

SAND, GRAVEL AND CONSTRUCTION AGGREGATE MINING

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45-6-1 to 45-6-63. Repealed by SL 1985, ch 340

[45-6-64](#). Sand, gravel and construction aggregate mining--Definitions.

Terms used in §§ [45-6-64](#) to [45-6-77](#), inclusive, mean:

- (1) "Affected land," land from which overburden is to be or has been removed and land upon which overburden or waste rock is to be or has been deposited; land which is disturbed by the building of access roads, railroad loops, storage areas, or other support facilities for the purpose of mining; and unstable slopes;
- (2) "Board," the Board of Minerals and Environment;
- (3) "Department," the Department of Agriculture and Natural Resources;
- (4) "Operator," any person, firm, partnership, limited liability company, association, or corporation or any department, division, or agency of federal or state government or any political subdivision of the state; and
- (5) "Secretary," the secretary of the Department of Agriculture and Natural Resources.

Source: SL 1983, ch 308, § 2; SL 1994, ch 351, § 106; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

[45-6-65](#). License required--Compliance with requirements--Fee.

An operator shall obtain a license to mine for sand, gravel, rock to be crushed and used in construction, pegmatite minerals or for limestone, iron ore, sand, gypsum, shale, pozzolan, or other materials used in the process of making cement or lime. The operator shall comply with the requirements of §§ [45-6-68](#), [45-6-69](#), [45-6-71](#), and [45-6-72](#) for each site to be mined. Failure to comply with these requirements for each site mined constitutes mining without a valid license.

The fee for the license is an annual fee of one hundred dollars for each individual mine site authorized under the license, which shall be deposited in the environment and natural resources fee fund established in § [1-41-23](#) by the department.

Source: SL 1983, ch 308, § 3; SL 1988, ch 357, § 2; SL 1988, ch 358, § 2; SL 1990, ch 354, § 3; SL 1993, ch 331; SL 1993, ch 333, § 3; SL 1994, ch 23, § 10; SL 1997, ch 226, § 1; SL 2009, ch 13, § 3; SL 2021, ch 1 (Ex. Ord. [21-3](#)), §§ 14, 53, eff.

45-6-66. Governmental units exempt from fee and security requirements.

No fee or surety may be required of units of state government or political subdivisions of state government.

Source: SL 1983, ch 308, § 4.

45-6-67. Operating and reclamation standards.

An operator shall comply with the following operating and reclamation standards:

- (1) Surface mined areas shall be reclaimed and shaped to control erosion and eliminate hazards to domestic animals and wildlife, to protect public health and safety and the environment and to provide for appropriate future beneficial land use;
- (2) All refuse, machinery, equipment, and materials from the pit operation shall be disposed of in a manner so as to create the least amount of unsightliness and unproductive areas and to not pollute surface or groundwater;
- (3) Land shall be revegetated in such a way as agreed upon by the operator, the local conservation district and the landowner which establishes a diverse, effective, and long-lasting vegetative cover. For any future land use other than crop land, the revegetation shall be capable of self-regeneration and at least equal in extent of cover to the natural vegetation of the surrounding area;
- (4) If it is necessary to remove overburden in order to remove the construction aggregates, topsoil shall be removed from the affected land and segregated from other spoil. If such topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material and is in a usable condition for sustaining vegetation when restored during reclamation;
- (5) Any disturbance to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and groundwater systems both during and after the pit operation and during reclamation shall be minimized. Operations shall be conducted to protect all waters from pollution by siltation, waste, debris and toxic fluids or materials;
- (6) All surface areas of the affected land, including spoil piles, shall be stabilized and protected so as to effectively control erosion and attendant air and water pollution. Noxious weed infestations shall be controlled during all phases of the pit operation and reclamation; and
- (7) Any area outside of the affected land shall be protected from slides, subsidence, or damage occurring during the mining operation and reclamation. All high walls shall be reduced to a slope not greater than the angle of repose upon abandonment of the mining operation, unless such a reduction would create conditions more detrimental than preservation of the high wall. Prior to slope reduction, the operator shall take precautions to limit access to the high wall area and to warn the public of the high wall. Such precautions shall include fencing and posting of warning signs. If high wall reduction is deemed impossible, impractical or aesthetically undesirable by the board, the board shall prescribe adequate fencing.

Source: SL 1983, ch 308, § 5.

45-6-67.1. Reclamation by owner--Time limit--Extension--Forfeiture of surety.

Any reclamation provided for in § [45-6-67](#) shall be carried to completion by the operator with all reasonable diligence, and final reclamation shall be completed within three years after all mining under the license has ceased operation, unless such period is extended by the Board of Minerals and Environment upon a finding that additional time is necessary for the completion of final reclamation of all licensed sites. Failure to complete final reclamation within three years after all mining under the license has ceased may result in the forfeiture of the surety.

Source: SL 1992, ch 254, § 86.

45-6-68. Publication of notice of mine operation--Contents.

The operator shall publish notice of each mine operation once in a newspaper of general circulation in the locality of the operation at least fourteen days before the commencement of mining. The notice shall contain the identity and address of the operator and resident agent, the location of the mining operation, whether the mineral to be mined is sand, gravel, or rock to be crushed and used in construction, the dates of commencement and completion of the operation, the proposed future use of the affected land and the location where additional information about the operation may be obtained.

Source: SL 1983, ch 308, § 6.

45-6-69. Notice of operation to public agencies--Contents--Time required.

The operator shall submit notification, consisting of a map of the affected area and the information required in the newspaper notice to the South Dakota Department of Agriculture and Natural Resources, the South Dakota Department of Game, Fish and Parks, the South Dakota Department of Education, and the local conservation district, of the operator's intent to commence mining at a new mine site at least thirty days before beginning mining operations.

Source: SL 1983, ch 308, § 7; SL 2003, ch 272 (Ex. Ord. 03-1), § 63; SL 2011, ch 165, § 197; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-6-70. Emergency waiver of notice requirements.

When an emergency situation exists and when in the public interest, the secretary of agriculture and natural resources may waive the minimum fourteen-day advertising requirements and thirty-day notice requirement of §§ [45-6-68](#) and [45-6-69](#).

Source: SL 1983, ch 308, § 8; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-6-71. Security required--Amount--Conditions--Alternatives.

Prior to the commencement of mining, an operator shall submit to the Board of Minerals and Environment a surety in the amount of five hundred dollars per acre of affected land. In lieu of filing a surety for each operation, the operator may post a twenty thousand dollar surety for statewide mining of sand, gravel, or rock to be crushed and used in construction. If a corporate surety bond is required, the bond shall be signed by the operator as principal and by a surety insurer certified under chapter [58-21](#). In lieu of the required surety, the operator may deposit cash or a certificate of deposit made payable to the individual and to the board or government securities with the board in an amount equal to that of the required surety. The surety shall remain in effect until the affected land has been reclaimed, the reclamation is approved by the board and the surety is released by the board.

Source: SL 1983, ch 308, § 9.

45-6-72. Annual fee and report.

Together with the annual license fee, the operator shall submit the following information for each location mined during the previous year: the tonnage of material removed, a map showing the areas mined, the areas reclaimed, and the acreage of each.

Source: SL 1983, ch 308, § 10; SL 2011, ch 165, § 196.

45-6-73. Operation without license as misdemeanor.

An operator who operates a mine for the extraction of sand, gravel, or rock to be crushed and used in construction without a valid license obtained pursuant to the provisions of §§ [45-6-64](#) to [45-6-77](#), inclusive, is guilty of a Class 1 misdemeanor.

Source: SL 1983, ch 308, § 11.

45-6-74. Revocation of license.

The secretary of agriculture and natural resources may revoke the license of any operator found to be in violation of any provision of §§ [45-6-64](#) to [45-6-77](#), inclusive. The revocation shall occur pursuant to the provisions of chapter [1-26](#).

Source: SL 1983, ch 308, § 12; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-6-75. Appeal to board from revocation or denial of license.

An operator may appeal a decision of the secretary of agriculture and natural resources to deny or rescind a mining license to the Board of Minerals and Environment. After providing the operator the opportunity for hearing, the board shall either confirm the secretary's decision or reinstate the license.

Source: SL 1983, ch 308, § 13; SL 2021, ch 1 (Ex. Ord. [21-3](#)), § 53, eff. Apr. 19, 2021.

45-6-76. Refusing entry for inspection as violation of license--Obstructing inspection prohibited--Report of inspector to operator.

It is a violation of the terms and conditions of an operator's license to refuse entry or access to any authorized representative of the Board of Minerals and Environment who, after presenting appropriate credentials, requests entry for the purpose of inspection under §§ [45-6-64](#) to [45-6-77](#), inclusive. No operator may obstruct, hamper, or interfere with any such investigation. The operator of the mining site may request and shall receive a report within ten days after the inspection setting forth the observations made by the person making the inspection which relate to compliance with §§ [45-6-64](#) to [45-6-77](#), inclusive.

Source: SL 1983, ch 308, § 14; SL 2011, ch 165, § 198.

45-6-77. Exemption of extraction for personal use.

The provisions of §§ [45-6-64](#) to [45-6-76](#), inclusive, do not apply to extraction of sand, gravel, or rock to be crushed and used in construction by an individual for personal use.

Source: SL 1983, ch 308, § 17.

45-6-78. Temporary cessation of license to mine--Requirements--Exemption during cessation--Reinstatement.

Any mining operator may request from the department a temporary cessation of the license to mine for a period of no more than three years. A temporary cessation may be requested if no mining has occurred within the past one hundred days. A mining license is not in a state of temporary cessation if one of the following occurs:

- (1) The mining under the license resumes within one year;
 - (2) Mining has been completed and only final reclamation and related activities remain to be completed; or
 - (3) A mining license has been issued, but the mining operation has not begun.
- The provisions of § [45-6-72](#) do not apply to the license during the period of a temporary cessation. All provisions of §§ [45-6-78](#) and [45-6-79](#) shall be met before a request may be granted by the department. The department shall grant a temporary cessation within ten days after a proper request is received. A license to mine shall be reinstated if the operator requests reinstatement and the one hundred dollar annual fee is submitted to the department.

Source: SL 1992, ch 254, § 87; SL 1993, ch 34, § 7.

45-6-79. Filing request for temporary cessation--Contents.

Any operator who desires to cease mining temporarily shall file a request for temporary cessation with the department. The request shall contain the following information:

- (1) The operator's name and license number;

- (2) The date of cessation of mining at each licensed site;
- (3) Reasons for the cessation of mining activities; and
- (4) A statement concerning the existing condition of the affected land and reclamation activities that have already been completed for each licensed site.

Source: SL 1992, ch 254, § 88.