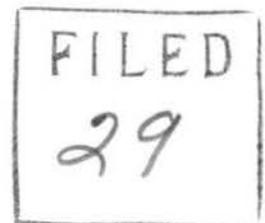


April 9, 1973

OPINION LETTER NO. 29  
Answer by letter-Nowotny

Mr. Robert Neuenschwander  
Director, Missouri Land  
Reclamation Commission  
Room B-36, Capitol Building  
Jefferson City, Missouri 65101



Dear Mr. Neuenschwander:

This is in reply to your request for an official opinion of this office asking five questions relating to the Land Reclamation Act found in Sections 444.760 through 444.786, RSMo Supp. 1971, concerning permits, acreage fees and bonds.

The policy of the law is declared in Section 444.762, reading in part as follows:

"It is hereby declared to be the policy of this state to provide, after surface mining operations are completed, for the reclamation and conservation of land subjected to surface disturbance by surface mining . . ."

Thus, the purpose of the law is to reclaim land where the surface has been disturbed as a result of surface mining.

"Surface mining" is defined as:

". . . the mining of clay, limestone, sand and gravel by removing the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed, and shall include mining of exposed natural deposits of such minerals over which no overburden lies." Section 444.765(11)

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Section 444.770 requires a permit before engaging in surface mining, reading in part as follows:

"1. It shall be unlawful beginning January 1, 1972, for any operator to engage in surface mining without first obtaining from the commission a permit to do so, in such form as is hereinafter provided.

"2. Sections 444.760 to 444.786 shall apply only to those surface mining and pit areas which are opened on or after January 1, 1972, or to the extended portion of pits extended after that date."

"Pit" is defined as:

". . . the place where clay, limestone, sand and gravel are being or have been mined by surface mining;" Section 444.765(8)

"Affected land," which term is used in Section 444.772 providing for the permit application, is defined as follows:

". . . the pit area or area from which overburden shall have been removed, or upon which overburden has been deposited after September 28, 1971;" Section 444.765(1)

"Overburden" is defined as:

". . . all of the earth and other materials which lie above natural deposits of clay, limestone, sand and gravel; and also means such earth and other materials disturbed from their natural state in the process of surface mining;" Section 444.765(6)

I

Your first question reads:

"1. Under HB 519, if overburden is removed but the actual removal of clay or limestone is done several years or more after the removal of the overburden, when is it necessary to obtain a permit, pay acreage fees and file a bond?"

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We assume for purposes of this question that all activity occurred after January 1, 1972, and that the removal of overburden is for the purpose of mining clay or limestone.

The answer depends on the purpose for which the overburden was removed or disturbed. If a person removed what would be considered overburden for the purpose of then removing natural deposits of clay, limestone, sand or gravel, that person must obtain a permit before the removal of the overburden, for such person would be engaged in surface mining, even if the actual removal of the sought-after materials did not occur for several years after the operation began.

## II

Your second and third questions read:

"2. Under HB 519, if overburden is removed prior to January 1, 1972 but the actual removal of clay or limestone is done after January 1, 1972 is a permit, acreage fee and bond required?

"3. Under HB 519 if overburden and removal of clay or limestone is done prior to January 1, 1972 and after January 1, 1972 the only activity is further vertical extension of the pit downward, by removal of clay or limestone, is a permit, acreage fee and bond required?"

Under subsection 1 of Section 444.770 a person must obtain a permit to engage in surface mining after January 1, 1972. Surface mining means the mining (or taking) of materials by removing the overburden lying above such materials and then taking the materials out, or if there is no overburden over the materials, the direct removal of such materials. Section 444.765(11).

Overburden, as you recall, means earth and materials which lie above deposits of clay, limestone, sand and gravel, but also such earth and other materials disturbed from their natural state in the process of surface mining. Section 444.765(6). This second part of the definition of overburden would have no meaning unless it meant something other than earth and other materials which lie above the natural deposits of clay, limestone, sand and gravel. The only meaning is thus earth and other materials which may lie in layers between or within the natural deposits of clay, limestone, sand and gravel.

This interpretation follows subsection 2 of Section 444.770 which provides that the law only applies to those surface mining

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and pit areas which are opened on or after January 1, 1972, or to the extended portion of pits extended after that date. And a pit is defined as the place where clay, limestone, sand or gravel are being or have been removed.

Therefore, it is our opinion, in answer to your second question, that if all earth and other materials have been removed above natural deposits of clay, limestone, sand or gravel prior to January 1, 1972, and only pure deposits of clay, limestone, sand or gravel are thereafter being removed, with no further removal or disturbance of earth and other materials, then a permit is not required. However, if the reverse is true then a permit is required, and, in answer to your third question, this is so even though there is only vertical extension of the pit.

Obviously, if there is lateral extension to new, undisturbed ground a permit is required.

### III

Your fourth question reads as follows:

"4. Under HB 519, when a bond is required for the mining of clay or limestone, and the mining operation, after removal of overburden, may extend over many years with a plan of reclamation for a future lake in the open pit, is the bond required until such time as mining ceases and a lake is formed, or may the bond be released prior to that time?"

A bond is required by Section 444.772.1(1), reading in part as follows:

". . . The operator shall file with the commission a bond payable to the state of Missouri with surety satisfactory to the division in the penal sum of five hundred dollars for each acre or fraction thereof of the area of land affected, conditioned upon the faithful performance of the requirements set forth in sections 444.760 to 444.786 and of the rules and regulations of the commission. In a particular instance where the circumstances are such as to warrant an exception, the commission, in its discretion, may reduce the amount of the bond for a particular operation to less than the required amount."

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The purpose of the bond is to assure that reclamation practices imposed by Section 444.774 will be performed. See Section 444.778.1 which provides in part:

". . . The penalty of such bond shall be five hundred dollars for each area or portion thereof of land proposed thereafter by the operator to be subjected to surface mining for the ensuing permit year. . . ."

Section 444.778 then provides, in part:

"2. The bond or security shall remain in effect until the mined acreages have been reclaimed, approved and released by the commission."

Accordingly, it is our opinion that anytime a permit is required, a bond is also required for any acreage covered by the permit and that bond must remain in effect and cannot be released until such time as all reclaiming has been completed, inspected, and finally released by the Commission. We do note that in any appropriate situation the bond can be reduced, Section 444.772(1), but this does not mean it could be reduced to zero, since this would in effect amount to releasing the bond prior to completion of reclamation, which cannot be done. The bond must at all times be of a sufficient amount which will, in the judgment of the Commission, insure complete compliance with the Land Reclamation Act and the rules and regulations of the Commission.

#### IV

Your fifth question reads as follows:

"5. Under HB 519, when a permit is obtained and the acreage fee is paid for the mining of clay or limestone on one acre, is a fee required on the same acre in subsequent years on application for a permit renewal if:

a. There is only vertical extension downward in the one-acre pit with no further removal of overburden; or

b. The first year of operation only part of the one-acre surface is disturbed and in the permit renewal year surface disturbance will only affect the remainder of the same acre?"

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An acreage fee is required as follows:

"(1) A basic permit fee of fifty dollars plus seventeen dollars and fifty cents for each acre or fraction thereof of the area of land to be affected by the operation shall be paid before the permit required herein shall be issued. . . ." Section 444.772.1(1)

Section 444.772.4 provides in part as follows:

"4. Where acreage for which a permit has been issued is being mined, and mining operations have not been completed thereon during the permit year, the permit as to such acreage may be renewed by applying on a permit renewal form furnished by the commission for an additional permit year and payment of a fee of fifty dollars. . . ."

The only acreage fee required to be paid is \$17.50 per acre when a permit is originally applied for.

Yours very truly,

JOHN C. DANFORTH  
Attorney General