
Rules of
Department of Natural Resources
Division 40—Land Reclamation Commission
Chapter 6—Permitting Requirements for Surface
and Underground Coal Mining and Reclamation
Operations and Coal Exploration

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**Title 10—DEPARTMENT OF
NATURAL RESOURCES**

**Division 40—Land Reclamation
Commission**

**Chapter 6—Permitting Requirements
for Surface and Underground Coal
Mining and Reclamation Operations
and Coal Exploration**

**10 CSR 40-6.010 General Requirements
for Permits, Permit Applications and Coal
Exploration**

PURPOSE: This rule sets forth requirements for permits, permit applications and coal exploration pursuant to sections 444.810, 444.815, 444.820, 444.835, 444.840 and 444.850, RSMo.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Responsibilities.

(A) Persons seeking to engage in surface coal mining and reclamation operations and coal exploration must submit an application for and obtain a permit for those operations in accordance with this chapter.

(B) The commission or director will review each application for a permit, approve or disapprove each permit application or exploration application and issue, condition, suspend or revoke exploration approval, permits, renewals or revised permits as required.

(C) All persons engaging in surface coal mining and reclamation operations and coal exploration under this permit shall comply with the terms and conditions of the permit and regulatory program.

(2) Definitions. As used throughout this chapter, except where otherwise indicated—

(A) Applicant means a person who seeks to obtain a permit under this chapter;

(B) Application means the documents and other information filed with the director under this chapter for the issuance of a permit;

(C) Complete application means an application for a permit, which contains all information required under this chapter;

(D) General area means, with respect to hydrology, the topographic and groundwater basin surrounding a mine plan area which is

of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface water and groundwater systems in the basins;

(E) Owned or controlled and owns or controls means any one or a combination of the relationships specified in paragraphs (2)(E)1. and 2. of this definition—

1. Being a permittee of a surface coal mining operation, based on instruments of ownership or voting securities, owning of record in excess of fifty percent (50%) of an entity or having any other relationship which gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator or other entity conducts surface coal mining operations; and

2. The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption, in fact, does not have the authority, directly or indirectly, to determine the manner in which the relevant surface coal mining operation is conducted:

A. Being an officer or director of an entity;

B. Being the operator of a surface coal mining operation;

C. Having the ability to commit the financial or real property assets or working resources of an entity;

D. Being a general partner in a partnership;

E. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten percent through fifty percent (10%–50%) of the entity; or

F. Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation;

(F) Principal shareholder means any person who is the record or beneficial owner of ten percent (10%) or more of any class of voting stock;

(G) Property to be mined means both the surface and mineral estates on and underneath lands which are within the permit area;

(H) Secretary is the Secretary of the Interior; and

(I) Violation notice means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading or other written communication.

(3) Coordination with Requirements Under Other Laws. The director, to avoid duplication, will coordinate the review and issuance of permits for surface coal mining and reclamation operations with—

(A) Any other federal or state permit process applicable to those operations including, at a minimum, permits required under the following:

1. Clean Water Act (33 U.S.C. Section 1251);

2. Clean Air Act (42 U.S.C. Section 7401); and

3. Resource Conservation and Recovery Act (42 U.S.C. Section 3251);

(B) The requirements of any water quality management plans which have been approved by the administrator of the United States Environmental Protection Agency under Sections 208 or 303(c), and (e) of the Clean Water Act, (33 U.S.C. Sections 1288, 1313(c), and (e)); and

(C) The applicable requirements of the Endangered Species Act of 1973, (16 U.S.C. 1531–1543); the Fish and Wildlife Coordination Act, (16 U.S.C. 661–666c); the National Historic Preservation Act of 1966 (16 U.S.C. 470–47011); Executive Order 11593; the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469–469c); the Bald Eagle Protection Act (16 U.S.C. 668d); and the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–712).

(4) Except as otherwise provided for in this rule, on and after eight (8) months from the date on which the state program is approved by the secretary pursuant to 30 U.S.C. 1253 and published in the *Federal Register*, no person shall engage in or carry out any surface coal mining and reclamation operations unless that person shall have first obtained a valid permit pursuant to this chapter.

(A) Initial Implementation. From September 28, 1979 until eight (8) months after approval of the state program, no person shall engage in or carry out any surface mining or reclamation operations unless that person shall first have obtained a permit pursuant to and complies with sections 444.500–444.755, RSMo, as in existence prior to September 28, 1979. Any permit issued pursuant to these provisions shall continue in force and effect for the term of the permit or any revisions or renewals the permit, except as provided in paragraph (4)(A)1. of this rule.

1. No permit issued pursuant to sections 444.500–444.755, RSMo, as in existence prior to September 28, 1979, shall extend past eight (8) months from the date of

approval of the state program, except as provided in subparagraph (4)(A)1.A. of this rule.

A. If an application for a permit pursuant to this chapter is filed within two (2) months after the approval of the state program, the operation may conduct operations under a permit issued pursuant to sections 444.500–444.755, RSMo, until determination on the application has been made by the director under 10 CSR 40-6.070.

(B) Filing Deadlines After Initial Implementation.

1. General. Each person who conducts or expects to conduct new surface coal mining and reclamation operations shall file a complete application for a permit for those operations allowing at a minimum of ninety (90) days for review of the application.

2. Renewal of valid permits. An application for renewal of a permit under 10 CSR 40-6.090(5) and (6) shall be filed at least one hundred twenty (120) days before the expiration of the permit involved. A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

3. Revisions of permits. Any application for revision of a permit under 10 CSR 40-6.090(4) shall be filed within a time sufficient to allow for review of the application before the date on which the permittee expects to revise surface coal mining or reclamation operations.

4. Succession to rights granted under prior permits. Any application for a new permit required for a person succeeding by transfer, sale or assignment of rights granted under a permit shall be filed not later than thirty (30) days after that succession is approved by the commission.

(5) Permit Applications—General Requirements for Format and Contents.

(A) Applications for permits to conduct surface and underground coal mining and reclamation operations shall be filed in the format required by the director. The application shall be complete and include, at a minimum for surface mining activities, all applicable information required under 10 CSR 40-6.030–10 CSR 40-6.050 for underground mining activities, all applicable information required under 10 CSR 40-6.100–10 CSR 40-6.120, and for special types of surface and

underground coal mining and reclamation operations, all the information required under 10 CSR 40-6.060.

(B) Information set forth in the application shall be current, presented clearly and concisely and supported by appropriate references to technical and other written material available to the commission and director.

(C) With regard to technical information presented in the permit application—

1. All technical data submitted in the application shall be accompanied by the following:

A. Names of persons or organizations which collected and analyzed the data;

B. Dates of the collection and analyses; and

C. Descriptions of methodology used to collect and analyze the data; and

2. Technical analyses shall be planned by or under the supervision of professionals qualified in the subject to be analyzed.

(D) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency consulted by the applicant in preparation of the application for information on the land uses, geology, vegetation, fish and wildlife, water quantity and quality, air quality and archeological, cultural and historic features.

(E) Maps and Plans—General Requirements.

1. Maps submitted with applications shall be presented in a consolidated format, to the extent possible and shall include all the types of information that are set forth on topographic maps of the United States Geological Survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the remainder of the mine plan area and the adjacent areas shall clearly show the lands and waters within those areas and be in a scale determined by the commission or director, but in no event smaller than 1:24,000.

2. All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the mine plan area. At a minimum, distinctions shall be clearly shown among those portions of the mine plan area in which surface coal mining operations occurred—

A. Prior to August 3, 1977;

B. After August 3, 1977 and prior to May 3, 1978;

C. After May 3, 1978 and prior to the approval of the state regulatory program;

D. After the date of approval of the state regulatory program and prior to the esti-

mated date of issuance of the first permit under this rule; and

E. After the estimated date of issuance of a permit by the commission or director.

(6) Permit Fees. Each application for a surface coal mining and reclamation permit pursuant to a regulatory program shall be accompanied by a fee.

(A) For new surface coal mining permits there shall be an initial fee of one hundred dollars (\$100), plus an acreage fee of one hundred dollars (\$100) for each acre or fraction of an acre of the permit area. For multiple year permits, the acreage fee shall be paid annually by dividing the total acres in the permit area by the number of years covered by the permit and multiplying that number by that year's acreage fee, and, after the first year, there shall be an annual fee of one hundred dollars (\$100). For the first year of any new permit, the first year's fees shall be paid with the permit application. Afterwards and until the operator obtains the final liability release on all lands covered by the permit, the annual fee and acreage fee shall be paid as a condition to and prior to operating for that permit year. The acreage fee shall be paid only once on any given area, except in the case of a revocation; an allowance shall be given for any acreage fee previously paid for a permit under sections 444.500–444.755, RSMo, when the land was not disturbed under the permit.

(B) For permit renewal, there shall be a basic fee of one hundred dollars (\$100) for each year of renewal, to be paid annually.

(C) For permit revision, there shall be a basic application fee of one hundred dollars (\$100).

(D) For application of a successor to a permit, there shall be a basic fee of one hundred dollars (\$100).

(E) For coal exploration permits there shall be an application fee of one hundred dollars (\$100).

(F) For surface effects of underground mining, there shall be a fee determined as in subsection (6)(A) of this rule.

(G) For reinstatement of a permit after suspension, there shall be a fee of one hundred dollars (\$100).

(H) Any land disturbed subsequent to revocation of a permit which included this land shall require a new permit application and fees paid as determined in subsection (6)(A) of this rule.

(7) Verification of Application. Applications for permits shall be verified under oath by a responsible official of the applicant that the



information contained in the application is true and correct to the best of the official's information and belief.

AUTHORITY: sections 444.530 and 444.810, RSMo Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed May 12, 1980, effective Sept. 12, 1980. Amended: Filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed June 2, 1987, effective Aug. 27, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000, effective Oct. 30, 2000.*

**Original authority: 444.530, RSMo 1971, amended 1983, 1990, 1993, 1995 and 444.810, RSMo 1979, amended 1983, 1993, 1995.*

10 CSR 40-6.020 General Requirements for Coal Exploration, Permits

PURPOSE: This rule sets forth the requirements for coal exploration permits pursuant to 444.810 and 444.845, RSMo.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Responsibilities.

(A) It is the responsibility of any person conducting or seeking to conduct coal exploration to comply with the requirements of this rule.

(B) The commission or director will receive applications for permits to explore, approve or disapprove the applications and issue, condition, suspend, revoke or enforce permits as required.

(2) Permit Requirements for Exploration Removing Two Hundred Fifty (250) Tons of Coal or Less.

(A) Any person who intends to conduct coal exploration operations during which two hundred fifty (250) tons or less of coal will be removed and which will not substantially disturb the natural land surface, before conducting the exploration, shall file with the director an application to remove two hundred fifty (250) tons or less. This type of per-

mit is intended specifically for drilling operations.

(B) The application shall be submitted on a form provided by the director and shall include:

1. The name, address and telephone number of the person seeking to explore;
2. The name, address and telephone number of the person's representative who will be present at, and responsible for, conducting the exploration activities;
3. A narrative describing the proposed exploration area or a map at a scale of 1:24,000 or greater showing the proposed area of exploration and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water and pipelines;
4. A statement of the period of intended exploration (not to exceed twelve (12)-consecutive calendar months for a given notice); and
5. A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of 10 CSR 40-4.010(3).

(3) Permit requirements for exploration removing more than two hundred fifty (250) tons of coal or where exploration will substantially disturb the natural land surface.

(A) Exploration Permit. Any person who intends to conduct coal exploration during which more than two hundred fifty (250) tons of coal will be removed, or where exploration will substantially disturb the natural land surface or which will take place on lands designated as unsuitable for surface mining under 10 CSR 40-5.020, before conducting the exploration, shall submit an application on a form provided by the director and obtain written approval from the commission. Exploration permits shall not be approved for more than five thousand (5000) tons, unless otherwise approved by the commission for good cause shown.

(B) Application Information. Each application for an exploration permit shall contain, at a minimum, the following information:

1. The name, address and telephone number of the applicant;
2. The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities;
3. A narrative describing the proposed exploration area;

4. A narrative description of the methods and equipment to be used to conduct the exploration and reclamation;

5. An estimated timetable for conducting and completing each phase of the exploration and reclamation;

6. The estimated amount of coal to be removed and a description of the methods to be used to determine the amount;

7. A statement of why extraction of more than two hundred fifty (250) tons of coal is necessary for exploration;

8. A description of—
A. The cultural or historical resources listed on the National Register of Historic Places;

B. The cultural or historical resources known to be eligible for listing on the National Register of Historic Places;

C. Known archaeological resources located within the proposed exploration area; and

D. Any other information that the director may require regarding known or unknown historic or archaeological resources;

9. A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) identified within the proposed exploration area;

10. A description of the measures to be used to comply with the applicable requirements of 10 CSR 40-4.010(3);

11. The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;

12. A map(s) at a scale of 1:24,000 or larger showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water and pipelines; proposed locations of trenches, roads and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531–1543); and

13. If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(C) Public Notice and Opportunity to Comment. Public notice of the application

and opportunity to comment shall be provided as follows:

1. Within ten (10) days of notification from the director that an application is considered administratively complete, the applicant shall provide public notice in a newspaper of general circulation in the county of the proposed exploration area;

2. The public notice shall state the name and address of the person seeking approval, the filing date of the application, the address of the director where written comments on the application may be submitted, the closing date of the comment period and a description of the area of exploration; and

3. Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within thirty (30) days of the newspaper advertisement.

(D) Decisions on Applications for Exploration Removing More Than Two Hundred Fifty (250) Tons of Coal.

1. The commission shall act upon an administratively complete application for a coal exploration permit and any written comments within a reasonable period of time. The approval of a coal exploration permit may be based only on a complete and accurate application.

2. The commission shall approve a complete and accurate application for a coal exploration permit filed in accordance with this rule if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will—

A. Be conducted in accordance with this rule, 10 CSR 40-4.010 and the applicable provisions of the director or commission;

B. Not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

C. Not adversely affect any cultural or historical resources listed on the National Register of Historic Places, pursuant to the National Historic Preservation Act, (16 U.S.C. Section 470, 1976, Supp. V), unless the proposed exploration has been approved by both the director or commission and the agency with jurisdiction over those matters.

3. Terms of approval issued by the commission shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this rule, 10 CSR 40-4.010 and any other requirement of the director or commission.

(E) Notice and Hearing.

1. The director or commission shall notify the applicant, the appropriate local government officials and other commenters on the application, in writing, of the commission's decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the director or commission at a public office in the vicinity of the proposed exploration operations.

2. Any person having an interest which is or may be adversely affected by a decision of the commission pursuant to paragraph (3)(E)1. of this rule shall have the opportunity for administrative and judicial review as set forth in 10 CSR 40-6.080.

(4) Coal Exploration Compliance Duties.

(A) All coal exploration and reclamation activities that substantially disturb the natural land surface shall be conducted in accordance with the coal exploration requirements of this rule, 10 CSR 40-4.010 and any exploration permit term or condition imposed by the director or commission.

(B) Any person who conducts any coal exploration in violation of the provisions of 10 CSR 40-4.010, or any exploration permit term or condition imposed by the director or commission shall be subject to the provisions of 10 CSR 40-8.030 and 10 CSR 40-8.040.

(5) Requirements for Commercial Use or Sale. Except as provided in this section, any person who extracts coal for commercial use or sale during coal exploration operations shall obtain a surface coal mining and reclamation operations permit for those operations from the director under 10 CSR 40-6.010 and 10 CSR 40-6.030 through 10 CSR 40-6.120. No surface coal mining and reclamation operations permit is required if the director or commission makes a prior written determination that the commercial use or sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time. The person conducting the exploration shall file an application for such determination with the director or commission. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing

the coal. The application shall contain the following:

(A) The name of the testing firm and the locations at which the coal will be tested;

(B) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user or, if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

1. The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

2. The amount of coal necessary for the test and why a lesser amount is not sufficient; and

3. A description of the specific tests that will be conducted;

(C) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of a user identified previously, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve; and

(D) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal, the feasibility of developing a surface coal mining operation, or both.

(6) Public Availability of Information.

(A) Except as provided in subsection (6)(B) of this rule, all information submitted to the director or commission under this section shall be made available for public inspection and copying.

(B) The director or commission shall keep information confidential if the person submitting it requests, in writing at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

(C) Information requested to be held as confidential under subsection (6)(B) shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

(7) Bonding for Coal Exploration Permits.

(A) Permits for exploration where two hundred fifty (250) tons of coal or less will be removed shall be bonded at the rate of five thousand dollars (\$5,000) per permit. Bonds shall be of the type allowed in 10 CSR 40-7.011(6).

(B) Permits for exploration where more than two hundred fifty (250) tons of coal will be removed or where exploration will substantially disturb the natural land surface shall be bonded at a rate sufficient to complete reclamation if the work has to be performed by the commission in the event of forfeiture.

(C) Exploration activities shall not commence until the bond has been accepted in writing by the director.

(8) Bond Release for Coal Exploration Permits. Applications for bond release may be made to the commission when an area qualifies for release. An exploration area shall qualify for bond release when the area is successfully reclaimed in accordance with the approved reclamation plan. Partial bond releases may be approved by the commission as long as the remaining bond is sufficient to complete reclamation if the remaining work has to be performed by the commission in the event of forfeiture.

AUTHORITY: section 444.530, RSMo Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Nov. 10, 1980, effective Feb. 11, 1981. Rescinded and readopted: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000, effective Oct. 30, 2000.*

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

10 CSR 40-6.030 Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information

PURPOSE: This rule sets forth requirements for legal, financial, compliance and related information for surface mining permit applications pursuant to sections 444.810, 444.815, 444.820, 444.825, 444.835, 444.840 and 444.850, RSMo.

(1) Identification of Interests.

(A) Each application shall contain the following information, except that the submission of a Social Security number is voluntary:

1. The permit applicant, including his/her telephone number, address and, as applicable, Social Security number and employer identification number;

2. Every legal or equitable owner of record of the property to be mined;

3. The holders of record of any leasehold interest in the property to be mined;

4. Any purchaser of record under a real estate contract of the property to be mined;

5. The operator, if the operator is a person different from the applicant, including his/her telephone number, address and, as applicable, Social Security number and employer identification number;

6. The resident agent of the applicant who will accept service of process, including his/her telephone number, address and, as applicable, Social Security number and employer identification number; and

7. The person who will pay the abandoned mine land reclamation fee, including his/her telephone number, and, as applicable, Social Security number and employer identification number.

(B) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

1. Names and addresses of every officer, partner, director or other person performing a function similar to a director of the applicant;

2. Name and address of any person who is a principal shareholder of the applicant; and

3. Names under which the applicant, partner or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application.

(C) For each person who owns or controls the applicant under the definition of owned or controlled and owns or controls in 10 CSR 40-6.010(2)(E), as applicable each application shall contain—

1. The person's name, address, Social Security number and employer identification number;

2. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

3. The title of the person's position, date position was assumed and, when submitted under 10 CSR 40-6.070(13)(E), date of departure from the position;

4. Each additional name and identifying number, including employer identification number, federal or state permit number and the Mine Safety and Health Administration (MSHA) number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the

United States within the five (5) years preceding the date of the application; and

5. The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(D) For any surface coal mining operation owned or controlled by the applicant under the definition of owned or controlled and owns or controls in 10 CSR 40-6.010(2)(E), each application shall contain—

1. Name, address, identifying numbers, including employer identification number, federal or state permit number and the MSHA number, the date of issuance of the MSHA number and the regulatory authority; and

2. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(E) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(F) Each application shall contain the name of the proposed mine and the MSHA identification number for the mine and all sections, if any.

(G) Each application shall contain a statement of all lands, interests in lands, options or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit. If requested by the applicant, any information required by this subsection which is not on public file pursuant to state law shall be held in confidence by the director, as provided under 10 CSR 40-6.070(6)(C)2.

(H) After an applicant is notified that his/her application is approved, but before the permit is issued, the applicant, as applicable, shall update, correct or indicate that no change has occurred in the information previously submitted under subsections (1)(A)–(D) of this rule.

(I) The applicant shall submit this information required by sections (1) and (2) of this rule in any prescribed format that is issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE).

(2) Compliance Information. Each application shall contain—

(A) A statement of whether the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant has—

1. Had a federal or state mining permit suspended or revoked in the last five (5) years; or

2. Forfeited a mining bond or similar security deposited in lieu of bond;

(B) If any suspension, revocation or forfeiture has occurred, a statement of the facts involved, including:

1. Identification number and date of issuance of the permit or date and amount of bond or similar security;

2. Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

3. The current status of the permit, bond or similar security involved;

4. The date, location and type of any administrative or judicial proceedings initiated concerning the suspension, revocation or forfeiture; and

5. The current status of these proceedings;

(C) A list of all violation notices received by the applicant during the three (3)-year period preceding the application date, and a list of all unabated cessation orders and unabated violation notices received prior to the date of the application by any surface coal mining and reclamation operation that is deemed or presumed to be owned or controlled by the applicant under the definition of "owned or controlled" and "owns or controls" in 10 CSR 40-6.010(2)(E) of this chapter. For each notice of violation issued pursuant to 10 CSR 40-8.030(7) or under the federal or state program for which the abatement period has not expired, the applicant must certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

1. Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

2. Brief description of the violation alleged in the notice;

3. The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (C) of this section to obtain administrative or judicial review of the violation;

4. The current status of the proceedings and of the violation notice; and

5. The actions, if any, taken by any person identified in subsection (C) of this section to abate the violation.

(D) After an applicant is notified that his/her application is approved, but before the permit is issued, the applicant, as applicable, shall update, correct or indicate that no change has occurred in the information previously submitted under this section.

(3) Right of Entry and Operation Information.

(A) Each application shall contain a description of the documents upon which the applicant bases his/her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the documents pertain and explain the legal rights claimed by the applicant.

(B) Where the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide for lands within the permit area—

1. A copy of the written consent of the surface owner to the extraction of coal by surface mining methods;

2. A copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

3. If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under the state law the applicant has the legal authority to extract the coal by those methods.

(C) Nothing in this section shall be construed to afford the commission or director the authority to adjudicate property title disputes.

(4) Relationship to Areas Designated Unsuitable for Mining.

(A) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under 10 CSR 40-5.020 or under study for designation in an administrative proceeding under that rule.

(B) If an applicant claims the exemption in 10 CSR 40-6.070(8)(D)2., the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(C) If an applicant proposes to conduct surface mining activities within three hundred feet (300') of an occupied dwelling, the application shall contain the waiver of the

owner of the dwelling as required in 10 CSR 40-5.010(3)(E).

(5) Permit Term Information.

(A) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(B) If the applicant proposes to conduct surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 10 CSR 40-6.070(12)(A).

(6) Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance.

(7) Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by—

(A) Type of permit or license;

(B) Name and address of issuing authority;

(C) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(D) If a decision has been made, the date of approval or disapproval by each issuing authority.

(8) Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection under 10 CSR 40-6.070(2)(D).

(9) Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the director and made a part of the complete application, not later than four (4) weeks after the last date of publication required under 10 CSR 40-6.070(2)(A).

(10) Access. The written consent, of the applicant and any other persons necessary to grant access, should be given to the commission or the director for the area of land affected under application from the date of application until the expiration of any permit granted under the application and after that

for such time as is necessary to assure compliance with all provisions of this law or any corresponding rule.

AUTHORITY: section 444.530, RSMo Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed Sept. 15, 1994, effective April 30, 1994. Amended: Filed March 21, 2000, effective Oct. 30, 2000.*

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

10 CSR 40-6.040 Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

PURPOSE: This rule sets forth requirements for information on environmental resources for surface mining permit applications pursuant to sections 444.810, 444.820, 444.825, 444.835, 444.840 and 444.850, RSMo.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Responsibilities.

(A) It is the responsibility of the applicant to provide, except where specifically exempted in this rule, all information required by this rule in the application.

(B) It is the responsibility of state and federal government agencies to provide information for applications as specifically required by this rule.

(2) General Requirements. Each permit application shall include a description of the existing, premining environmental resources within the proposed mine plan area and adjacent areas that may be affected or impacted by the proposed surface mining activities.

(3) General Environmental Resources Information. Each application shall describe and identify—

(A) The size, sequence and timing of the subareas of the mine plan area for which it is anticipated that individual permits for mining

will be requested over the estimated total life of the proposed surface mining activities; and

(B) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archaeological features within the proposed mine plan and adjacent areas. The description shall be based on all available information including, but not limited to, data of state and local archaeological, historical and cultural preservation agencies. Based on this information, the applicant may recommend to the director appropriate identification, evaluation or mitigation measures. The director may require the applicant to identify and evaluate important historic resources and archaeological sites that may be eligible for listing on the National Register of Historic Places through collection of additional information, conduct of field investigation or other appropriate analyses.

(4) Description of Hydrology and Geology—General Requirements.

(A) Each application shall contain a description of the geology, hydrology and water quality and quantity of all lands within the proposed mine plan area, the adjacent area and the general area. The description shall include information on the characteristics of all surface and ground waters within the general area and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to sections (4)–(8) of this rule and conform to this section.

(B) Information Provided by the Director.

1. Information on hydrology, water quality and quantity and geology related to hydrology of areas outside the proposed mine plan area and within the general area shall be provided by the director, to the extent that this data is available from an appropriate federal or state agency.

2. If this information is not available from those agencies, the applicant may gather and submit this information to the director as part of the permit application.

3. The permit shall not be approved by the commission or director until this information is made available in the application.

(C) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.

(5) Geology Description.

(A) The description shall include a general statement of the geology within the proposed mine plan and adjacent areas down to and including the deeper of either the stratum

immediately below the lowest coal seam to be mined or any aquifer to be affected below the lowest coal seam to be mined. The description shall include the areal and structural geology of the permit and adjacent areas and other parameters which influence the required reclamation and the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground waters. It shall be based on—

1. The cross-sections, maps and plans required by section (15) of this rule;

2. The information obtained under paragraphs (5)(B)1. and 2. of this rule; and

3. Geologic literature and practices.

(B) Test Borings and Core Samples.

1. Test borings or core samples from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined, or any aquifer below the lowest coal seam which may be adversely affected, to provide the following data in the description:

A. Location of subsurface water, if encountered;

B. Logs of drill holes showing the lithologic characteristics and thickness of each stratum and each coal seam;

C. Physical properties of each stratum within the overburden;

D. Chemical analysis of each stratum within the overburden and the stratum immediately below the lowest coal seam to be mined to identify, at a minimum, those horizons which contain potential acid-, toxic-forming or alkalinity-producing materials; and

E. Analyses of the coal seam for acid- or toxic-forming materials, including, but not limited to, an analysis of the total sulfur and pyritic sulfur content.

2. If required by the commission or director, test borings or core samplings shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance.

3. An applicant may request that the requirement for a statement of the results of the test borings or core samplings be waived by the director. The waiver may be granted only if the director makes a written determination that the statement is unnecessary because other equivalent information is accessible to him/her in a satisfactory form.

(6) Groundwater Information.

(A) The application shall contain a description of the groundwater hydrology for the proposed mine plan and adjacent area, including, at a minimum:

1. The depth below the surface and the horizontal extent of the water table and aquifers;

2. The lithology and thickness of the aquifers;

3. Known uses of the water in the aquifers and water table; and

4. The quality of subsurface water, if encountered.

(B) The application shall also contain information which describes the recharge, storage and discharge characteristics of aquifers and the quality and quantity of groundwater, in the parameters and in the detail necessary to evaluate these characteristics.

(7) Surface Water Information.

(A) Surface water information shall be described, including the name of the watershed which will receive water discharges, the location of all surface water bodies such as streams, lakes, ponds and springs, the location of any water discharge into any surface body of water and descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within the proposed mine plan and adjacent areas.

(B) Surface water information shall include:

1. Minimum, maximum and average discharge conditions which identify critical low flow and peak discharge rates of streams sufficient to identify seasonal variations; and

2. Water quality data to identify the characteristics of surface waters in, discharging into or which will receive flows from surface or ground water from affected areas within the proposed mine plan area sufficient to identify seasonal variations, showing—

A. Total dissolved solids in milligrams per liter;

B. Total suspended solids in milligrams per liter;

C. Acidity;

D. pH in standard units;

E. Total and dissolved iron in milligrams per liter;

F. Total manganese in milligrams per liter; and

G. Other information as the director determines is relevant.

(8) Alternative Water Supply Information. The application shall identify the extent to which the proposed surface mining may proximately result in contamination, diminution or interruption of any underground or surface source of water within the proposed mine plan or adjacent areas for domestic, agricultural, industrial or other legitimate use. If

contamination, diminution or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

(9) Climatological Information.

(A) When requested by the director, the application shall contain a statement of the climatological factors that are representative of the proposed mine plan area, including:

1. The average seasonal precipitation;

2. The average direction and velocity of prevailing winds; and

3. Seasonal temperature ranges.

(B) The director may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

(10) Vegetation Information.

(A) The permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(B) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under section (11) of this rule.

(11) Fish and Wildlife Resources Information.

(A) The fish and wildlife information required will be consistent with the Endangered Species Act of 1973, (16 U.S.C. Section 1531); section 444.855.2(17), RSMo; 10 CSR 40-3.040(18); and 10 CSR 40-3.100.

(B) Each application shall include information on fish and wildlife and their habitats within the proposed mine plan area and the portions of the adjacent areas where effects on these resources may reasonably be expected to occur. This information shall be sufficient in detail to design the protection and enhancement plan required in 10 CSR 40-6.050(7).

(C) The director, in consultation with the Missouri Department of Conservation and the United States Fish and Wildlife Service, shall determine the minimum level of informational detail and specify the areas from which information will be obtained and shall make a determination based on—

1. Published data and the Missouri Natural Features Inventory and other information;

2. Site-specific information obtained by the applicant in accordance with subsection (11)(D) of this rule; and

3. Written guidance obtained from agencies consulted.

(D) Site-specific information obtained by the applicant to satisfy paragraph (11)(C)2. of this rule, at a minimum, shall include the following:

1. Amount of woodland edge;

2. Extent of food sources, nesting places and concealment cover;

3. Degree of interspersed of habitat types; and

4. Amount and quality of permanent water sources.

(E) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include at a minimum:

1. Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the secretary under the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531, et seq.) or those species or habitats protected by the state of Missouri as listed in the current publication of *Rare and Endangered Species of Missouri* as determined by the Missouri Department of Conservation;

2. Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes or reproduction and wintering areas; or

3. Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(F) Fish and Wildlife Service. Upon request, the regulatory authority shall provide the resource information required under this section and the protection and enhancement plan required under this section to the United States Department of the Interior, Fish and Wildlife Service Regional or Field Office, for their review. This information shall be provided within ten (10) days of receipt of the request from the service.

(12) Soil Resources Information.

(A) The applicant shall provide adequate soil survey information of the permit area consisting of the following:

1. A map delineating different soils;

2. Soil identification;

3. Soil description; and

4. Present and potential productivity of prime farmland soils.

(B) Where the applicant proposes to use selected overburden materials as a supple-

ment or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 10 CSR 40-3.030(2).

(13) Land Use Information.

(A) The application shall contain a statement of the condition, capability and productivity of the land within the proposed permit area, including:

1. A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the anticipated date of beginning the proposed operations, the historic use of the land also shall be described; and

2. A narrative of land capability and productivity, which analyzes the land use description under subsection (13)(A) of this rule in conjunction with other environmental resources information required under this rule. The narrative shall provide analysis of—

A. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

B. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage or wood products from these lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the United States Department of Agriculture, state agricultural universities or appropriate state agencies.

(B) The application shall state whether the proposed mine plan area has been previously mined and, if so, require the following information, if available:

1. The type of mining method used;
2. The coal seams or other mineral strata mined;
3. The extent of coal or other minerals removed;
4. The approximate dates of past mining; and
5. The uses of the land preceding mining.

(C) The application shall contain a description of the existing land uses and land-use classifications under local law, if any, of the proposed mine plan and adjacent areas.

(14) Maps—General Requirements. The permit application shall include maps showing:

(A) All boundaries of lands and names of present owners of record of those lands both

surface and subsurface, included in or contiguous to the permit area;

(B) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(C) The boundaries of all areas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of size, sequence and timing of the mining of subareas for which it is anticipated that additional permits will be sought;

(D) The location of all buildings on and within one thousand feet (1000') of the proposed permit area, with identification of the current use of the buildings;

(E) The location of surface and subsurface man-made features within, passing through or passing over the proposed permit area, including, but not limited to, major electrical transmission lines, pipelines and agricultural drainage tile fields;

(F) The location and boundaries of any proposed reference areas for determining the success of revegetation;

(G) The locations of water supply intakes for current users of surface water flowing into, out of and within a hydrologic area defined by the director and those surface waters which will receive discharges from affected areas in the proposed mine plan area;

(H) Each public road located in or within one hundred feet (100') of the proposed permit area;

(I) The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archaeological sites within the mine plan and adjacent areas;

(J) Each public or private cemetery or Indian burial ground located in or within one hundred feet (100') of the proposed permit area;

(K) Any land within the proposed mine plan area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act;

(L) All buffer zones as defined at 10 CSR 40-8.010(1)(A); and

(M) Other relevant information required by the director.

(15) Cross-Sections, Maps and Plans. The application shall include cross-sections, maps and plans showing—

(A) Elevations and locations of test boring and core samplings;

(B) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife and air quality, if required in preparation of the application;

(C) Nature, depth and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden and the stratum immediately below the lowest coal seam to be mined;

(D) All coal croplines and the strike and dip of the coal to be mined within the proposed mine plan area;

(E) Location and extent of known workings of active, inactive or abandoned underground mines, including mine openings to the surface within the proposed mine plan and adjacent areas;

(F) Location and extent of subsurface water, if encountered, within the proposed mine plan or adjacent areas;

(G) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains and irrigation ditches within the proposed mine plan and adjacent areas;

(H) Location and extent of existing or previously surface mined areas within the proposed mine plan area;

(I) Location and dimensions of existing areas of spoil, waste and noncoal waste disposal dams, embankments, other impoundments and water treatment and air pollution control facilities within the proposed permit area;

(J) Location and depth, if available, of gas and oil wells within the proposed permit area and water wells in the mine plan area and adjacent area;

(K) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending one hundred (100) linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations specified by the director;

2. Where the area has been previously mined, the measurements shall extend at least one hundred feet (100') beyond the limits of mining disturbances, or any other distance determined by the director to be representative of the premining configuration of the land; and

3. Slope measurements shall take into account natural variations in slope to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed; and

(L) Maps, plans and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, or a professional geologist, with assistance from experts in related fields, such as land surveying and landscape architecture, and shall be updated as required by the commission or director.

(16) Prime Farmland Investigation.

(A) Land shall not be considered prime farmland when the applicant can demonstrate one (1) of the following:

1. The land has not been historically used as cropland;
2. The slope of the land is ten percent (10%) or greater;
3. The land is not irrigated or naturally subirrigated, has no developed water supply that is dependable or of adequate quality and the average annual precipitation is fourteen inches (14") or less;
4. Other factors exist, such as a very rocky surface or the land is frequently flooded during the growing season, more often than once in two (2) years and the flooding has reduced crop yields; or
5. On the basis of a soil survey of lands within the mine plan area, there are no soil map units that have been designated prime farmland by the United States Soil Conservation Service.

(B) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination which shows that the land for which the negative determination is sought meets one (1) of the criteria of subsection (16)(A) of this rule.

(C) Application Contents—Reconnaissance Inspection.

1. All permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The director or commission in consultation with the United States Natural Resources Conservation Service shall determine the nature and extent of the required reconnaissance inspection.

2. If the reconnaissance inspection establishes that prime farmland does exist within the proposed permit area, but that it has not been historically used as cropland, the applicant may submit a request for negative determination.

3. If the reconnaissance inspection indicates that land within the proposed permit area may be prime farmland historically used for croplands, the applicant shall determine if a soil survey exists for those lands and

whether soil mapping units in the permit area have been designated as prime farmland. If no soil survey exists, the applicant shall have a soil survey made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. Soil surveys of the detail used by the United States Natural Resources Conservation Service for operational conservation planning shall be used to identify and locate prime farmland soils. If the soil survey indicates that prime farmland soils are present within the proposed permit area, 10 CSR 40-6.060(4) shall apply.

AUTHORITY: section 444.530, RSMo Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed Dec. 15, 1987, effective April 1, 1988. Amended: Filed June 2, 1988, effective Aug. 25, 1988. Amended: Filed March 2, 1989, effective May 15, 1989. Amended: Filed May 2, 1989, effective Aug. 1, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed March 21, 2000, effective Oct. 30, 2000.*

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

10 CSR 40-6.050 Surface Mining Permit Application—Minimum Requirements for Reclamation and Operations Plan

PURPOSE: This rule sets forth requirements for reclamation and operations plans for surface mining permit applications pursuant to sections 444.810, 444.820 and 444.825, RSMo.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

(1) Responsibilities. It is the responsibility of—

(A) The applicant to provide to the commission and director all of the information required by this rule except where specifically exempted in this rule.

(B) State and federal governmental agencies to provide information to the commission and director where specifically required in this rule.

(2) Operations Plan—General Requirements. Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed mine plan area, including at a minimum, the following:

(A) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal by tonnage and the major equipment to be used for all aspects of those operations; and

(B) A narrative explaining the construction, modification, use, maintenance and removal of the following facilities (unless retention of these facilities is necessary for post-mining land use as specified in 10 CSR 40-3.130):

1. Dams, embankments and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning and transportation areas and structures;
4. Spoil, coal processing waste and non-coal waste removal, handling, storage, transportation and disposal areas and structures. Except for spoil, the narrative should be in accordance with the appropriate section(s) of 10 CSR 40-3.080;
5. Mine facilities; and
6. Water and air pollution control facilities.

(3) Operations Plan—Existing Structures.

(A) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

1. Location;
2. Plans of the structure which describe its current condition;
3. Approximate dates on which construction of the existing structure was begun and completed; and
4. A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 10 CSR 40-3 and 10 CSR 40-4, or if the structure does not meet the performance standards of 10 CSR 40-3 and 10 CSR 40-4, a showing whether the structure meets the performance standards of 10 CSR 40-2.

(B) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

1. Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of 10 CSR 40-3 and 10 CSR 40-4;

2. A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

3. Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of 10 CSR 40-3 and 10 CSR 40-4 are met; and

4. A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

(4) Operations Plan—Blasting.

(A) Blasting Plan. Each permit application shall contain a blasting plan for the proposed permit area, explaining how the applicant will comply with the requirements of 10 CSR 40-3.050(1)–(6). This plan shall include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and air blast, the bases for those limitations and the methods to be applied in controlling the adverse effects of blasting operations.

(B) Monitoring System. Each application shall contain a description of any system to be used to monitor compliance with the standards of 10 CSR 40-3.050(5), including the type, capability and sensitivity of any blast monitoring equipment and proposed procedures and locations of monitoring.

(C) Blasting Near Underground Mines. Blasting operations within five hundred feet (500') of active underground mines require approval of the state and federal regulatory authorities concerned with the health and safety of underground miners.

(5) Operations Plan—Maps and Plans. Each application shall contain maps and plans of the proposed mine plan and adjacent areas as follows:

(A) The maps and plans shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 10 CSR 40-6.040(14) and (15);

(B) The following shall be shown for the proposed permit area unless specifically

required for the mine plan area or adjacent area by the requirements of this section:

1. Buildings, utility corridors and facilities to be used;

2. The area of land to be affected within the proposed mine plan area according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond will be posted under 10 CSR 40-7;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal waste and noncoal waste storage area. Except for topsoil and spoil, the narrative should be in accordance with the appropriate section(s) of 10 CSR 40-3.080;

6. Each water diversion, collection, conveyance, treatment storage and discharge facility to be used;

7. Each air pollution collection and control facility;

8. Each source of waste and each waste disposal facility relating to coal processing or pollution control in accordance with 10 CSR 40-3.080(1)–(6);

9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;

10. Each explosive storage and handling facility; and

11. Location of each siltation structure, permanent water impoundment, coal processing waste bank and coal processing waste dam and embankment in accordance with section (11) and fill area for the disposal of excess spoil in accordance with section (16).

(C) Maps, plans and cross-sections required under paragraphs (5)(B)4., 5., 6., 10. and 11. of this rule shall be prepared by or under the direction of and certified by a qualified registered professional engineer, with assistance from experts in related fields such as land surveying and landscape architecture except that—

1. Maps, plans and cross-sections for siltation structures may only be prepared by a qualified registered professional engineer; and

2. Spoil disposal facilities, maps, plans and cross-sections may only be prepared by a qualified registered engineer.

(6) Air Pollution Control Plan. The application shall contain an air pollution control plan which includes the following:

(A) An air quality monitoring program, if required for approval, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (6)(B) of this rule to comply with applicable federal and state air quality standards; and

(B) A plan for fugitive dust control practices, as required under 10 CSR 40-3.090.

(7) Fish and Wildlife Plan.

(A) The fish and wildlife plan requirements shall be consistent with the Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531, et seq.); section 444.855.2(17), RSMo; 10 CSR 40-3.040(18) and 10 CSR 40-3.100.

(B) Each application shall contain a fish and wildlife plan which provides—

1. A statement of how, to the extent possible using the best technology currently available, the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations and how enhancement of these resources will be achieved, where practicable. The plan shall be consistent with the requirements of 10 CSR 40-3.100; cover the mine plan area and portions of adjacent areas as determined by the director pursuant to 10 CSR 40-6.040(11); and

2. If the applicant states that it will not be practicable, in accordance with paragraph (7)(B)1. of this rule, to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully completed under 10 CSR 40-3.120, a statement shall be provided which establishes, to the satisfaction of the director, why it is not practicable to achieve this condition.

(C) A statement must be included in the fish and wildlife plan explaining how the applicant will utilize impact control measures, management techniques and monitoring methods to protect or enhance the following, if they are to be affected by the proposed activities:

1. Listed or proposed threatened or endangered species of plants or animals listed by the secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.) and their critical habitats;

2. Species such as eagles, migratory birds or other animals protected by state or federal law, and their habitats, or other species identified through the consultation process pursuant to 10 CSR 40-6.040(11); or

3. Habitats of unusually high value for fish and wildlife, such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, reproduction and nursery areas and wintering areas, and including those sites listed as having significance in the Missouri Natural Features Inventory.

(D) Each fish and wildlife plan shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall—

1. Be consistent with the requirements of this section and 10 CSR 40-3.100;
2. Apply, at a minimum, to species and habitats identified under subsection (7)(C); and
3. Include—

A. Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, species and habitats and the monitoring of surface water quality and quantity; and

B. Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(8) Reclamation Plan—General Requirements.

(A) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with section 444.855, RSMo, 10 CSR 40-3 and 10 CSR 40-4 and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under sections (8)–(17).

(B) Each plan shall contain the following information for the proposed permit area:

1. A detailed timetable for the completion of each major step in the reclamation plan;
2. A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 10 CSR 40-7 with supporting calculations for the estimates;
3. A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anti-

ipated final surface configuration of the proposed permit area in accordance with 10 CSR 40-3.110(1)–(6);

4. A plan for removal, storage and redistribution of topsoil, subsoil and other material to meet the requirements of 10 CSR 40-3.030(1)–(5);

5. A plan for revegetation as required in 10 CSR 40-3.120(1)–(7), including, but not limited to, descriptions of the:

- A. Schedule of revegetation;
- B. Species and amounts per acre of seeds and seedlings to be used;
- C. Methods to be used in planting and seeding;
- D. Mulching techniques;
- E. Irrigation, if appropriate and pest and disease control measures, if any;

F. Measures proposed to be used to determine the success of revegetation as required in 10 CSR 40-3.120(6), including a plan for revegetation and liability release as required in 10 CSR 40-3.120(1)–(7) and also including, but not limited to:

(I) A map showing locations of proposed test plots and reference areas on a scale not less than one inch equals five hundred feet (1"=500');

(II) A map delineating the area which will be proposed for release based on the outcome of the test plots;

(III) A statement indicating when mining occurred at the area proposed for release;

(IV) Documentation that the reference areas chosen are representative of the soils in the permit area before mining and that test plots chosen are representative of the reconstructed soils in the permit area;

(V) A statement indicating which crop(s) will be used to prove success of revegetation, what harvesting method will be employed to gather the necessary data and what statistics will be employed to assure random sampling if harvesting will be done from a portion of the test plots and reference areas;

(VI) A statement that plots will be treated equally with regard to seeding dates, fertilization for the same yield goal, herbicide use, tillage type and frequency, row spacing, planting rates and harvest dates;

(VII) How the plots will be marked in the field;

(VIII) If the land to be used for plots is not under company control, a statement from the company granting the commission the right of entry must be included;

(IX) An account of the method to be used to randomly choose the plots;

(X) A soil testing plan that includes, at a minimum, tests for pH, nitrogen,

phosphorus, potassium, calcium, magnesium, sulfur and lime requirement; and

(XI) A plan discussing how the vegetation on the affected area will be maintained until Phase III release is approved;

G. A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation; and

H. Nutrient and soil amendment plans;

6. A description of the measures to be used to maximize the use and conservation of the coal resources;

7. A description of measures to be employed to ensure that all debris, acid- and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 10 CSR 40-3.080(8) and 10 CSR 40-3.110(3) and a description of the contingency plans which have been developed to preclude sustained combustion of materials;

8. A description, including appropriate cross-sections and maps of the measures to be used to seal or manage mine openings and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 10 CSR 40-3.020(1)–(3); and

9. A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Section 7401) and Clean Water Act (33 U.S.C. Section 1251) and other applicable air and water quality laws and regulations and health and safety standards.

(9) Reclamation Plan—Protection of Hydrologic Balance.

(A) Sampling and Analysis. All water quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the fifteenth edition of Standard Methods for the Examination of Water and Wastewater, which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed previously when feasible.

(B) Each plan shall contain a detailed description, with appropriate maps and cross-section drawings of the measures to be taken during and after the proposed surface mining activities in accordance with 10 CSR 40-3 to ensure the protection of—

1. The quality of surface and ground water systems, both within the proposed mine plan and adjacent areas, from the adverse effects of the proposed surface mining activities;

2. The rights of present users of surface and ground water; and

3. The quantity of surface and ground water both within the proposed mine plan area and adjacent area from adverse effects of the proposed surface mining activities or to provide alternative sources of water in accordance with 10 CSR 40-6.040(8) and 10 CSR 40-3.040(14), where the protection of quantity cannot be ensured.

(C) The description shall include:

1. A plan for the control, in accordance with 10 CSR 40-3 of surface and ground water drainage into, through and out of the proposed mine plan area; and

2. A plan for the treatment, where required under 10 CSR 40-3 and 10 CSR 40-4 and the regulatory program, of surface and ground water drainage from the area to be disturbed by the proposed activities and proposed quantitative limits on pollutants in discharges subject to 10 CSR 40-3.040(2), according to the more stringent of the following:

A. 10 CSR 40-3 and 10 CSR 40-4 and the regulatory program; or

B. Other applicable state and federal laws;

3. A plan for the restoration of the approximate recharge capacity of the mine plan area in accordance with 10 CSR 40-3.040(12);

4. A plan for the collection, recording and reporting of ground and surface water quality and quantity data, according to 10 CSR 40-3.040(13); and

5. If the determination of the probable hydrologic consequences (PHC) required by subsection (9)(D) of this rule indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-or toxic-forming material is present that may result in the contamination of ground or surface water supplies, then information supplemental to that required under 10 CSR 40-6.040(6) and (7), shall be provided to evaluate this PHC and to plan remedial and reclamation activities. This supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows or analysis of other water quality or quantity characteristics.

(D) The description shall include a determination of the probable hydrologic consequences of the proposed surface mining activities, on the proposed mine plan area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total

iron, pH, total manganese and any other parameters required by the director.

1. The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

2. The PHC determination shall include findings on:

A. Whether adverse impacts may occur to the hydrologic balance;

B. Whether acid- or toxic-forming materials are present that could result in the contamination of surface or ground water supplies;

C. Whether the proposed operation may approximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose;

D. What impact the proposed operation will have on—

(I) Sediment yield from the disturbed area;

(II) Acidity, total suspended and dissolved solids and other important water quality parameters of local impact;

(III) Flooding or stream flow alteration;

(IV) Ground and surface water availability; and

(V) Other characteristics as required by the regulatory authority.

3. An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated PHC determination shall be required.

(E) Cumulative Hydrologic Impact Assessment.

1. The director shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface and ground water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The director may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

2. An application for a permit revision shall be reviewed by the director to determine whether a new or updated CHIA shall be required.

(10) Reclamation Plan—Postmining Land Uses.

(A) Each plan shall contain a detailed description of the proposed use following reclamation of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of the proposed use to existing land use policies and plans. This description shall explain—

1. How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

2. Where range or grazing is the proposed postmining use, the detailed management plans to be implemented;

3. Where a land use different from the pre-mining land use is proposed, all materials needed for approval of the alternative use under 10 CSR 40-3.130; and

4. The consideration which has been given to making all the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.

(B) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation.

(11) Reclamation Plan—Ponds, Impoundments, Banks, Dams and Embankments.

(A) General. Each application shall include a general plan and a detailed plan for each proposed siltation structure, water impoundment and coal processing waste bank, dam or embankment within the proposed mine plan area.

1. Each general plan shall—

A. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as land surveying and landscape architecture;

B. Contain a description, map and cross-section of the structure and its location;

C. Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

D. Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

E. Contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general

plan will be submitted to the director. The commission or director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins; and

F. Contain the calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times under 10 CSR 40-3.040(6)(C)1. and 3.

2. Impoundments meeting the Class B or C criteria for dams in TR-60, which is incorporated by reference, shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). Each detailed design plan for a structure that meets or exceeds the size or other criteria of the MSHA, 30 CFR 77.216(a), shall—

A. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying and landscape architecture;

B. Include any geotechnical investigation, design and construction requirements for the structure;

C. Describe the operation and maintenance requirements for each structure; and

D. Describe the timetable and plans to remove each structure, if appropriate.

3. Each detailed design plan for a structure that does not meet the size or other criteria of 10 CSR 40-6.050(11)(A)2. shall—

A. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer and all coal processing waste dams and embankments covered by 10 CSR 40-3.080(9)–(11) shall be certified by a qualified registered professional engineer;

B. Include any design and construction requirements for the structure, including any required geotechnical information;

C. Describe the operation and maintenance requirements for each structure; and

D. Describe the timetable and plans to remove each structure, if appropriate.

(B) Siltation Structures. Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of 10 CSR 40-3.040(6). Any siltation structure or earthen structure which will remain on the proposed mine plan area as a permanent water impoundment shall also be designed to comply with the requirements of 10 CSR 40-3.040(10). Each plan, at a minimum, shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 30 CFR 77.216-2.

(C) Permanent and Temporary Impoundments. Permanent and temporary impound-

ments shall be designed to comply with the requirements of 10 CSR 40-3.040(10). Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 30 CFR 77.216-1 and 30 CFR 77.216-2. The plan required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall be submitted to the director as part of the permit application in accordance with subsection (11)(A).

(D) Coal Processing Waste Banks. Coal processing waste banks shall be designed to comply with the requirements of 10 CSR 40-3.080(1)–(4).

(E) Coal Processing Waste Dams and Embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 10 CSR 40-3.080(9)–(11). Each plan shall comply with the requirements of the MSHA 30 CFR 77.216-1 and 30 CFR 77.216-2 and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

1. The number, location and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded and subsurface conditions;

2. The character of the overburden and bedrock, the proposed abutment sites and any adverse geotechnical conditions which may affect the particular dam, embankment or reservoir site shall be considered;

3. All springs, seepage and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan; and

4. Consideration shall be given to the possibility of mudflows, rock-debris falls or other landslides into the dam, embankment or impounded material.

(F) If the structure meets the Class B or C criteria for dams in TR-60, or meets the size or other criteria of 30 CFR 77.216(a), each plan under subsections (11)(B), (C) and (E) of this rule shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion

of each alternative considered in selecting the specific design parameters and construction methods.

(12) Reclamation Plan—Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within five hundred feet (500') of an underground mine, the application shall describe the measures to be used to comply with 10 CSR 40-3.070.

(13) Diversions. Each application shall contain descriptions, including maps and cross-sections of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 10 CSR 40-3.040(3) and (4).

(14) Protection of Public Parks and Historic Places.

(A) For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and obtain approval as required in 10 CSR 40-5.010(3)(F).

(B) For any public parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measure to be used to prevent impacts, or if valid existing rights exist or joint agency approval is to be obtained under 10 CSR 40-5.010(3)(F), to minimize adverse impacts.

(C) The director may require the applicant or operator to protect historic or archaeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures prior to the commencement of any specific mining operation which would affect these properties.

(15) Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and affected landowners are protected if, under 10 CSR 40-5.010(3)(D), the applicant seeks to have the commission or director approve—

(A) Conducting the proposed surface mining activities within one hundred feet (100') of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(B) Relocating a public road.

(16) Disposal of Excess Spoil.

(A) Each application shall contain descriptions, including appropriate maps and cross-

section drawings, of the proposed disposal site and design of the spoil disposal structures according to 10 CSR 40-3.060(1)–(4). These plans shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the site and structures.

(B) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

1. The character of bedrock and any adverse geologic conditions in the disposal area;
2. A survey identifying all springs, seepage and groundwater flow observed or anticipated during wet periods in the area of the disposal site;
3. A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;
4. A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and
5. A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(C) If, under 10 CSR 40-3.060(1)(I), rock-toe buttresses or key way cuts are required, the applicant shall include the following:

1. The number, location and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and
2. Engineering specifications utilized to design the rock-toe buttress or key way cuts which shall be determined in accordance with paragraph (16)(B)5. of this rule.

(17) Transportation Facilities.

(A) Each application shall contain a detailed description of each road, conveyor or rail system to be constructed, used or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections and the following:

1. Design drawings and specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, low water crossings and drainage structure;
2. A report of appropriate geotechnical analysis, where approval of the commission or director is required for alternative specifications or for steep cut slopes under 10 CSR

40-3.140(1)(D), (3)(C), (8)(D) or (10)(C), or 10 CSR 40-3.290(3)(C), (8)(D) or (10)(C);

3. A description of measures to be taken to obtain approval for alteration or relocation of a natural drainageway under 10 CSR 40-3.140(4)(D), (11)(D) or (18)(C), or 10 CSR 40-3.290 (4)(D), (11)(D) or (18)(C);

4. A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval under 10 CSR 40-3.140(2)(C), (9)(C) or (16)(C), and 10 CSR 40-3.290(2)(C), (9)(C) or (16)(C);

5. A general description of each road, conveyor or rail system to be constructed, used or maintained within the proposed mine plan area shall be contained in each plan;

6. The drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream as necessary for approval of the road in accordance with 10 CSR 40-3.140(2)(B), (9)(B) and (16)(B), and 10 CSR 40-3.290(2)(B), (9)(B) and (16)(B);

7. Drawings and specifications for each low water crossing of perennial or intermittent stream channels indicating that the protection of the stream is maximized by the low water crossings being designed, constructed and maintained to prevent erosion of the structure or stream bed and additional contributions of suspended solids to stream flow;

8. The drawings and specifications for each proposed ford of perennial or intermittent streams that are used as a temporary route, as necessary for approval of the ford by the regulatory authority in accordance with 10 CSR 40-3.140(4)(A) or (11)(A); and,

9. Descriptions of the plans to remove and reclaim each road that would not be retained under an approved postmining land use and the schedule for this removal and reclamation.

(B) Class I and II Road Certification. The plans and drawings for each Class I and II road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, experienced in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(18) Support Facilities. Each applicant for a surface coal mining and reclamation permit shall submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross-sections, design drawings and specifications sufficient

to demonstrate compliance with 10 CSR 40-3.140(23) for each facility.

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

10 CSR 40-6.060 Requirements for Permits for Special Categories of Surface Coal Mining and Reclamation Operations

PURPOSE: This rule sets forth requirements for permits for special categories of surface coal mining and reclamation operations pursuant to sections 444.810, 444.815, 444.820, 444.825, 444.835, 444.840 and 444.850, RSMo.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the rule has been filed with the secretary of state. United States Department of Agriculture Handbooks 18, Soil Survey Manual, 1951 and 436, Soil Taxonomy, 1975 are incorporated by reference as they exist on the date of adoption of this chapter. The entire text of this rule may be found at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Experimental Practices Mining.

(A) Subsections (1)(B)–(I) of this rule apply to any person who conducts or intends to conduct surface coal mining and reclamation operations under a permit authorizing the use of alternative mining practices on an experimental basis if the practices require a variance from the environmental protection performance standards of 10 CSR 40-3 and 10 CSR 40-4 and the regulatory program.

(B) The purpose of this section is to provide requirements for the permitting of surface coal mining and reclamation operations

that encourage advances in mining and reclamation practices or allow postmining land use for industrial, commercial, residential or public use (including recreational facilities) on an experimental basis.

(C) Experimental practice as used in this section means the use of alternative surface coal mining and reclamation operations practices for experimental or research purposes. Experimental practices need not comply with specific environmental protection performance standards of 10 CSR 40-3 and 10 CSR 40-4 or the regulatory program, if approved pursuant to this section.

(D) No person shall engage in or maintain any experimental practice, unless that practice is first approved in a permit.

(E) Each person who desires to conduct an experimental practice shall include this practice in the permit application. The experimental practice application shall also be sent to the director of the office. The permit application shall contain appropriate descriptions, maps, data and plans which show—

1. The nature of the experimental practice;

2. How use of the experimental practice—

A. Encourages advances in mining and reclamation technology; or

B. Allows a postmining land use for industrial, commercial, residential or public use (including recreational facilities) on an experimental basis, when the results are not otherwise attainable under the approved regulatory program;

3. That the mining and reclamation operations proposed for using an experimental practice are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice;

4. That the experimental practice—

A. Is potentially more or at least as environmentally protective, during and after the proposed mining and reclamation operations, as those required under 10 CSR 40-3 and 10 CSR 40-4 and the regulatory program; and

B. Will not reduce the protection afforded public health and safety below that provided by the requirements of 10 CSR 40-3 and 10 CSR 40-4 and the regulatory program; and

5. That the applicant will conduct special monitoring with respect to the experimental practice during and after the operations involved. The monitoring program shall—

A. Ensure the collection and analysis of sufficient and reliable data to enable adequate comparisons to be made with other sur-

face coal mining and reclamation operations employing similar experimental practices; and

B. Include requirements designed to identify, as soon as possible, potential risks to the environment and public health and safety from the use of the experimental practice.

(F) Each application shall set forth the environmental protection performance standards of 10 CSR 40-3 and 10 CSR 40-4 which will be implemented in the event the objective of the experimental practice is a failure.

(G) All experimental practices shall be specifically identified through newspaper advertisements by the applicant and the written notifications required under 10 CSR 40-6.070(2).

(H) No permit authorizing an experimental practice shall be issued, unless it is found, in writing, upon the basis of both a complete application filed in accordance with the requirements of this section and the comments of the office that—

1. The experimental practice meets all of the requirements of paragraphs (1)(E)2.—5. of this rule;

2. The experimental practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved;

3. The experimental practice has been specifically approved, in writing, by the director of the office based on the findings of the director of the office that all of the requirements of paragraphs (1)(E)1.—5. of this rule will be met; and

4. The permit contains conditions which specifically—

A. Limit the experimental practice authorized to that granted by the commission or director and the director of the office;

B. Impose enforceable alternative environmental protection requirements; and

C. Require the person to conduct the periodic monitoring, recording and reporting program set forth in the application, with additional requirements as the commission or director or the director of the office may require.

(I) Each permit which authorizes the use of an experimental practice will be reviewed in its entirety at least every three (3) years by the director, or at least once prior to the middle of the permit term, with a report filed with the commission. After review, the director, with the consent of the director of the office, shall require by order, supported by written findings, any reasonable revision or modification of the permit provisions necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety. Any person who

is or may be adversely affected by the order shall be provided with an opportunity for a hearing in accordance with 10 CSR 40-6.080.

(J) Variances from the special environmental protection performance standards applicable to prime farmlands shall be approved only after consultation with the United States Department of Agriculture Soil Conservation Service.

(K) Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of this chapter and approved by the commission. Any revisions which propose significant alterations in the experimental practice, at a minimum, shall be subject to notice, hearing and public participation requirements of this chapter and concurrence by the commission. Revisions that do not propose significant alterations in the experimental practice shall not require concurrence by the commission.

(2) Steep Slope Mining.

(A) This section applies to any person who conducts or intends to conduct steep slope surface coal mining and reclamation operations except—

1. Where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds; and

2. To the extent that a person obtains a permit incorporating a variance under section (3) of this rule.

(B) Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of 10 CSR 40-4.040.

(C) No permit shall be issued for any operations covered by this section unless it is found in writing that in addition to meeting all other requirements of this chapter the operation will be conducted in accordance with the requirements of 10 CSR 40-4.040.

(3) Permits Incorporating Variances From Approximate Original Contour Restoration Requirements for Steep Slope Mining.

(A) This section applies to nonmountain-top removal, steep slope surface coal mining and reclamation operations where the operation is not to be reclaimed to achieve the approximate original contour required by 10 CSR 40-3.110(1)–(6) or 10 CSR 40-6.260.

(B) The objective of this section is to allow for a variance from approximate original contour restoration requirements on steep slopes

for surface coal mining and reclamation operations—

1. Improve watershed control of lands within the permit area and on adjacent lands; and

2. Make land within the permit area, after reclamation, suitable for an industrial, commercial, residential or public use, including recreational facilities.

(C) A permit for surface mining activities incorporating a variance from the requirement for restoration of the affected lands to their approximate original contour may be issued only if it is first found, in writing, on the basis of a complete application, that all of the following requirements are met:

1. The applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential or public use postmining land use;

2. The proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use;

3. The applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of 10 CSR 40-3.130 or 10 CSR 40-3.300;

4. The applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations. The watershed will only be deemed improved if—

A. There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to discharges prior to mining, so as to improve public or private uses or the ecology of these waters; or there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws;

B. The total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water; and

C. The Clean Water Commission approves the plan;

5. The applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operations under 10 CSR 40-6.030(3) and shall show an understanding that the variance could not be granted without the surface owner's request;

6. The applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of 10 CSR 40-4.040(3); and

7. All other requirements of the regulatory program will be met by the proposed operations.

(D) If a variance is granted under this section—

1. The requirements of 10 CSR 40-4.040(3) shall be made a specific condition of the permit; and

2. The permit shall be specifically marked as containing a variance from approximate original contour.

(E) Any permits incorporating a variance issued under this section shall be reviewed by the director to evaluate the progress and development of the mining activities, to establish that the operator is proceeding in accordance with the terms of the variance—

1. Within the sixth month preceding the third year from the date of its issuance;

2. Before each permit renewal; and

3. Not later than the middle of each permit term.

(F) If the permittee demonstrates to the director at any of the times specified in subsection (3)(E) of this rule that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit and the regulatory program, the review required at that time need not be held.

(G) The terms and conditions of a permit incorporating a variance under this section may be modified at any time if it is determined that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the regulatory program.

(4) Prime Farmlands.

(A) For purposes of this section—

1. Renewal of a permit shall mean a decision by the regulatory authority to extend the time by which the permittee may complete mining within the boundaries of the original permit and revision of the permit shall mean a decision by the regulatory authority to allow changes in the method of mining operations within the original permit area or the decision of the regulatory authority to allow incidental boundary changes to the original permit;

2. A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad or powerline or similar crossing; and

3. A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit

issued prior to August 3, 1977, but may include noncontiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the noncontiguous parcels were part of a single permitted operation. For the purposes of paragraph (4)(A)3., clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one (1) surface coal mining operation.

(B) Scope. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland. Nothing in this section shall apply to any permit issued prior to August 3, 1977, any revisions or renewals of the permit, or any continuous and existing strip mining operation for which a permit was issued prior to August 3, 1977. To meet the criteria of a continuous and existing operation, the applicant must submit the following to the director for review:

1. Proof that a definite contract for the coal field, which they intend to mine, existed on August 3, 1977;

2. Proof that the permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract or lease, but not including an option to buy, lease or contract;

3. Proof that the lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977;

4. A plan including any supportive data required by the director outlining the proposed procedures to meet the productive capacity of the intended land use as declared in the permit, as per 10 CSR 40-3.120; and

5. A detailed map delineating the exempted acreage.

(C) Application Contents—Prime Farmland. All permit applications for areas in which prime farmland has been identified within the proposed permit area shall include the following:

1. A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in the United States Department of Agriculture Handbooks 436 *Soil Taxonomy* (United States Soil Conservation Service, 1975), as amended on March 22, 1982 and October 5, 1982, and 18 *Soil Survey Manual* (United States Soil Conservation Service, 1951), as amended on

December 18, 1979, May 7, 1980, May 9, 1980, September 11, 1980, June 9, 1981, June 29, 1981 and November 16, 1982. The United States Natural Resources Conservation Service (NRCS) establishes the standards of the National Cooperative Soil Survey and maintains a *National Soils Handbook* which gives current acceptable procedures for conducting soil surveys. This *National Soils Handbook* is available for review at area and state NRCS offices.

A. United States Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they exist on November 23, 1987. Notices of changes made to these publications will be periodically published in the *Federal Register*. The handbooks are on file and available for inspection at the Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102. Copies of these documents are also available from the superintendent of documents, United States Government Printing Office, Washington, D.C. 20402, Stock Nos. 001-000-02597-0 and 001-000-00688-6, respectively. In addition, these documents are available for inspection at the national, state and area offices of the NRCS, United States Department of Agriculture and through the Federal Register Library, 1100 L Street, NW., Washington, D.C. Incorporation by reference provisions were approved by the director of the *Federal Register* on June 29, 1981.

B. The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the United States NRCS, including, but not limited to, soil horizon depths, pH and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the state conservationist, United States NRCS. The director may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil reconstruction standards of 10 CSR 40-4.030;

2. A plan for soil reconstruction, replacement and stabilization for the purpose of establishing the technological capability of the mine operator to comply with the requirements of 10 CSR 40-4.030;

3. Scientific data, such as agricultural school studies, for areas with comparable soils, climate and management that demonstrate that the proposed method of reclama-

tion, including the use of soil mixtures or substitutes, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area;

4. The productivity prior to mining, including the average yield of food, fiber, forage or wood products obtained under a high level of management; and

5. United States NRCS forms MO-LTP-1 and MO-LTP-2 shall be submitted as part of the application.

(D) Consultation With the Secretary of Agriculture.

1. The secretary of agriculture has responsibilities with respect to prime farmland soils and has assigned the prime farmland responsibilities arising under the Act to the chief of the United States NRCS. The United States NRCS shall carry out consultation and review through the state conservationist located in each state.

2. The state conservationist shall provide to the director a list of prime farmland soils, their location, physical and chemical characteristics, crop yields and associated data necessary to support adequate prime farmland soil descriptions.

3. The state conservationist shall assist the director in describing the nature and extent of the reconnaissance inspection required in 10 CSR 40-6.040(16)(C).

4. Before any permit is used for areas that include prime farmland, the director shall consult with the state conservationist. The state conservationist shall provide for the review of, and comment on, the proposed method of soil reconstruction in the plan submitted under paragraph (4)(C)2., of this rule. If the state conservationist considers those methods to be inadequate, s/he shall suggest revisions to the director which result in more complete and adequate reconstruction.

(E) Issuance of Permit. A permit for the mining and reclamation of prime farmland may be granted by the director if s/he first finds, in writing, upon the basis of a complete application, that—

1. The approved proposed postmining land use of these prime farmlands will be cropland;

2. The permit incorporates as specific conditions the contents of the plan submitted under subsection (1)(B) of this rule, after consideration of any revisions to that plan suggested by the state conservationist under paragraph (1)(C)4. of this rule;

3. The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime

farmland in the surrounding area under equivalent levels of management;

4. The proposed operations will be conducted in compliance with the requirements of 10 CSR 40-4.030 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the Land Reclamation Program; and

5. The aggregate total prime farmland acreage has not decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation nonprime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

(5) Augering.

(A) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations.

(B) Any application for a permit for operations covered by this section shall contain in the mining and reclamation plan a description of the augering methods to be used and the measures to be used to comply with 10 CSR 40-4.020.

(C) No permit shall be issued for any operations covered by this section unless it is found in writing that, in addition to meeting all other applicable requirements of this chapter, the operation will be conducted in compliance with 10 CSR 40-4.020.

(6) Coal Processing Plants or Support Facilities Not Located Within the Permit Area of a Specified Mine.

(A) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing coal processing plants or support facilities not within a permit area of a specific mine. Any person who operates this processing plant or support facility shall have obtained a permit in accordance with the requirements of this section.

(B) Any application for a permit for operations covered by this section shall contain in the mining and reclamation plan, specific plans, including descriptions, maps and cross-sections of the construction, operation, maintenance and removal of the processing plants and associated support facilities. The plan shall demonstrate that those operations will be conducted in compliance with 10 CSR 40-4.050.

(C) No permit shall be issued for any operation covered by this section unless it is found, in writing, that, in addition to meeting all other applicable requirements of this chapter, the operations will be conducted in compliance with the requirements of 10 CSR 40-4.050.

(7) Variances for Delay in Contemporaneous Reclamation Requirement in Combined Surface and Underground Mining Operations.

(A) Scope. This section applies to any person who conducts or intends to conduct combined surface mining activities and underground mining activities where contemporaneous reclamation as required by 10 CSR 40-3.150(2) is not practicable and a delay is requested to allow underground mining activities to be conducted before the reclamation operation for the surface mining activities can be completed.

(B) Application Contents for Variances. Any person who desires to obtain a variance under this rule shall file with the director complete applications for both the surface mining activities and underground mining activities which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps and plans, which—

1. Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of coal;

2. Show how multiple future disturbances of surface lands or waters will be avoided;

3. Identify the specific surface areas for which a variance is sought and the particular sections of the law, these regulations and the regulatory program from which a variance is being sought;

4. Show how the activities will comply with 10 CSR 40-4.060 and other applicable requirements of the regulatory program;

5. Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

6. Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of the surface mining activities is delayed; and

7. Show how off-site storage of spoil will be conducted to comply with the requirements of the law, 10 CSR 40-3.060 and the regulatory program.

(C) Issuance of Permit. A permit incorporating a variance under this rule may be issued by the director, if s/he first finds, in writing, upon the basis of a complete application filed in accordance with this rule, that—

1. The applicant has presented, as part of the permit application, specific feasible plans for the proposed underground mining activities;

2. The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

3. The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the regulatory program and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

4. The surface area of surface mining activities proposed for the variance has been shown by the applicant to be necessary for implementing the proposed underground mining activities;

5. No substantial adverse environmental damage, either on- or off-site, will result from the delay in completion of reclamation otherwise required by section 444.860.2(16), RSMo, 10 CSR 40-3 and the regulatory program;

6. The operations, as far as a variance is authorized, will be conducted in compliance with the requirements of 10 CSR 40-4.060 and the regulatory program;

7. Provisions for off-site storage of spoil will comply with the requirements of section 444.855.2(22), RSMo, 10 CSR 40-3.060 and the regulatory program;

8. Liability under the performance bond required to be filed by the applicant with the director pursuant to 10 CSR 40-7 shall be for the duration of the underground mining activities and until all requirements of 10 CSR 40-7 and the regulatory program have been complied with; and

9. The permit for the surface mining activities contains specific conditions—

A. Delineating the particular surface areas for which a variance is authorized;

B. Identifying the particular requirements of 10 CSR 40-4.060 and the regulatory program which are to be complied with, in lieu of the otherwise applicable provisions of section 444.855.2., RSMo, 10 CSR 40-3 and the regulatory program; and

C. Providing a detailed schedule for compliance with the particular requirements of 10 CSR 40-4.060 and the regulatory program identified under subparagraph (7)(C)9.B. of this rule.

(D) Review of Permits Containing Variances. Variances granted under permits issued under this rule shall be reviewed by the director no later than three (3) years from the

dates of issuance of the permit and any permit renewals.

(8) *In Situ* Processing Activities.

(A) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing *in situ* processing activities.

(B) Any application for a permit for operations covered by this section shall be made according to all requirements of this chapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operations involving *in situ* processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of 10 CSR 40-4.070, including:

1. Delineation of proposed holes and wells and production zone for approval of the director;

2. Specifications of drill holes and casings proposed to be used;

3. A plan for treatment, confinement or disposal of all acid-, toxic-forming or radioactive gases, solids or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

4. Plans for monitoring surface and ground water, and air quality, as required by the director.

(C) No permit shall be issued for operations covered by this section unless the director first finds, in writing, upon the basis of a complete application made in accordance with subsection (8)(B) of this rule, that the operation will be conducted in compliance with all requirements of this chapter relating to underground mining activities and 10 CSR 40-3.170–10 CSR 40-3.310 and 10 CSR 40-4.070.

AUTHORITY: section 444.810, RSMo Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed May 12, 1980, effective Sept. 11, 1980. Amended: Filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Nov. 10, 1980, effective Feb. 12, 1981. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed March 28, 1988, effective July 1, 1988. Amended: Filed Sept. 15, 1988, effective Jan. 15, 1989. Amended: Filed March 2, 1989, effective May 15, 1989. Amended: Filed May 2, 1989, effective Aug. 1, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000, effective Oct. 30, 2000.*

**Original authority: 444.810, RSMo 1979, amended 1983, 1993, 1995.*

10 CSR 40-6.070 Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions

PURPOSE: This rule sets forth requirements for review, public participation and approval of permit applications and permit terms and conditions pursuant to sections 444.810, 444.815, 444.820, 444.835, 444.840 and 444.850, RSMo.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Definitions. As used in subsections (7)(D) and (8)(I)—

(A) Willful violation means an act or omission which violates state or federal laws or regulations or individual permit conditions, committed by a person who intends the result which actually occurs; and

(B) Irreparable damage to the environment means any damage to the environment that cannot be corrected by actions of the applicant.

(2) Public Notices of Filing of Permit Applications.

(A) An applicant for a permit shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operations at least once a week for four (4) consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the director. The advertisement shall contain, at a minimum, the following information:

1. The name and business address of the applicant;

2. A map or description which shall—

A. Clearly show or describe towns, rivers, streams or other bodies of water, local landmarks and any other information, including routes, streets or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

B. Clearly show or describe the exact location and boundaries of the proposed permit area;

C. State the name of the United States Geological Survey 7.5-minute quadrangle map(s) which contains the area shown or described; and

D. If a map is used, indicate the north point;

3. The location where a copy of the application is available for public inspection under subsection (2)(D) of this rule;

4. The name and address of the director to which written comments, objections or requests for informal conferences on the application may be submitted under sections (3)–(5) of this rule; and

5. If an applicant seeks a permit to mine within one hundred feet (100') of the outside right-of-way of a public road or to relocate a public road, a concise statement describing the public road, the particular part to be relocated, where the relocation is to occur and the duration of the relocation.

(B) Upon receipt of a complete application for a permit, the director, within ten (10) days, shall issue written notification of—

1. The applicant's intention to surface mine a particularly described tract of land;

2. The application number;

3. Where a copy of the application may be inspected; and

4. Where comments on the application may be submitted under section (3) of this rule.

(C) The written notifications shall be sent to—

1. Federal, state and local governmental agencies with jurisdiction over or an interest in the area of the proposed operations and reclamation including, but not limited to, the local office of the Soil Conservation Service, the local United States Army Corps of Engineers district engineer, the National Park Service, other general governmental entities and fish and wildlife and historic preservation agencies;

2. Governmental planning agencies with jurisdiction to act with regard to land use, air or water quality planning in the area of the proposed operations;

3. Sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment or distribution facilities located in these areas; and

4. The federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application.

(D) The applicant shall—

1. Make a full copy of his/her complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application with the recorder of deeds at the courthouse of the county where the mining is proposed to occur; and

2. File the copy of the complete application under paragraph (2)(D)1. of this rule by the first date of newspaper advertisement of the application. The applicant shall file any subsequent revision of the application with the recorder of deeds at the same time as the revision is submitted to the commission or director.

(3) Opportunity for Submission of Written Comments on Permit Applications.

(A) Written comments on permit applications may be submitted to the commission and director by the public entities to whom notification is provided under subsections (2)(B) and (C) of this rule with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(B) These comments shall be submitted to the commission and director within thirty (30) days after the last publication of the newspaper advertisement required by subsection (2)(A) of this rule.

(C) The director shall immediately transmit a copy of all comments for filing and public inspection to the recorder of deeds where the applicant filed a copy of the application for a permit under subsection (2)(D) of this rule. A copy shall also be transmitted to the applicant.

(4) Right to File Written Objections.

(A) Any person whose interests are or may be adversely affected or an officer or head of any federal, state or local government agency or authority shall have the right to file written objections to an initial, renewed, or revised application for a permit within thirty (30) days after the last publication of the newspaper advertisement required by subsection (2)(A) of this rule.

(B) Upon receipt of any written objections, the director shall immediately—

1. Transmit a copy of them to the applicant; and

2. File a copy for public inspection at the office of the recorder of deeds where the applicant filed a copy of the application for permit under subsection (2)(D) of this rule.

(5) Informal Conferences.

(A) Procedure for Requests. Any objector under section (4) of this rule or the applicant,

in writing, may request that the director hold an informal conference on the application for a permit. The request shall—

1. Briefly summarize the issues to be raised by the requestor at the conference;
2. State whether the requestor desires to have the conference conducted in the locality of the proposed mining operations; and
3. Be filed not later than thirty (30) days after the last publication of the newspaper advertisement in subsection (2)(A) of this rule.

(B) Except as provided in subsection (5)(C) of this rule, if an informal conference is requested in accordance with subsection (5)(A) of this rule, the director shall hold an informal conference within thirty (30) days following the receipt of the request. The informal conference shall be conducted according to the following:

1. If requested under paragraph (5)(A)2. of this rule, the informal conference shall be held in the locality of the proposed mining;
2. The date, time and location of the informal conference shall be advertised by the director in a newspaper of general circulation in the locality of the proposed mine at least two (2) weeks prior to the scheduled conference;
3. If requested in writing by a conference requestor, within a reasonable time prior to the conference, the director shall arrange with the applicant to grant parties to the conference access to the mine plan area for the purpose of gathering information relevant to the conference; and

4. The conference shall be conducted by the director, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties to the conference until final release of the applicant's performance bond pursuant to 10 CSR 40-7.

(C) If all parties requesting the informal conference stipulate agreement before the requested informal conference and withdraw their request, the informal conference need not be held.

(D) Informal conferences held in accordance with this section may be used as the public hearing required under 10 CSR 40-5.010(3)(D) on proposed uses or relocation of public roads.

(6) Public Availability of Permit Application on File With the Commissioner or Director.

(A) General Availability. Except as provided in subsection (6)(C) of this rule, all appli-

cations for permits, revisions, renewals and transfers, assignments or sales of permit rights on file with the regulatory authority shall be available, at reasonable times, for public inspection and copying.

(B) Limited Availability. Except as provided in subsection (6)(C) of this rule, information pertaining to coal seams, test borings, core samplings or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. Information subject to this subsection shall be made available to the public when the information is required to be on public file pursuant to state law.

(C) Confidentiality. The director shall provide notice and the opportunity to be heard for persons both seeking and opposing disclosure, when this request is made through the procedures outlined in section (5) of this rule, to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to information—

1. That pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal which are potentially toxic in the environment;

2. Required under section 444.825, RSMo, that is not on public file pursuant to state law and that the applicant has requested in writing to be held confidential; and

3. On the nature and location of archeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979 (P. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

(7) Review of Permit Applications.

(A) Review by the Director and Determination of the Adequacy of the Fish and Wildlife Plan. The director shall—

1. Review the complete application and written comments, written objections submitted and records of any informal conference held under sections (3)–(5) of this rule;

2. Determine the adequacy of the fish and wildlife plan submitted pursuant to 10 CSR 40-6.050(7) or 10 CSR 40-6.120(12), in consultation with state and federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed surface coal mining and reclamation operations; and

3. Provide the resource information required under 10 CSR 40-6.040(11) and the protection and enhancement plan required

under this section to the United States Fish and Wildlife Service for its review within ten (10) days of receipt of the request from the service.

(B) If the director decides to approve the application, s/he shall require that the applicant file the performance bond before the permit is issued, in accordance with the provisions of 10 CSR 40-7.

(C) Based on available information concerning federal and state failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees and unabated violations of federal and state laws and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the director shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of any federal or state surface coal mining law or any other law or regulation referred to in subsection (7)(C). In the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation issued pursuant to 10 CSR 40-8.030(7) or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the regulatory authority shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either—

1. Submit proof which is satisfactory to the regulatory authority, department or agency which has jurisdiction over the violation that the violation—

A. Has been corrected; or

B. Is in process of being corrected; or

2. Establish for the regulatory authority that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant, within thirty (30) days of the judicial action, shall submit the proof required under paragraph (7)(C)1. of this rule.

(D) Before any final determination that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violation of the law or the Act of that nature, duration and with the result in irreparable damage to the environment that indicates an intent not to comply with the provisions of the law or the Act, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing conducted pursuant to 10 CSR 40-6.080(1).

(E) The applicant for a permit shall have the burden of establishing that the application is in compliance with all the requirements of the regulatory program.

(F) Any permit that is issued on the basis of proof submitted under paragraph (7)(C)1. of this rule that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (7)(C)2. of this rule, shall be conditionally issued.

(G) Final Compliance Review. After an application is approved, but before the permit is issued, the decision to approve the application shall be reconsidered, based on the compliance review required by subsection (7)(C) of this rule in light of any new information submitted under 10 CSR 40-6.030(1)(H) and (2)(D).

(8) Criteria for Permit Approval or Denial. No permit or revision application shall be approved, unless the application affirmatively demonstrates, and the director finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that—

(A) The permit application is accurate and complete and that all requirements of the regulatory program have been complied with;

(B) The applicant has demonstrated that surface coal mining and reclamation operations, as required by the regulatory program, can be feasibly accomplished under the mining and reclamation operations plan contained in the application;

(C) The assessment of the probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance, as described in 10 CSR 40-6.050(9)(E), has been made by the commission or director and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed mine plan area;

(D) The proposed permit area is not—

1. Included within an area designated unsuitable for surface coal mining operations under 10 CSR 40-5.020;

2. Within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 10 CSR 40-5.020, unless the applicant demonstrates that, before January 4, 1977, s/he has made substantial legal and financial commitments in relation to the operation for which s/he is applying for a permit;

3. On any lands subject to the prohibitions or limitations of 10 CSR 40-5.010(2)(A), (F) or (G);

4. Within one hundred feet (100') of the outside right-of-way line of any public road, except as provided for in 10 CSR 40-5.010(3)(D); or

5. Within three hundred feet (300') from any occupied dwelling, except as provided for in 10 CSR 40-5.010(2)(E) and (3)(E);

(E) The proposed operations will not adversely affect any publicly- or privately-owned parks or places included or eligible for listing in the National Register of Historic Places, except as provided for in 10 CSR 40-5.010(2)(C). This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the director has determined that no additional protection measures are necessary;

(F) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted the documentation required under 10 CSR 40-6.030(3)(B) or 10 CSR 40-6.100(3)(B);

(G) If applicable, the applicant has either—

1. Submitted the proof required by paragraph (7)(C)1. of this rule; or

2. Made the demonstration required by paragraph (7)(C)2. of this rule;

(H) The applicant has submitted proof that all required federal reclamation fees have been paid;

(I) If the applicant, anyone who owns or controls the applicant or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of a nature and duration and with resulting irreparable damage to the environment indicating an intent not to comply with the law, no permit shall be issued. Before a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination;

(J) The applicant, with respect to prime farmland, has obtained either a negative

determination or satisfied the requirements of 10 CSR 40-6.060(4);

(K) It is found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C. Section 1531);

(L) The applicant, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use in accordance with the requirements of 10 CSR 40-3.120(1)(E) or 10 CSR 40-3.270(1)(E); and

(M) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 10 CSR 40-4.080, the site of the operation is a previously mined area as defined in 10 CSR 40-8.010(1)(A)72.

(9) Criteria for Permit Approval or Denial—Existing Structures.

(A) No application for a permit or revisions which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and it is found, in writing, on the basis of information set forth in the complete application that—

1. If the applicant proposes to use an existing structure in accordance with the exemption provided in 10 CSR 40-8.070(2)(D)1.A.—

A. The structure meets the performance standards of the Act and 10 CSR 40-3 and 10 CSR 40-4; and

B. No significant harm to the environment or public health or safety will result from use of the structure; and

2. If other existing structures will be used—

A. If the application proposes to use an existing structure in accordance with the exemption provided in 10 CSR 40-8.070(2)(D)1.B.—

(I) The structure meets the performance standards of the law and 10 CSR 40-2;

(II) No significant harm to the environment or public health or safety will result from use of the structure; and

(III) The performance standards of 10 CSR 40-2 are at least as stringent as performance standards of 10 CSR 40-3 and 10 CSR 40-4; and

B. If it is found that the structure meets the criteria of subparagraphs (9)(A)1.A. and B. of this rule, but does not meet the criterion of 10 CSR 40-

8.070(2)(D)1.C., the applicant shall submit a compliance plan for modification or reconstruction of the structure and it must be found prior to the issuance of the permit that—

(I) The modification or reconstruction of the structure will bring the structure into compliance with the design and performance standards of 10 CSR 40-3 and 10 CSR 40-4 as soon as possible, but not later than six (6) months, after issuance of the permit;

(II) The risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

(III) The applicant will monitor the structure to determine compliance with the performance standards of 10 CSR 40-3 and 10 CSR 40-4.

(B) If it is found that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant will be required to abandon the existing structure. The structure shall not be used for or to facilitate surface coal mining operations after the effective date of issuance of the permit issued under this chapter. Abandonment of the structure shall proceed on a schedule approved in compliance with 10 CSR 40-3.150(4) or 10 CSR 40-3.310(4).

(10) Permit Approval or Denial Actions.

(A) The director shall approve, require modification of or deny all applications for permits on the basis of—

1. Complete applications for permits and revisions or renewals of permits;

2. Public participation as provided for in this chapter;

3. Compliance with any applicable provisions of 10 CSR 40-6.060; and

4. Processing and review of applications as required by this rule.

(B) The director shall take action as required under subsection (10)(A) of this rule, within the following times:

1. Initiation of regulatory program. Except as provided for in paragraph (10)(B)3. of this rule, a complete application submitted within two (2) months after approval of the state program by the secretary of the interior shall be processed by the director so that an application is approved or denied—

A. Within eight (8) months after the date of approval by the secretary of the interior of a regulatory program, unless the state or the commission and director are specifically enjoined from submitting a state program or the commission and director are specifically enjoined from implementing a regulatory program but in no case later than eight (8) months after program approval; and

B. If an informal conference has been held pursuant to section (5) of this rule, within sixty (60) days from the close of the conference;

2. Subsequent operation of regulatory programs. Except as provided for in paragraph (10)(B)3. of this rule, a complete application submitted in accordance with subsection (4)(B) of this rule shall be processed by the director, so that an application is approved or denied within the following times:

A. If an informal conference has been held under section (5) of this rule, within sixty (60) days of the close of the conference; and

B. If no informal conference has been held under section (5) of this rule, then within sixty (60) days after the last publication of notice; and

3. Notwithstanding any of the previously mentioned provisions of this section, no time limit requiring the commission or director to act shall be considered expired from the time the commission or director initiates a proceeding under subsection (7)(D) of this rule until the final decision of the hearing body.

(C) If an informal conference is held under section (5) of this rule, the director shall give his/her written findings to the permit applicant and to each person who is a party to the conference, approving, modifying or denying the application in whole or in part and stating the specific reasons therefore in the decision.

(D) If no informal conference has been held, the director shall give his/her written findings to the permit applicant, approving, modifying or denying the application in whole or in part and stating the specific reason in the decision.

(E) The director shall simultaneously give a copy of his/her decision to—

1. Each person and governmental official who filed a written objection or comment with respect to the application; and

2. The regional director of the office together with a copy of any permit issued.

(F) Within ten (10) days after the granting of a permit, including the filing of the performance bond which complies with 10 CSR 40-7, the director shall notify the local government officials in the county in which the area of land to be affected is located that a permit has been issued and shall describe the location of the lands within the permit area.

(11) Improvidently-Issued Permit.

(A) General Procedures.

1. Permit review. Where the director has reason to believe a surface coal mining and

reclamation permit was improvidently issued, s/he shall review the circumstances under which the permit was issued, using the criteria in paragraph (11)(A)2. of this rule. Where the regulatory authority finds that the permit was improvidently issued, it shall comply with paragraph (11)(A)3. of this rule.

2. Review criteria. The director shall find that a surface coal mining and reclamation permit was issued improvidently if—

A. Under the violations review criteria of the regulatory program at the time the permit was issued—

(I) The regulatory authority should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

(II) The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued;

B. The violation, penalty or fee—

(I) Remains unabated or delinquent; and

(II) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

C. Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.

3. Remedial measures. If the director, under paragraph (11)(A)2. of this rule, finds that because of an unabated violation or a delinquent penalty or fee a permit was issued improvidently, s/he shall use one (1) or more of the following remedial measures:

A. Implement, with the cooperation of the permittee or other person responsible and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

B. Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

C. Suspend the permit until the violation is abated or the penalty or fee is paid; or

D. Rescind the permit under subsection (11)(B) of this rule.

(B) Rescission Procedures.

1. A regulatory authority which, under subparagraph (11)(A)3.D. of this rule, elects to rescind an improvidently-issued permit shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the regulatory authority under paragraph (11)(A)2. of this rule and states that—

A. After a specified period of time, not to exceed ninety (90) days, the permit automatically will become suspended and not to exceed ninety (90) days after being rescinded, unless within those periods the permittee submits proof and the regulatory authority finds that—

(I) The finding of the regulatory authority under paragraph (11)(A)2. of this rule was erroneous;

(II) The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

(III) The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

(IV) Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee; and

B. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the regulatory authority.

2. Right to appeal. The permittee may file an appeal for administrative review of the notice under Administrative Procedures and Review, Chapter 536, RSMo. This review shall be requested within thirty (30) days of the receipt of the notice of proposed suspension and rescission. The requested hearing shall be held before the commission within thirty (30) days of the receipt of the request. The commission shall issue its decision within thirty (30) days of the hearing.

(12) Permit Terms.

(A) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted, if—

1. The application is full and complete for the specified longer term; and

2. The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of

equipment and the opening of this operation and the need is confirmed, in writing, by the applicant's proposed source for the financing.

(B) Termination and Extension Conditions.

1. A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit, within three (3) years of the issuance of the permit.

2. The commission may grant reasonable extensions of time for commencement of these operations upon receipt of a written statement showing that these extensions of time are necessary, if—

A. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

B. There are conditions beyond the control and without the fault or negligence of the permittee.

3. With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

4. Extensions of time granted under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(C) Permits may be suspended, revoked or modified in accordance with 10 CSR 40-6.060(1)–(3) and (5), 10 CSR 40-6.090(3) and 10 CSR 40-8.030.

(13) Conditions of Permits—General and Right of Entry. Each permit shall ensure that—

(A) Except to the extent that the commission or director otherwise directs in the permit that for specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the complete application;

(B) The permittee shall allow the authorized representative of the secretary of the interior, the commission, director or authorized representatives, without advance notice or a search warrant, upon presentation of appropriate credentials and without delay, to—

1. Have the rights of entry provided for in 10 CSR 40-8.030(2); and

2. Be accompanied by private persons for the purpose of conducting an inspection when the inspection is in response to an alleged violation reported to the commission or director by the private person;

(C) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the

maps submitted under 10 CSR 40-6.040 or 10 CSR 40-6.110, 10 CSR 40-6.050 or 10 CSR 40-6.120 and approved for the term of the permit and which are subject to the performance bond in effect pursuant to 10 CSR 40-7;

(D) The operator shall pay all reclamation fees required by Subchapter R of Chapter 30 of the *Code of Federal Regulations* for coal produced under the permit for sale, transfer or use in the manner required by that subchapter; and

(E) Within thirty (30) days after a cessation order is issued under 10 CSR 40-8.030(6) for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect, the permittee shall either submit to the regulatory authority the following information, current to the date the cessation order was issued, or notify the regulatory authority in writing that there has been no change since the immediately preceding submittal of that information:

1. Any new information needed to correct or update the information previously submitted to the regulatory authority by the permittee under 10 CSR 40-6.030(1)(C); or

2. If not previously submitted, the information required from a permit applicant by 10 CSR 40-6.030(1)(C).

(14) Conditions of Permits—Environment, Public Health and Safety. Each permit shall ensure and contain specific conditions requiring that the permittee shall—

(A) Take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

1. Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the noncompliance, any person whose health and safety is in imminent danger due to the noncompliance;

(B) Dispose of solids, sludge, filter backwash or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 10 CSR 40-3 and 10 CSR 40-4, by the regulatory program and which prevents violation of any other applicable state or federal law; and

(C) Conduct its operations—

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

2. Utilizing any methods specified in the permit in approving alternative methods of compliance with the performance standards of the regulatory program, in accordance with the provisions of the law, subsection (8)(M) of this rule and 10 CSR 40-3 and 10 CSR 40-4.

AUTHORITY: sections 444.530 and 444.810, RSMo Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed July 15, 1980, effective Nov. 13, 1980. Amended: Filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed Dec. 15, 1987, effective April 1, 1988. Amended: Filed June 2, 1988, effective Aug. 25, 1988. Amended: Filed Jan. 5, 1989, effective April 1, 1989. Amended: Filed March 2, 1989, effective May 15, 1989. Amended: Filed May 2, 1989, effective Aug. 1, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000, effective Oct. 30, 2000.*

**Original authority: 444.530, 1971, amended 1983, 1990, 1993, 1995 and 444.810, RSMo 1979, amended 1983, 1993, 1995.*

10 CSR 40-6.080 Administrative and Judicial Review of Decisions on Permit Applications

PURPOSE: This rule sets forth requirements for the administrative and judicial review of decisions on permit applications pursuant to sections 444.810, 444.850 and 444.900, RSMo.

(1) Administrative Review.

(A) Within thirty (30) days after the applicant or permittee is notified of the final decision of the director concerning the application for a permit, revision modification or renewal of a permit, application for transfer, sale or assignment of rights, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing before the commission on the reasons for the final decision in accordance with this section.

(B) Hearing Time Period and Relief.

1. The commission shall commence the hearing within thirty (30) days of request. This hearing shall be of record and adjudicatory in nature.

2. The commission, under the conditions as it prescribes, may grant the temporary relief as it deems appropriate, pending final determination of the proceeding, if—

A. All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

B. The person requesting that relief shows that there is a substantial likelihood that s/he will prevail on the merits of the final determination of the proceeding;

C. The relief will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air or water resources; and

D. The relief sought is not the issuance of a permit where a permit has been denied, in whole or part, by the director.

3. Hearing procedures.

A. For the purpose of the hearing, the commission or hearing officer may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery and take evidence, including but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

B. A verbatim record of each public hearing required by this section shall be made and a transcript made available on the motion of any part or by order of the commission.

C. *Ex parte* contacts between representatives of the parties before the commission or hearing officer and the commission or hearing officer shall be prohibited.

4. Within thirty (30) days after the close of the record, the commission shall issue and furnish the applicant and each person who participated in the hearing, with the written Findings of Fact, Conclusions of Law and Order with respect to the appeal.

5. The burden of proof at these hearings shall be on the party seeking to reverse the decision of the director.

(2) Judicial Review.

(A) Any applicant or any person with an interest which is or may be adversely affected and who had participated in the administrative proceedings as an objector shall have the right to appeal as provided in subsection (2)(B) of this rule if—

1. The applicant or person is aggrieved by the decision in an administrative review proceeding conducted pursuant to section (1) of this rule; or

2. Either the commission or director under section (1) of this rule fails to act with-

in time limits specified in the law, this chapter or regulatory program, whichever applies.

(B) Action identified in subsection (2)(A) of this rule shall be subject to judicial review as provided by law, but the availability of the review shall not be construed to limit the operation of the rights established in section 444.880, RSMo.

AUTHORITY: section 444.530, RSMo 1994. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980.*

**Original authority 1971, amended 1983, 1990, 1993.*

10 CSR 40-6.090 Permit Reviews, Revisions and Renewals and Transfer, Sale and Assignment of Rights Granted Under Permits

PURPOSE: This rule sets forth requirements for permit reviews, revisions and renewals and requirements for transfer, sale and assignments for transfer, sale and assignment of rights granted under permits pursuant to sections 444.810, 444.815, 444.840 and 444.850, RSMo.

(1) Responsibilities. The commission or director shall—

(A) Ensure that permits are revised prior to changes in surface coal mining and reclamation operation;

(B) Ensure that all permits are regularly reviewed to determine that surface coal mining and reclamation operations under these permits are conducted in compliance with the regulatory program;

(C) Effectively review and act on applications to renew existing permits, in a timely manner, to ensure that surface coal mining and reclamation operations continue, if they comply with the regulatory program; and

(D) Ensure that no person conducts surface coal mining and reclamation operations, through the transfer, sale or assignment of rights granted under permits, without prior approval.

(2) Definitions. As used in sections (9)–(11) of this rule—

(A) Successor in interest means any person who succeeds to rights granted under a permit by transfer, assignment or sale of those rights; and

(B) Transfer, assignment or sale of rights means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit.

(3) Review of Outstanding Permits.

(A) Review Periods.



1. The director shall review each permit issued and outstanding during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 10 CSR 40-6.060(1), (3) and (5).

2. For permits of longer than five (5)-year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years whichever is more frequent.

(B) After this review, the director shall file a report with the commission. This report shall order reasonable revision or modification of the permit provisions which are appropriate to ensure compliance with the regulatory program.

(C) Copies of the report and order of the director shall be sent to the permittee.

(D) Any order of the director requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions of administrative and judicial review of 10 CSR 40-6.080.

(4) Permit Revisions.

(A) A revision to a permit shall be obtained—

1. For changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when these changes constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit. A significant departure includes any change in the permit area, mining method or reclamation procedure which, in the opinion of the director, would significantly change the effect the mining operation would have on either those persons affected by the present operation or on the environment;

2. When required by an order issued under section (3) of this rule;

3. In order to continue operations after the cancellation or material reduction of the liability insurance policy or performance bond upon which the original permit was issued; or

4. As otherwise required under the regulatory program.

(B) The application for revision shall be filed in accordance with the following:

1. The permittee shall submit the application to the director within the time provided for by 10 CSR 40-6.010(4)(B)3.; and

2. The scale or extent of permit application information requirements and procedures, including notice and hearings, applicable to revision requests shall be sufficient to demonstrate compliance with all applicable rules. Any application for a revision which proposes significant alterations in the opera-

tions described in the materials submitted in the application for the original permit under 10 CSR 40-6.030, 10 CSR 40-6.040, 10 CSR 40-6.050, 10 CSR 40-6.060, 10 CSR 40-6.100, 10 CSR 40-6.110 or 10 CSR 40-6.120 or in the conditions of the original permit, at a minimum, shall be subject to the requirements of 10 CSR 40-6.070 and 10 CSR 40-6.080.

(C) Within a reasonable time, the director will approve or disapprove the complete application for revision, in accordance with the requirements of 10 CSR 40-6.070.

(D) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new permit and shall not be approved under this rule.

(E) The applicant for a permit revision shall have the burden of establishing that the application is in compliance with all the requirements of the regulatory program.

(5) Permit Renewals—General Requirements.

(A) Any valid, existing permit issued pursuant to 10 CSR 40-6 shall carry with it the right of successive renewal upon expiration of the term of the permit, in accordance with sections (6)—(8) of this rule. Successive renewal shall be available only for those areas which were specifically approved by the commission or director on the application for the existing permit as within the boundaries of the permit.

(B) Permit renewal shall not be available for conducting surface coal mining and reclamation operations on lands beyond the boundaries of the permit area approved under the existing permit. Approval of permits to conduct operations on these lands, including, but not limited to, any remainder of the mine plan area described in the application for the existing permit, shall be obtained in accordance with paragraph (6)(B)2. of this rule.

(6) Permit Renewals—Completed Applications.

(A) Contents. Complete applications for renewals of a permit shall be made within the time prescribed by 10 CSR 40-6.010(4)(B)2. Renewal applications shall be in a form with contents required by the director in accordance with paragraph (6)(B)2. of this rule, including at a minimum, the following:

1. A statement of the name and address of the permittee, the term of the renewal requested, the permit number and a description of any changes to the matters set forth in the original application for a permit or prior permit renewal;

2. A copy of the newspaper notice and proof of publication of same under 10 CSR 40-6.070(2)(A); and

3. Evidence that a liability insurance policy under 10 CSR 40-7.050 will be provided by the applicant for the proposed period of renewal.

(B) Processing and Review.

1. Complete applications for renewal shall be subject to the requirements of public notification and participation contained in 10 CSR 40-6.070(2)—(5).

2. If a complete application for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the complete application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new permit applications under 10 CSR 40-6.010, 10 CSR 40-6.030—10 CSR 40-6.120 and 10 CSR 40-7.

3. Before finally acting to grant the permit renewal, any additional performance bond needed to comply with the requirements of paragraph (8)(A)4. of this rule shall be filed.

(7) Permit Renewals—Terms. Any permit renewal shall be for a term not to exceed the period of the original permit established under 10 CSR 40-6.070(12).

(8) Permit Renewals—Approval or Denial.

(A) The director, upon the basis of a complete application for renewal and completion of all procedures required under sections (6) and (7) of this rule, shall issue a renewal of a permit, unless it is established and written findings are made that—

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under 10 CSR 40-3 and 10 CSR 40-4 and the regulatory program;

3. The requested renewal substantially jeopardizes the operator’s continuing responsibility to comply with the regulatory program on existing permit areas;

4. The operator has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond required pursuant to 10 CSR 40-7; or

5. Any additional revised or updated information required has not been provided by the applicant.

(B) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(C) The director shall send copies of any decision to the applicant, any persons who filed objections or comments to the renewal and to any persons who were parties to any informal conference held on the permit renewal.

(D) Any person having an interest which is or may be adversely affected by the decision shall have the right to administrative and judicial review set forth in 10 CSR 40-6.080.

(9) Transfer, Assignment or Sale of Permit Rights—General Requirements. No transfer, assignment or sale of the rights granted under any permit issued shall be made without the prior written approval of the director in accordance with section (10) of this rule.

(10) Transfer, Assignment or Sale of Permit Rights.

(A) Application Requirements. An applicant for approval of the transfer, assignment or sale of permit rights shall—

1. Provide the director with an application for approval of the proposed transfer, assignment or sale including;

A. The name and address of the existing permittee and permit number or other identifier;

B. A brief description of the proposed action requiring approval; and

C. The legal, financial, compliance and related information required by 10 CSR 40-6.030(1)–(3), (4)(C), (6) and (7) for surface mine operations or 10 CSR 40-6.100(1)–(3), (4)(D), (6) and (7) for underground operations for the applicant for approval of the transfer, assignment or sale of permit rights;

2. Advertise once the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit and the address to which written comments may be sent; and

3. Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under 10 CSR 40-7.011.

(B) Public Participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment or sale of permit rights, including an official of any federal, state or local government agency, may submit written comments on the application to the director

within thirty (30) days of the newspaper advertisement.

(C) Criteria for Approval. The director may allow a permittee to transfer, assign or sell permit rights to a successor, if s/he finds in writing that the successor—

1. Is eligible to receive a permit in accordance with 10 CSR 40-6.070(7) and (8);

2. Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by 10 CSR 40-7.011; and

3. Meets any other requirements specified by the director.

(D) Notification.

1. The director shall notify the permittee, the successor, commenters and the Office of Surface Mining Reclamation and Enforcement (OSMRE) of its findings.

2. The successor shall immediately provide notice to the director of the consummation of the transfer, assignment or sale of permit rights.

(E) Continued operation under existing permit. The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this chapter.

AUTHORITY: sections 444.530 and 444.810, RSMo Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed March 21, 2000, effective Oct. 30, 2000.*

**Original authority: 444.530, RSMo 1971, amended 1983, 1990, 1993, 1995 and 444.810, RSMo 1979, amended 1983, 1993, 1995.*

10 CSR 40-6.100 Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information

PURPOSE: This rule sets forth requirements for legal, financial, compliance and related information for underground mining permit applications pursuant to sections 444.810, 444.815, 444.820, 444.825, 444.835, 444.840 and 444.850, RSMo.

(1) Identification of Interests.

(A) Each application shall contain the following information, except that the submission of a Social Security number is voluntary:

1. The permit applicant including his/her telephone number, address and, as applicable, Social Security number and employer identification number;

2. Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

3. The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined;

4. Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined;

5. The operator, if the operator is a person different from the applicant, including his/her telephone number, address and, as applicable, Social Security number and employer identification number;

6. The resident agent of the applicant who will accept service of process, including his/her telephone number, address and, as applicable, Social Security number and employer identification number; and

7. The person who will pay the abandoned mine land reclamation fee, including his/her telephone number and, as applicable, Social Security number and employer identification number.

(B) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

1. Names and addresses of every officer, partner, director or other person performing a function similar to a director of the applicant;

2. Name and address of any person who is a principal shareholder of the applicant; and

3. Names under which the applicant, partner or principal shareholder previously operated a surface coal mining operation in the United States within the five (5) years preceding the date of application.

(C) For each person who owns or controls the applicant under the definition of owned or controlled and owns or controls in 10 CSR 40-6.010(2)(E), as applicable—

1. The person's name, address, Social Security number and employer identification number;

2. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

3. The title of the person's position, date position was assumed and, when submitted under 10 CSR 40-6.070(12)(E), date of departure from the position;

4. Each additional name and identifying number, including employer identification number, federal or state permit number and the Mine Safety and Health Administration (MSHA) number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

5. The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(D) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of owned or controlled and owns or controls in 10 CSR 40-6.010(2)(E), the operation's—

1. Name, address, identifying numbers, including employer identification number, federal or state permit number and the MSHA number, the date of issuance of the MSHA number and the regulatory authority; and

2. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(E) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(F) Each application shall contain the name of the proposed mine and the MSHA identification number for the mine and all sections, if any.

(G) Each application shall contain a statement of all lands, interests in lands, options or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit. If requested by the applicant, any information required by this subsection which is not on public file pursuant to state law shall be held in confidence by the director, as provided under 10 CSR 40-6.070(6)(C)2.

(H) After an applicant is notified that his/her application is approved, but before the permit is issued, the applicant, as appli-

cable, shall update, correct or indicate that no change has occurred in the information previously submitted under subsections (1)(A)–(D) of this rule.

(I) The applicant shall submit the information, required by this section and section (2) of this rule, in any prescribed format that is issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE).

(2) Compliance Information. Each application shall contain—

(A) A statement of whether the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant has—

1. Had a federal or state mining permit suspended or revoked in the last five (5) years; or

2. Forfeited a mining bond or similar security deposited in lieu of bond;

(B) If any such suspension, revocation or forfeiture has occurred, a statement of the facts involved, including:

1. Identification number and date of issuance of the permit or date and amount of bond or similar security;

2. Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

3. The current status of the permit, bond or similar security involved;

4. The date, location and type of any administrative or judicial proceedings initiated concerning the suspension, revocation or forfeiture; and

5. The current status of these proceedings;

(C) For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violations notices received by the applicant during the three (3)-year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

1. Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the

violation notice was issued, and the name of the issuing regulatory authority, department or agency;

2. A brief description of the violation alleged in the notice;

3. The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (C) of this section to obtain administrative or judicial review of the violation;

4. The current status of the proceedings and of the violation notice; and

5. The actions, if any, taken by any person identified in subsection (C) of this section to abate the violation; and

(D) After an applicant is notified that his/her application is approved, but before the permit is issued, the applicant, as applicable, shall update, correct or indicate that no change has occurred in the information previously submitted under this section.

(3) Right-of-Entry and Operation Information.

(A) Each application shall contain a description of the documents upon which the applicant bases his/her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains and explain the legal rights claimed by the applicant.

(B) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide, for lands to be affected by those operations within the permit area—

1. A copy of the written consent of the surface owner to the extraction of coal by surface mining methods;

2. A copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

3. If the conveyance does not expressly grant the right to extract coal by surface mining methods, documentation that under the applicable state law, the applicant has the legal authority to extract the coal by those methods.

(C) Nothing in this section shall be construed to afford the commission or director the authority to adjudicate property title disputes.

(4) Relationship to Areas Designated Unsuitable for Mining.

(A) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under 10 CSR 40-5.020 or under study for designation in an administrative proceeding initiated under that rule.

(B) If an applicant claims the exemption in 10 CSR 40-6.070(8)(D)2., the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(C) If an applicant proposes to conduct or locate surface operations or facilities within three hundred feet (300') of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 10 CSR 40-5.010(3)(E).

(5) Permit Term Information.

(A) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected and the horizontal and vertical extent of proposed underground mine workings for each phase of mining and over the total life of the permit.

(B) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 10 CSR 40-6.070(11)(A).

(6) Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance.

(7) Identification of Other Licenses and Permits.

(A) Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by—

1. Type of permit or license;
2. Name and address of issuing authority;

3. Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

4. If a decision has been made, the date of approval or disapproval by each issuing authority.

(8) Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection under 10 CSR 40-6.070(2)(D).

(9) Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the director and made a part of the complete application not later than four (4) weeks after the last date of publication required under 10 CSR 40-6.070(2)(A).

(10) Access. The written consent of the applicant and any other persons necessary to grant access should be given to the commission or the director for the area of land affected under application from the date of application until the expiration of any permit granted under the application and after that for such time as is necessary to assure compliance with all provisions of this law or any corresponding rule.

AUTHORITY: section 444.810, RSMo Supp. 1999. Original rule filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed March 21, 2000, effective Oct. 30, 2000.*

**Original authority: 444.810, RSMo 1979, amended 1983, 1993, 1995.*

10 CSR 40-6.110 Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

PURPOSE: This rule sets forth the requirements for information on environmental resources for underground mining permit applications pursuant to sections 444.810, 444.820, 444.825, 444.835, 444.840 and 444.850, RSMo.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Responsibilities. It is the responsibility of—

(A) The applicant to provide, except where specifically exempted in this rule, all information required by this rule in the application; and

(B) State and federal government agencies to provide information for applications as specifically required by this rule.

(2) General Requirements. Each permit application shall include a description of the existing, premining environmental resources within the proposed mine plan area and adjacent areas that may be affected or impacted by the proposed underground mining activities.

(3) General Environmental Resources Information. Each application shall describe and identify—

(A) The size, sequence and timing of the subareas of the mine plan area for which it is anticipated that individual permits for mining will be requested over the estimated total life of the proposed underground mining activities; and

(B) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed mine plan and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archaeological, historic and cultural preservation agencies. Based on this information, the applicant may recommend to the director appropriate identification, evaluation or mitigation measures. The director may require the applicant to identify and evaluate important historic resources and archaeological sites that may be eligible for listing on the National Register of Historic Places through collection of additional information, conduct of field investigation or other appropriate analyses.

(4) Description of Hydrology and Geology—General Requirements.

(A) Each application shall contain a description of the geology, hydrology and water quality and quantity of all lands within the proposed mine plan area, the adjacent area and the general area. The description shall include information on the characteristics of all surface and ground waters within the general area and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to sections (4)–(7) of this rule and conform to the following:

1. Information on hydrology, water quality and quantity and geology related to

hydrology of areas outside the proposed mine plan area and within the general area shall be provided by the director to the extent that this data is available from an appropriate federal or state agency;

2. If this information is not available from those agencies, the applicant may gather and submit this information to the director as part of the permit application; and

3. The permit shall not be approved by the commission or director until this information is made available in the application.

(B) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.

(5) Geology Description.

(A) The description shall include a general statement of the geology within the proposed mine plan and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer to be affected below the lowest coal seam to be mined. The description shall include the areal and structural geology of the permit and adjacent areas and other parameters which influence the required reclamation and the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground waters. It shall be based on—

1. The cross-sections, maps and plans required by section (15) of this rule;

2. The information obtained under paragraph (5)(B)1. of this rule; and

3. Geologic literature and practices.

(B) The geology for areas proposed to be affected by surface operations and facilities, those surface lands overlying coal to be mined and the coal to be mined shall be separately described as follows:

1. Geology of the strata down to and including the stratum immediately below any coal seam to be mined or any aquifer below the lowest coal seam which may be adversely affected shall be described for those areas to be affected by surface operations or facilities, including the following data resulting from analyses of test borings, core samplings or outcrop samples:

A. The location of areas where subsurface water will be exposed at the face-up area;

B. The logs of drill holes showing the lithologic characteristics of the strata to be affected;

C. The physical properties of each stratum within the overburden, including compaction and erodibility; and

D. Chemical analyses of each stratum to be affected, including the stratum immediately below the lowest coal seam to be mined, to identify, at a minimum, those horizons which contain potential acid-forming or alkalinity-producing materials; and

2. The geology for those surface lands within the proposed mine plan area which are underlain by the coal seam to be extracted and the geology of the coal seam itself, including:

A. Location of subsurface water, if encountered;

B. The depth, classification and geologic structure of the overburden;

C. Pyritic content and potential alkalinity of the stratum immediately above and below the coal seam to be mined and the clay content of the stratum immediately below the coal seam to be mined; and

D. Pyrite, marcasite and sulfur content of the coal seam.

(C) An applicant may request that the requirements of paragraph (5)(A)1. of this rule be waived by the director. The waiver may be granted only if the director makes a written determination that the statement required is unnecessary because other equivalent information is accessible to him/her in a satisfactory form.

(6) Groundwater Information.

(A) The application shall contain a description of the groundwater hydrology for the proposed mine plan and adjacent area, including, at a minimum:

1. The depth below the surface and the horizontal extent of the water table and aquifers;

2. The lithology and thickness of the aquifers;

3. The uses of the water in the aquifers and water table; and

4. The quality of subsurface water, if encountered.

(B) The application shall contain additional information which describes the recharge, storage and discharge characteristics of aquifers and the quality and quantity of groundwater, according to the parameters and in the detail necessary to evaluate these characteristics.

(7) Surface Water Information.

(A) Surface water information shall be described, including the name of the watershed which will receive water discharges, the location of all surface water bodies, such as streams, lakes, ponds and springs, the locations of any water discharge into any surface body of water and descriptions of surface drainage systems sufficient to identify, in

detail, the seasonal variations in water quantity and quality within the proposed mine plan and adjacent areas.

(B) Surface water information shall include:

1. Minimum, maximum and average discharge conditions, which identify critical low flows and peak discharge rates of streams sufficient to identify seasonal variations; and

2. Water quality data to identify the characteristics of surface waters in, discharging into or which will receive flows of surface or ground water from the affected area within the proposed mine plan area, sufficient to identify seasonal variations, showing—

A. Total dissolved solids in milligrams per liter;

B. Total suspended solids in milligrams per liter;

C. Acidity;

D. pH in standard units;

E. Total and dissolved iron in milligrams per liter;

F. Total manganese in milligrams per liter; and

G. Other information as the director determines is relevant.

(8) Alternative Water Supply Information. The application shall identify the extent to which the proposed underground mining activities may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed mine plan or adjacent area for domestic, agricultural, industrial or other legitimate use. If contamination, diminution or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

(9) Climatological Information.

(A) When requested by the director, the application shall contain a statement of the climatological factors that are representative of the proposed mine plan area, including:

1. The average seasonal precipitation;

2. The average direction and velocity of prevailing winds; and

3. Seasonal temperature ranges.

(B) The director may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

(10) Vegetation Information.

(A) The permit application shall contain a map that delineates existing vegetation types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include

information adequate to predict the potential for reestablishing vegetation.

(B) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 10 CSR 40-6.040(11).

(11) Fish and Wildlife Resources Information.

(A) The fish and wildlife information required will be consistent with the Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531, et seq.); section 444.855.2.(17), RSMo; 10 CSR 40-3.040(17); and 10 CSR 40-3.100. The director shall provide the United States Fish and Wildlife Service, within ten (10) days of their request, a copy of the information submitted by the applicant pursuant to this section.

(B) Each application shall include information on fish and wildlife and their habitats within the proposed mine plan area and the portions of the adjacent areas where effects of these resources may reasonably be expected to occur. This information shall be sufficient in detail to design the protection and enhancement plan required in 10 CSR 40-6.120(12).

(C) The director, in consultation with the Missouri Department of Conservation and the United States Fish and Wildlife Service, shall determine the minimum level of detail and specify the areas from which information will be obtained and shall make a determination based on—

1. Published data and the Missouri Natural Features Inventory and other information;
2. Site-specific information obtained by the applicant in accordance with paragraph (11)(D) of this rule; and
3. Written guidance obtained from agencies consulted.

(D) Site-specific information obtained by the applicant to satisfy paragraph (11)(C)2. of this rule, at a minimum, shall include the following:

1. Amount of woodland edge;
2. Extent of food sources, nesting places and concealment cover;
3. Degree of interspersation of habitat types; and
4. Amount and quality of permanent water sources.

(E) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include, at a minimum:

1. Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.); or those species or habitats protected by Missouri as determined by the Missouri Department of Conservation;

2. Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes or reproduction and wintering areas; or

3. Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(F) Upon request, the regulatory authority shall provide the resource information required under this section and the protection and enhancement plan required under this section to the United States Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within ten (10) days of receipt of the request from the service.

(12) Soil Resources Information.

(A) The applicant shall provide adequate soil survey information on those portions of the permit area to be affected by surface operations of facilities consisting of the following:

1. A map delineating different soils;
2. Soil identification;
3. Soil description; and
4. Present and potential productivity of existing soils.

(B) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 10 CSR 40-3.190(2).

(13) Land Use Information.

(A) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit areas, including:

1. A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five (5) years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described;

2. A narrative of land capability and productivity, which analyzes the land use description under subsection (13)(A) in con-

junction with other environmental resources information required under this rule. The narrative shall provide analyses of—

A. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the area proposed to be affected by surface operations or facilities; and

B. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage or wood products from these lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the United States Department of Agriculture, state agricultural universities or appropriate state agencies.

(B) The application shall state whether the proposed mine plan area has been previously mined and, if so, the following information, if available:

1. The type of mining method used;
2. The coal seams or other mineral strata mined;
3. The extent of coal or other minerals removed;
4. The approximate dates of past mining; and
5. The uses of the land preceding mining.

(C) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed mine plan and adjacent area.

(14) Maps—General Requirements. The permit application shall include maps showing:

(A) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(B) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin underground mining activities;

(C) The boundaries of all areas proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the mining of subareas for which it is anticipated that additional permits will be sought;

(D) The location of all buildings in and within one thousand feet (1000') of the proposed permit area, with identification of the current use of the buildings;

(E) The location of surface and subsurface man-made features within, passing through or passing over the proposed permit area,

including, but not limited to, major electric transmission lines, pipelines and agricultural drainage tile fields;

(F) The location and boundaries of any proposed reference areas for determining the success of revegetation;

(G) The locations of water supply intakes for current users of surface waters flowing into, out of and within a hydrologic area defined by the director and those surface waters which will receive discharges from affected areas in the proposed mine plan area;

(H) Each public road located in or within one hundred feet (100') of the proposed permit area;

(I) The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archaeological sites within the mine plan and adjacent areas;

(J) Each public or private cemetery or Indian burial ground located in or within one hundred feet (100') of the proposed permit area;

(K) Any land within the proposed mine plan area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act; and

(L) Other relevant information required by the director.

(15) Cross-Sections, Maps and Plans. The application shall include cross-sections, maps and plans showing—

(A) Elevations and locations of test borings and core samplings;

(B) Elevations and locations of monitoring stations used to gather data on water quality and quantity, fish and wildlife air quality, if required, in preparation of the application;

(C) Nature, depth and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden and the stratum immediately below the lowest coal seam to be mined;

(D) All coal croplines and the strike and dip of the coal to be mined within the proposed mine plan area;

(E) Location and extent of known workings of active, inactive or abandoned underground mines, including mine openings to the surface within the proposed mine plan and adjacent areas;

(F) Location and extent of subsurface water, if encountered, within the proposed mine plan or adjacent areas, including, but not limited to, areal and vertical distribution

of aquifers and portrayal of seasonal differences of head in different aquifers on cross-sections and contour maps;

(G) Location of surface water bodies, such as streams, lakes, ponds, springs, constructed or natural drains and irrigation ditches within the proposed mine plan and adjacent areas;

(H) Location and extent of existing or previously surface mined areas within the proposed mine plan area;

(I) Location and dimensions of existing areas of spoil, waste, coal development waste and noncoal waste disposal, dams, embankments, other impoundments and water treatment and air pollution control facilities within the proposed permit area;

(J) Location and depth, if available, of gas and oil wells within the proposed permit area and water wells in the mine plan area and adjacent areas;

(K) Sufficient slope measurements to adequately represent the existing land surface configuration of the area affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending one hundred (100) linear feet above and below or beyond the coal outcrop or the area to be disturbed or where this is impractical, at locations specified by the director;

2. Where the area has been previously mined, the measurements shall extend at least one hundred feet (100') beyond the limits of mining disturbances or any other distance determined by the director to be representative of the premining configuration of the land; or

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed; and

(L) Maps, plans and cross-sections included in a permit application and required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture and shall be updated as required by the director.

(16) Prime Farmland Investigation.

(A) The applicant shall conduct a preapplication investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland. All permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to

indicate whether prime farmland exists. The regulatory authority in consultation with the United States Soil Conservation Service (SCS) shall determine the nature and extent of the required reconnaissance inspection.

(B) Land shall not be considered prime farmland where the applicant can demonstrate one (1) or more of the following:

1. The land has not been historically used as cropland;

2. The slope of the land is ten percent (10%) or greater;

3. The land is not irrigated or naturally subirrigated, has no developed water supply that is dependable and of adequate quality and the average annual precipitation is fourteen inches (14") or less;

4. Other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; and

5. On the basis of a soil survey of the lands within the mine plan area, there are no soil map units that have been designated prime farmland by the United States SCS.

(C) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination which shows that the land for which the negative determination is sought meets one (1) or more of the criteria in subsection (16)(B) of this rule.

(D) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the United States SCS to determine if a soil survey exists for these lands and whether the applicable soil map units have been designated prime farmlands. If no soil survey has been made for these lands, the applicant shall cause a survey to be made—

1. When a soil survey for lands within this proposed mine plan area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application in accordance with 10 CSR 40-6.060(14) for this designated land; or

2. When a soil survey for lands within the proposed mine plan area contains soil map units which have not been designated as prime farmland after review by the United States SCS, the applicant shall submit a statement that no prime farmland is present. The statement shall identify the basis upon which this conclusion was reached.

*AUTHORITY: section 444.810, RSMo 1994. * Original rule filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Dec. 10,*

1980, effective April 11, 1981. Amended: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed Dec. 15, 1987, effective April 1, 1988. Amended: Filed March 2, 1989, effective May 15, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993.

**Original authority 1979, amended 1983, 1993.*

10 CSR 40-6.120 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation’s Plan

PURPOSE: This rule sets forth requirements for reclamation and operations plans for underground mining permit applications pursuant to sections 444.810, 444.820 and 444.825, RSMo.

PUBLISHER’S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

(1) Responsibilities. It is the responsibility of—

(A) The applicant to provide to the commission and director all of the information required by this rule, except where specifically exempted in this rule.

(B) State and federal governmental agencies to provide information to the commission and director where specifically required in this rule.

(2) Operations Plan—General Requirements. Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed mine plan area including, at a minimum, the following:

(A) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage and the major equipment to be used for all aspects of those operations; and

(B) A narrative explaining the construction, modification, use, maintenance and removal of the following facilities (unless retention of the facility is necessary for post-

mining land use as specified in 10 CSR 40-3.300):

1. Dams, embankments and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, including the size, sequence and timing for the development of underground workings, handling, storage, cleaning and transportation areas and structures;

4. Spoil, coal processing waste, mine development waste and noncoal waste removal, handling, storage, transportation and disposal areas and structures;

5. Mine facilities; and

6. Water and air pollution control facilities.

(3) Operations Plan—Existing Structures.

(A) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

1. Location;

2. Plans of the structure which describe its current condition;

3. Approximate dates on which construction of the existing structure was begun and completed; and

4. A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 10 CSR 40-3 and 10 CSR 40-4, or if the structure does not meet the performance standards of 10 CSR 40-3 and 10 CSR 40-4, a showing whether the structure meets the performance standards of 10 CSR 40-2.

(B) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

1. Design specification for the modification or reconstruction of the structure to meet the design and performance standards of 10 CSR 40-3 and 10 CSR 40-4;

2. A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

3. Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of 10 CSR 40-3 and 10 CSR 40-4 are met; and

4. A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

(4) Reclamation Plan—General Requirements.

(A) Each application shall contain a plan for the reclamation of the lands within the proposed permit area, showing how the applicant will comply with sections 444.855 and 444.860, RSMo, 10 CSR 40-3 and 10 CSR 40-4 and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under sections (4)–(17) of this rule.

(B) Each plan shall contain the following information for the proposed permit area:

1. A detailed timetable for the completion of each major step in the reclamation plan;

2. A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under 10 CSR 40-7, with supporting calculations for the estimates;

3. A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 10 CSR 40-3.260;

4. A plan for removal, storage and redistribution of topsoil, subsoil and other material to meet the requirements of 10 CSR 40-3.190;

5. A plan for revegetation as required in 10 CSR 40-3.270, including, but not limited to, descriptions of the:

A. Schedule of revegetation;

B. Species and amounts per acre of seeds and seedlings to be used;

C. Methods to be used in planting and seeding;

D. Mulching techniques;

E. Irrigation, if appropriate, and pest and disease control measures, if any;

F. Measures proposed to be used to determine the success of revegetation as required in 10 CSR 40-3.270(6); and

G. A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

6. A description of the measures to be used to maximize the use and conservation of the coal resource as required in 10 CSR 40-3.310;

7. A description of measures to be employed to ensure that all debris, acid- and toxic-forming materials and materials constituting a fire hazard are disposed of in accordance with 10 CSR 40-3.230(8) and 10 CSR 40-3.260(3) and a description of the contingency plans which have been developed to preclude sustained combustion of these materials;

8. A description, including appropriate cross-sections and maps of the measures to be used to seal or manage mine openings and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 10 CSR 40-3.180; and

9. A description of steps to be taken to comply with requirements of the Clean Air Act (42 U.S.C. Section 7401), the Clean Water Act (33 U.S.C. Section 1251), other applicable air and water quality laws and regulations and health and safety standards.

(5) Reclamation Plan—Protection of Hydrologic Balance.

(A) Sampling and Analysis. All water quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the fifteenth edition of *Standard Methods for the Examination of Water and Wastewater*, which is incorporated by reference, or the methodology in 40 CFR parts 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed previously when feasible.

(B) Each plan shall contain a detailed description with appropriate maps and cross-section drawings of the measures to be taken during and after the proposed underground mining activities in accordance with 10 CSR 40-3.170–10 CSR 40-3.310 to ensure the protection of—

1. The quality of surface and ground water, both within the proposed mine plan area and adjacent areas, from adverse effects of the proposed underground mining activities;

2. The rights of present users to surface and ground water;

3. The quantity of surface and ground water both within the proposed mine plan and adjacent area from adverse effects of the proposed underground mining activities, or to provide alternative sources of water in accordance with 10 CSR 40-6.110(8) and 10 CSR 40-3.200(13), where the protection of quantity cannot be ensured; and

4. Water quality by locating openings for mines in accordance with 10 CSR 40-3.200(10).

(C) If the determination of the probable hydrologic consequences required by subsection (5)(D) of this rule indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid- or toxic-forming material is present that may result in the contamination of ground or surface water supplies, then information supplemental to that required under 10 CSR 40-

6.110(6) and (7) shall be provided to evaluate the probable hydrologic consequences and to plan remedial and reclamation activities. This supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water bearing strata, flood flows or analysis of other water quality or quantity characteristics. The description shall include:

1. A plan for the control, in accordance with 10 CSR 40-3.170–10 CSR 40-3.310, of surface and ground water drainage into, through and out of the proposed mine plan area;

2. A plan for the treatment, where required under 10 CSR 40-3 and 10 CSR 40-4 and the regulatory program, of surface and ground water drainage from the area to be affected by the proposed activities and proposed quantitative limits on pollutants in discharges subject to 10 CSR 40-3.200(2), according to the more stringent of the following:

A. 10 CSR 40-3 and 10 CSR 40-4 and the regulatory program; or

B. Other applicable state and federal laws; or

3. A plan for the collection, recording and reporting of ground and surface water quality and quantity data according to 10 CSR 40-3.200(12).

(D) The description shall include a determination of the probable hydrologic consequences (PHC) of the proposed underground mining activities, on the proposed mine plan area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese and other parameters required by the director.

1. The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

2. The PHC determination shall include findings on:

A. Whether adverse impacts may occur to the hydrologic balance;

B. Whether acid- or toxic-forming materials are present that could result in the contamination of surface or ground water supplies; and

C. What impact the proposed operation will have on—

(I) Sediment yield from the disturbed area;

(II) Acidity, total suspended and dissolved solids and other important water quality parameters of local impact;

(III) Flooding or stream flow alteration;

(IV) Ground and surface water availability; and

(V) Other characteristics as required by the director.

3. An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated PHC determination shall be required.

(E) Cumulative Hydrologic Impact Assessment.

1. The director shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface and ground water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The director may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

2. An application for a permit revision shall be reviewed by the director to determine whether a new or updated CHIA shall be required.

(F) Each plan shall contain a detailed description with appropriate drawings of permanent entry seals and down-slope barriers designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed mine plan area.

(6) Reclamation Plan—Postmining Land Uses.

(A) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of the proposed use to existing land use policies and plans. This description shall explain—

1. How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

2. Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 10 CSR 40-3.300; and

3. The consideration given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local use plans and programs.

(B) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area and the state and local governmental agencies which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation.

(7) Reclamation Plan—Ponds, Impoundments, Banks, Dams and Embankments.

(A) General. Each application shall include a general plan and a detailed plan for each proposed siltation structure, water impoundment and coal processing waste bank, dam or embankment within the proposed mine plan area.

1. Each general plan shall—

A. Be prepared by or under the direction of and certified by a qualified registered professional engineer or by a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture;

B. Contain a description, map and cross-section of the structure and its location;

C. Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

D. Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

E. Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The commission or director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

2. Impoundments meeting the Class B or C criteria for dams in TR-60, which is incorporated by reference, shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). Each detailed design plan for a structure that meets or exceeds the size or other criteria of the MSHA, 30 CFR 77.216(a) shall—

A. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying and landscape architecture;

B. Include any geotechnical investigation, design and construction requirements for the structure;

C. Describe the operation and maintenance requirements for each structure; and

D. Describe the timetable and plans to remove each structure, if appropriate.

3. Each detailed design plan for a structure that does not meet the size or other criteria of 10 CSR 40-6.120(7)(A)2. shall—

A. Be prepared by or under the direction of and certified by a qualified registered professional engineer and all coal processing waste dams and embankments covered by 10 CSR 40-3.230(9)–(11) shall be certified by a qualified registered engineer;

B. Include any design and construction requirements for the structure, including any required geotechnical information;

C. Describe the operation and maintenance requirements for each structure; and

D. Describe the timetable and plans to remove each structure, if appropriate.

(B) Siltation Structures.

1. Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of 10 CSR 40-3.200(6). Any siltation structure or earthen structure, which will remain on the proposed mine plan area as a permanent water impoundment shall also be designed to comply with the requirements of 10 CSR 40-3.200(10).

2. Each plan, at a minimum, shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.

(C) Permanent and Temporary Impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 10 CSR 40-3.200(10). Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 30 CFR 77.216-1 and 30 CFR 77.216-2. The plan required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall be submitted to the director as part of the permit application in accordance with subsection (7)(A).

(D) Coal Processing Waste Banks. Coal processing waste banks shall be designed to comply with the requirements of 10 CSR 40-3.230(1)–(4).

(E) Coal Processing Waste Dams and Embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 10 CSR 40-3.230(9)–(11). Each plan shall comply with the requirements of the MSHA, 30 CFR 77.216-1 and 30 CFR 77.216-2 and shall contain the results of a geotechnical investigation of the proposed dam or embankment

structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

1. The number, location and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded and subsurface conditions;

2. The character of the overburden and bedrock, the proposed abutment sites and any adverse geotechnical conditions which may affect the particular dam, embankment or reservoir site shall be considered;

3. All springs, seepage and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan; and

4. Consideration shall be given to the possibility of mudflows, rock-debris falls or other landslides into the dam, embankment or impounded material.

(F) If the structure meets the Class B or C criteria for dams in TR-60, or meets the size or other criteria of 30 CFR 77.216(a), each plan under subsections (7)(B), (C) and (E) of this rule shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures and long-term seepage conditions. The plan also shall contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

(8) Protection of Public Parks and Historic Places.

(A) For any public parks or historic places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used to minimize or prevent these impacts and obtain approval as required in 10 CSR 40-5.010(3)(F).

(B) For any public parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measure to be used to prevent impacts or, if valid existing rights exist or joint agency approval is to be obtained under 10 CSR 40-5.010(3)(F), to minimize adverse impacts.

(C) The director may require the applicant or operator to protect historic or archaeological properties listed on or eligible for listing on the National Register of Historic Places

through appropriate mitigation and treatment measures prior to the commencement of any specific mining operation which would affect these properties.

(9) Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 10 CSR 40-5.010(3)(D), the applicant seeks to have the commission or director approve—

(A) Conducting the proposed underground mining activities within one hundred feet (100') of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(B) Relocating a public road.

(10) Underground Development Waste. Each plan shall contain descriptions, including appropriate maps and cross-section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 10 CSR 40-3.220. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to 10 CSR 40-6.050(16).

(11) Subsidence Control Plan. The application shall include a survey which shall show whether structures of renewable resource lands exist within the proposed permit and adjacent area and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of structures or renewable resource lands. If the survey shows that no such structures or renewable resource lands exist, or no material damage or diminution could be caused in the event of mine subsidence and if the commission or director agrees with this conclusion, no further information need be provided in the application under this rule. In the event the survey shows these structures or renewable resource lands exist and that subsidence could cause material damage or diminution of value of foreseeable use of the land, or if the commission or director determines that this damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(A) A detailed description of the mining method and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as long wall mining, room and pillar with pillar removal, hydraulic mining or other methods, including the size, sequence and timing for the development of underground workings; and

2. The extent, if any, to which planned and controlled subsidence is intended;

(B) A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value or reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence if any;

2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including such measures as:

A. Back stowing or backfilling of voids;

B. Leaving support pillars of coal; and

C. Protecting areas in which no coal removal is planned including a description of the overlying area to be protected by leaving coal in place; and

3. Taking on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface, including such measures as:

A. Reinforcement of sensitive structures or features;

B. Installation of footers designed to reduce damage caused by movement;

C. Change of location of pipelines, utility lines or other features;

D. Relocation of movable improvements to sites outside the angle-of-draw; and

E. Monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage;

(C) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 10 CSR 40-3.280(3):

1. Restoration or rehabilitation of structures and features, including approximate land surface contours, to premining condition;

2. Replacement of structures destroyed by subsidence;

3. Purchase of structures prior to mining and restoration of the land after subsidence to a condition capable of supporting and suitable for the structures and foreseeable land uses; and

4. Purchase of noncancellable insurance policies payable to the surface owner in the

full amount of the possible material damage or other comparable measures;

(D) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface including such measures as:

1. The results of presubsidence surveys of all structures and surface features which might be materially damaged by subsidence; and

2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation; and

(E) A description of the measures to be taken in accordance with 10 CSR 40-3.280(3)(B) to mitigate or remedy any subsidence-related material damage to or diminution in value or reasonably foreseeable use of the land or structures or facilities to the extent required under state law.

(12) Fish and Wildlife Plan.

(A) The fish and wildlife plan requirements shall be consistent with the Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531, et seq.); section 444.855.2(17), RSMo; 10 CSR 40-3.040(17); and 10 CSR 40-3.100.

(B) Each application shall contain a fish and wildlife plan which provides—

1. A statement of how, to the extent possible using the best technology currently available, the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during underground coal mining and reclamation operations and how enhancement of these resources will be achieved, where practicable. The plan shall be consistent with the requirements of 10 CSR 40-3.250, cover the mine plan area and portions of adjacent areas as determined by the director pursuant to 10 CSR 40-6.110(11); and

2. If in accordance with paragraph (12)(B)1. of this rule, the applicant states that it will not be practicable to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully completed under 10 CSR 40-3.120, a statement shall be provided which establishes, to the satisfaction of the director, why it is not practicable to achieve that condition.

(C) A statement must be included in the fish and wildlife plan explaining how the applicant will utilize impact control measures, management techniques and monitoring methods to protect or enhance the following, if they are to be affected by the proposed activities:

1. Listed or proposed threatened or endangered species of plants or animals listed by the secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531, et seq.); and their critical habitats;

2. Species such as eagles, migratory birds or other animals protected by state or federal law and their habitats or other species identified through the consultation process pursuant to 10 CSR 40-6.110(11); or

3. Habitats of unusually high value for fish and wildlife, such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, reproduction and nursery areas and wintering areas and including those sites listed as having significance in the Missouri Natural Features Inventory.

(D) Each fish and wildlife plan shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall—

1. Be consistent with the requirements of this section and 10 CSR 40-3.250;

2. Apply at a minimum, to species and habitats identified under subsection (12)(C); and

3. Include—

A. Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines and the monitoring of surface water quality and quantity; and

B. Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(13) Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 10 CSR 40-3.200(3) and (4).

(14) Operations Plans—Maps and Plans. Each application shall contain maps, plans and cross-sections of the proposed mine plan and adjacent areas as follows:

(A) The maps, plans and cross-sections shall show the underground mining activities to be conducted, the lands to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 10 CSR 40-6.110(14) and (15);

(B) The following shall be shown for the proposed permit area unless specifically required for the mine plan area or adjacent area by the requirements of this subsection:

1. Buildings, utility corridors and facilities to be used;

2. The area of land to be affected within the proposed mine plan area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 10 CSR 40-7;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal preparation waste, underground development waste and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife-related environmental values;

9. Each explosive storage and handling facility;

10. Location of each siltation structure, permanent water impoundment, coal processing waste bank and coal processing waste dam and embankment, in accordance with 10 CSR 40-6.120(7) and disposal areas for underground development waste and excess spoil, in accordance with 10 CSR 40-6.120(10);

11. Each profile, at cross-sections specified by the commission or director of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and subsidence monitoring point; and

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities; and

(C) Maps, plans and cross-sections required under paragraphs (14)(B)5., 6., 10. and 11. of this rule shall be prepared by or under the direction of and certified by a qualified professional engineer or professional

geologist experienced in the design and construction of impoundments with assistance from experts in related fields, such as land surveying and landscape architecture, except that—

1. Maps, plans and cross-sections for siltation structures may only be prepared by a qualified registered engineer; and

2. Excess spoil and underground development waste facilities' maps, plans and cross-sections may be prepared by a qualified registered professional engineer.

(15) Transportation Facilities.

(A) Each application shall contain a detailed description of each road, conveyor and rail system to be constructed, used or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections and the following:

1. Design drawings and specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, low water crossings and drainage structure;

2. A report of appropriate geotechnical analysis, where approval of the commission or director is required for alternative specifications or for steep cut slopes under 10 CSR 40-3.140(1)(D), (3)(C), (8)(D) or (10)(C), or 10 CSR 40-3.290(1)(D), (3)(C), (8)(D) or (10)(C);

3. A description of each measure to be taken to obtain approval for alteration or relocation of a natural drainageway under 10 CSR 40-3.140(4)(D), (11)(D) or (18)(C), or 10 CSR 40-3.290(4)(D), (11)(D) or (18)(C);

4. A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval under 10 CSR 40-3.140(2)(C), (9)(C) or (16)(C), and 10 CSR 40-3.290(2)(C), (9)(C) and (16)(C);

5. Each plan shall contain a general description of each road, conveyor or rail system to be constructed, used or maintained within the proposed mine plan area;

6. Allow in no event, the return of coal processing waste to abandoned underground workings to occur unless allowed by section 577.155, RSMo;

7. Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream as necessary for approval of the road in accordance with 10 CSR 40-3.140(2)(B), (9)(B) and (16)(B) and 10 CSR 40-3.290(2)(B), (9)(B) and (16)(B);

8. Contain the drawings and specifications for each low water crossing of perennial or intermittent stream channels indicating that the protection of the stream is maximized

by the low water crossings being designed, constructed and maintained to prevent erosion of the structure or stream bed and additional contributions of suspended solids to stream flow;

9. Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the regulatory authority in accordance with 10 CSR 40-3.140(4)(A) or (11)(A); and

10. Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use and the schedule for this removal and reclamation.

(B) Class I and II Road Certification. The plans and drawings for each Class I and II road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, experienced in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(16) Support Facilities. Each applicant for a surface coal mining and reclamation permit shall submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross-sections, design drawings and specifications sufficient to demonstrate compliance with 10 CSR 40-3.140(23) for each facility.

(17) Return of Coal Processing Waste to Abandoned Underground Workings.

(A) Each plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval in the permit and plan and by the MSHA under 10 CSR 40-3.230(7).

(B) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground operations, surface area to be supported by the backfill and the anticipated occurrence of surface effects following backfilling.

(C) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams and the effect on the hydrologic regime.

(D) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal and gradient from the backfilled area.

(E) The requirements of subsections (16)(A)–(D) of this rule also shall apply to pneumatic backfilling operations, except where the operations are exempted by the commission or director from requirements specifying hydrologic monitoring.

(18) Air Pollution Control Plan. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(A) An air quality monitoring program, if required by the commission or director, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (17)(B) of this rule to comply with applicable federal and state air quality standards; and

(B) A plan for fugitive dust control practices as required under 10 CSR 40-3.240.

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