

HOUSE BILL No. 2547

By Committee on Agriculture and Natural Resources

1-31

1 AN ACT concerning mines and mining; relating to mining permit
2 applications; amending K.S.A. 49-406 and repealing the existing
3 section.
4

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

6 Section 1. K.S.A. 49-406 is hereby amended to read as follows: 49-
7 406. (a) No operator shall engage in surface mining unless such operator
8 possesses a valid permit issued by the secretary designating the area of
9 land affected by the operation. The permit shall authorize the operator to
10 engage in surface mining upon the area of land described in such permit
11 and shall be valid for a period not to exceed five years from the date of its
12 issuance unless sooner revoked or suspended as herein provided. All
13 surface mining conducted under such permit shall comply with the
14 requirements of the surface mining control and reclamation act of 1977
15 (public law 95-87) and the regulations issued thereunder. It shall be the
16 duty of each producer holding a permit within the state of Kansas to file an
17 annual statement setting forth the full amount of coal mined or taken from
18 each source or deposit and to identify the specific source or deposit from
19 which taken. Such statement shall be filed with the secretary upon forms
20 provided by the department not later than 30 days after the end of each
21 calendar year. All operators shall apply for new permits within two
22 months following approval of the state reclamation program by the
23 secretary of the interior, pursuant to the final program provisions of the
24 national surface mining control and reclamation act of 1977 (public law
25 95-87), who expect to operate a mine or mines after the expiration of eight
26 months following such approval of this act.

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

33 (2) The owner or owners of the surface of the area of land to be
34 affected by the permit and the owner or owners of all surface area within
35 500 feet of any part of the affected area.

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

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

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

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

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

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

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

38 (c) At the time of submission of the application for a permit, or
39 amendment to a permit, the operator shall submit to the secretary proof of
40 publication which shall contain such data and be in such form as the
41 secretary shall require by regulations consistent with the national surface
42 mining control and reclamation act of 1977 (public law 95-87), which
43 notice shall be published at least once a week for four consecutive weeks.

1 The secretary, in accordance with regulations consistent with such national
2 act, shall notify appropriate public agencies of the operator's intention to
3 mine, and shall receive and make available for public inspection the
4 written comments or objections of such agencies and any person having an
5 interest possibly affected adversely by proposed operations. The secretary
6 also shall prescribe by regulations consistent with such national act, a
7 system for holding informal conferences in the area of proposed operations
8 with public notice thereof.

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

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

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

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

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

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

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

32 (8) A verified statement by the operator containing the proposed
33 method of operation, grading, reclamation and conservation plan for the
34 affected area including dates and approximate time of completion, and that
35 the operation will meet the requirements of this act, or any rule or
36 regulation promulgated hereunder.

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

43 (10) Such other information as may be required by the secretary in

1 order to qualify to administer the regulatory programs adopted by the
2 United States department of the interior, office of surface mining
3 reclamation and enforcement, pursuant to the national surface mining
4 control and reclamation act of 1977 (public law 95-87) and federal rules
5 and regulations adopted pursuant thereto.

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

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

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

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

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

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

41 (4) Fees established under this subsection shall be fixed by the
42 secretary, subject to restrictions and limitations imposed by this
43 subsection, in amounts deemed necessary to administer and enforce the

1 provisions of the mined-land conservation and reclamation act.

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

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

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

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

39 (5) An applicant may elect to satisfy the bonding requirements of this
40 subsection by depositing with the state treasurer cash or any of the
41 securities specified in ~~provision~~ *paragraph* (4) or any combination thereof
42 and a first mortgage on real estate which in the aggregate shall be equal to
43 or greater than the amount of the bond required for the bonded area. The

1 mortgage shall be equal in value to not more than 50% of the amount of
2 the bond and shall be secured by real estate which has an appraised value
3 equal to or greater than twice the amount of the mortgage.

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

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

23 (k) A valid permit issued by the secretary may be renewed with
24 respect to areas within boundaries of the existing permit, upon application
25 by the permit holder. The burden shall be upon the applicant, subsequent
26 to fulfillment of public notice requirements of the national surface mining
27 control and reclamation act of 1977 (public law 95-87), to establish,
28 subject to confirmation by written findings of the secretary, that:

29 (1) Terms and conditions of the existing permit are satisfactorily met;
30 ~~and~~

31 (2) present mining and reclamation operations are in compliance with
32 environmental protection standards imposed by this act and the national
33 surface mining control and reclamation act of 1977 (public law 95-87);
34 ~~and~~

35 (3) renewal will not substantially jeopardize the operator's continuing
36 responsibility on existing permit areas; ~~and~~

37 (4) the operator has provided evidence that the performance bond in
38 effect for the operation together with any additional bond required by the
39 secretary, will continue in full force and effect for any renewal requested;
40 and

41 (5) any additional revised or updated information required by the
42 secretary has been provided.

43 Prior to approval of any permit renewal, the secretary shall provide

1 notice to any appropriate public authorities.

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

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

21 Sec. 2. K.S.A. 49-406 is hereby repealed.

22 Sec. 3. This act shall take effect and be in force from and after its
23 publication in the statute book.