

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

PROPOSED AMENDMENT

10 CSR 40-10.020 Permit Application Requirements. The director is amending subsections (2)(E)-(F), (2)(H)-(J), and (3)(A).

PURPOSE: The amendment will increase acreage, site and total fees for Industrial Mineral Open Pit and In-Stream Sand and Gravel Operation mining more than five thousand (5,000) tons per year along with clarifying public notice certified mail out requirements, aligning the rules with a name change of a federal government agency and changing a recommendation to a decision by the director for permit issuance or denial.

10 CSR 40-10.020 Permit Application Requirements

(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 that have been issued by the Land Reclamation Program. The definition of "person associated with the applicant in a management function" means any proprietorship, subsidiary corporation, parent corporation, sister corporation, successor corporation, or the applicant's officers and directors if the applicant is a corporation and includes all partners if the applicant is a partnership;
8. A list of every individual associated with the applicant in a management function responsible for compliance with sections 444.500 to 444.790, RSMo; 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 as well as the names of all record landowners of real property located contiguous or adjacent to the **property** proposed [*mine plan area:*] **for mining**;
[(I) *Contiguous shall mean in actual contact, touching along a boundary or at a point;*
(II) *Adjacent shall mean immediately opposite from, as in across a road right-of-way, or across a river or stream;*
(III) *Neither definition shall include the names of any record landowners of contiguous real property or real property located in an adjacent state, but only land located in the state of Missouri;*]
 - 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)*] **Farm Service Agency (FSA)** 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)*] **eight hundred dollars (\$800)**.
 2. An annual site fee for each site listed on a permit [*of three hundred dollars (\$300)*]. *If surface mining operations are not conducted 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)] consisting of a hundredth (.01) to ten (10) acres a two hundred dollars (\$200) site fee, ten and a hundredth (10.01) to seventy five (75) acres a five hundred dollars (\$500) site fee, seventy five and a hundredth (75.01) to two hundred (200) acres an eight hundred dollars (\$800) site fee and a site consisting of more than two hundred (200) acres a site fee of one thousand dollars (\$1,000) .

3. An annual acreage fee for each acre bonded by the operator of *[five]* **thirteen** dollars (\$*[5]***13**) 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)]* **six thousand dollars (\$6,000); except after January 1, 2019 the total fee shall not be more than seven thousand five hundred dollars (\$7,500) and after January 1, 2021 the total fee shall not be more than nine thousand dollars (\$9,000).**

[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) At the time the application is deemed complete by the director, the applicant shall publish a notice of intent to operate a surface mine in any newspaper qualified pursuant to section 493.050, RSMo, to publish legal notices in any county where the mine plan area is located. Notice in the newspaper shall be posted once a week for four (4) consecutive weeks beginning no more than ten (10) days after the application is deemed complete in writing by the director via certified mail upon receipt by the applicant. 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 longterm 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 written comments or a request for *[a hearing and/ or]* an informal public meeting may be made by any person with a direct, personal interest in one or more of the factors that the *[Missouri Land Reclamation Commission]* **director** may consider in issuing a permit as required by The Land Reclamation Act, sections 444.760 to 444.790, RSMo, *[or whose health, safety or livelihood will be unduly impaired by the issuance of a permit]* regarding items such as permitting and reclamation requirements, erosion and

siltation control, excavations posing a threat to public safety, or protection of public road rights-of-way. *[If a hearing is held the commission has the ability to consider if the applicant has demonstrated a pattern of noncompliance with other environmental protection laws and regulations administered by the Missouri Department of Natural Resources.]* Written comments shall be sent to the Director of Staff, Land Reclamation Program, Department of Natural Resources, at the program's latest mailing address. All comments and requests for *[hearings and/or]* a public meeting[s] must be submitted in writing to the director's office within fifteen (15) days of the last date of publication of the notice;

(I) At the time the application is deemed complete by the director, the applicant shall also mail letters containing a notice of intent to operate a surface mine.

1. The applicant shall send the letters containing a notice of intent to operate a surface mine by certified mail to:

A. The governing body of the counties or cities in which the proposed area is located; and

B. The last known addresses of all **first tier** record landowners *[of contiguous real property or real property located adjacent to the proposed mine plan area]* **whose property is within two thousand six hundred forty feet, or one-half mile from the border of the proposed mine plan area; and adjacent to the proposed mine plan area, land upon which the mine plan area is located, or adjacent land having a legal relationship with either the applicant or the owner of the land upon which the mine plan area is located.**

2. The content of the notice sent under this subsection shall be the same as the public notice requirements under subsection (2)(H) of this rule; and

(J) The applicant shall submit proof that:

1. All certified letters required by this rule have been sent to all applicable parties, as listed above. Receipts showing that all parties have been properly served shall be submitted to the program to verify delivery; and

2. The newspaper ads have been run properly by submitting copies of the affidavits of publication that states the newspaper has complied with section 493.050, RSMo.

3. Such proof must be provided by the applicant prior to the director making a *[recommendation]* **decision** for approval or denial of the permit.

(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)]* **six thousand dollars (\$6,000)**); **except after January 1, 2019 the total fee shall not be more than seven thousand five hundred dollars (\$7,500) and after January 1, 2021 the total fee shall not be more than nine thousand dollars (\$9,000).**

(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 444.768, RSMo 2014. 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. Amended: Filed April 1, 2004, effective May 30, 2005. Amended: Filed **Date**, 2014, effective **DATE/YEAR**.*

Original authority: 444.530, RSMo 1971, amended 1983,1990, 1993, 1995. **Section 444.768 RSMo 2014.*

Public Cost: This proposed amendment will not cost state agencies or political subdivisions more than five hundred (\$500) in the aggregate.

PRIVATE COST: This proposed rule will cost private entities an estimated two hundred and twenty-six thousand, two hundred dollars (\$226,200) in the aggregate.

*Notice of Public Hearing and Notice to Submit Comments: A public hearing on this proposed amendment will begin at **9:00 a.m. on October 19, 2015**. The public hearing will be held at **1101 Riverside Drive, Jefferson City, Missouri**. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until*

*5:00 p.m., **October 19, 2015.** Written comments should be sent to Program Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102-0176.*