

SECOND REGULAR SESSION

HOUSE BILL NO. 1389

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LOEHNER (Sponsor), JONES (117), WALLACE, DETHROW, WELLS, MUNZLINGER, SCHLOTTACH, QUINN (7) AND SCHAD (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

3587L.01I

AN ACT

To repeal sections 444.765, 444.766, 444.770, and 444.774, RSMo, and to enact in lieu thereof four new sections relating to surface mining and gravel excavation.

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

Section A. Sections 444.765, 444.766, 444.770, and 444.774, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 444.765, 444.766, 444.770,
3 and 444.774, to read as follows:

444.765. Wherever used or referred to in sections 444.760 to 444.790, unless a different
2 meaning clearly appears from the context, the following terms mean:

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 (2) "Beneficiation", the dressing or processing of minerals for the purpose of regulating
13 the size of the desired product, removing unwanted constituents, and improving the quality or
14 purity of a desired product;

15 (3) "Commercial purpose", the purpose of extracting minerals for their value in sales to
16 other persons or for incorporation into a product;

17 (4) "Commission", the land reclamation commission in the department of natural
18 resources;

19 (5) "Construction", construction, erection, alteration, maintenance, or repair of any
20 facility including but not limited to any building, structure, highway, road, bridge, viaduct, water
21 or sewer line, pipeline or utility line, and demolition, excavation, land clearance, and moving of
22 minerals or fill dirt in connection therewith;

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

24 (7) **"Department", the department of natural resources;**

25 (8) "Excavation", any operation in which earth, minerals, or other material in or on the
26 ground is moved, removed, or otherwise displaced for purposes of construction at the site of
27 excavation, by means of any tools, equipment, or explosives and includes, but is not limited to,
28 backfilling, grading, trenching, digging, ditching, drilling, well-drilling, auguring, boring,
29 tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, demolition
30 of structures, and the use of high-velocity air to disintegrate and suction to remove earth and
31 other materials. For purposes of this section, excavation or removal of overburden for purposes
32 of mining for a commercial purpose or for purposes of reclamation of land subjected to surface
33 mining is not included in this definition. Neither shall excavations of sand and gravel by
34 political subdivisions using their own personnel and equipment or private individuals for
35 personal use be included in this definition;

36 [(8)] (9) "Fill dirt", material removed from its natural location through mining or
37 construction activity, which is a mixture of unconsolidated earthy material, which may include
38 some minerals, and which is used to fill, raise, or level the surface of the ground at the site of
39 disposition, which may be at the site it was removed or on other property, and which is not
40 processed to extract mineral components of the mixture. Backfill material for use in completing
41 reclamation is not included in this definition;

42 [(9)] (10) "Land improvement", work performed by or for a public or private owner or
43 lessor of real property for purposes of improving the suitability of the property for construction
44 at an undetermined future date, where specific plans for construction do not currently exist;

45 [(10)] (11) "Mineral", a constituent of the earth in a solid state which, when extracted
46 from the earth, is usable in its natural form or is capable of conversion into a usable form as a
47 chemical, an energy source, or raw material for manufacturing or construction material. For the

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

51 [(11)] (12) "Mining", the removal of overburden and extraction of underlying minerals
52 or the extraction of minerals from exposed natural deposits for a commercial purpose, as defined
53 by this section;

54 [(12)] (13) "Operator", any person, firm or corporation engaged in and controlling a
55 surface mining operation;

56 [(13)] (14) "Overburden", all of the earth and other materials which lie above natural
57 deposits of minerals; and also means such earth and other materials disturbed from their natural
58 state in the process of surface mining other than what is defined in subdivision (10) of this
59 section;

60 [(14)] (15) "Peak", a projecting point of overburden created in the surface mining
61 process;

62 [(15)] (16) "Pit", the place where minerals are being or have been mined by surface
63 mining;

64 [(16)] (17) "Public entity", the state or any officer, official, authority, board, or
65 commission of the state and any county, city, or other political subdivision of the state, or any
66 institution supported in whole or in part by public funds;

67 [(17)] (18) "Refuse", all waste material directly connected with the cleaning and
68 preparation of substance mined by surface mining;

69 [(18)] (19) "Ridge", a lengthened elevation of overburden created in the surface mining
70 process;

71 [(19)] (20) "Site" or "mining site", any location or group of associated locations where
72 minerals are being surface mined by the same operator;

73 [(20)] (21) "Surface mining", the mining of minerals for commercial purposes by
74 removing the overburden lying above natural deposits thereof, and mining directly from the
75 natural deposits thereby exposed, and shall include mining of exposed natural deposits of such
76 minerals over which no overburden lies and, after August 28, 1990, the surface effects of
77 underground mining operations for such minerals. For purposes of the provisions of sections
78 444.760 to 444.790, surface mining shall not include excavations to move minerals or fill dirt
79 within the confines of the real property where excavation occurs or to remove minerals or fill dirt
80 from the real property in preparation for construction at the site of excavation. No excavation
81 of fill dirt shall be deemed surface mining regardless of the site of disposition or whether
82 construction occurs at the site of excavation.

444.766. 1. No provision of sections 444.760 to 444.790 shall apply to the excavation
2 of minerals or fill dirt for the purposes of construction or land improvement as unrelated to the
3 mining of minerals for a commercial purpose or reclamation of land subsequent to the surface
4 mining of minerals.

5 2. No permit is required under sections 444.760 to 444.790 for the purpose of moving
6 minerals or fill dirt within the confines of real property where excavation occurs, or for purposes
7 of removing minerals or fill dirt from the real property as provided in this section.

8 (1) Excavations for construction pursuant to engineering plans and specifications
9 prepared by an architect, professional engineer, or landscape architect licensed pursuant to
10 chapter 327, RSMo, or any excavation for construction performed under a written contract that
11 requires excavation of minerals or fill dirt and establishes dates for completion of work and
12 specifies the terms of payment for work, shall be presumed to be for the purposes of construction
13 and shall not require a permit for surface mining.

14 (2) Excavations for purposes of land improvement where minerals removed from the site
15 are excess minerals that cannot be used on-site for any practical purpose and at no time are
16 subjected to crushing, screening, or other means of beneficiation with the exception of removal
17 of **dead trees, decaying vegetation**, tree limbs, and stumps shall be presumed to be for the
18 purposes of land improvement and shall not require a permit for surface mining, provided that:

19 (a) The site has not been designated as a surface mine by the federal Mine Safety and
20 Health Administration;

21 (b) Minerals from the property are not used for commercial purposes on a frequent or
22 ongoing basis; and

23 (c) A pit, peak, or ridge does not persist at the site as inconsistent with the purposes of
24 land improvement.

25 (3) Permits shall not be required for the excavation of fill dirt, regardless of the site of
26 disposition or whether construction occurs at the site of excavation.

27 3. (1) If the director or his or her designee determines that a surface mining permit is
28 required for real property which is purported to be for purposes of construction or land
29 improvement not requiring a surface mining permit under this section, such determination shall
30 be sent in writing to the owner of the property by certified mail stating the reasons for such
31 determination. Upon request of the person receiving the letter, an informal conference shall be
32 scheduled with the director within fifteen calendar days to discuss the determination. Following
33 the informal conference, the director shall issue a written determination regarding his or her
34 findings of fact no later than thirty calendar days after the date of the conference. If the director
35 agrees that a surface mining permit is required and the person disagrees with that decision, the
36 person may make a written request for a hearing before the commission at its next regular

37 meeting. Such written request shall be filed within thirty calendar days after receipt of the
38 director's written determination, except when the thirtieth day would be later than the date of the
39 next regularly scheduled commission meeting, the written request shall be filed at least seven
40 days prior to the commission meeting unless the director and the person filing the request
41 mutually agree to place the matter on the commission's agenda for a later meeting. The
42 commission shall issue a written determination as to whether a surface mining permit is required
43 under this state's law within thirty calendar days after the hearing. The written determination
44 may be appealed as provided under this chapter.

45 (2) Until a final written determination has been issued under the process established
46 under subdivision (1) of this subsection, the person receiving a letter stating the reasons a mining
47 permit is required may continue activity at the site in dispute. The commission may stay the
48 director's determination. If the final written determination is that a permit is required, all fees
49 otherwise provided by statute or rules of the commission shall apply. If the determination is that
50 no permit is required, no permit fees shall be required by the director or the commission.

51 (3) The process set out in this subsection for determining whether a mining permit is
52 required shall not be subject to the hearing requirements of section 444.789.

444.770. 1. It shall be unlawful for any operator to engage in surface mining without
2 first obtaining from the commission a permit to do so, in such form as is hereinafter provided,
3 including any operator involved in any gravel mining operation where the annual tonnage of
4 gravel mined by such operator is less than five thousand tons, **except as provided in subsection**
5 **2 of this section.**

6 **2. (1) A property owner or operator conducting gravel removal at the request of**
7 **a property owner for the primary purpose of managing seasonal gravel accretion on**
8 **property not used primarily for gravel mining, or a political subdivision who contracts**
9 **with an operator for excavation to obtain sand and gravel material solely for the use of**
10 **such political subdivision shall be exempt from obtaining a permit as required in**
11 **subsection 1 of this section. Such gravel removal shall be conducted solely on the property**
12 **owner's or political subdivision's property and shall be in accordance with department**
13 **guidelines, rules, and regulations. The property owner shall notify the department before**
14 **any person or operator conducts gravel removal from the property owner's property if the**
15 **gravel is sold or intended to be sold commercially. Notification shall include the nature of**
16 **the activity, name of the county and stream in which the site is located and the property**
17 **owner's name. The property owner shall not be required to notify the department**
18 **regarding any gravel removal at each site location for up to one year from the original**
19 **notification regarding that site. The property owner shall renotify the department before**
20 **any person or operator conducts gravel removal at any site after the expiration of one year**

21 from the previous notification regarding that site. At the time of each notification to the
22 department, the department shall provide the property owner with a copy of the
23 department's guidelines, rules, and regulations relevant to the activity reported. Said
24 guidelines, rules and regulations may be transmitted either by mail or via the Internet.

25 (2) The annual tonnage of gravel mined by such property owner or operator
26 conducting gravel removal at the request of a property owner shall be less than five
27 thousand tons, with a site limitation of fifteen hundred tons annually. Any operator
28 conducting gravel removal at the request of a property owner that has removed five
29 thousand tons of sand and gravel material within one calendar year shall have a watershed
30 management practice plan approved by the commission in order to remove any future sand
31 or gravel material the remainder of the calendar year. The application for approval shall
32 be accompanied by a three hundred dollar application fee and shall contain the name of
33 the watershed from which the operator will be conducting sand and gravel removal, the
34 location within the watershed district that the sand and gravel will be removed, and the
35 description of the vehicles and equipment used for removal. Upon approval of the
36 watershed management practice plan, the department shall provide a copy of the relevant
37 commission regulations to the operator.

38 (3) No property owner or operator conducting gravel removal at the request of a
39 property owner for the primary purpose of managing seasonal gravel accretion on
40 property not used primarily for gravel mining, or a political subdivision who contracts
41 with an operator for excavation to obtain sand and gravel material solely for the use of
42 such political subdivision shall conduct gravel removal annually from March fifteenth to
43 June first.

44 (4) No property owner or operator conducting gravel removal at the request of a
45 property owner for the primary purpose of managing seasonal gravel accretion on
46 property not used primarily for gravel mining shall conduct gravel removal from any site
47 located within a distance, to be determined by the commission and included in the
48 guidelines, rules, and regulations given to the property owner at the time of notification,
49 of any building, structure, highway, road, bridge, viaduct, water or sewer line, and pipeline
50 or utility line.

51 3. Sections 444.760 to 444.790 shall apply only to those areas which are opened on or
52 after January 1, 1972, or to the extended portion of affected areas extended after that date. The
53 effective date of this section for minerals not previously covered under the provisions of sections
54 444.760 to 444.790 shall be August 28, 1990.

55 [3.] 4. All surface mining operations where land is affected after September 28, 1971,
56 which are under the control of any government agency whose regulations are equal to or greater

57 than those imposed by section 444.774, are not subject to the further provisions of sections
58 444.760 to 444.790, except that such operations shall be registered with the land reclamation
59 commission.

60 [4.] 5. Any portion of a surface mining operation which is subject to the provisions of
61 sections 260.200 to 260.245, RSMo, and the regulations promulgated thereunder, shall not be
62 subject to the provisions of sections 444.760 to 444.790, and any bonds or portions thereof
63 applicable to such operations shall be promptly released by the commission, and the associated
64 permits canceled by the commission upon presentation to it of satisfactory evidence that the
65 operator has received a permit pursuant to section 260.205, RSMo, and the regulations
66 promulgated thereunder. Any land reclamation bond associated with such released permits shall
67 be retained by the commission until presentation to the commission of satisfactory evidence that:

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

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

73 [5.] 6. Notwithstanding the provisions of subsection 1 of this section, any political
74 subdivision which uses its own personnel and equipment or any private individual for personal
75 use may conduct in-stream gravel operations without obtaining from the commission a permit
76 to conduct such an activity.

77 **7. Any person filing a complaint of an alleged violation of this section, with the**
78 **department, shall identify himself by name and telephone number, provide the date and**
79 **location of the violation, and provide adequate information, as determined by the**
80 **department, that there has been a violation. Any records, statements, or communications**
81 **submitted by any person to the department relevant to the complaint shall remain**
82 **confidential and used solely by the department to investigate such alleged violation.**

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

5 (1) All ridges and peaks of overburden created by surface mining, except areas meeting
6 the qualifications of subdivision (4) of this subsection, or where washing, cleaning or retaining
7 ponds and reservoirs may be formed under subdivision (2) of this subsection, shall be graded to
8 a rolling topography traversable by farm machinery, but such slopes need not be reduced to less
9 than the original grade of that area prior to mining, and the slope of the ridge of overburden
10 resulting from a box cut need not be reduced to less than twenty-five degrees from horizontal

11 whenever the same cannot be practically incorporated into the land reclaimed for wildlife
12 purposes pursuant to subdivision (4) of this subsection. In surface mining the operator shall
13 remove all debris and materials not allowed by the reclamation plan before the bond or any
14 portion thereof may be released;

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

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

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

33 (5) Surface mining operations that remove and do not replace the lateral support shall
34 not, unless mutually agreed upon by the operator and the adjacent property owner, remove the
35 lateral support in the vicinity of any established right-of-way line of any public road, street or
36 highway closer than a distance equal to twenty-five feet plus one and one-half times the depth
37 of the unconsolidated material from such right-of-way line to the beginning of the excavation;
38 except that, unless granted a variance by the commission, the minimum distance is fifty feet.
39 The provisions of this subdivision shall apply to all existing surface mining operations beginning
40 August 28, 1990, except as provided in subsection [2] 3 of section 444.770;

41 (6) If surface mining is or has been conducted up to the minimum distance as defined
42 in subdivision (5) of this subsection along an established right-of-way line of any public road,
43 street or highway, a barrier or berm of adequate height shall be placed or constructed along the
44 perimeter of the excavation. Adequate height shall mean a height of no less than three feet.
45 Such barriers or berms shall not be required if barriers, berms or guardrails already exist on the
46 adjoining right-of-way. Barriers or berms of adequate height may also be required by the

47 commission when surface mining is or has been conducted up to the minimum distance as
48 defined in subdivision (5) of this subsection along other property lines, but only as necessary to
49 mitigate serious and obvious threats to public safety;

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

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

66 (9) The operator shall reclaim all affected lands except as otherwise provided in sections
67 444.760 to 444.790. The operator shall determine on company-owned land, and with the
68 landowners on leased land for leases that are entered into after August 28, 1990, which parts of
69 the affected land shall be reclaimed for forest, pasture, crop, horticultural, homesite, recreational,
70 industrial or other use including food, shelter, and ground cover for wildlife;

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

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

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

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

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

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

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

110 6. The commission may grant such additional time for meeting with the completion dates
111 required by sections 444.760 to 444.790 as are necessary due to an act of God, war, strike, riot,
112 catastrophe, or other good cause shown.

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