

Approved: 1-18-94
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on January 12, 1994 in Room 423-S of the Capitol.

All members were present :

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Don Hayward, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:
Charles Jones, Director, Environment, KDHE
Tom Day, Kansas Corporation Commission

Others attending: See attached list

The meeting was called to order by the Chairperson at 8:05 a.m.

SB-169 - surface-mining land conservation and reclamation act

Senate Bill 169 which had additional hearings October 20, 1993, was placed before the committee.

Charles Jones told the committee he had provided a bill draft from his department for SB-169. (Attachment 1)
Provided to the committee was a memorandum concerning contact dates with Woody Moses. (Attachment 2)

Staff handed members copies of amendments to SB-169 which were made October 20, 1993, noting that provisions placed the purview of the bill under the Conservation Commission. (Attachment 3)

In answer to a concern expressed regarding the establishment of more bureaucracy Kenneth K. Kern, Conservation Commission, told members they would expect to employ one full time staff person for field work and one clerical person, both of which would be supported by fees.

Senator Emert made a motion to pass SB-169 out favorable as amended. Senator Hardenburger seconded the motion.

There was discussion with Woody Moses, Kansas Aggregate Association, in which it was stated that two meetings had been held with KDHE, one early in December and one shortly before Christmas. A third meeting is scheduled January 18, 1994. He further stated his organization had been promoting this bill since 1969.

The motion carried.

The chairperson called attention to bill draft, 3 RS 1361, requested by Senator Frahm, relating to criminal hunting which would amend K.S.A. 1993 Supp. 21-3728.

Senator Vancrum made a motion to accept this bill. Senators Martin seconded the motion and the motion carried.

Tom Day, Kansas Corporation Commission, appeared before the committee requesting introduction of two bills. The first request would amend K.S.A. 55-705b, concerning applications and exceptions, and would

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 423-S Statehouse, at 8:00 a.m. on January 12, 1994.

allow operators and leaseholders of existing gas wells to eliminate duplicate paperwork. (Attachment 4)

Senator Lee moved introduction of the bill. Senator Martin seconded the motion and the motion carried.

The second bill introduction requested by Tom Day concerned an amendment to KSA 66-138, fines to counties, and would request the monies from fines be returned to the appropriate fee fund with the Kansas Corporation Commission.

Senator Martin moved to introduce the bill with Senator Hardenburger seconding the motion. The motion carried.

Senator Lee told committee members she had received no response from KDHE concerning their regulation which sets the same fee for all users, large or small. The chairperson noted there was also a bill coming from Rules and Regulations, concerning the licensing of tanks every year .

The meeting adjourned at 8.27 a.m.

The next meeting is scheduled for January 13, 1994.

SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

DATE January 12, 1994

(PLEASE PRINT)

NAME AND ADDRESS

ORGANIZATION

TOM DAY	KCC TOPEKA	KCC
Larry Knuthe	KDHE - Topeka	KDHE
Ken Kern	SCC - Topeka	SCC
Jack Graves	Worldy USA	Worldy USA
ED SCHAUB	TOPEKA	WESTERN RESOURCES
Edward Masys	✓	Kansas Aggregate Producers Assoc
Don Schuck	Topeka	ICOGA
J.C. LONG	Topeka	UtiliCorp United
Charles Jones	TOPEKA	KDHE
Murray J. BALK	Pittsburg	KDHE
John Peterson		Beck Aircraft
STEVE KEARNEY		WMX
Jim Ludwig	Topeka	WESTERN RESOURCES

PROPOSED BILL No. ____

By Committee on Energy and Natural Resources

AN ACT xx; enacting the surface mining conservation and reclamation act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. [Citation of Act] This act shall be known and may be cited as the surface mining conservation and reclamation act.

Sec. 2. [Declaration of policy] Where surface mining operations are conducted, it is declared to be the policy of this state to provide for the reclamation of affected lands to encourage productive use including but not limited to: The planting of forests; the seeding of grasses and legumes for grazing purposes; the enhancement of wildlife and aquatic resources; the establishment of recreational and industrial sites; and for the conservation, development, management, and use of all natural resources in a manner which is environmentally sound and protects the health, safety, and general welfare of the people, as well as the natural beauty and aesthetic values in the affected areas of the state. It is also declared to be the policy of this state to authorize the secretary to take such actions as may be necessary to enforce this act. The Kansas department of health and environment shall have jurisdiction and authority to regulate the reclamation of lands affected by surface mining operations in order to encourage productive use of such lands.

Sec. 3. [Definitions] As used in this act:

(a) "Secretary" means the secretary of the Kansas department of health and environment.

(b) "Affected land" means the area of land from which overburden has been removed or upon which overburden has been deposited, but shall not include stockpile areas or roads.

(c) "Department" means the Kansas department of health and environment.

(d) "Mine" means any underground or surface mine developed and operated for the purpose of extracting any materials except coal.

(e) "Operator" means any person, including any agency of state or local government, or any publicly owned utility or corporation, engaged in surface types of mining who removes overburden for the purpose of producing materials or minerals for retail sale, and such person shall be subject to the surface mining conservation and reclamation act and to all the requirements of such act and rules and regulations which may be adopted pursuant thereto for the purpose of regulating the act.

(f) "Overburden" means all of the earth and other materials which lie above a natural deposit of minerals and also means such earth and other material after removal from their natural state in the process of surface types of mining.

(g) "Peak" means a projecting point of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(h) "Pit" means a tract of land from which overburden has been or is being removed for the purpose of surface mining.

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January 12, 1994
Attachment 1

1 (i) "Ridge" means a lengthened elevation of overburden removed from its
2 natural position and deposited elsewhere in the process of surface mining.

3 (j) "Surface mining" means:

4 (1) The mining of material, except coal, oil and gas, for sale or for processing
5 or for consumption in the regular operation of a business by removing the overburden
6 lying above natural deposits exposed, or by mining directly from deposits lying
7 exposed in their natural state. Surface mining shall include dredge operations lying
8 outside the high banks of streams and rivers. Surface mining shall include the surface
9 impacts incident to underground mining.

10 (2) Removal of overburden and mining of limited amounts of any materials shall
11 not be considered surface mining when done only for the purpose and to the extent
12 necessary to determine the location, quantity, or quality of the natural deposit, if the
13 materials removed during the exploratory excavation or mining are not sold, processed
14 for sale, or consumed in the regular operation of a business.

15 (k) "Topsoil" means the A and E soil horizon layers of the four master soil
16 horizons or the natural medium located at the land surface with favorable
17 characteristics for growth of vegetation.

18 (l) "Active site" means a site where surface mining is being conducted.

19 (m) "Inactive site" means a site where surface mining is not being conducted
20 but where overburden has been disturbed in the past for the purpose of conducting
21 further surface mining and an operator anticipates conducting further surface mining
22 operations in the future.

23 (n) "Materials" means natural deposits of gypsum, clay, stone, sandstone,
24 sand, shale, silt, gravel, volcanic ash or any other minerals of commercial value found
25 on or in the earth with the exception of coal, oil and gas, and those located within cut
26 and fill portions of road rights-of-way.

27 (o) "Reclamation" or "reclamation and conservation" means the reconditioning
28 of the area of land affected by surface types of mining under a plan approved by the
29 secretary.

30 (p) "Stockpile" means the mining by surface mining of gypsum, clay, shale,
31 stone, sandstone, sand, silt, gravel, volcanic ash, or other minerals; and removal from
32 its natural position and depositing elsewhere for future use in the normal operation as
33 a business.

34 (q) "Imminent danger to the health and safety of the public" means the
35 existence of any condition, practice, or any violation of a permit or other requirement
36 of this act in a surface mining and reclamation operation, which condition, practice,
37 or violation could reasonably be expected to cause physical harm to persons or the
38 environment before such condition, practice, or violation can be abated. A reasonable
39 expectation of death or serious injury to a person before abatement exists if a rational
40 person, subjected to the same conditions or practices giving rise to the peril, would
41 not expose oneself to the danger during the time necessary for abatement.

42 (r) "Method of operation" means the manner by which the surface cut is made,
43 the overburden is placed or handled, water is controlled and other acts are performed
44 by the operator in the process of uncovering and removing minerals.

1 (s) "Operation" means all of the premises, facilities, roads and equipment used
2 in the process of producing minerals from a designated surface mine area and
3 removing overburden for the purpose of producing minerals.

4 (t) "Person" means an individual, partnership, association, society, joint stock
5 company, firm, company, corporation, or other business organization.

6 (u) "Permit" means a permit to conduct surface mining and reclamation
7 operations issued by the secretary.

8 (v) "Permit area" means the area of land indicated on the approved map
9 submitted by the operator with the operator's application, which area of land shall be
10 covered by the operator's bond as required by this act and shall be readily identifiable
11 by appropriate markers on the site.

12 (w) "Unwarranted failure to comply" means the failure of an operator to
13 prevent the occurrence of any violation of the operator's permit or any requirement
14 of this act due to indifference, lack of diligence, or lack of reasonable care, or the
15 failure to abate any violation of such permit or the act due to indifference, lack of
16 diligence, or lack of reasonable care.

17 (x) "Underground mining" means the extraction of rocks, minerals, and
18 industrial materials, other than coal, oil, and gas from the earth by developing entries
19 or shafts from the surface to the seam or deposit before recovering the product by
20 beneath the ground extraction methods.

21 (y) "Surface mining and reclamation operations" means surface mining
22 operations and all activities necessary and incident to the reclamation of such
23 operations after the date of enactment of this act.

24 Sec. 4. [Powers and authority of secretary; rules and regulations] The
25 secretary shall have and exercise the following authority and powers which shall be
26 enforced and administered by the secretary:

27 (a) To adopt rules and regulations respecting the administration of this act and
28 in conformity therewith.

29 (b) To examine and pass upon all plans and specifications submitted by the
30 operator for the method of operation and for the reclamation and conservation of the
31 area of land affected by the operation.

32 (c) To make investigations and inspections which may be deemed necessary
33 to insure compliance with the provisions and intent of this act. Authorized
34 representatives of the department shall have the right, without advance notice and
35 upon presentation of credentials, to enter upon any mining and reclamation operations
36 or any premises in which records required to be maintained are kept and, at
37 reasonable times and without delay, may have access to and copy any records, or
38 inspect any monitoring equipment or method of operation under this act.

39 (d) To order the suspension or revocation of any permit and order to cease and
40 desist operations for failure to comply with any of the provisions of this act.

41 (e) To enjoin any operation that is started without first having secured a permit
42 as required by this act.

43 (f) To conduct hearings under provision of this act and for the purpose of any
44 investigation or hearing, the secretary or the secretary's designee may administer
45 oaths or affirmation, subpoena witnesses relevant to the inquiry.
46

1 (g) To order an operator to adopt such remedial measures as necessary to
2 comply with this act.

3 (h) To request from and receive from state agencies technical assistance in
4 administering the provisions of this act.

5 (i) To employ inspectors, clerical help, and other personnel as may be
6 necessary, within the limits of appropriations therefor, for the purpose of
7 administering and enforcing the provisions of the surface mining conservation and
8 reclamation act. Within the limits of appropriations therefor, the secretary may enter
9 into contracts with consultants for services which may be required in the
10 administration of the surface mining conservation and reclamation act.

11 **Sec. 5. [Exclusions from application of act]** The surface mining conservation
12 and reclamation act shall not apply to:

13 (a) Affected land mined prior to the effective date of this act and shall apply
14 only to those areas affected after the effective date of this act;

15 (b) the stockpiling, method of stockpiling, or mining from stockpiles of gypsum,
16 clay, shale, stone, sandstone, sand, silt, gravel, volcanic ash, or other minerals which
17 are consumed in the regular operation of the business; or

18 (c) river sand producers subject to dredging permits as issued by the chief
19 engineer of the division of water resources.

20 **Sec. 6. [Surface mining unlawful without permit; application for permits;**
21 **conditions; transfer; duration]** (a) No operator shall engage in surface mining unless
22 such operator possesses a valid permit issued by the secretary designating the area
23 of land affected by the operation. The permit shall authorize the operator to engage
24 in surface mining and reclamation upon the area of land described in such permit. All
25 surface mining conducted under such permit shall comply with the requirements of
26 the surface mining conservation and reclamation act and the regulations issued
27 thereunder as well as other state and Federal environmental regulations.

28 (b) All operators who expect to operate a mine or mines after the expiration of
29 eight months following such approval of this act shall apply for new permits within
30 two months following approval of the surface mining conservation and reclamation
31 act. Every operator intending to engage in surface mining in this state at a surface
32 mining site not previously permitted shall make application for a permit for that site
33 on forms provided by Secretary. Application must be made at least seven days prior
34 to the commencement of mining or removal of overburden.

35 (c) Applications for permits shall be on forms prescribed by the secretary. The
36 permit application shall at a minimum include:

37 (1) A description of the tract or tracts of land where the site is located and the
38 estimated number of acres at the site to be affected by surface mining. The
39 description shall include the section, township, range, and county in which the land
40 is located and shall otherwise describe the land with sufficient certainty to determine
41 the location and to distinguish the land to be registered from other lands;

42 (2) three copies of a United States geological survey topographic map on
43 which the operator has indicated the location of the area of land affected, the course
44 which would be taken by drainage from the area of land affected to the nearest
45 stream or streams to which such drainage would normally flow, the name of the
46 applicant and the date;

1 (3) the owner or owners of the surface of the area of land to be affected by
2 the permit and the owner or owners of all surface area within 500 feet of any part of
3 the affected area.

4 (4) all persons with any interest in the minerals to be mined;

5 (5) a statement explaining the authority of the applicant's legal right to operate
6 a mine on the land;

7 (6) the permanent and temporary post-office address of the applicant;

8 (7) proof of compliance with all applicable zoning codes or rules and
9 regulations;

10 (8) the written consent of the applicant and such other persons, if any,
11 necessary to grant such access to the secretary and the secretary's designee to the
12 area of land affected under application from the date of application until final bond
13 release and thereafter for such time as is necessary to assure compliance with all
14 provisions of this act or any rule or regulation promulgated hereunder;

15 (9) a determination of probable hydrologic consequences of the mining and
16 reclamation operations, both on and off the mine site, with respect to the hydrologic
17 regime, quantity and quality of water in surface and groundwater systems including
18 the dissolved and suspended solids under seasonal flow conditions and the collection
19 of sufficient data for the mine site and surrounding areas so an assessment can be
20 made by the department of the probable cumulative impacts of all anticipated mining
21 in the area upon the hydrology of the area, and particularly upon water availability;

22 (10) an operation plan. The operation plan will detail the method of
23 overburden removal and how mining operations will be conducted;

24 (11) a plan of reclamation which will outline how the operator will meet the
25 requirements for reclamation as contained in this act, and the rules and regulations
26 promulgated hereunder and the projected cost of reclamation, including a detailed
27 itemization thereof. This plan will provide enough specificity for the department to
28 determine whether or not reclamation can be successfully achieved; and

29 (12) such other information as may be required by the secretary in order to
30 administer the surface mining conservation and reclamation act and regulations
31 adopted pursuant thereto.

32 (d) The secretary shall not approve the application for a permit to surface mine
33 where such mining would constitute a hazard to a residence, public building, school,
34 church, cemetery, commercial or residential building, public road, stream, lake, other
35 property, the public, or the environment. No surface mining operations shall be
36 permitted within 100 feet of the outside right-of-way line of any public road, except
37 where mine access roads or haulage roads join such right-of-way line and except that
38 the secretary may permit such roads to be relocated or the area affected to lie within
39 100 feet of such road, if after public notice and opportunity for public hearing in the
40 locality, a written finding is made that the interests of the public and the landowners
41 affected thereby will be protected; or within 300 feet from any occupied dwelling,
42 unless waived by the owner thereof, nor within 300 feet of any public building,
43 school, church, community, or institutional building, public park, or within 100 feet
44 of a cemetery.

1 (e) The term of the permit shall not exceed 5 years. A valid permit issued by
2 the secretary may be renewed with respect to areas within the boundaries of the
3 existing permit.

4 (f) A new operator who acquires control of an active site or the right to
5 conduct any future mining at an inactive site shall apply within fifteen (15) days for
6 a permit for the site in the new operator's name. The application shall be made and
7 processed as provided under this section and section 11.

8 (g) Any person who falsifies information required to be submitted pursuant to
9 this section shall be guilty of a misdemeanor.

10 Sec. 7. [Application fee; annual fee; extraction fee] (a) Application fees and
11 renewal fees shall be established by the rules and regulations of the secretary in an
12 amount not exceeding the cost of administering the provisions of this act.

13 (b) A basic fee of \$50 plus a fee in an amount to be fixed by the secretary for
14 every acre and fraction of an acre of land to be affected shall be paid annually. This
15 annual fee shall be paid by January 31 of each year.

16 (c) Each permittee shall be assessed a per ton fee on every ton of minerals
17 extracted. Pursuant to this paragraph the per ton fee shall be an amount not less than
18 \$.01 and not more than \$.10 per ton of minerals extracted each calendar year. This
19 per ton fee shall be paid to the department on a quarterly basis and it shall be due
20 within 30 calendar days after the beginning of each calendar quarter. Fees
21 established under this subsection shall be fixed by the secretary, subject to
22 restrictions and limitations imposed by this subsection, in amounts deemed necessary
23 to administer and enforce the provisions of the surface mining conservation and
24 reclamation act.

25 Sec. 8. [Sign required] A mine site permitted pursuant to this act shall have,
26 at the primary entrance to the mine site, a clearly visible sign which sets forth the
27 name, business address, permit number, and phone number of the operation. Failure
28 to post and maintain a sign, as required by this section, within thirty (30) days after
29 notice from the secretary, invalidates the permit.

30 Sec. 9. [Suspension or revocation of permit] When, on the basis of an
31 inspection, the secretary or the secretary's designee determines that a pattern of
32 violations of any requirements of this act or any permit conditions required by this act
33 exists or has existed, and if the secretary or the secretary's designee also finds that
34 such violations are caused by the unwarranted failure of the operator to comply with
35 any requirements of this act or any permit conditions, or that such violations are
36 willfully caused by the operator, the secretary or the secretary's designee shall issue
37 an order to the operator to show cause as to why the permit should not be suspended
38 or revoked and shall provide opportunity for a public hearing. If a hearing is requested
39 the secretary or the secretary's designee shall inform all interested parties of the time
40 and place of the hearing. Upon the operator's failure to show cause as to why the
41 permit should not be suspended or revoked, the secretary or secretary's designee shall
42 suspend or revoke the permit. Proceedings for the suspension or revocation of a
43 permit pursuant to this section shall be conducted in accordance with the Kansas
44 administrative procedure act. Any action of the secretary pursuant to this section is
45 subject to review in accordance with the act for judicial review and civil enforcement
46 of agency actions.

1 Sec. 10. **[Permit amendment]** (a) An operator may apply at any time for
2 amendment of any site. The application for amendment shall be submitted by the
3 operator on a form provided by the secretary and shall identify, in the manner required
4 under section 6, the tract or tracts of land to be added or removed from the permit.

5 (b) If the application is for an increase in the area of a permitted site, the
6 application shall be processed in the same manner as an original permit.

7 (c) If the application is to cancel a portion or all of the unmined part of the site,
8 the secretary, after ascertaining that no overburden has been disturbed or deposited
9 on the land, shall order release of the bond posted on the land being removed from
10 the permit and cancel or amend the written authorization allowing the operator to
11 conduct surface mining on the site.

12 (d) No land where overburden has been disturbed or deposited shall be
13 removed from or released from the operator's bond.

14 Sec. 11. **[Bond or security required]** (a) After a surface mining and
15 reclamation permit application has been approved but before such a permit is issued,
16 the applicant shall file with the secretary, on a form prescribed and furnished by the
17 department, a bond for performance payable to the state treasurer, and conditioned
18 upon faithful performance of all the requirements of this act and the permit. The bond
19 shall cover that area of land within the permit area upon which the operator will
20 initiate and conduct surface mining and reclamation operations. The amount of the
21 bond required for each bonded area shall depend upon the reclamation requirements
22 of the approved permit; shall reflect the probable difficulty of reclamation giving
23 consideration to such factors as topography, geology of the site, hydrology, and
24 revegetation potential; and shall be determined by the secretary. The amount of the
25 bond shall be sufficient to assure the completion of the reclamation plan if the work
26 had to be performed by the department in the event of forfeiture. An operator in
27 violation of the state act can not obtain a new permit.

28 (1) Liability under the bond shall be for the duration of the surface mining and
29 reclamation operation and for a period coincident with operator's responsibility for
30 revegetation requirements. Surety bonds shall be executed by the operator and a
31 corporate surety licensed to do business in Kansas.

32 (2) The amount of the bond required and the terms of each acceptance of the
33 applicant's bond shall be adjusted by the secretary from time to time as affected land
34 acreages are increased or decreased or where the cost of future reclamation changes.

35 (3) In lieu of determining the necessary bond amount as provided for in this
36 section, the operator may submit bond to the department at the rate of \$220 per acre
37 per 1 foot depth of pit for areas that do not need blasting to slope the highwall. For
38 areas that need to be blasted to slope the highwall the bond shall be \$350 per acre
39 per 1 foot increment of pit depth. In order to submit bonds at these rates the
40 operator shall not obtain a variance to mine closer than 100 feet from the permit
41 boundary. For any variances in mining the bond shall be determined as provided for
42 in this section.

1 (b) A bond filed with the secretary by an operator pursuant to this act shall be
2 in a form prescribed by the secretary, payable to the state of Kansas, and conditioned
3 upon faithful performance by the operator of all requirements of this act and all rules
4 and regulations adopted by the secretary pursuant to this act. The bond shall be
5 signed by the operator as principal and by a corporate surety licensed to do business
6 in Kansas as surety.

7 (c) Any operator who is approved by the secretary for permits on two or more
8 surface mining sites may elect, at the time the second or any subsequent site is
9 permitted, to post a single bond in lieu of separate bonds on each site. The amount
10 of a single bond on two or more surface mining sites may be increased or decreased
11 from time to time in accordance with this section or sections 10 or 13. When an
12 operator elects to post a single bond in lieu of separate bonds previously posted on
13 individual sites, the separate bonds shall not be released until the new bond has been
14 accepted by the secretary.

15 (d) In lieu of a bond the operator may deposit cash, certificates of deposit,
16 letter of credit, or government securities with the secretary on the same conditions
17 as prescribed by this section for filing of bonds.

18 (d) A bond or security posted under this act to assure reclamation of affected
19 lands shall not be released until all reclamation work required by section 13 has been
20 performed in accordance with the provisions of this act, except when a replacement
21 bond is posted by a new operator or responsibility is transferred under section 13.

22 (e) No bond filed with the secretary by an operator pursuant to this act may
23 be canceled by the surety without at least 90 days notice to the secretary. If the
24 license to do business in Kansas of any surety of a bond filed with the secretary is
25 suspended or revoked, the operator shall substitute for the surety a corporate surety
26 licensed to do business in Kansas within ninety (90) days after receiving notice
27 thereof from the secretary. Upon failure of the operator to make substitution of
28 surety as herein provided, the secretary shall have the right to suspend the operator's
29 authorization to conduct surface mining and reclamation on the site or sites covered
30 by the bond until substitution has been made. The Kansas commissioner of insurance
31 shall notify the secretary whenever the license of any surety to do business in Kansas
32 is suspended or revoked.

33 (f) The attorney general, upon request of the secretary, shall institute such
34 proceedings for forfeiture of the bond posted by an operator to guarantee reclamation
35 of a site when the operator is in violation of any of the provisions of this act or any
36 rule and regulation adopted by the secretary pursuant to this act. Forfeiture of the
37 operator's bond shall fully satisfy all obligations of the operator to reclaim affected
38 land covered by the bond. The secretary shall have the power to reclaim, as required
39 by section 13, any surface mined land with respect to which a bond has been
40 forfeited, using the proceeds of the forfeiture to pay for the necessary reclamation
41 work.

42 Sec. 12. [Mineral exploration] (a) Mineral exploration operations which disturb
43 the natural land surface shall be conducted in accordance with exploration regulations
44 issued by the secretary. Such regulations shall include, at a minimum:
45
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1 (1) the requirement that prior to conducting any exploration under this section,
2 any person must file with the department a notice of intention to explore and such
3 notice shall include a description of the exploration area and the period of supposed
4 exploration; and

5 (2) provisions for reclamation in accordance with the performance standards of
6 this act of all lands disturbed in exploration, including excavations, roads, drill holes,
7 and the removal of necessary facilities and equipment.

8 (b) Information submitted to the department pursuant to this section as
9 confidential concerning trade secrets or privileged commercial or financial information
10 which relates to the competitive rights of the person or entity intended to explore the
11 described area shall not be available for public examination.

12 (c) Any person who conducts any mineral exploration activities which
13 substantially disturb the natural land surface in violation of this section or regulations
14 issued pursuant thereto shall be subject to the penalty provisions of this act.

15 Section 13. [Reclamation of land] (a) An operator authorized under this act
16 to operate a mine, after completion of mining operations and within the time specified
17 in this section, shall:

18 (1) Grade affected lands, except for impoundments, to slopes having a
19 maximum of one foot vertical rise for each three feet of horizontal distance if the
20 depth of the pit is greater than 10 feet. If the depth of the pit is 10 feet or less the
21 affected land will be graded as to have slopes with a maximum of one foot vertical
22 rise to five feet horizontal distance. When the original topography of the affected land
23 was steeper than one foot of vertical rise for each three feet of horizontal distance
24 prior to mining, the affected lands may be graded to blend with the surrounding
25 terrain. Those areas disturbed by mining will have a minimum of 8" of topsoil
26 replaced for root growth medium.

27 (2) Provide for the vegetation of the affected lands, except for impoundments,
28 as approved by the secretary, before the release of the bond as provided in section
29 11. The ground cover of desirable species on the permit area at the time of bond
30 release will be at least 90% with 90% statistical confidence of that which existed
31 prior to mining. This ground cover will exist in place for two growing seasons prior
32 to bond release.

33 (b) When the planting of a permit area is completed, the operator shall file a
34 planting report with the secretary on a form to be prescribed and furnished by the
35 department giving the following information:

36 (1) Identification of the operation;

37 (2) the type of planting or seeding, including mixtures and amounts;

38 (3) the date of planting or seeding;

39 (4) the area of land planted; and

40 (5) such other relevant information as the secretary may require.

41 All planting reports shall be signed by the operator. Inspection and evaluation for
42 vegetative cover shall be made as soon as it is possible to determine if a satisfactory
43 stand has been established.

44 (c) Notwithstanding subsection (a), overburden piles where disposition has not
45 occurred for a period of twelve (12) months shall be stabilized.
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1 (d) Topsoil that is a part of overburden shall not be buried in the process of
2 mining but shall be salvaged and be replaced for root growth medium.

3 (e) The secretary may grant a variance from the requirements of subsections
4 (a), (b), (c) and (d). For an appropriate and different postmining land use, the
5 secretary may also grant a variance from the revegetation requirements of this section
6 for such different use.

7 (e) An operator of a mine shall reclaim affected lands within a period not to
8 exceed three (3) years, after the filing of the report required under subsection (b) of
9 section 14 indicating the mining of any part of the site has been completed.

10 (f) An operator, upon completion of any reclamation work required by this
11 section, shall apply to the secretary in writing for approval of the work. The
12 secretary, within ninety (90) days, shall inspect completed reclamation work. Upon
13 determination by the secretary that the operator has satisfactorily completed all
14 required reclamation work on the land included in the application, the secretary shall
15 release the bond or security on the reclaimed land, shall remove the land from the
16 permit, and shall terminate or amend as necessary the operator's authorization to
17 conduct surface mining on the site.

18 (g) The time for completion of reclamation work may be extended upon
19 presentation by the operator of evidence satisfactory to the secretary that reclamation
20 of affected land cannot be completed within the time specified by this section without
21 unreasonably impeding removal of material products from other parts of an active site.

22 (h) The secretary may establish procedures for transferring the responsibility
23 for reclamation of a mine site to a state agency or political subdivision which intends
24 to use the site for other purposes. The secretary, with agreement from the receiving
25 agency or subdivision to complete adequate reclamation, may approve the transfer of
26 responsibility, release the bond or security, and terminate or amend the operator's
27 authorization to conduct surface mining on the site.

28 Sec. 14. [Annual report; periodic reports] (a) It shall be the duty of each
29 operator holding a permit within the state of Kansas to file an annual statement
30 setting forth the full amount of minerals mined or taken from each source or deposit
31 and to identify the specific source or deposit from which taken. Such statement shall
32 be filed with the secretary not later than 30 days after the end of each calendar year.
33 The annual statement shall make reference to the most recent permitting of the mine
34 site and shall show:

35 (1) The location and extent of all surface land area on the mine site affected
36 by mining during the period covered by the report; and

37 (2) the extent to which removal of mineral products from all or any part of the
38 affected land has been completed.

39 (b) A report shall also be filed within 90 days after completion of all surface
40 mining operations at the site regardless of the date of the last preceding report.

41 (c) Forms for the filing of periodic reports required by this section shall be
42 provided by the secretary.
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1 Sec. 15. [Inspections] (a) Departmental inspections shall be made on an
2 irregular basis averaging not less than one complete inspection once every year for the
3 surface mining and reclamation operations covered by each permit. Inspections shall
4 occur without prior notice to the operator or its agents or employees except for
5 necessary on site meetings and shall include filing of inspection reports adequate to
6 enforce the requirements of and to carry out the terms and purposes of this act.
7 When an inspection results from information provided to the department by any
8 person, the secretary shall notify such person when the inspection is proposed to be
9 carried out, and such person shall be allowed to accompany the inspector during the
10 inspection.

11 (b) The secretary or the secretary's designee during regular business hours may
12 inspect any lands on which any operator is authorized to operate a mine for the
13 purpose of determining whether the operator is or has been complying with the
14 provisions of this act. When, on the basis of any inspection, the secretary or the
15 secretary's designee determines that any condition or practices exist, or that any
16 operator is in violation of any requirement of this act or any permit condition required
17 by this act, which condition, practice, or violation also creates a danger to the health
18 or safety of the public, or is causing, or can reasonably be expected to cause
19 environmental harm to land, air, or water resources, the secretary or the secretary's
20 designee immediately shall order a cessation of mining operations or the portion
21 thereof relevant to the condition, practice, or violation. Such cessation order shall
22 remain in effect until the secretary or the secretary's designee determines the
23 condition, practice, or violation has been abated, or until modified, vacated, or
24 terminated by the secretary or the secretary's designee. Where the secretary finds
25 the ordered cessation of mining and reclamation operations, or any portion thereof,
26 will not completely abate the danger to health or safety of the public or the
27 environmental harm to land, air, or water resources, the secretary in addition to the
28 cessation order, shall impose affirmative obligations on the operator requiring the
29 operator to take whatever steps the secretary deems necessary to abate the danger
30 of environmental harm.

31 (c) When, on the basis of an inspection, the secretary or the secretary's
32 designee determines that any operator is in violation of any requirement of this act or
33 any permit condition required by this act, but such violation does not create an
34 imminent danger to the health or safety of the public, or cannot be reasonably
35 expected to cause significant, imminent environmental harm to land, air, or water
36 resources, the secretary or the secretary's designee shall issue an administrative order
37 to the operator or the operator's agent requiring the operator to correct the violation
38 and remediate any environmental or other damage resulting from the violation. If,
39 upon expiration of the period of time set forth in the order, the violation has not been
40 corrected and the damage remediated, the secretary or the secretary's designee may
41 issue an additional order revoking the permit or requiring the operator to take
42 additional or other action.
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1 (d) The provisions of the Kansas administrative procedures act shall apply to
2 orders issued pursuant to this section. Such orders shall set forth with reasonable
3 specificity the nature of the violation and the period of time established for correction
4 and remediation. The attorney general at the request of the secretary, may secure
5 enforcement of the orders of the secretary and the provisions of this act, through the
6 provisions of the Kansas Judicial Review Act, by action to compel specific
7 performance of an order.

8 Sec. 16. **[Prohibited acts; penalties]** (a) It shall be unlawful for:

9 (1) any person to willfully and knowingly violate a condition of a permit issued
10 pursuant to this act or fail or refuse to comply with any order issued under this act,
11 or any order incorporated in a final decision issued by the secretary under this act;

12 (2) any director, officer, or agent of an operator to willfully and knowingly
13 authorize, order, or carry out a violation of a condition of a permit issued pursuant to
14 this act or a failure or refusal to comply with any order issued under this act, or any
15 order incorporated in a final decision issued by the secretary under this act;

16 (3) any person to knowingly make any false statement, representation, or
17 certification, knowingly fail to make any statement, representation, or certification in
18 any application, record, report, plan, or other document filed or required to be
19 maintained pursuant to this act; or

20 (4) any person to knowingly destroy, alter, or conceal any record required to
21 be maintained under rules and regulations promulgated by the secretary pursuant to
22 this act.

23 (b) Any person who violates any provision of subsection (a) shall be punished
24 by a fine of not more than \$10,000, or by imprisonment for not more than one year
25 or both.

26 Sec. 17. **[Civil Penalties]** (a) If the secretary determines that the operator has
27 failed to correct a violation of this act or of any rule and regulation adopted by the
28 secretary pursuant to this act which was contained in a prior administrative order, the
29 secretary may request the attorney general to institute bond forfeiture proceedings.
30 In determining the amount of the penalty, consideration shall be given to the
31 operator's history of previous violations at the particular surface mining operation; the
32 seriousness of the violation, including harm to the environment and any hazard to the
33 health or safety of the public, whether the operator was negligent; and the
34 demonstrated good faith of the operator charged in attempting to achieve rapid
35 compliance after notification of the violation.

36 (b) Additionally, a civil penalty for violations of the Act or the rules and
37 regulations promulgated thereafter in an amount up to \$1,000 per violation may be
38 assessed by the secretary. Each day the violation continues shall be a separate
39 violation.

40 (c) All civil penalties assessed pursuant to this section shall be due and payable
41 within 30 days after written notice of the imposition of a civil penalty has been served
42 upon the operator upon whom the penalty is being imposed, unless a longer period of
43 time is granted by the secretary or unless the operator appeals the assessment as
44 provided in section 18.

1 (d) Upon the issuance of a notice or order charging that a violation of the act
2 has occurred, the secretary shall inform the operator within 30 days of the proposed
3 amount of the penalty. The person charged with the penalty shall then have 30 days
4 to pay the proposed penalty in full or, if the person wishes to contest either the
5 amount of the penalty or the fact of the violation, forward the proposed amount to
6 the secretary for placement in an interest-bearing escrow account. Each such escrow
7 account shall be outside the state treasury and shall be in a bank, as defined by
8 subsection (d) of K.S.A. 75-4201, and amendments thereto, designated by the
9 pooled-money investment board. If, through administrative or judicial review of the
10 proposed penalty, it is determined that no violation occurred, or that the amount of
11 the penalty should be reduced, the secretary shall remit within 30 days the
12 appropriate amount to the person. Failure to forward the money to the secretary
13 within 30 days shall result in a waiver of all legal rights to contest the violation or the
14 amount of the penalty.

15 (e) No civil penalty shall be imposed under this section except upon the written
16 order of the secretary or the secretary's designee to the operator upon whom the
17 penalty is to be imposed. The order shall state the nature of the violation and the
18 penalty imposed, and shall inform the operator upon whom the penalty is imposed
19 about the right to appeal to the secretary for a hearing on the matter. An operator
20 upon whom a civil penalty has been imposed may appeal to the secretary within
21 fifteen (15) days after service of the order imposing the civil penalty. If appealed, a
22 hearing shall be conducted in accordance with the provisions of the Kansas
23 administrative procedure act. The decision of the secretary shall be final unless
24 review is sought under section 18.

25 (f) Any operator who fails to correct a violation for which a citation has been
26 issued within the period permitted for its correction shall be assessed a civil penalty
27 of not more than \$7500.

28 (g) Civil penalties owed under this act may be recovered in a civil action
29 brought by the attorney general at the request of the secretary in the district court of
30 Shawnee county.

31 (h) Any action pursuant to this section shall not be a bar to enforcement of this
32 act, rules and regulations in force pursuant thereto, and any orders made pursuant to
33 this act, by injunction or other appropriate remedy, and the secretary shall have power
34 to institute and maintain in the name of this state any and all such enforcement
35 proceedings.

36 (i) Nothing in this act shall be construed to abridge, limit or otherwise impair
37 the right of any person to damages or other relief on account of injury to persons or
38 property and to maintain any action or other appropriate proceedings therefor.

39 Sec. 18. [Judicial review] Any action of the secretary is subject to review in
40 accordance with the act for judicial review and civil enforcement of agency actions.
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1 Sec. 19. [Surface mining fee fund; surface mining reclamation fund] (a) The
2 department shall remit all moneys received from the payment of fees assessed by the
3 secretary, including any interest thereon, to the state treasurer at least monthly.
4 Upon receipt of each such remittance, the state treasurer shall deposit the entire
5 amount thereof in the state treasury and such amount shall be credited to the surface
6 mining fee fund. All expenditures from the surface mining fee fund shall be made in
7 accordance with appropriation acts upon warrants of the director of accounts and
8 reports issued pursuant to vouchers approved by the secretary or by a person or
9 persons designated by the secretary and may be expended for the administration and
10 enforcement of this act.

11 (b) Interest attributed to the investment of monies in the surface mining fee
12 fund shall be credited to the surface mining fee fund. On or before the 10th day of
13 the month following the month in which moneys are first credited to the surface
14 mining fee fund, and monthly thereafter on or before the 10th day of the month, the
15 director of accounts and reports shall transfer from the state general fund to the
16 surface mining fee fund, the amount of money certified by the pooled money
17 investment board in accordance with this subsection. Prior to the 10th day of the
18 month following the month in which moneys are first credited to the surface mining
19 fee fund, and monthly thereafter prior to the 10th day of the month, the pooled
20 money investment board shall certify the director of accounts and reports the amount
21 of money equal to the proportionate amount of all the interest credited to the state
22 general fund for the preceding month, pursuant to K.S.A. 75-4210a and amendments
23 thereto, that is attributable to moneys in the surface mining fee fund. Such amount
24 of money shall be determined by the pooled money investment board based on: (A)
25 The average daily balance of moneys in the surface mining fee fund during the
26 preceding month as certified to the board by the director of accounts and reports and
27 (B) the average interest rate on time deposit, open accounts for that period as
28 determined under K.S.A. 75-4212 and amendments thereto. On or before the fifth
29 day of the month following the month in which moneys are first credited to the
30 surface mining fee fund, and monthly thereafter on or before the fifth day of the
31 month, the director of accounts and reports shall certify to the pooled money
32 investment board the average daily balance of moneys in the surface mining fee fund
33 during the preceding month.

34 (c) The surface mining reclamation fund is hereby created in the state treasury.
35 The secretary shall remit all moneys received from payments of civil penalties and the
36 forfeiture of bonds to the state treasurer at least monthly. Upon receipt of each such
37 remittance, the state treasurer shall deposit the entire amount thereof in the state
38 treasury and such amount shall be credited to the surface mining reclamation fund.
39 All expenditures from the surface mining reclamation fund shall be made in
40 accordance with appropriation acts upon warrants of the director of accounts and
41 reports issued pursuant to vouchers approved by the secretary or by a person or
42 persons designated by the secretary and shall be expended for reclamation of land
43 affected by open pit, strip pit and surface types of mine operations as well as
44 underground mining operations.
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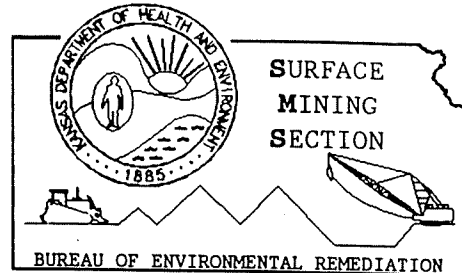
1 (d) Interest attributed to the investment of monies in the surface mining
2 reclamation fund shall be credited to the surface mining reclamation fund. On or
3 before the 10th day of the month following the month in which moneys are first
4 credited to the surface mining reclamation fund, and monthly thereafter on or before
5 the 10th day of the month, the director of accounts and reports shall transfer from
6 the state general fund to the surface mining reclamation fund, the amount of money
7 certified by the pooled money investment board in accordance with this subsection.
8 Prior to the 10th day of the month following the month in which moneys are first
9 credited to the surface mining reclamation fund, and monthly thereafter prior to the
10 10th day of the month, the pooled money investment board shall certify the director
11 of accounts and reports the amount of money equal to the proportionate amount of
12 all the interest credited to the state general fund for the preceding month, pursuant
13 to K.S.A. 75-4210a and amendments thereto, that is attributable to moneys in the
14 surface mining reclamation fund. Such amount of money shall be determined by the
15 pooled money investment board based on: (A) The average daily balance of moneys
16 in the surface mining reclamation fund during the preceding month as certified to the
17 board by the director of accounts and reports and (B) the average interest rate on time
18 deposit, open accounts for that period as determined under K.S.A. 75-4212 and
19 amendments thereto. On or before the fifth day of the month following the month in
20 which moneys are first credited to the surface mining reclamation fund, and monthly
21 thereafter on or before the fifth day of the month, the director of accounts and reports
22 shall certify to the pooled money investment board the average daily balance of
23 moneys in the surface mining reclamation fund during the preceding month.

24 Sec. 20. **[Underground mining, applicability]** Notwithstanding the general
25 applicability of this act to underground mining, no person shall engage in underground
26 mining in this state without first obtaining a permit from the secretary. The provisions
27 of this act shall apply to all aspects of underground mining within the state which are
28 covered by this act, except underground coal mining. The secretary shall enforce this
29 act with respect to all such aspects of underground mining, in the same manner as
30 for surface mining, and is authorized to adopt such rules and regulations as may be
31 required for such enforcement.

32 Sec. 21. **[Enacting Clause]** This act shall take effect and be in force from and
33 after its publication in the statute book.
34

MEMORANDUM

TO: Charles Jones
FROM: Murray J. Balk *mjb*
DATE: January 11, 1994
RE: Woody Mosses



=====

Woody Mosses contact dates:

1. November 5, 1993, called Woody Mosses and he was out of the office. His secretary said she would have him call me.
2. November 9, 1993, called Woody Mosses back because he had not returned my call of November 5, 1993. Woody said he would have to contact some of the people in his organization (KAPA) and would get back to me about KDHE meeting with them.
3. On the morning of November 18, 1993, I called Woody back since he had not gotten back to me after the November 9, 1993, conversation. This call was to find out what his people had decided about meeting with KDHE. His secretary said he was on the phone and he would call me back.
4. Called Woody in the late afternoon of November 18, 1993, because he had not return my call from the morning. We discussed meeting dates again, he still had to contact KAPA members about dates for the meeting.
5. Called Woody again on November 19, 1993, to see if he had contacted his people about the meeting.
6. Had a meeting with KAPA members to discuss regulations.
7. Called Woody and spoke with him about setting up a tour with KAPA members and KDHE to view several quarries in the Topeka area on December 21, 1993.
8. Called Woody on December 14, 1993, to confirm the tour for the 21st but he did not return my call until December 15, 1993.

Senate Energy & Nat'l R
January 12, 1994
Attachment 2

Woody Mosses Contacts
January 11, 1994
Page 2

9. Charles Jones, Larry Knoche and I toured a quarry in the Topeka area with KAPA members.

10. December 27, 1993, I called Woody to set up a meeting to discuss KDHE's version of the Bill. Subsequently, Larry Knoche set up a meeting between KAPA and KDHE to discuss the Bill. The meeting was set up for January 18, 1994. The reason for setting up the meeting so late was that Woody could not meet with us during the week of January 10th because KAPA had a convention. The plan was to meet on the January 18th and try to come up with a Bill that both parties could get behind.

Ks. Ags. Producers

10/26/93

Session of 1993

SENATE BILL No. 169

By Committee on Energy and Natural Resources

2-3

Adopted amendments
on 10/26

Senate Energy & Nat'l Res
January 12, 1994
Attachment 3

8 AN ACT enacting the surface-mining land conservation and reclama-
9 tion act.

10

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. This act shall be known and may be cited as the
13 surface-mining land conservation and reclamation act.

14 Sec. 2. It is the policy of this state to provide for the reclamation
15 and conservation of land affected by surface mining and thereby to
16 preserve natural resources, protect and perpetuate the taxable value
17 of property, and protect and promote the health, safety and general
18 welfare of the citizens of this state.

19 Sec. 3. As used in this act:

20 (a) "Director" means the executive director of the commission or
21 a designee.

22 (b) "Affected land" means the area of land from which overburden
23 has been removed or upon which overburden has been deposited,
24 but shall not include stockpile areas or roads.

25 (c) "Commission" means the state conservation commission.

26 (d) "Mine" means any underground or surface mine developed
27 and operated for the purpose of extracting ~~any materials except coal~~.

28 (e) "Operator" means any person, firm, partnership, corporation,
29 government or other agency.

30 (f) "Overburden" means all of the earth and other materials which
31 lie above the natural deposits of material being mined or to be mined.

32 (g) "Peak" means a projecting point of overburden removed from
33 its natural position and deposited elsewhere in the process of surface
34 mining.

35 (h) "Pit" means a tract of land from which overburden has been
36 or is being removed for the purpose of surface mining.

37 (i) "Ridge" means a lengthened elevation of overburden removed
38 from its natural position and deposited elsewhere in the process of
39 surface mining.

40 (j) "Surface mining" means:

41 (1) The mining of material, except for coal, oil and gas, for sale
42 or for processing or for consumption in the regular operation of a
43 business by removing the overburden lying above natural deposits

rocks, minerals, and industrial materials; other
than coal, oil and gas; and borrow areas created
for construction purposes.

1 and mining directly from the natural deposits exposed, or by mining
 2 directly from deposits lying exposed in their natural state. Surface
 3 mining shall include dredge operations lying outside the high banks
 4 of streams and rivers.

[or the surface affects of underground mining.]

5 (2) Removal of overburden and mining of limited amounts of any
 6 materials shall not be considered surface mining when done only for
 7 the purpose and to the extent necessary to determine the location,
 8 quantity or quality of the natural deposit, if the materials removed
 9 during exploratory excavation or mining are not sold, processed for
 10 sale or consumed in the regular operation of a business.

11 (k) "Topsoil" means the natural medium located at the land sur-
 12 face with favorable characteristics for growth of vegetation.

[which is normally the A and/or B soil horizon
layers of the four soil horizons.]

13 (l) "Active site" means a site where surface mining is being
 14 conducted.

15 (m) "Inactive site" means a site where surface mining is not being
 16 conducted but where overburden has been disturbed in the past for
 17 the purpose of conducting surface mining and an operator anticipates
 18 conducting further surface mining operations in the future.

19 (n) "Materials" means natural deposits of gypsum, clay, stone,
 20 sandstone, sand, shale, silt, gravel, volcanic ash or any other minerals
 21 of commercial value found on or in the earth with the exception of
 22 coal, oil and gas and those located within cut and fill portions of
 23 road rights-of-way.

24 (o) "Reclamation" means the reconditioning of the area of land
 25 affected by surface mining.

26 (p) "Stockpile" means the ~~mining by surface~~ mining of gypsum,
 27 clay, shale, stone, sandstone, sand, silt, gravel, volcanic ash or other
 28 minerals and removal from its natural position and deposited else-
 29 where for future use in the normal operation as a business.

[finished products of the]

30 Sec. 4. Sections 2 through 22 shall not apply to:

31 (a) Affected land mined prior to the effective date of this act and
 32 shall apply only to those areas of land affected after the effective
 33 date of this act;

34 (b) in any way affect or control the stockpiling, method of stock-
 35 piling or mining from stockpiles of gypsum, clay, shale, stone, sand-
 36 stone, sand, silt, gravel, volcanic ash or other minerals which are
 37 consumed in the regular operation of the business; or

38 (c) ~~river sand producers subject to dredging permits as issued~~
 39 ~~by the chief engineer of the division of water resources.~~

[(q) "Underground mining means the extraction of
rocks, minerals, and industrial materials ,
other than coal, oil, and gas from the earth by
developing entries or shafts from the surface to
the seam or deposit before recovering the
product by underground extraction methods.

[(c) operations which involve the removal of sand
and gravel from within streams and are already
subject to the provisions of KSA 82a-301 through
305 (a) .

40 Sec. 5. No person, firm, partnership or corporation shall engage
 41 in surface mining or operation of an underground mine or mines,
 42 as defined by this act without first obtaining a license from the
 43 director.

1 (a) Licenses shall be issued upon application submitted on a form
 2 provided by the director and shall be accompanied by a fee of ~~\$50~~.
 3 Each applicant shall be required to furnish on the form information
 4 necessary to identify the applicant. Licenses shall expire on ~~Decem-~~
 5 ~~ber 31 of each year~~ and shall be renewed by the director upon
 6 application submitted within 30 days prior to the expiration date and
 7 accompanied by a fee of ~~\$10~~.

[\$300]

[one year from date of issue]

renewal fee. License renewal fees shall be established by the rules and regulations of the director in an amount not exceeding the cost of administering the provisions of this act , estimated by the commission.

8 (b) A license to mine is only valid when approved by the com-
 9 mission and acknowledged by a certificate which has been signed
 10 by the director and lists the operator and the assigned license
 11 number.

12 Sec. 6. The director may, with approval of the commission, com-
 13 mence proceedings to suspend, revoke or refuse to renew a license
 14 of any licensee for repeated or willful violation of any of the provisions
 15 of this act. Proceedings for the suspension or revocation of a license
 16 pursuant to this section shall be conducted in accordance with the
 17 Kansas administrative procedure act by the director or a hearing
 18 officer appointed by the director.

19 Sec. 7. (a) At least ~~seven~~ days before commencement of mining
 20 or removal of overburden at a surface mining site not previously
 21 registered, an operator engaged in surface mining in this state shall
 22 register the site with the director. Application for registration shall
 23 be made upon a form provided by the director. All site registrations
 24 shall expire on ~~December 31 of each year~~. Application for renewal
 25 of registration shall be on a form provided by the director. Regis-
 26 tration and registration renewal fees shall be established by the
 27 commission in an amount not exceeding the cost of administering
 28 the registration provisions of this ~~section~~. The application shall
 29 include:

[thirty calendar]

[one year from date of issue.]

30 (1) A description of the tract or tracts of land where the site is
 31 located and the estimated number of acres at the site to be affected
 32 by surface mining;

[act.]

33 ~~(3) (2)~~ the description shall include the section, township, range and
 34 county in which the land is located and shall otherwise describe the
 35 land with sufficient certainty to determine the location and to dis-
 36 tinguish the land to be registered from other lands;

New Subparagraph (2) A reclamation plan detailing the post mining land use, how the final reclamation will be achieved and illustrating the proposed final topography.

37 ~~(4) (3)~~ A statement explaining the authority of the applicant's legal
 38 right to operate a mine on the land; and

[Renumber Subparagraphs 2-4 accordingly]

39 ~~(5) (4)~~ proof of compliance with all applicable zoning codes or rules
 40 and regulations.

41 (b) The registration application fees and registration renewal fees
 42 shall be established by the rules and regulations of the director in
 43 an amount not exceeding the cost of administering the registration

and all applicable local, state, and federal permits, except those contingent upon the issuance of a registration under the provisions of this act.

1 provisions of this act, as estimated by the commission.

2 (c) A mine site registered pursuant to this section or section 21
3 shall have, at the primary entrance to the mine site, a clearly visible
4 sign which sets forth the name, business address and phone number
5 of the operator. Failure to post and maintain a sign as required by
6 this subsection, within 30 days after notice from the director, in-
7 validates the registration.

8 (d) A person who falsifies information required to be submitted
9 under this section shall be guilty of a misdemeanor.

[class A.]

10 Sec. 8. The application for registration shall be accompanied by
11 a bond or security as required under sections 20 or 21. After as-
12 certaining that the applicant is licensed under section 5 and is not
13 in violation of this act with respect to any site previously registered
14 with the director, the director shall register the mine site and shall
15 issue the applicant written authorization to operate a mine.

16 Sec. 9. (a) An operator may at any time apply for amendment
17 or cancellation of registration of any site. The application for amend-
18 ment or cancellation of registration shall be submitted by the operator
19 on a form provided by the director and shall identify as required
20 under section 7 the tract or tracts of land to be added to or removed
21 from registration.

22 (b) If the application is for an increase in the area of a registered
23 site, the application shall be processed in the same manner as an
24 application for original registration.

25 (c) If the application is to cancel registration of any or all of the
26 unmined part of a site, the director, after ascertaining that no over-
27 burden has been disturbed or deposited on the land, shall order
28 release of the bond or the security posted on the land being removed
29 from registration and cancel or amend the operator's written au-
30 thorization to conduct surface mining on the site.

[shall substantially met the criteria, as
established by the reclamation plan, before it]

31 (d) ~~No~~ land where overburden has been disturbed or deposited
32 shall be removed from registration or released from bond or security
33 under this section.

34 Sec. 10. (a) If control of an active site or the right to conduct
35 any future mining at an inactive site is acquired by an operator other
36 than the operator holding authorization to conduct surface mining
37 on the site, the new operator, within 15 days, shall apply for reg-
38 istration of the site in the new operator's name. The application shall
39 be made and processed as provided under sections 7 and 8. The
40 former operator's bond or security shall not be released until the
41 new operator's bond or security has been accepted by the director.

42 (b) The director may establish procedures for transferring the
43 responsibility for reclamation of a mine site to a state agency or

1 political subdivision which intends to use the site for other purposes.
 2 The director, with agreement from the receiving agency or subdivi-
 3 sion to complete adequate reclamation, may approve the transfer
 4 of responsibility, release the bond or security, and terminate or
 5 amend the operator's authorization to conduct surface mining on the
 6 site.

7 Sec. 11. (a) An operator authorized under this act to operate a
 8 mine, after completion of mining operations and within the time
 9 specified in section 13, shall:

10 (1) Grade affected lands except for impoundments, pit floors, ~~the~~
 11 ~~high banks of sand pits, and highwalls,~~ to slopes having a maximum
 12 ~~of one foot vertical rise for each three feet of horizontal distance.~~
 13 Where the original topography of the affected land was steeper than
 14 one foot of vertical rise for each three feet of horizontal distance,
 15 the affected lands may be graded to blend with the surrounding
 16 terrain.

[and]

[no steeper than]

17 (2) Provide for the vegetation of the affected lands, except for
 18 impoundments, pit floors, and highwalls, as approved by the director
 19 before the release of the bond as provided in section 16.

20 (b) Notwithstanding subsection (a), overburden piles where dis-
 21 position has not occurred for a period of 12 months shall be stabilized.

[The grading of high banks of sand pits and
 highwalls may be modified or exempted by the
 director.]

22 (c) Topsoil that is a part of overburden shall not be buried in
 23 the process of mining.

24 (d) The director, with concurrence of the ~~advisory~~ commission,
 25 may grant a variance from the requirements of subsections (a) and
 26 (b).

[or will not occur]

27 (e) A bond or security posted under this act to assure reclamation
 28 of affected lands shall not be released until all reclamation work
 29 required by this section has been performed in accordance with the
 30 provisions of this act, except when a replacement bond or security
 31 is posted by a new operator or responsibility is transferred under
 32 section 10.

[or destroyed]

33 Sec. 12. (a) An operator shall file with the director a periodic
 34 report for each site under registration. The report shall make ref-
 35 erence to the most recent registration of the mine site and shall
 36 show:

37 (1) The location and extent of all surface land area on the mine
 38 site affected by mining during the period covered by the report.

39 (2) The extent to which removal of mineral products from all or
 40 any part of the affected land has been completed.

41 (b) A report shall also be filed within 90 days after completion
 42 of all surface mining operations at the site regardless of the date of
 43 the last preceding report. Forms for the filing of periodic reports

1 required by this section shall be provided by the director.

2 Sec. 13. (a) An operator of a mine shall reclaim affected lands
3 within a period not to exceed three years, after the filing of the
4 report required under subsection (b) of section 12 indicating the
5 mining of any part of a site has been completed.

6 (b) For certain postmining land uses, such as a sanitary land fill,
7 the director, with the approval of the commission, may allow an
8 extended reclamation period.

9 (c) An operator, upon completion of any reclamation work re-
10 quired by section 11, shall apply to the director in writing for ap-
11 proval of the work. The director, within ~~90 days~~, shall inspect the
12 completed reclamation work. Upon determination by the director
13 that the operator has satisfactorily completed all required reclamation
14 work on the land included in the application, the commission shall
15 release the bond or security on the reclaimed land, shall remove
16 the land from registration, and shall terminate or amend as necessary
17 the operator's authorization to conduct surface mining on the site.

[a reasonable time as determined by the
commission]

18 ~~(d) In the event the director fails to inspect the completed re-~~
19 ~~clamation work within the time specified in subsection (c), the op-~~
20 ~~erator and surety shall notify the commission of substantial~~
21 ~~completion of reclamation upon the affected area. Upon receipt of~~
22 ~~such notice the commission shall release the bond without further~~
23 ~~prejudice.~~

[(d) Periodic inspections may be conducted by the
director or the director's designee, to ensure
that the operator is following the reclamation
plan.]

24 Sec. 14. The time for completion of reclamation work may be
25 extended upon presentation by the operator of evidence satisfactory
26 to the director that reclamation of affected land cannot be completed
27 within the time specified by section 13 without unreasonably im-
28 peding removal of material products from other parts of an active
29 site or future removal of material products from an inactive site.

30 Sec. 15. (a) A bond filed with the director by an operator pur-
31 suant to this act shall be in a form prescribed by the director, payable
32 to the state of Kansas, and conditioned upon faithful performance
33 by the operator of all requirements of this act and all rules and
34 regulations adopted by the director pursuant to this act. The bond
35 shall be signed by the operator as principal and by a corporate surety
36 licensed to do business in Kansas as surety. In lieu of a bond, the
37 operator may deposit cash, certificates of deposit or government
38 securities with the director on the same conditions as prescribed by
39 this section for filing of bonds.

40 (b) The amount of the bond or other security required to be
41 filed with each application for registration of a surface mining site,
42 or to increase the area of affected land previously registered as
43 required under section 9 shall be a minimum of \$250 per acre and

1 shall not exceed a maximum of ~~\$500~~ per acre.

[\$1,000]

[New Paragraph (c) - Any political subdivision of the state of Kansas which engages or intends to engage in surface mining shall meet all requirements of this act except the subdivision shall not be required to post bond or security on registered land.]

[and 15.]

2 Sec. 16. Any operator who registers with the director two or
3 more surface mining sites may elect, at the time the second or any
4 subsequent site is registered, to post a single bond in lieu of separate
5 bonds on each site. The amount of a single bond on two or more
6 surface mining sites may be increased or decreased from time to
7 time in accordance with sections 8, 9, ~~and~~ 13. When an operator
8 elects to post a single bond in lieu of separate bonds previously
9 posted on individual sites, the separate bonds shall not be released
10 until the new bond has been accepted by the director.

11 Sec. 17. No bond filed with the director by an operator pursuant
12 to this act may be canceled by the surety without at least 90 days'
13 notice to the director. If the license to do business in Kansas of any
14 surety of a bond filed with the director is suspended or revoked,
15 the operator, within 90 days after receiving notice thereof from the
16 director, shall substitute for the surety a corporate surety licensed
17 to do business in Kansas. Upon failure of the operator to make
18 substitution of surety as herein provided, the director shall have the
19 right to suspend the operator's authorization to conduct surface min-
20 ing on the site or sites covered by the bond until substitution has
21 been made. The Kansas commissioner of insurance shall notify the
22 director whenever the license of any surety to do business in Kansas
23 is suspended or revoked.

24 Sec. 18. The director or the director's designee, when accom-
25 panied by the operator or operator's designee during regular business
26 hours, may inspect any lands on which any operator is authorized
27 to operate a mine for the purpose of determining whether the op-
28 erator is or has been complying with the provisions of this act. The
29 director shall give written notice to any operator who violates any
30 of the provisions of this act or any rules and regulations adopted by
31 the director pursuant to this act. If corrective measures approved
32 by the director are not commenced within 90 days, the violation
33 shall be referred to the commission. The operator shall be notified
34 in writing of the referral.

35 Sec. 19. Upon receipt of the referral, the commission shall
36 schedule a hearing on the violation by the operator within 30 days
37 after the date of receipt. The commission, upon written request,
38 shall afford the operator the right to appear before the commission
39 at the hearing. The operator shall have the right to counsel, and
40 may produce witnesses and present statements, documents and other
41 information with respect to the alleged violation. If the commission
42 determines that the operator is in violation of this act or of any rule
43 and regulation adopted by the director pursuant to this act, the

1 commission shall request the attorney general to institute bond for-
2 feiture proceedings.

3 Sec. 20. The attorney general, upon request of the commission,
4 shall institute proceedings for forfeiture of the bond posted by an
5 operator to guarantee reclamation of a site where the operator is in
6 violation of any of the provisions of this act or any rule and regulation
7 adopted by the director pursuant to this act. Forfeiture of the op-
8 erator's bond shall fully satisfy all obligations of the operator to
9 reclaim affected land covered by the bond. The director shall have
10 the power to reclaim as required by section 11, any surface mined
11 land with respect to which a bond has been forfeited, using the
12 proceeds of the forfeiture to pay for the necessary reclamation work.

13 Sec. 21. (a) The director, upon finding that the operator has
14 failed to comply with any condition of a license or site registration
15 with which the operator is required to comply pursuant to this act,
16 may impose upon the operator a civil penalty not exceeding \$1,000
17 for each day of noncompliance.

18 (b) All civil penalties assessed pursuant to this section shall be
19 due and payable within 35 days after written notice of the imposition
20 of a civil penalty has been served upon whom the penalty is being
21 imposed, unless a longer period of time is granted by the director
22 or unless the operator appeals the assessment as provided in this
23 section.

24 (c) No civil penalty shall be imposed under this section except
25 upon the written order of the director or the director's designee to
26 the operator upon whom the penalty is to be imposed, stating the
27 nature of the violation, the penalty imposed and the right of the
28 operator upon whom the penalty is imposed to appeal to the director
29 for a hearing on the matter. An operator upon whom a civil penalty
30 has been imposed may appeal, within 15 days after service of the
31 order imposing the civil penalty, to the director. If appealed, a
32 hearing shall be conducted in accordance with the provisions of the
33 Kansas administrative procedure act. The decision of the director
34 shall be final unless review is sought under subsection (d).

35 (d) Any action of the director pursuant to this section is subject
36 to review in accordance with the act for judicial review and civil
37 enforcement of agency actions.

38 ~~23~~ Sec. 22. The director, with the approval of the commission, shall
39 adopt such rules and regulations as necessary to administer and
40 enforce the provisions of this act.

41 ~~24~~ Sec. 23. This act shall take effect and be in force from and after
its publication in the statute book.

New Section 22 - (a) There is hereby created a fee fund within the state treasury which shall be known and cited as the "Land Reclamation Fee Fund".

(b) The director shall remit daily to the state treasurer all moneys collected from fees imposed pursuant to this act. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit it to the land reclamation fee fund herein created.

Sec. 22 - renumber accordingly

Sec. 23 - renumber accordingly

KANSAS CORPORATION COMMISSION
PROPOSED LEGISLATION
1994 LEGISLATURE

Amend K.S.A. 55-705b (applications and exception)

The Conservation Division of the KCC proposes amending K.S.A 55-705b with language to grant an allowable in a prorated gas field in a manner as shall be prescribed by the Commission in rules and regulations. This proposal will allow operators and leaseholders with existing gas wells in a prorated common source of supply to not duplicate forms and filings with the Commission when the information regarding that gas well, except exact location, is already on file with the Wichita office of the Conservation Division. This is basically a paper reduction act for the Commission as well as gas operators in the State.

There is no fiscal impact on the KCC or any other state agency. All application fees, intent to drill fee, and taxation of the particular wells in question under this amendment would remain as they are presently.

Amend KSA 66-138 (fines to counties)

When the Corporation Commission fines a company for violations of KCC statutes or rules and regulations, many of the fines as set out in KSA 66-138 go to the county treasurer for use in the county coffers. Since the KCC does the investigations and work to discover discrepancies and violations of regulated companies, it is the feeling of the Commission that the monies should go to the state of Kansas and credited to the public service regulation fund or the motor carrier license fee fund. The original intention of the statutes was a revenue-sharing fund which enabled the counties to enhance their school funding, but with the enactment in 1992 of the comprehensive school finance package, these funds are no longer necessary and the monies from fines of motor carriers and public utilities goes into the general funds of the counties receiving them.

Senate Energy & Natural Res.
January 12, 1994
Attachment 4

55-705b. Application; notice. ~~No allowable shall be granted by the commission for any gas well except upon application duly verified setting forth the location of the well and the description of the acreage attributable thereto, the common source of supply in which the same is located and such other information as the commission may require. Upon the filing of any such application the same shall be duly docketed and notice thereof given in the manner and for the time provided in K.S.A. 55-706.~~ An allowable may be granted by the commission for any gas well in such a manner and under such conditions as shall be prescribed by the commission in a basic proration order adopted for such common source of supply or otherwise by any rule, regulation, order, or decision of the commission under the provisions of this act.

History: L. 1945, ch. 233, § 7; March 24.

66-138. Common carriers, motor carriers or public utilities; penalties for violation of law. If any common carrier, motor carrier holding a certificate, permit or license or public utility governed by the provisions of this act violates any of the provisions of this act, or shall do any act herein prohibited, or fails or refuses to perform any duty enjoined upon it in this act, or fails, neglects or refuses to obey any lawful requirement or order made by the commission, or any final judgment or decree made by any court upon appeal from any order of the commission, it shall, for every such violation, failure or refusal, forfeit and pay to the ~~county treasurer~~ appropriate fee fund of the state corporation commission a sum not less than \$100 and not more than \$1,000 for such offense.

Such forfeiture shall be enforced and collected by the attorney general in any court of competent jurisdiction. In construing and enforcing the provisions of this act, any act, omission or failure of any officer, agency or other person acting for or employed by any such public utility, common carrier or motor carrier holding a certificate, permit or license, while acting within the scope of such person's employment, shall in every case be deemed to be the act, omission or failure of such public utility, common carrier or motor carrier holding a certificate, permit or license, and every day during which any such public utility, common carrier or motor carrier holding a certificate, permit or license, or officer, agent or employee thereof, fails to comply with any order or direction of the commission, or to perform any duty required or enjoined by this act, shall constitute a separate and distinct violation of the provisions of this act.

History: L. 1911, ch. 238, § 38; R.S. 1923, 66-138; L. 1973, ch. 106, § 18; L. 1986, ch. 248, § 1; July 1.