

Rules of
Department of Natural Resources
Division 45—Metallic Minerals Waste Management
Chapter 6—Permits

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**Title 10—DEPARTMENT OF
NATURAL RESOURCES
Division 45—Metallic Minerals Waste
Management
Chapter 6—Permits**

**10 CSR 45-6.010 Permit Applications—
General**

PURPOSE: This rule describes procedures for obtaining a Metallic Minerals Waste Management Permit and steps taken to implement sections 444.352–444.380, RSMo Supp. 1989. It qualifies portions of the law and the relationship with other environmental programs.

(1) All persons who operate or desire to operate a metallic minerals waste management area shall apply to the director for a permit required by section 444.358, RSMo Supp. 1989. Each permit shall consist of a closure plan and an inspection-maintenance plan consistent with sections 444.362 and 444.365, RSMo Supp. 1989 and other terms and conditions as may be necessary to implement those plans.

(2) The minimum contents of the application are listed in section 444.360, RSMo Supp. 1989. To support implementation of the statute—

(A) Application documents should be submitted in triplicate to the Land Reclamation Program, P.O. Box 176, Jefferson City, MO 65102;

(B) All applications shall be submitted under a cover letter signed by the operator. The letter shall contain the following certification statement: “(name of operator) certifies that the information contained in this application, to the best of its knowledge and belief, is true, complete and accurate, and if granted this permit, agrees to abide by the Metallic Minerals Waste Management Act and all rules, orders and decisions issued under the Act’s authority subject to any legitimate appeal available to it”;

(C) The legal description required by section 444.360, RSMo Supp. 1989 need only contain the sections impacted by the waste management area and the appropriate township and range. A survey of the metallic minerals waste management boundary is not required;

(D) The person who holds fee title to the property will be considered the owner of the surface of the waste management area;

(E) The operator of a waste management area, who is not the owner, must provide a statement of the legal right to operate on the waste management area. This statement is to

be submitted to the owner and must certify that a copy of the plan has been provided to the owner. The word plan, as used in sections 444.352–444.380, RSMo Supp. 1989 refers to both the closure and inspection-maintenance plans. A copy of a letter sent by the applicant to the fee title holder certifying the plans to the owner needs to be a part of the application;

(F) The application or transmittal letter covering the application shall contain the following clause: “(name of operator) hereby grants to the director of the Department of Natural Resources or his/her authorized representatives the right of entry and travel upon its lands and operations at all normal working times for the purpose of making necessary field inspections during the operation of the area and during the closure and inspection-maintenance periods”;

(G) The maps required by section 444.360(8), RSMo Supp. 1989 may be submitted as one (1) map or as separate maps. If separate maps are submitted, they should be drawn to the same scale and preferably on a drafting material capable of overlaying;

(H) Maps identifying the waste management area should illustrate the existing and projected boundaries of the waste management area;

(I) The contiguous properties referred to in section 444.360(8)(c), RSMo Supp. 1989 should include, but not be limited to, items such as underground mine networks, air shafts, mills, clear water ponds and surface structures;

(J) Geologic features that could relate to surface water and groundwater quality or dam stability should be included on maps. These should include, but are not limited to, features such as karst areas, caves, springs, unconsolidated geologic materials, faults and other bedrock formations;

(K) The water well information supplied should include all known or suspected residential water supplies and underground injection wells. Any available information about well and casing depths or aquifers should be included and updated every five (5) years with the required closure plan review; and

(L) A geological cross-section of the area under the waste management area should be submitted and include well depths, aquifers, standing water in wells, unconsolidated geologic material, bedrock formations and significant information regarding the quality of groundwater. This cross-section should be at the same horizontal scale as the map required in section 444.360(8), RSMo. The vertical scale shall be clearly labeled.

(3) Application review, permit issuance or permit denial will be conducted with the understanding that—

(A) The permit will be issued to the operator of the facility;

(B) The operator shall submit the permit application and processing fee as specified in sections 444.370 and 444.372, RSMo Supp. 1989;

(C) The director is required by section 444.355.1, RSMo Supp. 1989 to ensure the coordination of existing environmental programs as a part of processing the permit. To accomplish this the director will use department staff to—

1. Review all environmental permits held by the applicant including, but not limited to, National Pollutant Discharge Elimination System (NPDES) permits; dam safety construction, registration and safety permits; air pollution control permits; solid waste management permits; hazardous waste management permits; and underground injection control (UIC) regulations;

2. Determine if the existing programs are adequate to achieve the objective of the closure and inspection-maintenance plans; and

3. Take action as authorized by section 444.372, RSMo Supp. 1989 to resolve any unsatisfactory issue;

(D) The director or designated department staff shall conduct an initial review of each application per section 444.372, RSMo Supp. 1989. This review will include or result in:

1. A check of the completeness of the application as compared to section 444.360, RSMo Supp. 1989 and 10 CSR 45-6;

2. An initial evaluation of proposed final uses of the waste management area, financial assurance instruments, the closure and inspection-maintenance plans; and

3. A submittal to the applicant of the initial review findings;

(E) The applicant’s response to the initial review findings referred to in paragraph (3)(D)3. will initiate a more detailed and site-specific evaluation of the application. To the extent allowed by section 444.380, RSMo Supp. 1989, this detail evaluation may require—

1. Orders of rulemaking necessary to implement or interpret the statute;

2. Field investigations to determine compliance and evaluate proposed management plan details;

3. Communications with other state and federal agencies necessary to implement subsection (3)(C) of this rule; and

4. Meetings with the operator to discuss and promote approvable management methods; and

(F) A completed application, referenced in section 444.372, RSMo Supp. 1989 will contain supplemental or corrected information requested during the review process described in section (3) of this rule.

(4) Permit Issuance, Conditions and Revisions.

(A) Section 444.372, RSMo Supp. 1989 requires issuance or denial of the Metallic Minerals Waste Management Permit within ninety (90) days of receipt of the completed application.

(B) Sections 444.362 and 444.365, RSMo Supp. 1989 require the operator to submit closure and inspection-maintenance plans and conduct a periodic plan review, along with the director, every five (5) years. Sections 444.362 and 444.365, RSMo Supp. 1989, 10 CSR 45-6.020 and 10 CSR 45-8 will be used as guidelines for the review process.

(C) Section 444.368, RSMo Supp. 1989 requires the operator to secure an approvable financial assurance instrument. Acceptable forms of financial assurance are listed in the referenced statute. The amount of financial assurance required by section 444.368.2, RSMo Supp. 1989 will be based upon the acreage within the metallic minerals waste management area boundary. Section 444.368, RSMo Supp. 1989 and 10 CSR 45-6.030 will be used as guidelines for review and approval of financial assurance instruments.

(D) Consistent with the purposes of the approved closure plan set forth by section 444.362, RSMo Supp. 1989, the Metallic Minerals Waste Management Permit shall remain in effect until—

1. Coordination with other applicable environmental permits is unnecessary; and
2. There is evidence through the inspection-maintenance plan that ensures the continued integrity of any waste management structures and the achievement of final designated uses.

(E) After notice to the permittee and a hearing, if required, the permit may be modified as necessary.

(5) Enforcement. The director is authorized by section 444.375, RSMo Supp. 1989 to investigate noncompliance with the waste management permit. Authorized enforcement actions are outlined in sections 444.352–444.380, RSMo Supp. 1989.

AUTHORITY: section 444.380, RSMo Supp. 1999. Original rule filed Oct. 2, 1990,*

effective April 29, 1991. Amended: Filed Jan. 19, 2000, effective Sept. 30, 2000.

**Original authority: 444.380, RSMo 1989, amended 1993, 1995.*

10 CSR 45-6.020 Closure Plan and Inspection-Maintenance Plan—General Requirements

PURPOSE: This rule describes general requirements and guidelines for obtaining an approved Metallic Minerals Waste Management Area Permit and the relationship of this permit to the requirements of other environmental programs.

(1) To comply with the Metallic Minerals Waste Management Act, sections 444.352–444.380, RSMo Supp. 1989 and to ensure that metallic mineral wastes are contained in an environmentally safe manner, the operator of a metallic minerals waste management area must obtain approval of a method of closure and an inspection-maintenance plan following closure.

(2) Consistent with sections 444.362 and 444.365, RSMo Supp. 1989, the requirements of applicable state environmental programs and permits shall be included in the closure and inspection-maintenance plans. Compliance with these requirements will be considered a condition of the Metallic Minerals Waste Management Permit. Existing environmental programs, permits, statutes and rules include, but are not limited to:

(A) The Water Pollution Control Program’s—

1. National Pollutant Discharge Elimination System (NPDES) Permit, Chapter 644, RSMo and 10 CSR 20-6.010;
2. 401/404 approvals, Federal Clean Water Act and section 401, RSMo;
3. Land application letters of approval Chapter 644, RSMo; and
4. Underground Injection Control (UIC) Permit, Chapters 577 and 644, RSMo, 10 CSR 20-6.070 and 10 CSR 20-6.090;

(B) The Division of Geology and Land Survey’s Dam and Reservoir Safety—

1. Registration Permit, section 236.440, RSMo and 10 CSR 22-3.030;
2. Construction Permit, section 236.435, RSMo and 10 CSR 22-3.040; and
3. Safety Permit, section 236.440, RSMo and 10 CSR 22-3.050;

(C) The Solid Waste Management Program’s—

1. Solid Waste Disposal Area Permit, sections 260.200–260.245, RSMo and 10 CSR 80-1.010–10 CSR 80-4.010;

2. Solid Waste Processing Facility Permit, sections 260.200–260.245, RSMo, 10 CSR 80-1.010, 10 CSR 80-2.020 and 10 CSR 80-5.010; and

3. Waste Tire Requirements, section 206.200–206.345, RSMo and 10 CSR 80-8.020–10 CSR 80-8.060;

(D) The Air Pollution Control Program’s—

1. Major and Minor Source Permits, section 643.075, RSMo and 10 CSR 10-6.060;

2. *De minimis* Permit, section 643.075, RSMo and 10 CSR 10-6.060; and

3. Open Burning Permit, Chapter 643, RSMo and, 10 CSR 10-2.100, 10 CSR 10-3.030, 10 CSR 10-4.090, 10 CSR 10-5.070 and 10 CSR 10-6.060;

(E) The Public Drinking Water Program’s permit to construct and permit to dispense drinking water, sections 640.110.1 and 640.115, RSMo and 10 CSR 60-10.010 and 10 CSR 60-3.010;

(F) The Land Reclamation Program’s permit to engage in surface mining and sections 444.500–444.786, RSMo; and

(G) The Hazardous Waste Management Program’s—

1. Hazardous Waste Generator Notification Requirements, section 260.380, RSMo and 10 CSR 25-5;

2. Hazardous Waste Resource Recovery Certification, section 260.350–260.434, RSMo and 10 CSR 25-9; and

3. Hazardous Waste Facility Permit, section 260.350, RSMo and 10 CSR 25.

(3) If it is determined that existing environmental laws and regulations are not adequate to achieve the objectives of the closure and inspection-maintenance plans, the director may establish additional permit conditions as may be necessary to achieve those objectives, taking cost, benefit and technical feasibility into account.

(4) The definitions, provisions and guidelines in 10 CSR 45 shall be used with and, in case of conflict, shall take precedence over other regulations listed in section (2) of this rule.

AUTHORITY: section 444.380, RSMo Supp. 1999. Original rule filed Oct. 2, 1990, effective April 29, 1991. Amended: Filed Jan. 19, 2000, effective Sept. 30, 2000.*

**Original authority: 444.380, RSMo 1989, amended 1993, 1995.*

10 CSR 45-6.030 Financial Assurance—Company Guarantee and Financial Test

PURPOSE: This rule establishes procedures for obtaining approval from the director of the Department of Natural Resources of a financial assurance instrument in the form of a company guarantee.

(1) Definitions. The terms defined in section (1) of this rule are used in the specifications for the financial test which shall accompany a company guarantee. The definitions are intended to assist in understanding the rule and are not intended to limit the term definitions in any way that conflicts with generally accepted accounting practices.

(A) Assets. All existing and all probable future economic benefits obtained or controlled by a particular entity.

(B) Company. The owner/operator of the metallic mineral waste management area.

(C) Current assets. Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(D) Current liabilities. Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(E) Liabilities. Probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(F) Net working capital. Current assets minus current liabilities.

(G) Net worth. Total assets minus total liabilities and is equivalent to owner's equity.

(H) Owner/operator. Owner and operator.

(I) Parent corporation. A corporation which directly owns at least fifty percent (50%) of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a subsidiary of the parent corporation.

(J) Tangible net worth. The tangible assets that remain after deducting liabilities. These assets would not include intangibles such as goodwill and rights to patents or royalties.

(2) Company Guarantee and Financial Test. The requirements for a financial assurance instrument may be satisfied by passing a financial test and submitting a letter from the company guaranteeing the required amount of financial assurance. A corporate guarantee submitted by the parent corporation of the owner/operator as specified in subsection

(2)(J) of this rule may also be used to satisfy the requirement for financial assurance.

(A) To pass the financial test the owner/operator must meet the criteria of either paragraph (2)(A)1. or 2. of this rule.

1. The owner/operator must have—

A. Two (2) of the following three (3) ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

B. Tangible net worth at least three (3) times the required financial assurance covered by the test; and

C. Total assets in Missouri amounting to at least three (3) times the required financial assurance covered by the test.

2. The owner/operator must have—

A. A current rating for his/her most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

B. Tangible net worth at least three (3) times the sum of the required financial assurance covered by the test; and

C. Total assets located in the state of Missouri amounting to at least three (3) times the sum of the required financial assurance covered by the test.

(B) The phrase "required financial assurance" as used in subparagraph (2)(A)1.C. of this rule refers to the penal sum required by section 444.368, RSMo Supp. 1989 and named in the letter from the owner/operator's chief financial officer (Appendix Form 1). The penal sum is one thousand dollars (\$1000) for each acre or fraction of an acre of the metallic minerals waste management area but not less than twenty thousand dollars (\$20,000) for each permit.

(C) To demonstrate that s/he meets this test, the owner/operator must submit the following items to the director:

1. A form letter provided by the director, signed by the owner/operator's chief financial officer and worded as specified on the form letter;

2. A copy of the independent certified public accountant's report on examination of the owner/operator's financial statements for the latest completed fiscal year; and

3. A special report from the owner/operator's independent certified public accountant to the owner/operator stating that—

A. S/he has compared the data which the form letter from the chief financial officer specifies as having been derived from the independently audited year-end financial

statements for the latest fiscal year with the amounts in those financial statements; and

B. No matters in connection with that procedure, came to his/her attention which caused him/her to believe that the specified data should be adjusted.

(D) After the initial submission of items specified in subsection (2)(C) of this rule, the owner/operator must send updated information to the director within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subsection (2)(C) of this rule.

(E) If the owner/operator no longer meets the requirements of subsection (2)(A) of this rule, s/he must send notice to the director of intent to establish alternate financial assurance. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner/operator no longer meets the requirements. The owner/operator must provide the alternate financial assurance within one hundred twenty (120) days after the end of that fiscal year.

(F) The director, based on a reasonable belief that the owner/operator may no longer meet the requirements of subsection (2)(A) of this rule, may require reports of financial condition at any time from the owner/operator in addition to those specified in subsection (2)(A) of this rule. If the director finds, on the basis of these reports or other information, that the owner/operator no longer meets the requirements of subsection (2)(A) of this rule, the owner/operator must provide alternate financial assurance as noted in section 444.368, RSMo Supp. 1989 within thirty (30) days after notification of that finding.

(G) The director may require and evaluate additional information which relates to financial status including present or potential environmental liabilities and may deny the use of the financial test based upon that evaluation or the failure of an applicant to provide any additional information requested by the director within thirty (30) days from the date of this request. Pending approval of the use of the test by the director or pending appeal before any court of competent jurisdiction of the director's denial of the use of the test, the owner/operator shall comply with the financial assurance requirements through the use of an alternate financial assurance mechanism as noted in section 444.368, RSMo Supp. 1989. The burden of proof shall be on the applicant in the event of any appeal of a denial. If the director rules that the owner/operator's financial test is unacceptable, the owner/operator shall have thirty (30) days from the date of notification of the

decision to provide alternative financial assurances.

(H) The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner/operator's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner/operator must provide alternate financial assurance as noted in section 444.368, RSMo Supp. 1989 within thirty (30) days after notification of the disallowance.

(I) The owner/operator is no longer required to submit the items specified in subsection (2)(C) of this rule when—

1. An owner/operator substitutes alternate financial assurance as specified in section 444.368, RSMo Supp. 1989; or

2. The director releases the owner/operator from the requirements as specified in section 444.368, RSMo Supp. 1989.

(J) An owner/operator may meet the financial assurance requirements of section 444.368, RSMo Supp. 1989, by obtaining a written guarantee, referred to in this rule as a corporate guarantee. The guarantor must be the parent corporation of the owner/operator. The guarantor must meet the requirements for owner/operators in subsections (2)(A)—(I) of this rule and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified on the forms provided by the director to meet the guarantee. The corporate guarantee must accompany the items sent to the director as specified in subsection (2)(C) of this rule. The terms of the corporate guarantee shall provide that—

1. If the owner/operator fails to perform closure and/or inspection-maintenance of a disposal area covered by the corporate guarantee in accordance with the closure and/or inspection-maintenance plan and other permit requirements whenever required to do so, the guarantor will do so or establish alternate financial assurance as specified in section 444.368, RSMo Supp. 1989, in the name of the owner/operator;

2. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner/operator and to the director. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner/operator and the director as evidenced by the return receipts; and

3. If the owner/operator fails to provide alternate financial assurance as specified in section 444.368, RSMo Supp. 1989, and obtain the written approval of the alternate assurance from the director within ninety (90) days after receipt of both the owner/operator and the director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide alternative financial assurance in the name of the owner/operator.

(3) Registration with Missouri Secretary of State. Any company or parent corporation providing financial assurance as specified in section 444.368, RSMo Supp. 1989, shall be registered with the Office of the Secretary of State to do business in Missouri.

AUTHORITY: section 444.380, RSMo Supp. 1999. Original rule filed Oct. 2, 1990, effective April 29, 1991. Amended: Filed Jan. 19, 2000, effective Sept. 30, 2000.*

**Original authority: 444.380, RSMo 1989, amended 1993, 1995.*