

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1201
97TH GENERAL ASSEMBLY

5067S.04T

2014

AN ACT

To repeal sections 444.772 and 444.773, RSMo, and to enact in lieu thereof two new sections relating to surface mining.

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

Section A. Sections 444.772 and 444.773, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 444.772 and 444.773, to read as follows:

444.772. 1. Any operator desiring to engage in surface mining shall make written
2 application to the director for a permit.

3 2. Application for permit shall be made on a form prescribed by the commission and
4 shall include:

5 (1) The name of all persons with any interest in the land to be mined;

6 (2) The source of the applicant's legal right to mine the land affected by the permit;

7 (3) The permanent and temporary post office address of the applicant;

8 (4) Whether the applicant or any person associated with the applicant holds or has held
9 any other permits pursuant to sections 444.500 to 444.790, and an identification of such permits;

10 (5) The written consent of the applicant and any other persons necessary to grant access
11 to the commission or the director to the area of land affected under application from the date of
12 application until the expiration of any permit granted under the application and thereafter for
13 such time as is necessary to assure compliance with all provisions of sections 444.500 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.

14 or any rule or regulation promulgated pursuant to them. Permit applications submitted by
15 operators who mine an annual tonnage of less than ten thousand tons shall be required to include
16 written consent from the operator to grant access to the commission or the director to the area
17 of land affected;

18 (6) A description of the tract or tracts of land and the estimated number of acres thereof
19 to be affected by the surface mining of the applicant for the next succeeding twelve months; and

20 (7) Such other information that the commission may require as such information applies
21 to land reclamation.

22 3. The application for a permit shall be accompanied by a map in a scale and form
23 specified by the commission by regulation.

24 4. The application shall be accompanied by a bond, security or certificate meeting the
25 requirements of section 444.778, a geologic resources fee authorized under section 256.700, and
26 a permit fee approved by the commission not to exceed one thousand dollars. The commission
27 may also require a fee for each site listed on a permit not to exceed four hundred dollars for each
28 site. If mining operations are not conducted at a site for six months or more during any year, the
29 fee for such site for that year shall be reduced by fifty percent. The commission may also require
30 a fee for each acre bonded by the operator pursuant to section 444.778 not to exceed twenty
31 dollars per acre. If such fee is assessed, the per-acre fee on all acres bonded by a single operator
32 that exceed a total of two hundred acres shall be reduced by fifty percent. In no case shall the
33 total fee for any permit be more than three thousand dollars. Permit and renewal fees shall be
34 established by rule, except for the initial fees as set forth in this subsection, and shall be set at
35 levels that recover the cost of administering and enforcing sections 444.760 to 444.790, making
36 allowances for grants and other sources of funds. The director shall submit a report to the
37 commission and the public each year that describes the number of employees and the activities
38 performed the previous calendar year to administer sections 444.760 to 444.790. For any
39 operator of a gravel mining operation where the annual tonnage of gravel mined by such operator
40 is less than five thousand tons, the total cost of submitting an application shall be three hundred
41 dollars. The issued permit shall be valid from the date of its issuance until the date specified in
42 the mine plan unless sooner revoked or suspended as provided in sections 444.760 to 444.790.
43 Beginning August 28, 2007, the fees shall be set at a permit fee of eight hundred dollars, a site
44 fee of four hundred dollars, and an acre fee of ten dollars, with a maximum fee of three thousand
45 dollars. Fees may be raised as allowed in this subsection after a regulation change that
46 demonstrates the need for increased fees.

47 5. An operator desiring to have his or her permit amended to cover additional land may
48 file an amended application with the commission. Upon receipt of the amended application, and
49 such additional fee and bond as may be required pursuant to the provisions of sections 444.760
50 to 444.790, the director shall, if the applicant complies with all applicable regulatory
51 requirements, issue an amendment to the original permit covering the additional land described
52 in the amended application.

53 6. An operation may withdraw any land covered by a permit, excepting affected land,
54 by notifying the commission thereof, in which case the penalty of the bond or security filed by
55 the operator pursuant to the provisions of sections 444.760 to 444.790 shall be reduced
56 proportionately.

57 7. Where mining or reclamation operations on acreage for which a permit has been
58 issued have not been completed, the permit shall be renewed. The operator shall submit a permit
59 renewal form furnished by the director for an additional permit year and pay a fee equal to an
60 application fee calculated pursuant to subsection 4 of this section, but in no case shall the
61 renewal fee for any operator be more than three thousand dollars. For any operator involved in
62 any gravel mining operation where the annual tonnage of gravel mined by such operator is less
63 than five thousand tons, the permit as to such acreage shall be renewed by applying on a permit
64 renewal form furnished by the director for an additional permit year and payment of a fee of three
65 hundred dollars. Upon receipt of the completed permit renewal form and fee from the operator,
66 the director shall approve the renewal. With approval of the director and operator, the permit
67 renewal may be extended for a portion of an additional year with a corresponding prorating of
68 the renewal fee.

69 8. Where one operator succeeds another at any uncompleted operation, either by sale,
70 assignment, lease or otherwise, the commission may release the first operator from all liability
71 pursuant to sections 444.760 to 444.790 as to that particular operation if both operators have
72 been issued a permit and have otherwise complied with the requirements of sections 444.760 to
73 444.790 and the successor operator assumes as part of his or her obligation pursuant to sections
74 444.760 to 444.790 all liability for the reclamation of the area of land affected by the former
75 operator.

76 9. The application for a permit shall be accompanied by a plan of reclamation that meets
77 the requirements of sections 444.760 to 444.790 and the rules and regulations promulgated
78 pursuant thereto, and shall contain a verified statement by the operator setting forth the proposed
79 method of operation, reclamation, and a conservation plan for the affected area including
80 approximate dates and time of completion, and stating that the operation will meet the

81 requirements of sections 444.760 to 444.790, and any rule or regulation promulgated pursuant
82 to them.

83 10. At the time that a permit application is deemed complete by the director, the operator
84 shall publish a notice of intent to operate a surface mine in any newspaper qualified pursuant to
85 section 493.050 to publish legal notices in any county where the land is located. If the director
86 does not respond to a permit application within forty-five calendar days, the application shall be
87 deemed to be complete. Notice in the newspaper shall be posted once a week for four
88 consecutive weeks beginning no more than ten days after the application is deemed complete.
89 The operator shall also send notice of intent to operate a surface mine by certified mail to the
90 governing body of the counties or cities in which the proposed area is located, and to the last
91 known addresses of all record landowners [of contiguous real property or real property located
92 adjacent to the proposed mine plan area] **whose property is:**

93 **(1) Within two thousand six hundred forty feet, or one-half mile from the border**
94 **of the proposed mine plan area; and**

95 **(2) Adjacent to the proposed mine plan area, land upon which the mine plan area**
96 **is located, or adjacent land having a legal relationship with either the applicant or the**
97 **owner of the land upon which the mine plan area is located.**

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99 The notices shall include the name and address of the operator, a legal description consisting of
100 county, section, township and range, the number of acres involved, a statement that the operator
101 plans to mine a specified mineral during a specified time, and the address of the commission.
102 The notices shall also contain a statement that any person with a direct, personal interest in one
103 or more of the factors the [commission] **director** may consider in issuing a permit may request
104 a public meeting[, a public hearing] or file written comments to the director no later than fifteen
105 days following the final public notice publication date. **If any person requests a public**
106 **meeting, the applicant shall cooperate with the director in making all necessary**
107 **arrangements for the public meeting to be held in a reasonably convenient location and at**
108 **a reasonable time for interested participants, and the applicant shall bear the expenses.**

109 11. The [commission] **director** may approve a permit application or permit amendment
110 whose operation or reclamation plan deviates from the requirements of sections 444.760 to
111 444.790 if it can be demonstrated by the operator that the conditions present at the surface
112 mining location warrant an exception. The criteria accepted for consideration when evaluating
113 the merits of an exception or variance to the requirements of sections 444.760 to 444.790 shall
114 be established by regulations.

115 12. Fees imposed pursuant to this section shall become effective August 28, 2007, and
116 shall expire on December 31, 2018. No other provisions of this section shall expire.

444.773. 1. All applications for a permit shall be filed with the director, who shall promptly investigate the application and make a [recommendation to the commission] **decision** within [four] **six** weeks after **completion of** the [public notice period] **process** provided in **subsection 10 of** section 444.772 [expires as to whether] **to issue or deny** the permit [should be issued or denied]. If the director determines that the application has not fully complied with the provisions of section 444.772 or any rule or regulation promulgated pursuant to that section, the director [shall recommend denial of] **may seek additional information from the applicant before making a decision to issue or deny** the permit. The director shall consider any [written] **public** comments when making [his or her recommendation to the commission on the issuance or denial of] **the decision to issue or deny** the permit. **In issuing a permit, the director may impose reasonable conditions consistent with the provisions of sections 444.760 to 444.790.**

2. [If the recommendation of the director is to deny the permit, a hearing as provided in sections 444.760 to 444.790, if requested by the applicant within fifteen days of the date of notice of recommendation of the director, shall be held by the commission.

3. If the recommendation of the director is for issuance of the permit, the director shall issue the permit without a public meeting or a hearing except that upon petition, received prior to the date of the notice of recommendation, from any person whose health, safety or livelihood will be unduly impaired by the issuance of this permit, a public meeting or a hearing may be held. If a public meeting is requested pursuant to this chapter and the applicant agrees, the director shall, within thirty days after the time for such request has passed, order that a public meeting be held. The meeting shall be held in a reasonably convenient location for all interested parties. The applicant shall cooperate with the director in making all necessary arrangements for the public meeting. Within thirty days after the close of the public meeting, the director shall recommend to the commission approval or denial of the permit. If the public meeting does not resolve the concerns expressed by the public, any person whose health, safety or livelihood will be unduly impaired by the issuance of such permit may make a written request to the land reclamation commission for a formal public hearing. The land reclamation commission may grant a public hearing to formally resolve concerns of the public. Any public hearing before the commission shall address one or more of the factors set forth in this section.] **The director's decision shall be deemed to be the decision of the director of the department of natural resources and shall be subject to appeal to the administrative hearing commission as provided by sections 640.013 and 621.250.**

[4. In any public hearing, if] **3. For purposes of an appeal, the administrative hearing commission [finds] may consider**, based on competent and substantial scientific evidence on the record, [that] **whether** an interested party's health, safety or livelihood will be unduly impaired by the issuance of the permit], the commission may deny such permit]. [If] The

37 **administrative hearing** commission [finds] **may also consider**, based on competent and
38 substantial scientific evidence on the record, [that] **whether** the operator has demonstrated,
39 during the five-year period immediately preceding the date of the permit application, a pattern
40 of noncompliance at other locations in Missouri that suggests a reasonable likelihood of future
41 acts of noncompliance[, the commission may deny such permit]. In determining whether a
42 reasonable likelihood of noncompliance will exist in the future, the **administrative hearing**
43 commission may look to past acts of noncompliance in Missouri, but only to the extent they
44 suggest a reasonable likelihood of future acts of noncompliance. Such past acts of
45 noncompliance in Missouri, in and of themselves, are an insufficient basis to suggest a
46 reasonable likelihood of future acts of noncompliance. In addition, such past acts shall not be
47 used as a basis to suggest a reasonable likelihood of future acts of noncompliance unless the
48 noncompliance has caused or has the potential to cause, a risk to human health or to the
49 environment, or has caused or has potential to cause pollution, or was knowingly committed, or
50 is defined by the United States Environmental Protection Agency as other than minor. If a
51 hearing petitioner or the **administrative hearing** commission demonstrates either present acts
52 of noncompliance or a reasonable likelihood that the permit seeker or the operations of
53 associated persons or corporations in Missouri will be in noncompliance in the future, such a
54 showing will satisfy the noncompliance requirement in this subsection. In addition, such basis
55 must be developed by multiple noncompliances of any environmental law administered by the
56 Missouri department of natural resources at any single facility in Missouri that resulted in harm
57 to the environment or impaired the health, safety or livelihood of persons outside the facility.
58 For any permit seeker that has not been in business in Missouri for the past five years, the
59 **administrative hearing** commission may review the record of noncompliance in any state where
60 the applicant has conducted business during the past five years. [Any decision of the
61 commission made pursuant to a hearing held pursuant to this section is subject to judicial review
62 as provided in chapter 536. No judicial review shall be available, however, until and unless all
63 administrative remedies are exhausted.] **Once the administrative hearing commission has**
64 **reviewed the appeal, the administrative hearing commission shall make a recommendation**
65 **to the commission on permit issuance or denial.**

66 **4. The commission shall issue its own decision, based on the appeal, for permit**
67 **issuance or denial. If the commission changes a finding of fact or conclusion of law made**
68 **by the administrative hearing commission, or modifies or vacates the decision**
69 **recommended by the administrative hearing commission, it shall issue its own decision,**
70 **which shall include findings of fact and conclusions of law. The commission shall mail**
71 **copies of its final decision to the parties to the appeal or their counsel of record. The**
72 **commission's decision shall be subject to judicial review pursuant to chapter 536, except**

73 **that the court of appeals district with territorial jurisdiction coextensive with the county**
74 **where the mine is to be located shall have original jurisdiction. No judicial review shall be**
75 **available until and unless all administrative remedies are exhausted.**

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