

JOINT HEALTH ORDINANCE NO. 07252022

A JOINT ORDINANCE ESTABLISHING REGULATIONS FOR MINING AREAS; PROVIDING STANDARDS FOR MINING FACILITIES; PROVIDING DEFINITIONS; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR ENFORCEMENT; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the Ste. Genevieve County Commission and Ste. Genevieve County Health Department are aware that silica sand mining can produce fugitive dust and other materials containing crystalline silica;

WHEREAS, according to the Federal Occupational Safety & Health Administration, respirable crystalline silica causes multiple diseases, including silicosis, an incurable lung disease. Also, both OSHA and the International Agency for Research on Cancer have designated respirable crystalline silica as a human carcinogen;

WHEREAS, silica sand mining activities can consume significant quantities of groundwater and potentially affect regional groundwater supplies;

WHEREAS, § 192.300.1, RSMo, provides, *inter alia*, "The county commissions and the county health center boards of the several counties may make and promulgate orders, ordinances, rules or regulations, respectively as will tend to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county, but any orders, ordinances, rules or regulations shall not:

(1) Be in conflict with any rules or regulations authorized and made by the department of health and senior services in accordance with this chapter or by the department of social services under chapter 198; or

(2) Impose standards or requirements on an agricultural operation and its appurtenances, as such term is defined in section 537.295, that are inconsistent with, in addition to, different from, or more stringent than any provision of this chapter or chapters 260, 640, 643, and 644, or any rule or regulation promulgated under such chapters;" and

WHEREAS, the Missouri Department of Health and Senior Services and Missouri Department of Social Services have not adopted any rules that are in conflict with the standards established in this Joint Ordinance;

WHEREAS, any Mining Facility affected by this Ordinance is not an "agricultural operation" as such term is used in § 192.300.1 and defined in § 537.295, RSMo;

WHEREAS, because silicosis caused by environmental exposure to crystalline silica is not a "contagious disease" caused by the spread of germs, viruses, or any infectious agents, this Joint Ordinance is not an "order" as defined by § 67.265, RSMo and is not adopted "for the purpose of preventing the spread of a contagious disease."

WHEREAS, the adoption and enforcement of public health standards is hereby found to be necessary in order to enhance and protect the public health of the citizens in Ste. Genevieve County, Missouri from the foregoing potential adverse impacts associated with silica sand mining.

WHEREAS, public health standards and criteria to protect the public health of the residents of Ste. Genevieve County, Missouri from the foregoing potential adverse effects of crystalline silica from silica sand mining activities consistent with State law have been prepared based upon State law and scientific studies presented to and considered by the Ste. Genevieve County Commission and Ste. Genevieve County Health Department, as well as the experience of the members of the Ste. Genevieve County Commission and Ste. Genevieve County Health Department with local conditions in Ste. Genevieve County, Missouri; and

WHEREAS, in accordance with § 192.300.1 RSMo, the Ste. Genevieve County Commission and Ste. Genevieve County Health Department are adopting this Joint Health Ordinance to establish public health standards in order to protect public health, including but not necessarily limited to air quality, drinking water supplies, and water quality in Ste. Genevieve County, Missouri.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSION AND COUNTY HEALTH DEPARTMENT OF STE. GENEVIEVE COUNTY, MISSOURI, AS FOLLOWS:

Section 1. Definitions.

1. "Commission," the Ste. Genevieve County Commission;
2. "Department", the Missouri Department of Natural Resources;
3. "Fugitive Dust," particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or mining and reclamation operations or both. During surface mining and reclamation operations it may include: emissions from haul roads; wind erosion of exposed surfaces, storage piles and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported or redistributed;
4. "Groundwater," subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated;
5. "Health Department," the Ste. Genevieve County Health Department;
6. "Mining", the removal and processing of overburden, extraction of underlying silica sand deposits, or the extraction of exposed natural deposits of silica sand for a commercial purpose;
7. "Mining Facility," all real property where any silica sand mining or processing is conducted, including the Permit Area, Mine Plan Area, and all adjacent or adjoining property owned, leased or otherwise controlled by the Operator for any purpose relating to silica sand mining or processing;
8. "Occupied Dwelling," any residence which has been occupied a minimum of one hundred and twenty (120) days during the twelve (12) month period immediately prior to the date upon which a Permit is issued by the Department;

9. "Operator", any Person engaged in silica sand mining or processing and owning, leasing or otherwise controlling a Mining Facility;

10. "Person", any individual, partnership, copartnership, firm, company, public or private corporation, limited liability company, association, joint stock company, trust, estate, political subdivision, or any agency, board, department or bureau of the state or federal government, or any other legal entity whatever, which is recognized by law as the subject of rights and duties.

11. "Permit", any permit issued by the Department under Chapters 260, 444, 640, 643, or 644, RSMo, as amended, to any Operator or any Person in connection with any silica sand mining and subsequent reclamation operations at any Mining Facility;

12. "Permit Area" or "Mine Plan Area," the area of land indicated on the approved map submitted by the Operator in its permit application to the Department, which area of land shall be covered by the Operator's bond and shall be readily identifiable by appropriate markers on the site;

13. "Populated Area," any circular area inscribed by a radius of 750 feet and a circumference of 4,712.39 feet that is not located on a Mining Facility and which includes a platted subdivision and/or has at least five (5) Occupied Dwellings located within the area.

14. "School," any elementary or secondary educational institution and any institution of higher education or any technical or vocational school above the secondary school level.

15. "Setback," the required distance from the property line of the Mining Facility to locations described in Section Two of this Ordinance.

16. "Silica Sand", naturally occurring, unconsolidated silica sand or friable sandstone present in the St. Peters Sandstone or Lamotte Sandstone formations located in Ste. Genevieve County, Missouri.

Section 2. Public Health and Environmental Standards

1. In addition to the specific requirements as hereinafter set forth, all Mining Facilities shall be designed, constructed, and operated in accordance with all applicable laws and regulations currently in effect or as may hereafter be adopted by the Department. Specific County requirements to protect public health, air quality, drinking water supplies, and water quality are:

- A. No Mining Facility shall be located less than 2,640 feet from:
- (1) The defined incorporated limits of a City, Town, Village within the limits of the County of Ste. Genevieve.
 - (2) A School or property owned and operated by any of the School Districts or educational institutions within Ste. Genevieve County.
 - (3) Any Church or place of worship.
 - (4) Any Populated Area or platted subdivision.
 - (5) Parks, ball fields, and public recreational areas
 - (6) Public or private wells used for purposes of supplying potable

drinking water for human consumption. Any well used solely and exclusively for livestock watering is not included in this section.

- B. No Mining Facility shall be located less than 1,320 feet from:
- (1) Any Occupied Dwelling.
 - (2) Any cave or sinkhole;
 - (3) Any losing stream or tributary of any losing stream;
 - (4) Any stream segment of any Department-designated "Outstanding State Resource Waters;"
 - (5) Any stream segment which has a Department-designated "Beneficial Use Designation" for "IRR-Irrigation," "LWP-Livestock & Wildlife Protection," "WWH-Protection of Warm Water Habitat," or "WBC-Whole Body Contact Recreation."

C. For the purposes of this Ordinance, all distances shall be measured from the nearest foundation of an Occupied Dwelling, nearest Occupied Dwelling within a Populated Area, Church, School, Park and/or other feature listed in Section 2.1.A or 2.1.B in a straight line to the closest property line of the nearest Mining Facility.

D. The Setback distances set forth in this Section, may be modified through existing or future written leases, easements, or other agreements between the Operator of the Mining Facility and the affected residence or adjoining landowner, as the case requires.

E. If the Commission or Health Department receives a complaint relating to the presence of any Fugitive Dust originating from a Mining Facility at any location described in Section 2.1 of this Ordinance, a copy of such complaint shall be provided to the Operator of the Mining Facility, who shall provide a response and a corrective action plan, if warranted, within ten (10) business days.

Section 3. Enforcement.

A. No Person shall (i) construct or operate a Mining Facility, or (ii) resume operations at any inactive Mining Facility that has not operated for a continuous twenty-four (24) month period prior to the effective date of this Joint Ordinance, in any manner that does not comply with any Permit(s) issued by the Department and this Joint Ordinance. Failure to comply with the requirements of this Joint Ordinance shall be a violation.

B. This Joint Ordinance may be enforced in a civil action against any Operator or Person violating any provision in the Joint Ordinance by either: (1) the Commission, (2) the Health Department, or (3) any City, Town, Village, School District, Church, property owner, or any other Person with a protectable legal interest, who is a member of any class described in Section 2.1.A or 2.1.B herein for which this Joint Ordinance is intended to protect.

Section 4. Severability.

A. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any Court of competent jurisdictions, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance since the same would

have been enacted by the Commission without the incorporation in this Ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph, or section.

Section 5. Repeal of Ordinance Not to Affect Liabilities, Etc.

A. Whenever any part of this Ordinance shall be repealed or modified, either expressly or by implication, by a subsequent Ordinance, that part of the Ordinance thus repealed or modified shall continue in force until the subsequent Ordinance repealing or modifying the ordinance shall go into effect unless therein otherwise expressly provided; but no suit, prosecution, proceeding, right, fine or penalty instituted, created, given, secured or accrued under this ordinance previous to its repeal shall not be affected, released, or discharged but may be prosecuted, enjoined, and recovered as fully as if this ordinance or provisions had continued in force, unless it shall be therein otherwise expressly provided.

Section 6. Effective Date.

A. This Ordinance shall be in full force and effect from and after its passage.

PASSED AND APPROVED THIS 28th DAY OF July, 2022.

STE. GENEVIEVE COUNTY COMMISSION

Garry Nelson
Presiding Commissioner

Don A. Stoppa
First District Commissioner

Paul Dill
Second District Commissioner

ATTEST:

Sue Welch

County Clerk
7-28-2022

Date

PASSED AND APPROVED THIS 28th DAY OF July, 2022.

STE. GENEVIEVE COUNTY HEALTH DEPARTMENT

Robert Bach
Chairman

Paul B. Miller
Director

Jul D. K...
Director

Jim Boy
Director

Michael Bos...
Director