such other monies as received from grants or other funds or gifts from public and private agencies and individuals.

(3) Monies deposited in the fund are to be used to carry out the state reclamation plan.

AUTHORITY: section 444.810, RSMo 2016. Original rule filed June 11, 1981, effective Oct. 13, 1981. Amended: Filed March 26, 2018, effective Nov. 30, 2018.*

**Original authority: 444.810, RSMo 1979, amended 1983, 1993, 1995.*

10 CSR 40-9.020 Reclamation—General Requirements

PURPOSE: This rule sets forth requirements for abandoned mine reclamation done with moneys from the abandoned mine reclamation fund pursuant to sections 444.810, 444.915, 444.920, 444.935 and 444.940, RSMo.

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

(A) They were mined for coal or affected by coal mining processes before August 3, 1977;

(B) They were inadequately reclaimed;

(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 monies from the fund will be sought under 30 CFR 886 and 30 CFR 888;

(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;

(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, are to be used to offset the cost of the reclamation or transferred to the fund if not needed 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.

(2) Land and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities with federal funds under the state reclamation program when requested by the governor to the director of the office and the director of the office has found in writing that—

(A) The conditions of section (1) of this rule have been met;

(B) The reclamation has been requested by the governor;

(C) All reclamation with respect to abandoned coal mine land and water has been accomplished within the state or the reclamation is necessary for the protection of public health and safety; and

(D) Moneys allocated to the state for the state reclamation program by the federal government are available for the work.

(3) Left or abandoned in either an unreclaimed or inadequately reclaimed condition means lands and water—

(A) Which meet the conditions of section (1) or (2) of this rule; and

(B) Which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

AUTHORITY: section 444.810, RSMo 2016. Original rule filed June 11, 1981, effective Oct. 13, 1981. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000, effective Oct. 30, 2000. Amended: Filed March 26, 2018, effective Nov. 30, 2018.*

**Original authority: 444.810, RSMo 1979, amended 1983, 1993, 1995.*

10 CSR 40-9.030 Rights of Entry

PURPOSE: This rule sets forth requirements for the entry onto land by the state under the state reclamation plan for purposes of reclamation and of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and performing reclamation work pursuant to sections 444.810, 444.925 and 444.940, RSMo.

(1) Consent to Entry. The commission, its agents, employees or contractors shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry.

The consent shall be in the form of a signed statement by the owner of record or his/her authorized agent which, as a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the land and any special conditions for entry. The statement shall not include any commitment by the state to perform reclamation work nor to compensate the owner for entry.

(2) Entry for Studies or Exploration.

(A) The commission, its agents, employees, or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects.

(B) If the owner of the land to be entered under this section will not provide consent to entry, the commission will give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety, or environment. The notice shall be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one (1) or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least thirty (30) days before entry.

(C) Entry necessary to investigate and explore reported emergency conditions will be governed by 10 CSR 40-9.030(4).

(3) Entry for Reclamation.

(A) The commission, its agents, employees, or contractors may enter upon land to perform reclamation activities if the consent of the owner cannot be obtained.

(B) Prior to entry under this section, the commission shall find in writing with supporting reasons that—

1. Land or water resources have been adversely affected by past coal mining practices;

2. The adverse effects are at a stage where, in the interest of the public health, safety, or environment, action to restore, reclaim, abate, control, or prevent should be taken;

3. The owner of the land or water

resources where entry is necessary to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available; or

4. The owner will not give permission for the commission, its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(C) The commission will give notice of its intent to enter for purposes of conducting reclamation at least thirty (30) days before entry upon the property. The notice shall be in writing and mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one (1) or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

(4) Entry for Emergency Reclamation.

(A) The commission, its agents, employees, or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or environment.

(B) Prior to entry under this section, the director shall make a written finding with supporting reasons that—

1. An emergency exists constituting a danger to the public health, safety, or environment;

2. Emergency restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining is necessary; and

3. No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(C) Notice to the owner shall not be required prior to entry for emergency reclamation. The director shall make reasonable efforts to notify such owner and obtain consent prior to entry consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical. The notice shall be mailed, return receipt requested, to the owner, if known, and shall include a copy of the findings required



by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted on the property entered in one (1) or more places where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement that an emergency existed and where the findings required by this section may be inspected or obtained.

(D) The moneys expended for such work, and the benefits accruing to any such premises so entered, shall be chargeable against such land and shall mitigate or offset any claim in, or action brought by any owner of any interest in such premises for any alleged damages as a result of the entry.

AUTHORITY: section 444.810, RSMo 2016. Original rule filed June 11, 1981, effective Oct. 13, 1981. Amended: Filed March 26, 2018, effective Nov. 30, 2018.*

**Original authority; 444.810, RSMo 1979, amended 1983, 1993, 1995.*

10 CSR 40-9.040 Acquisition of Land and Water for Reclamation

PURPOSE: This rule sets forth requirements for the acquisition of land and water for reclamation purposes by the state under the state reclamation plan pursuant to sections 444.810, 444.925.3-6, and 444.940, RSMo.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Land Eligible for Acquisition.

(A) Land adversely affected by past coal mining practices may be acquired by the commission with federal moneys from the fund if approved in advance by the office. Prior to acquisition of such land, the commission shall find in writing that acquisition is necessary for successful reclamation in accordance with section 444.925.1, RSMo.

(B) The commission in acquiring land under this rule shall acquire only such inter-

ests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interest in improvements on the land, mineral rights, or associated water rights may be acquired if—

1. Severance of such interests from the surface estate cannot be made; or

2. Such interests are necessary to the reclamation work planned or the post-reclamation use of the land; and

3. Adequate written assurances cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

(2) Procedures for Acquisition.

(A) An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained from a professional appraiser. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on *Uniform Appraisal Standards for Federal Land Acquisitions* (Interagency Land Acquisition Conference, 2016), which is incorporated by reference and made a part of this rule, copies may be obtained by contacting The Appraisal Foundation, 1155 15th Street NW, Suite 1111, Washington, DC 20005 or online at <https://www.appraisalfoundation.org>. This rule does not incorporate any subsequent amendments or additions.

(B) When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

(C) When necessary, land or interest in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(D) The commission in acquiring land under this rule shall comply, at a minimum and to the extent applicable, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601; 41 CFR 114-50); Solicitor of the Interior's Regulations for Approval of Title to Lands and Condemnation (I SRM 6.1); and Regulations of the Attorney General under Order No. 440-70 dated October 2, 1970 establishing standards for title approval of lands to be acquired for federal public purposes.

(E) Titles to all interest in land acquired shall be in the name of the state and shall be recorded in accordance with applicable state law.

(3) Acceptance of Gifts of Land.

(A) The commission may accept donations of title to land or interest in land which is necessary for reclamation activities. A donation shall not be accepted if the terms or conditions of acceptance are inconsistent with the objectives or requirements of the program.

(B) Offers to make a gift of such land or interest in land shall be in writing and shall include:

1. A statement of the interest which is being offered;

2. A legal description of the land and a description of any improvements on it;

3. A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor;

4. A statement that—

A. The offeror is the record owner of the interest being offered;

B. The interest offered is free and clear of all encumbrances except as clearly stated in the offer;

C. There are no adverse claims against the interest offered;

D. There are no unredeemed tax deeds outstanding against the interest offered; and

E. There is no continuing responsibility by the operator under state or federal law for reclamation; and

5. An itemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

(C) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under the Surface Coal Mining Law," RSMo. Title to donated land shall be in the name of the governor of the state of Missouri.

AUTHORITY: section 444.810, RSMo 2016. Original rule filed June 11, 1981, effective Oct. 13, 1981. Amended: Filed March 26, 2018, effective Nov. 30, 2018.*

**Original authority; 444.810, RSMo 1979, amended 1983, 1993, 1995.*

10 CSR 40-9.050 Management and Disposition of Land and Water

PURPOSE: This rule sets forth requirements for management and disposition of land and water acquired for reclamation purposes by the state under the state reclamation plan pursuant to sections 444.810, 444.925.5, 444.925.6, and 444.940, RSMo.

(1) Management of Acquired Lands.



(A) Land acquired under 10 CSR 40-9.040 may be used pending disposition under section (2) of this rule for any lawful purpose that is not inconsistent with the reclamation activities and post-reclamation uses for which it was acquired.

(2) Disposition of Reclaimed Lands.

(A) Prior to the disposition of any land acquired under this section, the commission shall—

1. Publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of four (4) successive weeks. The notice shall provide at least thirty (30) days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held if requested by any person;

2. Hold a public hearing if requested as a result of the public notice. The commission may determine that a hearing is appropriate even if a request is not received. It shall be scheduled at a time and place that affords local citizens and political subdivisions the maximum opportunity to participate. The time and place of the hearing shall be announced in a newspaper of general circulation in the area in which the land is located at least thirty (30) days before the hearing. All comments received at the hearing shall be recorded; and

3. Make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, state, or federal law or regulations which apply.

(B) The administrative responsibility for land acquired under this part may be transferred in accordance with applicable law, and with approval of the regional director of the office, to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify—

1. The purposes for which the land may be used consistent with the authorization under which the land was acquired; and

2. That the administrative responsibility for the land will revert to the commission if, at any time in the future, the land is not used for the purposes specified.

(C) In accordance with applicable law and with approval by the regional director of the office, title to abandoned and unreclaimed land may be transferred to the United States to be reclaimed and administered by the

office.

(D) The commission, in accordance with applicable law and with the approval of the regional director of the office, may sell land acquired under 10 CSR 40-9.040 by public sale if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, state, or federal land-use plans for the area in which the land is located.

1. Land shall be sold by public sale only if it is found that retention by the state or disposal under this section is not in the public interest.

2. Land will be sold for not less than fair market value in accordance with the following minimum procedures, and such other procedures utilized for each sale:

A. Publication of a notice once a week for four (4) consecutive weeks in a newspaper of general circulation in the locality in which the land is located. This notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be a condition of the sale, and state the time and place of the sale; and

B. Sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

(E) All monies received from disposal of land under this rule shall be deobligated and returned to the office.

*AUTHORITY: section 444.810, RSMo 2016. * Original rule filed June 11, 1981, effective Oct. 13, 1981. Amended: Filed March 26, 2018, effective Nov. 30, 2018.*

**Original authority: 444.810, RSMo 1979, amended 1983, 1993, 1995.*

10 CSR 40-9.060 Reclamation on Private Lands

PURPOSE: This rule sets forth requirements concerning reclamation done on private lands pursuant to sections 444.810, 444.930, and 444.940, RSMo (1986).

(1) Reclamation activities may be carried out on private land if a consent to enter is obtained under 10 CSR 40-9.030(1), or if entry is necessary and made under 10 CSR 40-9.030(3) or 10 CSR 40-9.030(4).

(2) Appraisals.

(A) A notarized appraisal of private land to be reclaimed which may be subject to a lien under subsection (3)(A) of this rule shall be obtained from an independent appraiser. The appraisal shall state—

1. The estimated market value of the

property in its unreclaimed condition; and

2. The estimated market value of the property as reclaimed.

(B) This appraisal shall be made prior to start of reclamation activities. The commission shall furnish to the appraiser information of sufficient detail in the form of plans, factual data, specifications, etc. to make these appraisals. When reclamation necessitates more than six (6) months to complete, an updated appraisal under paragraph (2)(A)2. shall be made to determine if the increase in value as originally appraised has actually occurred. This updated appraisal shall not include any increase in value of the land as unreclaimed. If the updated appraisal value results in lower increase in value, this increase shall be used as a basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien. The commission shall provide appraisal standards for projects consistent with generally acceptable appraisal practice.

(3) Liens.

(A) The commission has the discretionary authority to place or waive a lien against land reclaimed if the reclamation results in a significant increase in the fair market value.

1. The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by the commission pursuant to section 444.930, RSMo and consistent with state laws governing liens.

2. A lien shall not be placed against the property of a surface owner who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.

3. The lien may be waived by the commission if the cost of filing it, including indirect costs to the state, exceeds the increase in fair market value as a result of reclamation activities.

4. The lien may be waived by the commission if findings made prior to construction indicate that the reclamation work performed on private land will primarily benefit health, safety, or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence;

(B) If a lien is to be filed, the commission, within six (6) months after completion of the reclamation work, shall file a statement in the



office having responsibility under applicable law for recording judgments and placing liens against land. This statement shall consist of notarized copies of the appraisals obtained under section (2) of this rule and may include an account of moneys expended for reclamation work. The amount reported to be the increase in value of the property shall constitute the amount of the lien recorded in and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land. The lien shall be recorded in compliance with existing federal and state laws; provided, however, that prior to the time of the actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to prepay that amount instead of allowing the lien to be filed against the property involved.

(C) Within sixty (60) days after the lien is filed, the landowner may request a hearing before the commission to determine the increase in the market value as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past mining practices. The increase in value shall constitute the amount of the lien and shall be recorded with the statement filed under subsection (3)(B) of this rule. Any party aggrieved by the decision may appeal as provided by law.

(4) Satisfaction of Liens.

(A) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.

(B) The commission shall maintain or renew the lien from time to time as may be required under state law.

(C) Monies derived from the satisfaction of liens established under this part shall be deposited in the abandoned mine reclamation fund.

AUTHORITY: section 444.810, RSMo 2016. Original rule filed June 11, 1981, effective Oct. 13, 1981. Amended: Filed March 18, 1987, effective June 25, 1987. Amended: Filed March 26, 2018, effective Nov. 30, 2018.*

**Original authority: 444.810, RSMo 1979, amended 1983, 1993, 1995.*