

Rules of
Department of Natural Resources
Division 40—Land Reclamation Commission
Chapter 10—Permit and Performance Requirements
for Industrial Mineral Open Pit and In-Stream Sand
and Gravel Operations

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**Title 10—DEPARTMENT OF
NATURAL RESOURCES
Division 40—Land Reclamation
Commission
Chapter 10—Permit and Performance
Requirements for Industrial Mineral
Open Pit and In-Stream Sand and Gravel
Operations**

**10 CSR 40-10.010 Permit Requirements
for Industrial Mineral Operations**

PURPOSE: This rule sets forth requirements for permit application pursuant to sections 444.770, 444.772 and 444.778, RSMo.

(1) Operations Required to Have Permits. Any person, firm or corporation engaged in or controlling surface mining of industrial minerals in areas opened on or after January 1, 1972, must obtain a permit from the Land Reclamation Commission in accordance with section 444.770.1. and 444.770.2., RSMo. The effective date for having to obtain a permit for minerals not covered previously under the provisions of the Land Reclamation Act, as amended is August 28, 1990.

(A) After August 28, 1990, surface mining for the following industrial minerals shall require a permit:

1. Gravel;
2. Limestone;
3. Granite;
4. Traprock;
5. Tar sands;
6. Clay;
7. Barite;
8. Sandstone;
9. Oil shale;
10. Sand;
11. Shale; and
12. All others as defined in 444.765.4., RSMo.

(2) Operations Not Required to Obtain a Land Reclamation Permit.

(A) These regulations do not apply to iron, lead, zinc, gold, silver, coal, water, fill dirt, natural oil or gas.

(B) Surface mining for industrial minerals may be conducted without a permit by any—

1. Individual for personal use only; and
2. Political subdivision including, but not limited to, county, city, state or branch of the military which uses its own personnel and equipment to obtain minerals for its own use.

(C) As stated in section 444.770.4., RSMo, any portion of a surface mining operation which is subject to sections 260.200–260.245, RSMo, and the associated regulations on solid waste disposal will not be required to obtain a surface mining permit.

Any permits already issued for a surface mining operation will be canceled by the Land Reclamation Commission if the operator shows that s/he has received and initiated operations under a solid waste permit for the same area. This submittal shall consist of a letter from the Waste Management Program showing issuance of a solid waste disposal permit or sanitary landfill permit and include the legal description of the site(s), the effective date and expiration date of the permit, the date that disposal began and plans for closure and post-closure.

(D) For surface mine operations initiated after September 28, 1971 that are controlled by a governmental agency whose regulations require the mining and reclamation operation to comply with standards that are greater than or equal to the standards in section 444.774, RSMo of the Land Reclamation Act these operations are—

1. Not subject to the permitting requirements under sections 444.760–444.790, RSMo; and

2. Required to register with the Land Reclamation Commission prior to operating. Registration will consist of providing—

A. The name of the governmental agency conducting the surface mine operations and the legal description of the operations;

B. A copy of the law and rules which are applicable to the operation; and

C. A description of the operation.

(E) In-stream sand and gravel dredging operations in the Missouri and Mississippi Rivers which are regulated by the Department of the Army, Corps of Engineers, under section 10 of the 1899 Rivers and Harbors Act, and/or section 404 of the Clean Water Act shall register with the Land Reclamation Commission by furnishing a copy of their current Department of the Army permit and supporting documents to the commission within thirty (30) days after the effective date of these regulations (February 6, 1992) or within thirty (30) days after issuance of a Department of the Army permit, whichever occurs first. Thereafter, these operations shall register on January 1 or each year so long as the operation is active.

AUTHORITY: sections 444.767, RSMo Supp. 1993, 444.770 and 444.784, RSMo Supp. 1990. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994.*

**Original authority: 444.767, RSMo 1971, amended 1990, 1993; 444.770, RSMo 1971, amended 1991; and 444.784, RSMo 1971, amended 1991.*

**10 CSR 40-10.020 Permit Application
Requirements**

PURPOSE: This rule complies with sections 444.772, 444.774 and 444.778, RSMo by setting forth the requirements for surface mine operators to obtain the necessary permit from the Land Reclamation Commission.

(1) The commission shall prescribe the form and content of the application to be submitted to the commission in order for an operator to obtain a mining permit. The applicant must submit the required information before a permit may be issued.

(2) As required by section 444.772, RSMo, an applicant shall provide a complete application package submitted which includes the following:

(A) A completed application form supplied by the commission signed and dated by an officer of the applicant or other authorized representative of the applicant. The form shall contain at least the following information:

1. The applicant's name;
2. The name of an individual in charge of the operation;
3. The permanent and temporary post office address of the applicant;
4. The name of a person to contact about the application;
5. A legal description to the nearest one-quarter, one-quarter (1/4, 1/4) section and the estimated number of acres of any land to be affected by surface mining by the applicant during the succeeding twelve (12)-month term of the permit;
6. The source of the applicant's legal right to mine the land affected by the permit;
7. A list of permits which the applicant or any person associated with the applicant in a management function holds or has held under sections 444.500–444.789, RSMo;
8. A list of the names of all persons with any ownership interest in the land or mineral to be mined, both surface and subsurface; and
9. The mineral to be mined;

(B) The authorized written consent of the applicant and any other persons necessary to grant access to the commission, director, his/her staff or other appropriate state agency staff to the area of land affected under the application or permit during all phases of operation and reclamation;

(C) On areas leased after August 28, 1990, the applicant shall obtain from the landowner a signed approval of the post-reclamation land use or shall provide other written proof that s/he has determined the post-reclamation



land use in conjunction with the landowner. This landowner approval shall be required only for the original permit application unless there is a change in the post-reclamation land use;

(D) A plan of operation and reclamation which meets the requirements of 444.760–444.790, RSMo.

1. The operation plan for surface mine operators shall include:

A. A brief description of topsoil availability, removal and storage as outlined in 10 CSR 40-10.050(6);

B. A brief description and location of spoil placement and disposal;

C. A brief description of handling of acid materials, if applicable; and

D. A brief description of the location and arrangement of the pit if not delineated clearly on the map submitted with the application.

2. All applications shall contain a reclamation and operation plan for the lands and water within the proposed permit area.

3. The reclamation plan shall include, at a minimum:

A. A list of species used for reclamation and the seeding/planting rates;

B. Methods and timing of seeding/planting;

C. If required by the commission, references to support revegetation methods;

D. A brief description of the grading, topsoiling and revegetation schedules as outlined in 10 CSR 40-10.050(10); and

E. The land use that area is to be reclaimed to and the acreage of each.

4. Commercial in-stream operators must describe what measures will be taken to minimize impacts on the stream environment, that is, how they will follow the requirements of 10 CSR 40-10.050(14), (15) and (16).

5. The applicant may provide either a short-term or long-term plan for operations and reclamation. A short-term plan shall describe, at a minimum, the activities required by the operation and reclamation plan outlined in this subsection, which will occur over the one (1)-year term of the permit. A long-term plan shall describe, at a minimum, the activities required by the operation and reclamation plan outlined in this subsection which will occur over more than one (1) year. Permits having long-term operation plans will be issued for one (1)-year terms, except that, upon renewal, the applicant is not required to resubmit an operation plan, provided that the operations will continue to be conducted in the manner originally proposed. Also, the operator only must acquire a permit for the portion of the area included in the long-term plan which will be

affected over the upcoming one (1)-year term of the permit. But, in no instance shall the operator affect any area outside of the area included in the current approved permit;

(E) Two (2) different maps sufficient for the following purposes:

1. One (1) map sufficient to locate and distinguish the mining site from other mine sites in the general area of the county;

2. One (1) map of sufficient scale and detail to illustrate the following:

A. The names of any persons or businesses having any surface or subsurface interest in the lands to be mined, including owners or leaseholders of the land and utilities;

B. The boundaries and the acreage of each site, if proposing multiple sites, of all areas proposed to be affected over the permit term;

C. The approximate location of public roads located in or within one hundred feet (100') of the proposed permit area;

D. The date that the map was prepared, a north arrow and section, township and range lines;

E. The name of the creek or stream being mined, if an in-stream operation is proposed;

F. This map must be prepared on an original or clearly copied United States Geological Survey (USGS) seven and one-half (7 1/2) minute topographical map, county assessor map, Agricultural Stabilization Conservation Service (ASCS) aerial photos or up-to-date county ownership plats or on a map of equal or better quality; and

G. The locations of terraces, waterways, diversions and post-mining land use designations shall be identified on the permit map.

3. Both maps and all copies submitted must be clearly legible and must contain the company name, mine or site name, date of last map edit, scale indication (such as a scale bar or numerical ratio) and a symbol definition key for any special symbols used; and

4. If the applicant requests a permit for a portion of the area described in a long-term operation and reclamation plan, the applicant shall indicate the boundary of the proposed permit area and the boundary of the area proposed to be disturbed over the life of the mine on the map required by paragraph (2)(E)2. of this rule;

(F) All required fees based upon the type of operation and amount of production as follows:

1. An annual permit fee of five hundred dollars (\$500).

2. An annual site fee for each site listed on a permit of three hundred dollars (\$300). If surface mining operations are not conduct-

ed at a site for a total of six (6) months or more during any one (1) permit year, the fee for such site for that year shall be reduced by fifty percent (50%) or to the amount of one hundred fifty dollars (\$150).

3. An annual acreage fee for each acre bonded by the operator of five dollars (\$5) per acre for each acre permitted.

4. For any operator of a gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand (5,000) tons, the total cost of submitting an application shall be three hundred dollars (\$300).

5. In no case shall the total fee for any permit be more than two thousand five hundred dollars (\$2,500).

6. Fees imposed shall expire on December 31, 2007;

(G) The required bond, as specified in section 444.778, RSMo and described in 10 CSR 40-10.030; and

(H) Proof that a public notice has been published in any newspaper with a general circulation in the counties where the land is located. The applicant shall advertise a public notice in accordance with this subsection each time the applicant files a permit application for a new mine, files a request for expansion to an existing mine, when making revisions to the original operation and reclamation plan and when transferring the permit to a new operator, as defined in sections (5)–(7) of this rule. Public notices shall not be required for renewing existing permits or to permit additional acreage within a currently approved long-term operation and reclamation plan, as defined in paragraph (2)(D)6. of this rule. The notice must contain the following:

1. A statement of intent to conduct surface mining specifying the mineral and estimated period of operation;

2. The name and address of the operator;

3. A legal description of affected land consisting of county, section, township and range;

4. The number of acres involved;

5. A statement informing the public that comments will be accepted by the director of the Land Reclamation Commission for fifteen (15) days following the publication of the public notice; and

6. The address of the director of the Land Reclamation Commission.

(3) As required by section 444.772, RSMo, any mining permit covering affected land that has not been totally reclaimed and released from liability prior to permit expiration must be renewed annually.



(A) The operator shall submit a permit renewal form furnished by the director for an additional permit year and pay an annual fee equal to an application fee calculated pursuant to subsection (2)(F) of this rule, but in no case shall the annual renewal fee for any operator be more than two thousand five hundred dollars (\$2,500).

(B) For any operator of a gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand (5,000) tons, the operator shall submit an annual permit renewal form furnished by the director for an additional permit year and pay an annual fee of three hundred dollars (\$300).

(C) Upon receipt of the completed permit renewal form and annual fee from the operator, the director shall approve the renewal. With approval of the director and operator, the permit renewal may be extended for a portion of an additional year with a corresponding prorating of the renewal fee.

(4) If an operation will not expand beyond its originally permitted area during the next permit year and the method of operation and reclamation has not changed, a request for renewal, rather than a complete new application, shall be filed on a form approved by the commission.

(5) When the operator desires to add additional acreage to his/her permit or to substantially revise the methods of operation or reclamation reflected in the original application, an amended application shall be filed. The application shall comply with all the items as prescribed in section (2) of this rule.

(6) When one (1) operator succeeds another operator, the second operator must file a complete application which complies with all the items prescribed in section (2) of this rule.

(7) If at any time during the permit term an operator wishes to revise the methods described in an approved operation and reclamation plan, the operator may file a revision to the plan. A revision must include:

(A) A complete description of the revision stating, at a minimum, how the revision changes any of the activities described in the original operation and reclamation plan;

(B) Proof that a public notice has been published, as specified in subsection (2)(H) of this rule; and

(C) A revised map required under paragraph (2)(E)2. of this rule to eliminate inaccuracies in the original map.

AUTHORITY: section 444.530, RSMo 2000. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed March 15, 2002, effective Oct. 30, 2002. Amended: Filed Dec. 16, 2003, effective Sept. 30, 2004.*

**Original authority: 444.530, RSMo 1971, amended 1983, 1990, 1993, 1995.*

10 CSR 40-10.030 Bonding

PURPOSE: This rule sets forth bonding requirements pursuant to sections 444.772 and 444.778, RSMo.

(1) Bond Requirements. All permit applications must include a bond for the appropriate amount payable to the state of Missouri, which remains in effect until mined acreages have been reclaimed, approved and released by the commission, or until replaced with a bond of equal amount.

(A) Operations mining more than five thousand (5,000) tons per year of gravel or any quantity of either limestone, barite, traprock, granite, tar sand, clay, sandstone, oil shale, sand, shale and all others defined in section 444.765.4., RSMo must file an eight thousand-dollar (\$8,000) bond with the commission. The eight thousand-dollar (\$8,000) bond covers up to eight (8) acres of permitted area. Each additional acre permitted over eight (8) acres shall be bonded at five hundred dollars (\$500) per acre. Multiple sites totaling eight (8) acres or less may be covered by a single eight thousand-dollar (\$8,000) bond if they are part of a single permit.

(B) Operators who mine less than five thousand (5,000) tons of gravel yearly from all sites covered by a single permit shall file a bond with the commission at the rate of five hundred dollars (\$500) per acre for each permitted acre.

(C) In-Stream Sand and Gravel Operations.

1. Initially, an in-stream sand and gravel operator will not be required to submit bond due to the lack of reclamation responsibility.

2. If it is determined, upon inspection and subsequent review and analysis by the staff director, that a reclamation responsibility exists, the permittee will be required to obtain an amended permit on the area of reclamation responsibility, and post the appropriate bond, as described in subsection (1)(A) and (B) of this rule. A reclamation responsibility is defined as a mining activity causing accelerated bank erosion, headcutting

upstream or in adjacent streams, excessive sedimentation downstream, impeded stream flow or other circumstances requiring corrective action, but only where there is clear evidence that the mining or reclamation activity within the permit area is the primary cause of this reclamation responsibility.

3. Bond releases shall be handled in accordance with sections (4)–(7) of this rule. The bond would be released once the problem that caused the reclamation responsibility is reclaimed or corrected. Only those problems within a permit area or those operations within a permit area that are determined to be the primary cause of problems within and outside the permit area need to be reclaimed or corrected. The permittee shall not be required to conduct reclamation operations outside the permit area. Still, work that could be accomplished within the permit area to alleviate those problems that developed outside the permit area would be required before bond release.

(2) Types of Bonds. The director may accept surety bonds and collateral bonds secured by certificates of deposit (CDs).

(A) Surety bonds shall be signed by the operator as principal and the surety bonds must be issued by a good and sufficient corporate surety licensed to do business in Missouri. Persons obligating the surety must be certified by power of attorney.

1. Upon the incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the permittee shall be deemed without a bond coverage in violation of this rule and section 444.778, RSMo.

2. The commission may suspend the permit if the operator fails to make substitution of surety within sixty (60) days after receiving notice from the commission, until the substitution is made.

3. The commission also may issue a notice of violation if no substitution is made in sixty (60) days and the permittee continues to operate. The notice of violation shall specify a reasonable period to replace bond coverage, not to exceed ninety (90) days. During this period, the director and his/her staff may conduct inspections to ensure continued compliance with other permit requirements, the regulations and the law. If a notice of violation is not abated in accordance with the schedule, the director may pursue forfeiture of the operator's bond.

(B) Collateral bonds secured by CDs shall be subject to the following conditions:



1. The bonds shall be submitted on a form provided by the commission as provided by section 444.778.1., RSMo. A CD must be assigned to the state of Missouri;

2. Interest on a CD shall be paid to the permittee;

3. No single CD shall exceed the sum of one hundred thousand dollars (\$100,000), nor shall any permittee submit CD aggregating more than one hundred thousand dollars (\$100,000) from a single bank or financial institution. The issuing bank or financial institution must be insured by the Federal Deposit Insurance Corporation;

4. The CD shall be kept in the custody of Missouri until the bond is released by the commission; and

5. The permittee shall give prompt notice to the commission of any insolvency or bankruptcy of the issuer of the certificate.

(C) Personal bonds secured by letters of credit shall be subject to the following conditions:

1. The bond and the letters of credit shall be submitted on forms provided by the commission;

2. Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the regulatory authority if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date;

3. The beneficiary of the letter of credit shall be the state of Missouri;

4. The letter of credit shall be issued by a bank or trust company located in the United States. If the issuing bank or trust company is located in another state, a bank or trust company located in Missouri must confirm the letter of credit. Confirmations shall be irrevocable and on a form provided by the director;

5. The letter of credit shall be governed by Missouri law. The Uniform Customs and Practice for Documentary Credits, fixed by the International Chamber of Commerce, shall not apply;

6. The letter of credit shall provide that the director may draw upon the credit by making a demand for payment, accompanied by his/her statement that the commission has declared the permittee's bond forfeited;

7. The issuer of a letter of credit or confirmation shall warrant that the issuance will not constitute a violation of any statute or regulation which limits the amount of loans or other credits which can be extended to any single borrower or customer or which limits the aggregate amount of liabilities which the

issuer may incur at any one (1) time from issuance of letters of credit and acceptances;

8. The bank issuing the letter(s) of credit for bonding purposes shall give prompt notice to the commission and the permittee of any insolvency or bankruptcy of the bank; and

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

(D) The replacement of surety and performance bonds shall be subject to the following:

1. Permit holders may replace existing bonds with replacement bonds at any time; and

2. Existing performance bonds will not be released until the permittee has submitted and the director has approved acceptable replacement performance bonds. A replacement of performance bonds pursuant to this section shall not constitute a release of liability under section 444.775, RSMo.

(3) If, after a surety has provided ninety (90)-day notice of cancellation, the bond shall be considered canceled on any unaffected acreage, except that the total bonding may not be reduced to less than the eight thousand-dollar (\$8,000) minimum.

(4) In addition to these bonding requirements, for each acre or portion of an acre permitted on or after August 28, 1990, where topsoil has been removed, either by discarding or selling, an additional bond at four thousand five hundred dollars (\$4,500) per acre shall be filed with the Land Reclamation Commission, unless the area does not require replacement of topsoil for revegetation. If more than twelve inches (12") of topsoil exists on the site or if the commission approves a soil substitution plan, the excess may be sold without posting the additional bond.

(5) An operator may file with the commission a bond release request for permitted bonded acres which are not disturbed at any time. If approved by the commission, the bond will be reduced at the rate at which it was posted, following a field inspection of the area to verify that no disturbance has occurred.

(6) When an operator succeeds another at an operation, the commission may release the first operator after the successor operator obtains a permit and posts the bonds required by law and assumes, in writing, all outstanding reclamation liability and requirements at the site(s) transferred to the successor operator. All areas disturbed by the first operator that have not been transferred to the succes-

sor operator shall remain the liability of the first operator.

(7) To file a request for bond release on an operation, an operator must apply, in writing, to the commission for release of the bond or portion of the bond. This application shall be on a form provided by the commission and shall be accompanied by a map showing the area requested for release.

(8) If, after being inspected, an area is found by the commission to qualify for a bond release, the bond will be reduced proportionately, but not below the eight thousand-dollar (\$8,000) minimum required. An area shall qualify for bond release when the operator has fulfilled all reclamation obligations specified in the approved permit, Land Reclamation Act, the rules in this chapter and all other applicable laws.

(9) Whenever an increase in acreage permitted requires an increase in bond, additional bond and bond form(s) reflecting the increase shall be submitted as required by this rule.

(10) The bond shall be forfeitable upon permit revocation or upon the operator's failure to renew the permit on affected acres not reclaimed or for any violation of these rules. In the event the bond is forfeited, the commission may pursue all legal remedies to obtain the bond and to complete reclamation.

AUTHORITY: sections 444.767 and 444.778, RSMo Supp. 1993 and 444.775 and 444.784, RSMo Supp. 1990. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994.*

**Original authority: 444.767 and 444.778, RSMo 1971, amended 1990, 1993; 444.775, RSMo 1990; and 444.784, RSMo 1971, amended 1990.*



MISSOURI DEPARTMENT OF NATURAL RESOURCES
LAND RECLAMATION COMMISSION

SURETY BOND
SURFACE MINING OF MINERALS

P.O. BOX 176
JEFFERSON CITY, MISSOURI 65102

SURETY COMPANY BOND NUMBER

KNOW ALL MEN BY THESE PRESENTS, That the undersigned _____
of _____ as principal,
and _____,
of _____ as surety are held
and firmly bound unto the State of Missouri, Land Reclamation Commission in the penal sum of _____
_____ Dollars (\$ _____) for the payment of which sum, well and
truly to be made, we hereby jointly and severally bind ourselves, our heirs, administrators, executors, successors,
and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas, the above named principal
did on the _____ day of _____ 19 _____, file with the Land
Reclamation Commission an application to secure a permit to engage in surface mining in the State of Missouri,
under the terms and provisions of Sections 444.760 to 444.789, RSMo that in said application the principal estimated
that _____ acres of land are affected or will be affected by surface mining during the
period corresponding with Permit No. _____.

Now if the said principal faithfully performs all requirements of the Land Reclamation Act and complies with
all rules of the Land Reclamation Commission at 10 CSR Division 40 and satisfactorily reclaims all lands within
the State of Missouri affected by surface mining by said principal under said permit in accordance with Sections
444.760 to 444.789, RSMo then this obligation shall be null and void; otherwise it shall remain in full force and
effect.

The Surety shall not cancel this bond, for any reason whatsoever, including, but not limited to, nonpayment
of premium, bankruptcy or insolvency of the Principal, or issuance of notices of violations or cessation orders and
assessment of penalties with respect to the operations covered by this bond, unless the Surety shall first give actual
notice in writing to both the Commission and the Principal of intent to cancel the bond, stating the reasons therefor,
ninety (90) days in advance of such cancellation. The obligations of the bond may not be cancelled as to acreage
affected prior to the expiration of the ninety (90) day notice period.

Application for release of the obligations of this bond may be made to the Commission in accordance with
the provisions of Sections 444.760 and 444.789, RSMo.

MO 780-0016 (8-90)



PRINCIPAL'S SIGNATURE		SURETY'S SIGNATURE	
SIGNATURE	DATE	SIGNATURE	DATE
NAME		NAME	
OFFICIAL POSITION		OFFICIAL POSITION	
STATE OF MISSOURI COUNTY OF		STATE OF MISSOURI COUNTY OF	
APPEARED BEFORE ME THIS _____ DAY OF _____ _____, 19____, _____ AND _____ _____ TO ME PERSONALLY KNOWN, WHO EXECUTED THE ABOVE AS THEIR FREE ACTS AND DEEDS.		APPEARED BEFORE ME THIS _____ DAY OF _____ _____, 19____, _____ AND _____ _____ TO ME PERSONALLY KNOWN, WHO EXECUTED THE ABOVE AS THEIR FREE ACTS AND DEEDS.	
NOTARY PUBLIC	MY COMMISSION EXPIRES	NOTARY PUBLIC	MY COMMISSION EXPIRES

The amount of this bond shall be calculated as follows: eight thousand dollars (\$8,000.00) for each permit up to eight acres and five hundred dollars (\$500.00) for each acre or portion thereafter of land to be affected by mining operations. Bonding requirements are per 444.778, RSMo.

Where one signs by virtue of Power of Attorney for a surety company, such Power of Attorney must be filed with the bond.

Any notices to or correspondence with the surety hereunder shall be to the following name and address:

NAME			
ADDRESS	CITY	STATE	ZIP CODE
BOND ACCEPTED BY THE DIRECTOR: SIGNATURE		DATE	

MO 780-0016 (8-90)



MISSOURI DEPARTMENT OF NATURAL RESOURCES
LAND RECLAMATION COMMISSION

PERSONAL BOND SECURED BY A CERTIFICATE OF DEPOSIT
(Surface Mining of Minerals)

P.O. BOX 176
JEFFERSON CITY, MISSOURI 65102

PERMIT NUMBER ▶		
<p>KNOW ALL MEN BY THESE PRESENTS, That the undersigned _____ of (NAME OF PERMITTEE)</p> <p>_____, as Obligor (permittee), (ADDRESS OF PERMITTEE)</p> <p>is held and firmly bound unto the State of Missouri payable to the Treasurer of the State of Missouri, to the credit of the Mined Land Reclamation Fund in the penal sum of _____ Dollars (\$ _____) for the payment of such sum, well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns. This obligation is secured by Certificate of Deposit as described herein:</p>		
CERTIFICATE NUMBER	ISSUING BANK	AMOUNT
CERTIFICATE NUMBER	ISSUING BANK	AMOUNT
CERTIFICATE NUMBER	ISSUING BANK	AMOUNT
<p>Each Certificate of Deposit described above is payable to the Treasurer of the State of Missouri or _____ (Obligor), and shall be kept in the custody of the State of Missouri until successful completion of the conditions of this obligation, and shall be forfeitable by the State of Missouri, acting through the Land Reclamation Commission, if the conditions of this obligation are not met. The issuing bank(s) named above hereby waives all rights of setoff or liens against the Certificate(s) of Deposit denominated above.</p> <p>THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the above named Obligor did on the _____ day of _____, 19 _____, file with the Land Reclamation Commission an application to secure a permit to engage in surface mining and reclamation operations in the State of Missouri, under the terms and provisions of Sections 444.760 to 444.789, RSMo; that said application has been approved for operations under Permit Number _____, consisting of _____ acres; that the Obligor will undertake operations and complete reclamation on the affected land in accordance with the statutes, regulations of the Commission, conditions of the permit, and the approved reclamation plan; and that this bond is subject to forfeiture pursuant to the statutes and regulations for failure to so comply. The penalty of this bond shall be the full effective amount of this bond.</p>		

MO 780-0936 (8-90)



Now if the Obligor faithfully performs all the requirements of Sections 444.760 to 444.789, RSMo, and complies with the regulations of the Land Reclamation Commission at 10 CSR Division 40, with the conditions of the permit issued to Obligor as identified herein, or any amendments to said permit, and successfully completes reclamation on the area covered by said permit according to said statutes, regulations, permit conditions and reclamation plan, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

Application for release of the obligations of this bond may be made to the Commission in accordance with the provisions of Section 444.760 and 444.789, RSMo.

OBLIGOR (SIGNATURE)		OFFICIAL TITLE	
NOTARY PUBLIC EMBOSSEER SEAL	STATE OF MISSOURI		COUNTY (OR CITY OF ST. LOUIS)
	SUBSCRIBED AND SWORN BEFORE ME, THIS		
	DAY OF _____ 19__		
	NOTARY PUBLIC SIGNATURE	MY COMMISSION EXPIRES	USE RUBBER STAMP IN CLEAR AREA BELOW.
NOTARY PUBLIC NAME (TYPED OR PRINTED)			

Interest on the Certificates of Deposit may be payable to the Obligor.

No single Certificate of Deposit shall exceed the sum of \$100,000.00 nor shall any permittee submit Certificates aggregating more than \$100,000.00 from a single bank. The issuing bank(s) must be protected by the Federal Deposit Insurance Corporation (F.D.I.C.).

The amount of this bond shall be calculated as follows: eight thousand dollars (\$8,000.00) for each permit up to eight acres and five hundred dollars (\$500.00) for each acre or portion thereafter of land to be affected by mining operations. Bonding requirements are per Section 444.778, RSMo.

BOND ACCEPTED BY THE DIRECTOR (SIGNATURE)	DATE
---	------

MO 780-0936 (8-90)



MISSOURI DEPARTMENT OF NATURAL RESOURCES
LAND RECLAMATION COMMISSION
**PERSONAL BOND SECURED BY A LETTER OF CREDIT
(THE LAND RECLAMATION ACT)**

P. O. BOX 176
JEFFERSON CITY, MO 65102

BOND NUMBER	PERMIT NUMBER
-------------	---------------

KNOW ALL MEN BY THESE PRESENTS, That the undersigned _____ of
(NAME OF PERMITTEE)

_____, as Obligor
(ADDRESS OF PERMITTEE)

is held and firmly bound unto the State of Missouri payable to the Treasurer of the State of Missouri, to the credit of the
Mined Land Reclamation Fund in the penal sum of _____ Dollars (\$ _____)
for the payment of such sum, well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators,
executors, successors, and assigns. This obligation is secured by Irrevocable Letter of Credit No. _____
dated _____, issued by the _____,
(NAME OF ISSUING BANK)

of _____,
(ADDRESS OF ISSUING BANK)

in the amount of \$ _____, (and an Irrevocable Confirmation of Letter of Credit, Document No. _____,
dated _____, issued by the _____,
(NAME OF CONFIRMING BANK)

of _____,
(ADDRESS OF CONFIRMING BANK)

in the amount of \$ _____).

THE CONDITION OF THIS OBLIGATION is such, that:

Whereas, the above named Obligor did on the _____ day of _____, 19 _____, file with the
Director of the Land Reclamation Commission an application to secure Permit No. _____ to conduct surface
mining and reclamation operations in accordance with the statutes at 444.760 to 444.790 and the regulations at 10 CSR
40 Chapter 10;

Whereas, obligations guaranteed by this bond shall be in effect for the above referenced permit;

Whereas, the Obligor has chosen to post this bond as a guarantee that the reclamation of land disturbed during these
surface mining operations will be completed as required by the statutes and regulations and as specified in the permit as
issued and subsequently amended; and

Whereas, the Obligor agrees to guarantee this obligation and to indemnify, defend, and hold harmless the State of Missouri,
Land Reclamation Commission from any and all losses and expenses which the Land Reclamation Commission may sustain
as a result of the Obligor's failure to comply with the conditions of this obligation.

Now, therefore, the conditions of the obligations are such that, this bond shall remain in full force and effect until the
Obligor faithfully completes reclamation as set forth in the statutes, regulations and the above referenced permit.



LIABILITY UNDER THIS OBLIGATION:

a) begins on the date of issuance of the above referenced permit and extends until reclamation is completed to the satisfaction of the Land Reclamation Commission; and

b) continues until the bond is released or replaced in accordance with 10 CSR 40-10.030, or until the permit has been sold, reassigned or otherwise transferred in accordance with 10 CSR 10.020(6);

The failure of the Obligor to fulfill the obligations specified by the statutes, regulations and the permit, shall subject this bond and the underlying Letter of Credit to forfeiture. The beneficiary of the forfeited amount shall be the Treasurer of the State of Missouri.

Application for release of the obligations on this bond may be made to the Commission in accordance with the provisions of Sections 444.775, RSMo.

OBLIGOR'S SIGNATURE

SIGNATURE	
NAME	
OFFICIAL TITLE	DATE

NOTARY'S SIGNATURE

NOTARY PUBLIC EMBOSSEY OR BLACK INK RUBBER STAMP SEAL	STATE OF	COUNTY (OR CITY OF ST. LOUIS)
	SUBSCRIBED AND SWORN BEFORE ME, THIS	
	DAY OF	19
	USE RUBBER STAMP IN CLEAR AREA BELOW.	
NOTARY PUBLIC SIGNATURE	MY COMMISSION EXPIRES	
NOTARY PUBLIC NAME (TYPED OR PRINTED)		

Letters of Credit will be accepted only from banks or trust companies in the United States. If the bank is located in another state, a bank located in Missouri must confirm the letter of credit. Letters of credit and confirmations must be irrevocable, and must be on the forms provided by the Director.

BOND ACCEPTED BY THE DIRECTOR: SIGNATURE	DATE
--	------



IRREVOCABLE LETTER OF CREDIT

DIRECTOR
MISSOURI LAND RECLAMATION COMMISSION
P. O. BOX 176
JEFFERSON CITY, MISSOURI 65102

OUR LETTER OF CREDIT NUMBER _____

DATE OF ISSUANCE _____

DEAR SIR:

We, the _____ of
(NAME OF ISSUING BANK)

(ADDRESS OF ISSUING BANK)

hereby establish, at the request of _____ (Customer)
our Irrevocable Letter of Credit No. _____, in favor of the State of Missouri,
Land Reclamation Commission, in the amount of _____ dollars
(\$ _____), effective immediately.

This Letter of Credit is issued in conjunction with certain Personal Bonds given or to be given by Customer to you as a condition of the issuance by you of certain Surface Mining and Reclamation Operations Permits to Customer. The bonds and permits to which this Letter of Credit applies are listed in Attachment A hereto incorporated by reference herein. It is intended that as Customer requests additional permits be issued by you, and submits Personal Bonds to you for the issuance of those permits, we will supplement Attachment A, up to the aggregate sum of _____ dollars (\$ _____). Attachment A shall be supplemented by our submittal to you of a substitute Attachment A, in the same form and fully executed, with a cumulative listing of bonds and permits covered by this Letter of Credit.

Funds under this Letter of Credit are available to you upon presentation to us of your written demand for payment, accompanied either by your statement that the Missouri Land Reclamation Commission has declared forfeited one or more of Customer's bonds listed in Attachment A, or by your statement that this Letter of Credit has not been replaced by the Customer as required by Attachment B. The demand and statement shall be substantially in the form of the document set forth in Attachment C, incorporated by reference herein.

We hereby agree to honor any and all demands for payment made in compliance with the terms of this Letter of Credit, up to the sum stated above. Payment hereunder shall be by our cashier's check payable in U. S. currency to the order of the Treasurer of the State of Missouri to the credit of the Mined Land Reclamation Fund at your address above stated.



This Letter of Credit will terminate only upon the happening of one of these conditions:

1. We receive written notice from you that all of Customer's above-referenced bonds have been released, accompanied by the original of this Letter of Credit; or
2. We receive written notice from you that all of Customer's above-referenced bonds have been secured by other instruments, and that this Letter of Credit is no longer needed, accompanied by the original of this Letter of Credit; or
3. We receive written notice from you that the Customer's bond has been forfeited and you draw upon and we pay the total amount of this Letter of Credit; or
4. You receive written notice from us per Attachment B that we do not elect to renew this Letter of Credit, in which event you may draw upon this Letter of Credit in accordance with the terms of Attachment B.

Our liability under this Letter of Credit shall be reduced to the extent that you notify us in writing that Customer's above-referenced bond has been partially released in a specified amount.

We warrant that the issuance of this Letter of Credit will not constitute a violation of any statute or regulation which limits the amount of loans or other credit which can be extended to any single borrower or customer, or which limits the aggregate amount of liabilities, which we may incur at any one time from the issuance of Letters of Credit and acceptances. We agree that by making demand for payment hereunder, neither you, nor the Missouri Land Reclamation Commission, nor the State of Missouri, makes any warranties to us, either express or implied.

This Letter of Credit shall be governed by Missouri Law, including the Uniform Commercial code as found in Chapter 400, RSMo. The Uniform Customs and Practice for Documentary Credits, fixed by the International Chamber of Commerce, shall not be applicable to this Letter of Credit.



Correspondence concerning this Letter of Credit, including demand for payment, shall be addressed to us
 at _____

We certify that the officer of agent signing this letter is authorized by us to execute this Letter of Credit on
 our behalf.

Very truly yours,

STATE OF MISSOURI _____) COUNTY OF _____) SS. APPEARED BEFORE ME THIS _____ DAY OF _____, 19____ AND _____ TO ME PERSONALLY KNOWN, WHO EXECUTED THE ABOVE AS THEIR FREE ACTS AND DEEDS. NOTARY PUBLIC _____ MY COMMISSION EXPIRES _____	SIGNATURE _____ NAME _____ OFFICIAL POSITION _____ TELEPHONE _____
STATE OF MISSOURI _____) COUNTY OF _____) SS. APPEARED BEFORE ME THIS _____ DAY OF _____, 19____ AND _____ TO ME PERSONALLY KNOWN, WHO EXECUTED THE ABOVE AS THEIR FREE ACTS AND DEEDS. NOTARY PUBLIC _____ MY COMMISSION EXPIRES _____	COUNTERSIGNED _____ _____ PRESIDENT OR VICE PRESIDENT



ATTACHMENT A

DATE _____, 19 _____

FOLLOWING IS A LIST OF THE BOND NUMBERS, PERMIT NUMBERS, AND ACRES PRESENTLY COVERED UNDER LETTER OF CREDIT NUMBER _____, LETTER OF CREDIT NUMBER _____ IS FOR \$ _____, AND THE DOLLARS BELOW REFLECT THE AMOUNT OF THIS LETTER OF CREDIT WHICH IS COMMITTED TO SPECIFIC BONDS AND PERMITS AS OF THIS DATE.

DESCRIPTION	PERMIT NUMBERS	BOND NUMBER	ACRES	DOLLARS

TOTAL BOND APPLICATION TO LETTER OF CREDIT NO. _____ AS OF _____, 19 _____ IS _____

STATE OF MISSOURI))
COUNTY OF _____)) SS.

SIGNATURE _____

APPEARED BEFORE ME THIS _____ DAY OF _____, 19 _____

NAME _____

AND _____ TO ME PERSONALLY KNOWN.

OFFICIAL POSITION _____

WHO EXECUTED THE ABOVE AS THEIR FREE ACTS AND DEEDS.

TELEPHONE _____

NOTARY PUBLIC MY COMMISSION EXPIRES _____

STATE OF MISSOURI))
COUNTY OF _____)) SS.

COUNTERSIGNED _____

APPEARED BEFORE ME THIS _____ DAY OF _____, 19 _____

AND _____ TO ME PERSONALLY KNOWN.

PRESIDENT OR VICE PRESIDENT _____

WHO EXECUTED THE ABOVE AS THEIR FREE ACTS AND DEEDS.

NOTARY PUBLIC MY COMMISSION EXPIRES _____



ATTACHMENT B

To Letter of Credit No. _____

This Letter of Credit shall expire one (1) year from date of issuance, but shall be deemed automatically renewed for an additional period of one (1) year beyond the current or any future expiration date unless at least ninety (90) days prior to any such expiration date we, the issuing bank, notify the Missouri Land Reclamation Commission, in writing, certified mail, return receipt requested, at the address shown on page 1 of the Letter of Credit, that we do not elect to renew this Letter of Credit for any such additional period. Upon your receipt of such notification, you may withdraw the total effective amount of the Letter of Credit hereunder by your drafts, at sight, on us, bearing reference to this Letter of Credit number and accompanied by your signed statement that the proceeds of the draft will be retained by the Missouri Land Reclamation Commission and held in lieu of the Letter of Credit. Cancellation shall not affect any liability incurred and accrued hereunder prior to the termination of the ninety (90)-day period.



ATTACHMENT C
FORM OF DEMAND FOR PAYMENT

[LETTERHEAD]

[NAME AND ADDRESS OF ISSUING
OR CONFIRMING BANK]

RE: DEMAND FOR PAYMENT UNDER YOUR LETTER OF CREDIT

[OR CONFIRMATION OF LETTER OF CREDIT] NO. _____

DEAR SIRs:

Pursuant to the above-referenced Letter of Credit [or Confirmation of Letter of Credit], we hereby order that you pay to us the sum of \$ _____, by your cashier's check to the order of the Treasurer of Missouri, to the credit of the Mine Land Reclamation Fund, directed to be undersigned.

We state to you that the Missouri Land Reclamation Commission has declared and forfeited Personal Bond No. _____, given to us by _____
(PERMITTEE)

as a condition of the issuance of Surface Coal Mining and Reclamation Operations Permit No. _____, Increment No. _____

Very truly yours,

DIRECTOR
LAND RECLAMATION COMMISSION



10 CSR 40-10.040 Permit Review Process

PURPOSE: This rule sets forth the requirements for review of the application, the approval and denial process and hearing requirements pursuant to section 444.773, RSMo.

(1) Within fifteen (15) days of receipt of a complete application, but not before any required public notice period has expired, the director promptly shall review the application and shall make a determination on an application. The recommendation will be to either issue or deny.

(A) The director shall make a recommendation on a permit application based on the following:

1. The application's compliance with section 444.772, RSMo;

2. The application's compliance with 10 CSR 40-10.020;

3. Consideration of any written comments received during the fifteen (15)-day public notice period from persons who have a direct personal interest in one (1) or more of the factors the commission is required to consider in issuing a permit;

4. Whether the operator has had a permit revoked, a bond forfeited and has not caused the revocation or forfeiture to be corrected to the satisfaction of the commission; and

5. If a petition is filed and a hearing is held under subsection (1)(C), the commission shall make the decision on the permit application.

(B) If the director recommends a denial, the applicant may request a hearing, as provided for in 10 CSR 40-10.080(1)(A).

(C) If the director recommends approval of the application, the permit shall be issued without a hearing, unless a petition is received as provided for in 10 CSR 40-10.080(1)(B).

(2) The director may approve a variance to a permit application or permit amendment when the operation, reclamation or conservation plan deviates from the requirements of sections 444.760–444.790, RSMo and these rules if it can be demonstrated by the operator that—

(A) Conditions present at the mine location warrant the exception;

(B) The protection of the health, safety and livelihood of the public is not reduced;

(C) There is no additional effect to the landowner's or adjacent landowner's property than the effects under a normal permit;

(D) The protection afforded by sections 444.760–444.790, RSMo is not reduced;

(E) The procedure to be used in the review of a request for a variance shall be as follows:

1. The operator shall identify on a map the location of the area(s) that the variance request applies. Such map shall comply with the requirements of 10 CSR 40-10.020(2)(E); and

2. The operator shall list the number of acres involved in the variance request area, the dates that work is to commence and is to be completed, and the nature of the variance request; and

(F) If the director recommends a denial of the variance, the applicant may request a hearing, as provided for in 10 CSR 40-10.080(1)(A).

AUTHORITY: sections 444.767, RSMo Supp. 1993, 444.772, RSMo Supp. 1992, 444.773, 444.774 and 444.784, RSMo Supp. 1990. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994.*

**Original authority: 444.772, RSMo 1971, amended 1984, 1990, 1992; 444.773, RSMo 1990; 444.774 and 444.784, RSMo 1971, amended 1990; and 444.767, RSMo 1971, amended 1990, 1993.*

10 CSR 40-10.050 Performance Requirements

PURPOSE: This rule sets forth the requirements that a surface mine operator must meet to protect the environment and restore the surface-mined land by setting standards for post-mining land use, backfilling and grading, sediment and water management control, protection of adjacent properties and time extension criteria pursuant to section 444.760–444.790, RSMo.

(1) Copies of all current Land Reclamation Program permits must be available for inspection at the mine office that is listed on the permit application.

(2) Lateral Support Requirements.

(A) The distance from a public road, street or highway right-of-way to the beginning of excavation shall be—

1. Twenty-five feet (25') plus one and one-half (1 1/2) times the depth of unconsolidated material; and

2. The minimum allowable distance is fifty feet (50'), unless a variance is granted by the commission. The variance shall be according to 10 CSR 40-10.040(2) and shall be approved by the authority having jurisdiction over the road.

(B) For unconsolidated materials left in place, a slope of no more than forty degrees

(40°) may start near the right-of-way line and proceed to the excavation which is the point where the slope exceeds forty degrees (40°). In either case, the excavation shall be no closer to the right-of-way than twenty-five feet (25'), plus one and one-half (1 1/2) times the depth of unconsolidated material or fifty feet (50'), whichever is greater, unless a variance is granted according to paragraph (2)(A)2.

(3) Safety Barrier Requirements.

(A) An adequate safety barrier must be placed at the perimeter of the excavation if the excavation is—

1. At or within fifty feet (50') of the right-of-way of any public road and no other adequate barriers exist; or

2. Fifty feet (50') or closer to any property line and is necessary to mitigate serious and obvious threats to public safety.

(B) The barrier shall be a minimum of three feet (3') high.

(4) Erosion and Siltation Control Requirements.

(A) The commission may require erosion or sedimentation control if damaging erosion or siltation occurs or is likely to occur from land affected by surface mining onto adjacent lands.

(B) Erosion and siltation are considered damaging if it causes the approved post-mining land use not to be met or excess silt is deposited on or outside the affected area.

1. Erosion control includes, but is not limited to, diverting runoff away from the permitted area, straw dikes, riprap, check dams, mulch, vegetative cover, chemical treatment and limiting livestock grazing.

2. Sedimentation control includes, but is not limited to, vegetative sediment filters, sediment ponds, silt fences and keeping the disturbed, but reclaimed, area to a minimum by timely reclamation.

3. Erosion control structures shall be constructed to United States Department of Agriculture Soil Conservation Service (SCS) standards.

4. Sedimentation ponds shall be built to Missouri SCS Ponds 378 standards, unless subsection (9)(C) or (D) regarding Missouri Dam Safety or Mine Safety and Health Administration (MSHA) apply.

5. Sedimentation ponds shall be designed and built to control damaging runoff.

(5) Grading Requirements.

(A) The affected areas must be graded to a free draining topography traversable by farm machinery and suitable for the intended land use.



(B) Exceptions to the Grading Requirements of Subsection (5)(A).

1. Slopes need not be reduced to less than the original slope of the areas prior to mining by the permittee.

2. Areas that will be under water permanently.

3. Areas that will be reclaimed for wildlife purposes where up to twenty-five percent (25%) of the acreage of overburden generated by surface mining during each permit year need not be graded to a rolling topography, but shall be graded to a minimum width of thirty feet (30') or one-half (1/2) the diameter of the base of the pile, whichever is less.

4. Boxcut spoil that cannot be reclaimed to wildlife purposes shall be graded to a slope no steeper than twenty-five degrees (25°) from horizontal.

5. Slopes of dams, berms, dikes, ditches or terraces.

6. Areas in the floodplain of a river or stream subject to flooding and to the extent that grading would be unsafe or ineffective as outlined in section 444.774.1(11), RSMo.

7. For barite pits, section 444.774.1(2), RSMo, requires the sidewalls of the excavation to be graded to a point where it blends with the surrounding topography. In no case shall the contour be such that erosion and siltation are increased.

8. Highwalls consisting of consolidated materials may remain after reclamation if overburden material removed during mining is not available for use as backfill or if the backfilling of a highwall is impracticable.

(C) Covering Acid-Forming Materials.

1. Acid-forming materials or other materials requiring special handling uncovered during mining shall be covered with two feet (2') of nontoxic-, nonacid-forming material.

2. Acid-forming materials shall include the following:

A. Materials having an acid-base deficiency of more than five (5) tons calcium carbonate equivalent per one thousand (1,000) tons of material;

B. Materials having a pyritic sulfur content of more than two percent (2%) per one thousand (1,000) tons of material;

C. Materials having an electrical conductivity of more than four millimhos/centimeter (4.0) (mmhos/cm);

D. Materials having a pH of less than four and one-half (4.5);

E. Oil, scum or other hydrocarbon materials in sufficient amounts collected on or in impoundments which will affect wildlife adversely; and

F. Waste materials from the processing of tar sands.

(D) When surface mining tar sands, all spent sands and refuse shall be collected and disposed of as the commission prescribes as conditions of the permit.

(6) Topsoil Handling Requirements.

(A) Soil Removal.

1. A twelve-inch (12") layer that includes the A horizon (the topsoil) and the unconsolidated material immediately below the topsoil, or all of unconsolidated material if the total available is less than twelve inches (12"), shall be removed and replaced as the surface soil layer.

2. If twelve inches (12") of the A horizon and the unconsolidated material immediately below the topsoil does not exist, the SCS county soil survey shall be used to verify available material. If the operator disagrees with the SCS survey or if the SCS soil survey is not available, it shall become his/her burden to demonstrate that less than twelve inches (12") of material existed prior to mining.

3. All of the required soil material shall be removed before drilling, blasting, mining or other surface disturbance can take place.

4. All topsoil shall be removed ten feet (10') ahead of the mineral or overburden excavations unless use of substitute materials is approved in the reclamation plan.

(B) Whenever topsoil is not respread immediately, the stockpiled topsoil or substitute material shall be placed in a stable area within the permit area where it will not be disturbed or be exposed to excessive water, wind erosion or contaminants. Topsoil shall be protected from erosion, whether in stockpiles or after replacement on graded spoil, by establishment of a temporary or permanent vegetative cover or by mulching.

(C) Soil Redistribution.

1. Topsoil redistribution. Topsoil shall be redistributed in a manner that—

A. Achieves an approximate uniform thickness;

B. Prevents excess compaction of the topsoil; and

C. Protects the slope from erosion, on all slopes five-to-one (5:1) ratio or greater or where erosion occurs, by the operator applying mulch or using other measures approved by the director.

2. Nutrients and soil amendments shall be applied to the surface soil layer in a manner sufficient to achieve a vegetative cover as required by section 444.774.2., RSMo and these rules.

(D) Overburden or other approved materials may be used as a topsoil substitute mate-

rial provided the resulting soil medium is equal to or more suitable for vegetation and if all the following requirements are met:

1. The operator demonstrates in the reclamation plan that the selected overburden materials or an overburden-topsoil mixture is equal to or more suitable for restoring land capability and productivity by results of chemical and physical analysis. These analyses shall include determinations of pH, percent organic material, phosphorus, potassium, texture class and water-holding capacity;

2. The chemical and physical analyses are performed by a qualified laboratory; and

3. The alternative material is removed and replaced in accordance with this section.

(E) Sale or Destruction of Topsoil.

1. The approved reclamation plan also may include a provision for the sale or disposal of excess topsoil, provided sufficient topsoil is stockpiled as necessary to carry out the reclamation plan.

2. If topsoil is removed and either sold or made unavailable for reclamation, a four thousand five hundred-dollar (\$4,500)-per-acre bond for each acre to be revegetated shall be posted with the Land Reclamation Commission for each acre on which this occurs, unless a substitute material is stockpiled. This bonding requirement shall not apply to areas where topsoil does not exist prior to mining.

(7) Revegetation and Post-Mining Land Uses.

(A) Reclaimed areas shall be able to support or be utilized, or both, for one (1) or more of the following uses:

1. Wildlife habitat—Areas that will be utilized as forest, wildlife shelter, wildlife food sources and that can be protected from livestock;

2. Agricultural—Areas that will be utilized as pasture, cropland, horticultural crops and support facilities;

3. Development—Areas that will be utilized as home sites, industrial development and recreational sites; and

4. Water impoundments—Areas that provide water impoundments for wildlife habitat, agricultural uses or development uses.

(B) Revegetation.

1. Where required, the operator shall establish a vegetative cover appropriate for the approved land use and in conjunction with 10 CSR 40-10.020(2)(D)3. by methods based on sound agronomic and forestry practices.

2. The vegetation on all affected areas, as appropriate, shall be sufficient to control erosion.

3. All soil amendments made for the purpose of establishing or improving vegeta-



tive cover on an affected area shall be based upon soil test results from a qualified soils lab.

(8) Cleanup Requirements. All debris and materials generated by the mining operations not allowed or shown on the reclamation plan must be removed before reclamation is considered complete.

(9) Permanent Final Pit Impoundments.

(A) Section 444.774.1(7), RSMo allows for permanent impoundments in the final cut in a permit area. The impoundment shall—

1. Not interfere with other mining operations.

2. Not damage adjoining property.

3. Comply with section 444.774.1(8), RSMo, which requires—

A. If the impoundment will cover the exposed face of a mineral seam where toxic materials are present, then it must be constructed to prevent a constant inflow from a stream and the discharge must not cause fish or wildlife kills; and

B. If the impoundment will cover tar sands, the tar sands must be capped with two feet (2') of earth; and no layer of hydrocarbon will be allowed to collect on the surface that will affect fish or wildlife adversely.

(B) The impoundment shall be designed and constructed to SCS Ponds 378 standards for Missouri.

(C) If the height of the dam is thirty-five feet (35') or more, as measured from the natural bed of the stream or lowest point on the toe of the dam (whichever is lower) up to the crest elevation, then the operator must have the designs approved by the Dam and Reservoir Safety Program per 10 CSR 22-3.020 prior to construction of the impoundment.

(D) If the structure can impound water or sediment to a height of five feet (5') or more above the upstream toe of the structure and can have a storage volume of twenty (20) acre-feet or more, or can impound water or sediment to an elevation of twenty feet (20') or more above the upstream toe, then the operator is advised that the federal requirements of 30 CFR 77.216 may apply.

(E) The effluent shall meet National Pollutant Discharge Elimination System (NPDES) standards where NPDES permits have been issued before the bond is released.

(10) Timing of Reclamation. Reclamation shall commence as soon as practicable after the start of mining. On all areas or portions of areas where surface mining has been completed.

(A) Grading and topsoil replacement shall be completed within twelve (12) months after the expiration or renewal of the permit under which the surface mine disturbance occurred.

(B) Seeding and planting shall be completed within twenty-four (24) months after the expiration of the permit or initial permit renewal, with survival of vegetation by the second growing season.

(C) All areas within the permit shall be subject to this timetable unless it can be shown by the operator that the area is needed as a part of the active operations.

(11) Signs. A sign(s) identifying the mine area shall be displayed at the primary point of access to the permit area. It shall show the name of the permittee. The operator shall exhibit due diligence in maintaining the sign(s) until after the release of all performance bonds.

(12) Substitution of Previously Mined Land for Reclamation.

(A) The operator may reclaim an area of previously mined land as a substitute for the areas actually disturbed by the permitted mining. Substitute areas need not be contiguous to the original permit area.

(B) The substitute area must be shown to have an equivalent or greater reclamation benefit than the original mine site.

(C) The landowners of both the substitute areas and the original mine site must have given approval for the substitution.

(D) The operator shall submit two (2) copies of an application on a form provided by the commission and maps equivalent to 10 CSR 40-10.020(2)(E).

(E) The operator must receive approval of the request from the commission before the reclamation is initiated on the substitute site.

(F) The operator shall be released of all responsibility for reclamation on the area previously permitted.

(13) Flood Plain.

(A) Mining conducted in flood plains of streams and rivers subject to periodic flooding may be exempt from grading requirements if it can be demonstrated to the commission that grading would be unsafe to pursue or ineffective in achieving proper reclamation.

(B) Areas that are in a flood plain, as defined in 10 CSR 40-10.100(8), and where reclamation operations are unsafe to pursue or ineffective in achieving reclamation as defined in subsection (13)(C), will be exempted automatically without demonstration to the commission if it can be demonstrated to the director.

(C) Reclamation operations shall be considered unsafe to pursue or ineffective in achieving reclamation if the land surface is affected severely in that inundation causes surface changes that makes reclamation ineffective and nonpermanent.

(14) In-Stream Gravel Removal Requirements.

(A) Commercial operations that conduct sand and/or gravel removal within the stream banks must comply with the following requirements.

(B) The following requirements are designed to protect water quality while allowing for the excavation of sand and gravel from riparian environments. Upon request of the applicant, the program may establish site-specific variances to address conditions that may occur at individual locations.

1. Excavation of sand or gravel deposits shall be limited to deposits in unconsolidated areas containing primarily smaller material (at least eighty-five percent (85%) of the material is less than three inches (3") in diameter) that is loosely packed and contains no woody perennial vegetation greater than one and one-half inches (1 1/2") in diameter, measured at breast height four and one-half feet (4.5').

2. An undisturbed buffer of ten foot (10') width shall be left between the excavation area and the water's edge of the flowing stream at the time of excavation. A buffer zone of adequate width to protect bank integrity should be left between the excavation area and the base of the high bank.

3. An undisturbed buffer of twenty-five feet (25') wide shall be maintained in an undisturbed condition landward of the high bank for the length of the gravel removal site. Disturbed areas in this riparian zone shall be limited to maintained access road(s) for ingress and egress only. No clearing within this riparian area is authorized in association with work authorized by this permit.

4. Sand or gravel shall not be excavated below water elevation at the time of removal, except:

A. If the stream is dry at the time of excavation, excavation shall not occur deeper than the lowest undisturbed elevation of the stream bottom adjacent to the site. Upon request of the applicant, excavation depth restriction may be modified if the staff director determines that a variance would not significantly impact the stream resource.

B. For wet stream reaches, excavation depth restriction may be modified if it is determined by the staff director that a variance would not significantly impact the stream resource based on the presence of



bedrock to prevent head cutting, excessive bedload, gravel rich areas or any other appropriate reason.

5. Stream channels shall not be relocated, straightened, cut off, shortened, widened, or otherwise modified. A stream channel is defined as that area between the high banks of the creek where water is flowing, or in the case of a dry stream, where water would flow after a rain event.

6. Within thirty (30) days of the removal of excavation equipment from the site, streambank areas disturbed by the removal operation shall be revegetated or otherwise protected from erosion. For long-term operations (longer than thirty (30) days) or for sites that will be periodically revisited as gravel is deposited, access points shall be appropriately constructed and maintained such that stream banks and access roads are designed and constructed to minimize erosion.

7. Any aggregate, fines, or oversized material removed from the site shall be placed beyond the high bank, on a non-wetland site that has been approved by the landowner. No material, including oversized material, that results from excavation activity may be stockpiled or otherwise placed into flowing water or placed against streambanks as bank stabilization unless specifically authorized by a state or federal permit.

8. All sand or gravel washing, gravel crushing, and gravel sorting shall be conducted beyond the high bank, in a non-wetland area and away from areas that frequently flood, such that gravel, silt, and wash water that is warm, stagnant, or contains silty material cannot enter the stream or any wetland.

9. Vehicles and other equipment shall be limited to removal sites and existing crossings. Water shall be crossed as perpendicular to the direction of the stream flow as possible.

10. Fuel, oil and other wastes and equipment containing such wastes shall not be stored or released at any location between the high banks or in a manner that would enter the stream channel. Such materials shall be disposed of at authorized locations.

(15) Outstanding Resource Waters (10 CSR 20-7.031).

(A) In-stream sand and gravel operations are prohibited from those waters listed as “Outstanding National Resource Waters.”

(B) In-stream sand and gravel operations are prohibited from those segments of “Outstanding State Resource Waters” that are owned or managed by a state or federal agency.

(C) All other applications for in-stream sand and gravel operations on “Outstanding State Resource Waters” shall be reviewed individually to determine if specific conditions are necessary to preserve these stream reaches during mining activity. These individual reviews would assist the applicant in focusing on issues of specific concern. The individual review shall include a site visit by Department of Natural Resources (DNR) staff prior to permit issuance, and annual site inspections by DNR staff during the life of the permit.

(16) The Land Reclamation Program shall consult with the appropriate agencies as to the presence of state and federal threatened and endangered species in the stream reach in order to avoid jeopardizing the species’ continued existence or destroying or adversely modifying the habitat of such species.

AUTHORITY: sections 444.530, RSMo 2000 and 444.767, 444.774, 444.784, RSMo Supp. 2003. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed Dec. 16, 2003, effective Sept. 30, 2004.*

**Original authority: 444.530, RSMo 1971, amended 1983, 1990, 1993, 1995, 2001; 444.767, RSMo 1971 amended 1990, 1993, 2001; 444.774, RSMo 1971, 1990, 2001; and 44.784, RSMo 1971, 1990, 2001.*

10 CSR 40-10.060 Inspection Authority and Right of Entry

PURPOSE: This rule sets forth the requirements for the commission, director or authorized agent to enter upon surface mined lands for the purposes of conducting inspections to assure compliance with the state laws and rules pursuant to section 444.777, RSMo.

(1) Access.

(A) The commission, director or authorized agent, upon presentation of appropriate credentials—

1. Shall have the right-of-entry to any lands being or have been surface mined;

2. May have access, at reasonable time and without delay, to inspect any records applicable to surface mining and reclamation operations pursuant to sections 444.760–444.789, RSMo; and

3. May inspect, at reasonable time and without delay, the methods of operation and reclamation.

(2) If access is refused or an inspection obstructed or hampered, a search warrant may be obtained.

AUTHORITY: sections 444.760–444.789, RSMo Supp. 1991. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992.*

**Original authority: Please consult the Revised Statutes of Missouri.*

10 CSR 40-10.070 Enforcement

PURPOSE: This rule sets forth the requirements for enforcement procedures pursuant to sections 444.778, 444.782, 444.786, 444.787, 444.788 and 444.789, RSMo.

(1) Operations Without a Permit.

(A) If surface mining activities are being conducted without a permit or in violation of any revocation order and a variance has not been issued, enforcement action shall be taken.

1. Prior to the filing of any suit, a notice of violation shall be issued to the operator by the director or an authorized representative of the director. This notice shall be in writing, signed by the person writing the violation and setting forth:

A. The nature of the alleged violation;

B. The law, regulation or permit requirement violated;

C. The location of the affected area to which it applies;

D. The remedial action(s) required; and

E. A reasonable time for abatement.

2. The director may vacate the notice of violation or modify the abatement requirements and the time frames if sufficient justification is presented by the operator.

3. The director shall terminate a notice of violation if all abatement measures have been accomplished. The notice of violation may be subject to an administrative penalty so defined in section (7).

4. The violation shall be served upon the operator as described in section (4).

5. If the operator fails to respond to the notice of violation as per the abatement method and time as specified in the notice, the director shall present the matter to the commission. The commission shall request the attorney general to file suit in the name of the state of Missouri in either the county where the violation has occurred or in Cole County. The suit shall be filed for injunctive relief and civil penalty of not less than fifty dollars (\$50) nor to exceed one thousand dollars (\$1,000) per day for each day the violation continues and for forfeiture of bond. Civil penalties may be assessed by the court of jurisdiction following the determination of a violation.



6. The operator is not entitled to an informal conference or a hearing before the commission based upon the fact of a notice of violation issued under this provision. The operator's right to appeal shall be before the court of jurisdiction.

7. The operator may enter into a settlement agreement with the commission, if adopted and approved by the court of jurisdiction. A settlement agreement shall not be prepared until a petition for injunctive relief has been filed.

(2) Operations With a Permit.

(A) Conference, Conciliation and Persuasion (CC&P). If, during the course of inspection, it is determined that a surface mining operation is being conducted contrary to or in violation of any statute or regulation promulgated by the commission, a condition of the permit or any approved variance or condition of the bond, the director, by conference, conciliation or persuasion, may endeavor to eliminate the violation.

(B) Notice of Violation. If attempts to eliminate a violation through, CC&P are not successful, the director or an authorized representative of the director shall issue a violation to the operator. The notice of violation may be issued by an authorized representative of the commission.

1. A notice of violation issued under this section shall be in writing, signed by the person writing the violation and setting forth—

- A. The nature of the alleged violation;
- B. The law, regulation or permit requirement violated;
- C. The location on the permit to which it applies;
- D. The remedial action(s) required; and
- E. A reasonable time for abatement.

2. The director may vacate the notice of violation or modify the abatement requirements and the time frames if sufficient justification is presented by the operator.

3. If the time frame for abatement of a violation is not met, the director shall file a formal complaint with the commission.

4. The director shall terminate a notice of violation if all abatement measures have been accomplished. The notice of violation may be subject to administrative penalties as defined in section (7).

(3) Formal Complaint.

(A) The director shall issue a formal complaint to the commission if the—

- 1. Abatement measures have not been met within the prescribed time frame; or

2. Administrative penalties assessed by the commission have not been paid within ninety (90) days.

(B) The formal complaint shall be in writing, signed by the director and include:

- 1. The nature of the alleged violation;
- 2. The law or regulation violated;
- 3. Remedial action required;
- 4. The statement that the operator has a right to a hearing; and
- 5. The proposed penalty assessment on the original violation.

(C) The operator may request a hearing by the commission within fifteen (15) days of receipt of the complaint by the operator.

(4) Service of Notice of Violation, Formal Complaint or Commission Orders.

(A) A notice of violation, formal complaint or commission order shall be served on the person to whom it is directed or a designated agent by certified mail or hand delivered at the mine site.

(B) If the person to receive the certified materials refuses to accept delivery or to collect the mail, the requirements of this rule shall be deemed to have been completed.

(5) Permit Revocation or Suspension.

(A) A permit may be subject to suspension or revocation if any of the following conditions apply:

- 1. The permittee has failed to commence corrective measures outlined in a notice of violation within ninety (90) days;
- 2. The permittee has become insolvent, failed in business, been adjudicated bankrupt, filed a petition in bankruptcy or for a receiver, or had a petition filed against him/her, had a receiver appointed by any court or creditor of the permittee, has attached or executed a judgment against the permittee's equipment, materials or facilities at the permit area, and the permittee cannot demonstrate or prove an ability to continue to operate in compliance with the regulatory program and permit and plan;
- 3. The commission shall not issue any permits to any person who has had a permit revoked until the violation that caused the revocation is corrected by the operator to the satisfaction of the commission;
- 4. The permittee fails to reinstate or replace a bond that has been cancelled by surety as provided by section 444.778, RSMo; or

5. The permittee fails to pay an administrative penalty within ninety (90) days of being assessed by the commission and all administrative and judicial reviews have been exhausted. Judicial review should be request-

ed within thirty (30) days of the commission's final decision.

(B) Procedures.

1. If a hearing is held pursuant to subsection (3)(C) of this rule, the commission shall issue written findings of facts and conclusions of law.

2. If appropriate, the commission shall issue an order suspending or revoking the permit within thirty (30) days after the hearing.

(C) After a hearing is held at the request of the operator who has received a formal complaint or after considering a formal complaint when no hearing has been requested by the operator, the commission may revoke or temporarily suspend the permit. The commission may reinstate a suspended permit after the violation has been abated in a satisfactory manner.

(6) Bond Forfeiture.

(A) The commission shall notify the operator of any noncompliance when responding to a formal complaint. This notice shall give the operator a description in writing, by certified mail, of any corrective measures to be taken as approved by the commission, and if these corrective measures have not been commenced by the operator within ninety (90) days, the commission may request forfeiture of the bond.

(B) If the operator does not abate the violation, the—

1. Land Reclamation Commission will notify the operator of noncompliance in writing by certified mail; and

2. Operator will be provided with an opportunity to request a hearing within thirty (30) days after receiving the notification.

A. If the operator requests a hearing, the commission, based on the information presented at the hearing, may—

- (I) Vacate;
- (II) Modify; or
- (III) Affirm the violation.

B. If the commission affirms the violation or the operator does not request a hearing, the commission may request the attorney general's office to forfeit bond after the permit has been revoked.

C. If the surety desires to and is capable of completing reclamation, the director, under additional terms and conditions as s/he deems necessary or prudent, may enter into an agreement with the surety to complete reclamation as expeditiously as possible on a set schedule of compliance in lieu of collection of the forfeited bond. If the surety fails to complete reclamation according to the schedule of compliance, the director shall



collect the forfeited bond or any instruments securing the bond.

(C) An order of bond forfeiture shall authorize the commission to utilize appropriated monies in the Mine Land Reclamation Fund to complete the reclamation.

(7) Penalty Assessment.

(A) The director shall review each notice of violation in accordance with the assessment procedures described in this rule to determine whether an administrative penalty should be assessed, the amount of the penalty and whether each day of continued violation will be deemed a separate violation for purposes of the total penalty assessed and, when appropriate, file with the commission and serve the operator the notice provided by section 444.787, RSMo, within thirty (30) days of the issuance of the notice of violation.

(B) Matrix System for Penalties.

1. The matrix system described in this section shall be used to determine the amount of penalty. A penalty shall not be imposed until the director has sought to eliminate the violation through CC&P as defined in 10 CSR 40-10.100(6) or if the violation is considered a minor violation as defined in 10 CSR 40-10.100(31)(B).

2. A penalty shall be assigned in whole numbers as follows:

A. Potential for harm. The assessment of the potential for harm resulting from a violation should be based on the following:

(I) Risk of exposure. The risk of human or environmental exposure presented by a given violation depends on both the likelihood of exposure and the degree of that potential exposure. Evaluating the risk of exposure may be aided by considering these factors—

(a) Probability of exposure; if the investigation indicates that the probability of exposure is considered high—three (3) points are assigned, if considered moderate—two (2) points are assigned, if considered low—one (1) point is assigned.

(b) Potential seriousness of the exposure; if the investigation indicates that the probability of exposure is considered high—three (3) points are assigned, if it is considered moderate—two (2) points are assigned, if it is considered low—one (1) point is assigned;

(II) Harm to the regulatory program. Violations may have serious implications and merit substantial penalties where the violation undermines statutory or regulatory purposes or procedures for implementing sections 444.760–444.790, RSMo and its corresponding regulations. If the actions of the operator that are the subject of a viola-

tion, have or may have a substantial adverse effect on the statutory or regulatory purposes or procedures for implementing the law or regulations and the program is substantially undermined—three (3) points shall be assigned, if the program is significantly undermined—two (2) points shall be assigned, if there is a small adverse effect—one (1) point shall be assigned; and

(III) Evaluating the potential for harm. The potential for harm should be considered to be major, moderate or minor based upon the average of the points assigned under (7)(B)2.A.(I)(a), (b) and part (7)(B)2.A.(II). If the average of the total points assigned is two and six-tenths (2.6) or greater, the assigned category in the assessment matrix in the potential for harm axis shall be considered major; if the average is from one and six-tenths (1.6) to two and three-tenths (2.3), the assigned category shall be moderate; if the average is one and three tenths (1.3) or lower, the assigned category shall be minor.

(a) Major. The violation poses or may pose a substantial risk of exposure of humans or other environmental receptors to a health or safety hazard(s) or environmental pollution or the actions have or may have a substantial adverse effect on statutory or regulatory purposes or procedures for implementing The Land Reclamation Act or its corresponding regulations, or both;

(b) Moderate. The violation poses or may pose a significant risk of exposure of humans or other environmental receptors to a health or safety hazard(s) or environmental pollution or, actions, have or may have a significant adverse effect on statutory or regulatory purposes or procedures for implementing The Land Reclamation Act or its corresponding regulations, or both; and

(c) Minor. The violation does not pose a substantial or significant risk of exposure of humans or other environmental receptors to a health or safety hazard(s) or environmental pollution or the actions have or may have a small adverse effect on statutory or regulatory purposes or procedures for implementing The Land Reclamation Act or its corresponding regulations;

B. Extent of deviation from requirement. This relates to the degree to which the violation renders inoperative the law or regulation violated. The violator may be substantially in compliance with the provisions of the law or regulation or it may have totally disregarded the law or regulation. In determining the extent of the deviation, the following categories should be used:

(I) Major. The violator deviates from the law or regulation requirements to the extent that most (or important aspects) of

the requirements are not met, resulting in substantial noncompliance;

(II) Moderate. The violator significantly deviates from the requirements of the regulation or statute, but some of the requirements are implemented as intended; and

(III) Minor. The violator does not deviate substantially or significantly from the regulatory or statutory requirements, but most (or all important aspects) of the requirements are met; and

C. Penalty assessment matrix. The factors outlined in subsections (2)(A) and (B) concerning potential for harm and extent of deviation from a requirement will be used in determining the penalty to be assessed. A matrix is formed using potential for harm and extent of deviation from a requirement as axes of the penalty assessment matrix. The matrix has nine (9) cells and the specific cell is chosen after determining whether major, moderate or minor is appropriate for both the potential for harm and the extent of deviation from requirement factors. The matrix to be used is illustrated—

		Extent of Deviation From Requirement		
Potential for Harm		Major	Moderate	Minor
Major		\$1000 to \$800	\$799 to \$600	\$599 to \$400
Moderate		\$799 to \$600	\$399 to \$200	\$199 to \$100
Minor		\$599 to \$400	\$199 to \$100	\$0

3. Adjustment factors. After the initial assessment is obtained from the matrix, the assessment may be adjusted by taking into account the following factors:

A. Good faith/lack of good faith. The operator can manifest good faith by promptly acting to abate the violation, in which case, the assessment would be adjusted down. The operator can also manifest lack of good faith by not meeting specified time frames for no apparent reason, in which case, the assessment may be adjusted up. No adjustment should be made where the operator's efforts primarily consist of coming into compliance. The following dollar amounts shall be used to adjust the penalty assessment as determined by the matrix:

- (I) For prompt abatement—
 - (a) Abatement within 10% of time allowed, deduct \$100;
 - (b) Abatement within 11 to 20% of time allowed, deduct \$90;
 - (c) Abatement within 21 to 30% of time allowed, deduct \$80;
 - (d) Abatement within 31 to 40% of time allowed, deduct \$70;
 - (e) Abatement within 41 to 50% of time allowed, deduct \$60;



(f) Abatement within 51 to 60% of time allowed, deduct \$50;

(g) Abatement within 61 to 70% of time allowed, deduct \$40;

(h) Abatement within 71 to 80% of time allowed, deduct \$30;

(i) Abatement within 81 to 90% of time allowed, deduct \$20;

(j) Abatement within 91 to 99% of time allowed, deduct \$10;

(k) Abatement within 100% of time allowed, deduct \$0;

(II) For lack of good faith, there shall be an additional five dollars (\$5) added to the assessment for each day that the abatement goes beyond the date assigned in the notice of violation, for up to thirty (30) days or one hundred fifty dollars (\$150) of added assessment.

B. Degree of willfulness negligence, or both. Adjustments may be made in instances of heightened culpability. In determining whether to adjust the penalty upward, the commission shall consider the operator's control over the violation, foreseeability of the events constituting the violation, precautions taken by the operator, the operator's knowledge of the legal requirement which was violated and whether the operator knew or should have known of the hazards associated with the conduct that caused the violation. The penalty shall be adjusted as follows, considering the operator's degree of willfulness/negligence:

(I) If the events surrounding the violation were within the operator's control, the assessment shall be increased by fifty dollars (\$50);

(II) If the events surrounding the violation were out of the control of the operator, the assessment shall be decreased by fifty dollars (\$50);

(III) If the events surrounding the violation were foreseeable and the operator failed to act, the assessment shall be increased by fifty dollars (\$50);

(IV) If the events surrounding the violation were unforeseeable, the assessment shall be decreased by fifty dollars (\$50);

(V) If the operator was diligent in taking precautions to prevent or avoid the violation, the assessment shall be decreased by fifty dollars (\$50);

(VI) If the operator was not diligent, there shall be no adjustment to the assessment;

(VII) If the operator was negligent in preventing the violation, fifty dollars (\$50) shall be added to the assessment;

(VIII) If the violation was caused by intentional conduct and a threat to health

or safety is a result, one hundred dollars (\$100) is added to the assessment;

(IX) If the operator was warned of the legal requirements, twenty dollars (\$20) shall be added to the assessment for each written warning given;

(X) If the operator was aware of the legal requirements, but not advised of them, ten dollars (\$10) shall be added to the assessment;

(XI) If the operator was warned of the hazards posed by the violation and an environmental, health or safety hazard has been created, twenty dollars (\$20) shall be added to the assessment for each warning given;

(XII) If the operator was aware of the environmental, health or safety hazards, but was not warned, ten dollars (\$10) shall be added to the assessment;

C. History of noncompliance. The assessment would be adjusted upwards if the operator has a history of noncompliance. The adjustment would be based on the similarity of the previous violation(s), how recent the previous violation(s) was, the number of previous violation(s) and the operator's response to abating the previous violation(s). The history of all violation(s) that have been finalized in the past twenty-four (24) months shall be considered as follows:

(I) For violation(s) of a similar nature, twenty-five dollars (\$25) each shall be added to the assessment; and

(II) For each day the operator failed to abate the notice(s) of violation(s), five dollars (\$5) shall be added to the assessment for each violation.

D. Ability to pay. A downward adjustment to the assessment could be made if the operator can clearly show that the assessment is beyond its means to pay.

4. Assessment of separate violation for each day. An administrative penalty may be assessed for each day the violation continues. In determining whether to make the assessment, the factors listed in subsection (7)(B) of this rule shall be considered and the extent to which the person to whom the notice or order is issued gained an economic benefit as a result of a failure to comply may be considered.

5. Procedures for assessment of administrative penalties.

A. When the director files a notice as provided in section (4) of this rule, the procedures set forth in sections 444.787 and 444.790, RSMo will be followed.

B. The director shall serve a copy of the proposed assessment and worksheet showing the computation of the proposed assessment on the person to whom the notice

or order was issued by certified mail within thirty (30) days of the issuance of the notice or order.

(I) If the mail is tendered at the address of that person set forth in the permit as required under 10 CSR 40-10.020 or at any address which the person is in fact located and s/he refuses to accept delivery or to collect the mail, requirements of this paragraph shall be deemed to have been complied with upon the tender.

(II) Failure by the director to serve any proposed assessment within thirty (30) days shall not be grounds for dismissal of all or part of the assessment unless the person against whom the proposed penalty has been assessed—

(a) Proves actual prejudice as result of the delay; and

(b) Makes timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review as outlined in the rules set forth.

C. Unless a conference has been requested, the director shall review and reassess any penalty, if necessary, to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The director shall serve a copy of any reassessment and of a worksheet showing computation of the reassessment in the manner provided with subsection (7)(C) of this rule. However, in no case shall the penalty be increased where commission or department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty.

(C) Procedures for Informal Assessment Conference.

1. The director shall arrange for an informal conference to review the proposed assessment or reassessment upon written request of the person to whom the notice or order was issued. If the request is received within fifteen (15) days from either the date of issuance of the proposed assessment/reassessment, the informal conference shall be held within sixty (60) days of the receipt of the written request.

2. Failure to hold these conferences within that sixty (60)-day time period shall not be grounds for dismissal.

3. The commission shall assign the director to hold the informal assessment conference. The conference shall not be governed by Chapter 536, RSMo regarding the requirements for formal adjudicatory hearings.

4. The director shall notify the person issued the notice or order, any person who caused, directly or indirectly, the issuance of



the notice or order and any interested persons of the time and place of the conference.

5. The director shall consider all relevant information on the violation within thirty (30) days after the conference is held. The director either shall—

A. Issue a proposed settlement agreement that has been prepared and signed by him/herself to the person issued the notice or order; or

B. Affirm, raise, lower or vacate the proposed penalty.

6. The director promptly shall serve the person assessed with the notice of his/her action in the form of a settlement agreement and a cover letter explaining the action or a letter and new worksheet, if required, if the penalty has been vacated, raised or lowered.

7. If the settlement agreement is signed by the person issued the notice or order, the person assessed will be deemed to have waived all rights of further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement, the settlement agreement shall contain a clause to this effect.

8. If the settlement agreement is entered into, the agreement shall be proposed to the commission for approval or disapproval.

9. If approved, the commission shall send the person issued the notice or order a copy of the commission order and request for payment within thirty (30) days.

10. If the settlement agreement is disapproved or if payment is not made within thirty (30) days, the assessments determined by the penalty points shall be proposed to the commission at the next regularly scheduled commission meeting.

11. If the person issued notice or order does not accept a settlement agreement or any other action of the director which is a result of the informal assessment conference, s/he may request a formal review before the commission. The request shall be received by the commission within thirty (30) days of the receipt of the director's decision from the conference.

12. At any formal review proceeding, no evidence as to statements made or evidence produced by any one (1) party at an informal conference or resultant settlement agreement shall be introduced as evidence by another party or to impeach a witness.

(D) Procedures for Appeal to the Commission.

1. Any person or permittee subject to an administrative penalty, after an informal assessment conference, or in lieu of an informal assessment conference, may appeal his/her penalty to the commission for a review.

2. Any appeal to the commission will be handled in accordance with section 444.789, RSMo, and according to Missouri's Administrative Procedure and Review Law, as found in Chapter 536, RSMo.

(E) Judicial Review. Any final order imposing an administrative penalty is subject to judicial review upon filing of a petition pursuant to section 536.100, RSMo, by any person subject to the penalty. Either party may require that the judicial appeal is tried as a trial *de novo* in the circuit court of the jurisdiction where the violation occurred.

(F) Payment of Administrative Penalties.

1. Any appeal will stay the due date of that administrative penalty until the appeal is resolved.

2. Payment of any administrative penalty shall be paid within sixty (60) days from the date of issuance of the order assessing the penalty.

3. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent (15%) of the penalty plus ten percent (10%) per annum on any amounts owed.

4. Action may be brought in the appropriate circuit court to collect any unpaid administrative penalty and for attorney's fees and costs incurred directly in the collection of it.

(G) Payment of Administrative Penalty. Any administrative penalty assessed under this rule shall be paid to the county treasurer of the county where the violation occurred and credited to the school fund.

(H) Civil Penalty.

1. The state may elect to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court in lieu of assessing an administrative penalty.

2. Assessment of an administrative penalty shall preclude the assessment of—

A. A civil penalty for the same violation by the attorney general; and

B. The judicial assessment of a civil penalty for the same violation.

(I) The regulations in this rule may also be used in the assessment of civil penalties.

(J) Habitual Violator. A person or operator as defined in 10 CSR 40-10.100(10).

1. The limitation outlined in paragraph (7)(G)2. of this rule shall not apply for a habitual violator of the Land Reclamation Act, land reclamation laws of other states or Missouri or federal laws pertaining to land reclamation.

2. Where a habitual violator, as per the definition in 10 CSR 40-10.100(10), is identified, the commission may pursue both

administrative penalties and civil penalties as outlined in this section.

AUTHORITY: sections 444.767 and 444.778, RSMo Supp. 1993, 444.787 and 444.790, RSMo Supp. 1991, 444.782, 444.784, 444.786, 444.788 and 444.789, RSMo Supp. 1990. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed Jan. 2, 1992, effective Aug. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994.*

**Original authority: 444.777, 444.788 and 444.789, RSMo 1990; 444.778 and 444.767, RSMo 1971, amended 1990, 1993; 444.782, 444.784 and 444.786, RSMo 1971, amended 1990; 444.787, RSMo 1990, amended 1991; and 444.790, RSMo 1991.*

10 CSR 40-10.080 Hearings and Informal Conferences

PURPOSE: This rule sets forth the procedures for hearings and informal conferences pursuant to sections 444.773 and 444.787, RSMo.

(1) Hearings.

(A) Any operator, whose permit application has been denied, may request a hearing before the Land Reclamation Commission if s/he notifies the director within fifteen (15) days of receipt of the notification of permit denial. The hearing will be held within fifteen (15) days of the date of the request.

(B) A hearing concerning permit issuance may be requested by any person whose health, safety or livelihood is affected by the surface mining as defined in 10 CSR 40-10.100(28) and who petitions the director within the initial fifteen (15)-day permit review period. Criteria used for the determination of the scheduling of a hearing should be based upon the finding that the person's health, safety or livelihood is affected by noncompliance with any applicable laws or regulations.

(C) If an owner of land that has been affected files a petition in opposition to the release of an operator's bond within thirty (30) days of the receipt date of the application for bond release, a hearing will be held to determine if the site meets bond release standards.

(D) If the director recommends denial of an application for bond release, the operator may request a hearing within thirty (30) days of the receipt of the denial.

(E) Within fifteen (15) days of being issued a formal complaint, the operator may request a hearing before the Land Reclamation Commission at its regular meeting.



(F) For any decision of the commission made pursuant to a hearing held under this section, judicial review is provided in Chapter 536, RSMo. No judicial review shall be available, however, until and unless all administrative remedies are exhausted. The hearing shall also adhere to the requirements of section 444.789, RSMo and corresponding regulations.

(G) For all hearings, the Land Reclamation Commission shall issue these orders as shall be appropriate and shall give notice to the operator and, if applicable, to the person requesting the hearing.

(H) All final orders of the commission shall be subject to judicial review. Judicial review shall not become available until all administrative remedies are exhausted.

(2) Procedure for Hearings Before the Commission.

(A) Any hearing shall be of record and shall be a contested case.

(B) Those involved in the hearing may make oral argument, introduce testimony and evidence and cross-examine witnesses.

(C) The hearing shall be before—

1. The commission as a body;
2. One (1) designated commission member; or
3. A member of the Missouri Bar or a hearing officer.

(D) The full commission shall make the final decision as to the results of the hearing and shall issue written findings of fact and conclusions of law.

(E) Any member of the commission may issue, in the name of the commission, notice of hearing and subpoenas. The rules of discovery that apply to any civil case shall apply to hearings held by the commission.

(F) The commission immediately shall notify the operator of its decision by certified mail.

(3) Informal Conferences.

(A) Within fifteen (15) days of receipt of a notice of violation, an operator may request an informal conference with the director at a location of the director's discretion, unless the operator has been cited for failure to obtain a permit or for failure to renew a permit, and has been issued a notice of violation under 10 CSR 40-10.070(1). The director shall give as much advance notice as practicable of the informal conference to the operator and to the person who filed the complaint that led to the notice of violation, if applicable.

1. Within thirty (30) days of the close of the informal conference, the director shall affirm, modify or vacate the notice or order

in writing. Copies of the decision shall be sent to the operator.

(B) An informal conference may be requested by any person whose property, safety or health are adversely affected by a violation of the Land Reclamation Act and who requests the director for this informal conference. Within thirty (30) days of the informal conference, the director shall order the operator to adopt corrective measures as are necessary.

(C) Informal conferences are conducted by the director who shall take information from any person in attendance.

AUTHORITY: sections 444.767, RSMo Supp. 1993, 444.773, 444.775, 444.784, 444.787 and 444.789, RSMo Supp. 1990. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994.*

**Original authority: 444.773, 444.775, 444.787 and 444.789, RSMo 1990; 444.767, RSMo 1971, amended 1990, 1993; and 444.784, RSMo 1971, amended 1990.*

10 CSR 40-10.090 Annual Reclamation Status Report

PURPOSE: This rule sets forth requirements for filing an annual reclamation status report pursuant to section 444.774.4., RSMo.

(1) Within sixty (60) days after the anniversary of the permit, an annual reclamation status report must be filed with the Land Reclamation Commission.

(A) Reclamation status reports filed by all operators, except for in-stream sand and gravel operators, must include the following:

1. The number of acres disturbed during the permit year;
2. How many acres were reclaimed during the year; and
3. A map accurately showing the location of the disturbed and reclaimed acres, as well as the current permit boundaries.

(B) In-stream sand and gravel operators must provide a listing of each of the permitted areas that were actually disturbed.

AUTHORITY: sections 444.760–444.789, RSMo Supp. 1990. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992.*

**Original authority: Please consult the Revised Statutes of Missouri.*

10 CSR 40-10.100 Definitions

PURPOSE: This rule defines certain terms used for surface mining of minerals under 10 CSR 40-10 and in keeping with section 444.765, RSMo.

(1) Administrative penalty. The monetary fine assessed by the commission.

(2) Affected land. The pit area or area from which overburden has been removed or upon which overburden has been deposited after September 28, 1971. When mining is conducted underground, affected land means any excavation or removal of overburden required to create access to mine openings, except that areas of disturbance encompassed by the actual underground openings for air shafts, portals, adits and haul roads in addition to disturbances within fifty feet (50') of any openings for haul roads, portals or adits shall not be considered affected land. Sites which exceed the excluded areas by more than one (1) acre for underground mining operations shall obtain a permit for the total extent of affected lands with no exclusions as required under sections 444.760–444.789, RSMo.

(3) Amended permit. Involves adding an area to an existing permit area where the area added is already included in an approved long-term operation and reclamation plan. An amended permit does not require a public notice.

(4) Applicable law. That which an operator is required to adhere to with regard to any environmental law or regulation that the Missouri Department of Natural Resources administers.

(5) Commission. The Land Reclamation Commission in the Department of Natural Resources.

(6) Conference, conciliation and persuasion (CC&P). The administrative means employed by the director or his/her representative to resolve or prevent an alleged violation of the law, rules, permit or conditions of the bond, including, but not limited to, informal conversations, telephone conversations and letters issued by the director.

(7) Consolidated material. Any naturally formed aggregate or mass of mineral matter which is firm and coherent and that cannot be excavated by normal construction equipment. Material requires blasting to be excavated.



- (8) Director. The staff director of the Land Reclamation Commission.
- (9) Fill dirt. Material excavated for use as construction fill which does not have a distinctive physical property matching one of the minerals listed under 10 CSR 40-10.010(1) and which will not be refined into one of those minerals. Backfill material for use in completing reclamation is not included in this definition.
- (10) Flood plain. Geographic areas susceptible to periodic inundation from overflow of natural waterways.
- (11) Habitual violator. A person, permittee or operator that has established a pattern of violations of any requirements of the Land Reclamation Act, its corresponding regulations or the permit is defined here as any person or permittee who has—
(A) Three (3) similar violations in any six (6) or less inspections;
(B) Five (5) violations in any ten (10) or fewer inspections; or
(C) Three (3) or more violations in three (3) consecutive inspections.
- (12) In-stream sand and gravel operator. An operator whose entire extraction operation occurs on areas between the defined river or creek banks that are covered by water or are saturated by water throughout the entire year.
- (13) Lateral support. Undisturbed material left in place, with unconsolidated material left in place at no more than a forty degree (40°) grade, to prevent sloughing of the adjacent right-of-way of a public road, street or highway.
- (14) Mine expansion. Involves expansions to the area beyond the area described in an existing operation and reclamation plan. With the exception of a permit fee, a mine expansion requires an application equal to a new permit. An expansion may be requested at any time during the term of an existing permit and requires the filing of a new public notice.
- (15) Mineral or industrial mineral. A constituent of the earth in a solid state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form as a chemical, an energy source or raw material for manufacturing or construction material. For the purposes of this section, this definition also includes barite, tar sands shale, sand, sandstone, limestone, granite, clay, traprock and oil shales, but does not include iron, lead, zinc, gold, silver, coal, surface or subsurface water, fill dirt, natural oil or gas, together with other chemicals recovered.
- (16) New permit. Permits issued for the first time where a new permit number is assigned. All requirements of 10 CSR 40-10.020 apply.
- (17) Notice of violation. The document that is sent by the director to the operator describing the nature of a violation(s) of any law, rule, permit or condition of the bond, the corrective measures to be taken to abate the violation(s) and a time period for abatement of the violation(s). This definition shall include the notice itself, any modification, termination or vacation of the notice of violation itself by subsequent actions taken by the director or the commission.
- (18) Operator. Any person, firm or corporation engaged in and controlling a surface mining operation.
- (19) Overburden. All of the earth and other materials which lie above natural deposits of minerals and also means the earth and other materials disturbed from their natural state in the process of surface mining.
- (20) Peak. A projecting point of overburden created in the surface mining process.
- (21) Permit period. The length of time for which the permit is issued, a one (1)-year period.
- (22) Pit. The place where minerals are being or have been extracted by surface mining.
- (23) Refuse. All waste material directly connected with the cleaning and preparation of substance mined by surface mining.
- (24) Renewed permit. Involves only extending the term of an existing permit by another year.
- (25) Revised operations. Involves the substantial revision of the mining methods of an existing operation and reclamation plan. This revision does not involve the addition of new areas to the permit. A revision is substantial if the changes clearly exceed the scope of activity authorized by the permit in effect at the time or measurably increases the potential affects on public health, safety and livelihood.
- (26) Ridge. A lengthened elevation of overburden created in the surface mining process.
- (27) Site or mining site. Any location or group of associated locations where minerals are being surface mined by the same operator.
- (28) Surety bond. A joint undertaking by the permittee as principal and the surety where the surety is obligated to pay Missouri the face amount of the bond should the reclamation not be completed by the permittee.
- (29) Surface mining. The mining of minerals for commercial purposes by removing the overburden lying above natural deposits of the minerals, and mining directly from the natural deposits exposed and shall include mining of exposed natural deposits of these minerals over which no overburden lies and, after August 28, 1990, the surface effects of underground mining operators for these minerals.
- (30) Unconsolidated material. Material which can be removed and handled by normal construction equipment without blasting.
- (31) Violation.
(A) Major Violation. The violation poses a high likelihood of pollution, creation of health or safety hazard or public nuisance; or the actions have or may have a substantial adverse effect on the purposes of or procedures for implementing the Land Reclamation Act and its corresponding regulations or a combination of these.
(B) Minor Violation. The violation poses a low likelihood of pollution, creation of health or safety hazard or public nuisance; or the actions have or may have a low adverse effect on the purposes of or procedures for implementing the Land Reclamation Act and its corresponding regulations or it has a minor potential for harm and a minor deviation from the requirements of the law and regulations or a combination of these.

AUTHORITY: sections 444.767, RSMo Supp. 1993, 444.765 and 444.784, RSMo Supp. 1990. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed Jan. 2, 1992, effective Aug. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994.*

**Original authority: 444.767, RSMo 1990, amended 1990, 1993 and 444.784, RSMo 1971, amended 1990.*