

## 2012 Kansas Statutes

**49-406. Permit to engage in surface mining; compliance with federal act required; annual statement of coal mined; application for permit, contents; notice of application for permit, publication; map and plan to accompany application; disapproval of application, when; fees; performance bonds; cash deposits, securities, mortgages on real estate; liability insurance; renewal of permits; application filed for public inspection, information required to be furnished.** (a) No operator shall engage in surface mining unless such operator possesses a valid permit issued by the secretary designating the area of land affected by the operation. The permit shall authorize the operator to engage in surface mining upon the area of land described in such permit and shall be valid for a period not to exceed five years from the date of its issuance unless sooner revoked or suspended as herein provided. All surface mining conducted under such permit shall comply with the requirements of the surface mining control and reclamation act of 1977 (public law 95-87) and the regulations issued thereunder. It shall be the duty of each producer holding a permit within the state of Kansas to file an annual statement setting forth the full amount of coal mined or taken from each source or deposit and to identify the specific source or deposit from which taken. Such statement shall be filed with the secretary upon forms provided by the department not later than 30 days after the end of each calendar year. All operators shall apply for new permits within two months following approval of the state reclamation program by the secretary of the interior, pursuant to the final program provisions of the national surface mining control and reclamation act of 1977 (public law 95-87), who expect to operate a mine or mines after the expiration of eight months following such approval of this act.

(b) The application for the permit shall include: (1) Five copies of a United States geological survey topographic map on which the operator has indicated the location of the area of land affected, the course which would be taken by drainage from the area of land affected to the nearest stream or streams to which such drainage would normally flow, the name of the applicant and the date.

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

(3) All persons with any interest in the coal to be mined.

(4) The source of the applicant's legal right to mine the coal or other minerals affected by the permit.

(5) The permanent and temporary post-office address of the applicant.

(6) Whether the applicant or any person, firm, partnership or corporation associated with the applicant holds or has held any other permits under this act; and, if so, an identification of such permits.

(7) The written consent of the applicant and such other persons, if any, necessary to grant such access to the secretary and the secretary's designee to the area of land affected under application from the date of application until the expiration of any permit granted under such application and thereafter for such time as is necessary to assure compliance with all provisions of this act or any rule or regulation promulgated hereunder.

(8) A determination of probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the department of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability. This determination shall not be required until hydrologic information on the general area prior to mining is made available from appropriate governmental agencies, but a permit shall not be approved until such information is available and is incorporated into the application. If the secretary finds that the probable total annual production at all locations of any operator will not exceed 100,000 tons, the determination of probable hydrologic consequences, and any statement required by the secretary concerning results of test borings or core samplings, shall, upon written operator request, be performed by a qualified public or private laboratory designated by the secretary, at departmental expense.

(9) Such other information as may be required by the secretary in order to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.

(c) At the time of submission of the application for a permit, or amendment to a permit, the operator shall submit to the secretary proof of publication which shall contain such data and be in such form as the secretary shall require by regulations consistent with the national surface mining control and reclamation act of 1977 (public law 95-87), which notice shall be published at least once a week for four consecutive weeks. The secretary, in accordance with regulations consistent with such national act, shall notify appropriate public agencies of the operator's intention to mine, and shall receive and make available for public inspection the written comments or objections of such agencies and any person having an interest possibly affected adversely by proposed operations. The secretary also shall prescribe by regulations consistent with such national act, a system for holding informal conferences in the area of proposed operations with public notice thereof.

(d) The application for a permit shall be accompanied by an enlarged United States geological survey topographic map prepared and certified by a professional engineer or geologist containing the following: (1) An identification of the area to correspond with the application.

(2) The boundaries of surface properties and names of owners on the area of land affected, adjacent deep mines, and the name of the owner or owners of the surface area within 1,000 feet of any part of the area of land affected, and, if known to the operator, the existence of adjacent deep mines.

(3) Be of a scale of not less than 400 feet to the inch and not to exceed 660 feet to the inch.

(4) Show the names and locations of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, oil and gas wells and utility lines on the area to be mined and within 1,000 feet of such area.

(5) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit to be mined, and the total number of acres involved in the area of land affected.

(6) Show the date on which the map was prepared, the north point and the quadrangle name.

(7) Show the drainage plan on and away from the area of land affected. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the nearest streams or tributaries receiving the discharge.

(8) A verified statement by the operator containing the proposed method of operation, grading, reclamation and conservation plan for the affected area including dates and approximate time of completion, and that the

operation will meet the requirements of this act, or any rule or regulation promulgated hereunder.

(9) The certification of the maps by the professional engineer or geologist shall read as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the surface mining laws of this state." The certification shall be signed and, in the case of an engineer, the engineer's seal affixed.

(10) Such other information as may be required by the secretary in order to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.

Nothing in this subsection shall be construed to permit the practice of engineering, as defined by K.S.A. 74-7001, and amendments thereto, by a geologist.

(e) The application for a permit shall be accompanied by a plan of reclamation that meets the requirements of this act, and the rules and regulations promulgated hereunder and the requirements necessary for the secretary to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.

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

(g) (1) A basic fee of \$50 plus a fee in an amount to be fixed by the secretary for every acre and fraction of an acre of land to be affected shall be paid at the time of application.

(2) Each permittee shall be assessed a per ton fee on every ton of coal extracted.

(3) Pursuant to paragraph (2) of this subsection (g), the per ton fee shall be an amount not less than \$.03 and not more than \$.10 per ton of coal extracted each calendar year. This per ton fee shall be paid to the department on a quarterly basis and it shall be due within 30 calendar days after the beginning of each calendar quarter.

(4) Fees established under this subsection shall be fixed by the secretary, subject to restrictions and limitations imposed by this subsection, in amounts deemed necessary to administer and enforce the provisions of the mined-land conservation and reclamation act.

(h) (1) After a surface coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the secretary, on a form prescribed and furnished by the department, a bond for performance payable to the state treasurer, and conditional upon faithful performance of all the requirements of this act and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the department an additional bond or bonds to cover such increments as required by the secretary. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential; and shall be determined by the secretary. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the department in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.

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

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

(4) Subject to provision (5), an applicant may elect to satisfy the bonding requirements of this subsection by depositing with the state treasurer cash, negotiable bonds of the United States or of the state of Kansas, negotiable certificates of deposit of any bank organized under the laws of the United States or of the state of Kansas or irrevocable letters of credit of any such bank. The cash deposit or market value of any such securities shall be equal to or greater than the amount of the bond required for the bonded area.

(5) An applicant may elect to satisfy the bonding requirements of this subsection by depositing with the state treasurer cash or any of the securities specified in provision (4) or any combination thereof and a first mortgage on real estate which in the aggregate shall be equal to or greater than the amount of the bond required for the bonded area. The mortgage shall be equal in value to not more than 50% of the amount of the bond and shall be secured by real estate which has an appraised value equal to or greater than twice the amount of the mortgage.

(i) Each permit applicant shall submit to the department as part of the application, a certificate issued by an insurance company licensed to do business in Kansas, certifying that the applicant has a public liability policy in force for all operations under the permit applied for, providing personal injury and property damage insurance in an amount adequate to compensate persons damaged as a result of mining and reclamation operations, including use of explosives, and entitled to compensation under the laws of Kansas. The secretary may establish, by regulations, the amount of such insurance to be carried. Such policy shall be maintained during the term of the permit and any renewal, and be continued until completion of all operations.

(j) Where one operator succeeds another at any uncompleted operation, either by sale, assignment, lease or otherwise, the secretary may release the first operator from all liability under this act as to that particular operation. If two or more operators have been issued a permit for the same operation and have otherwise complied with the requirements of the act and regulations promulgated pursuant thereto, the successor operator shall assume as part of such operator's obligation under the act, all liability for the reclamation of the area of land affected by the former operator.

(k) A valid permit issued by the secretary may be renewed with respect to areas within boundaries of the

existing permit, upon application by the permit holder. The burden shall be upon the applicant, subsequent to fulfillment of public notice requirements of the national surface mining control and reclamation act of 1977 (public law 95-87), to establish, subject to confirmation by written findings of the secretary, that:

- (1) Terms and conditions of the existing permit are satisfactorily met; and
- (2) present mining and reclamation operations are in compliance with environmental protection standards imposed by this act and the national surface mining control and reclamation act of 1977 (public law 95-87); and
- (3) renewal will not substantially jeopardize the operator's continuing responsibility on existing permit areas; and
- (4) the operator has provided evidence that the performance bond in effect for the operation together with any additional bond required by the secretary, will continue in full force and effect for any renewal requested; and
- (5) any additional revised or updated information required by the secretary has been provided.

Prior to approval of any permit renewal, the secretary shall provide notice to any appropriate public authorities.

(l) If a renewal application includes a proposal to extend operations beyond existing permit boundaries, that portion of the application applicable to areas beyond existing permit boundaries shall be subject to all standards applicable to new permits. Permit renewals shall not be issued for terms greater than provided for original permits, and applications for renewal permits shall be made at least 120 days prior to expiration of the existing permit.

(m) Each permit applicant shall file a copy of the application for public inspection at the field office of the department, which copy need not contain information relating to the coal seam itself. Any person with an interest which may be adversely affected shall be furnished with information pertaining to coal seams, test borings, core samplings, or soil samples, if such information is required by the secretary, together with data respecting location of subsurface water and analysis of chemical properties including acid forming properties of the mineral and overburden. Information pertaining only to the analysis of the chemical and physical properties of the coal, excepting information regarding such mineral or elemental content which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record.

**History:** L. 1968, ch. 395, § 6; L. 1974, ch. 229, § 2; L. 1978, ch. 208, § 5; L. 1979, ch. 169, § 4; L. 1981, ch. 213, §3; L. 1984, ch. 200, § 1; L. 1988, ch. 192, § 14; L. 1990, ch. 194, § 1; July 1.