§ 23-2711. Permits.

1. After September first, nineteen hundred ninety-one, any person who mines or proposes to mine from each mine site more than one thousand tons or seven hundred fifty cubic yards, whichever is less, of minerals from the earth within twelve successive calendar months or who mines or proposes to mine over one hundred cubic yards of minerals from or adjacent to any body of water not subject to the jurisdiction of article fifteen of this chapter or to the public lands law shall not engage in such mining unless a permit for such mining operation has been obtained from the department. A separate permit shall be obtained for each mine site.

2. Applications for permits may be submitted for annual terms not to exceed five years. A complete application for a new mining permit shall contain the following:

(a) completed application forms;

(b) a mined land-use plan;

(c) a statement by the applicant that mining is not prohibited at that location; and

(d) such additional information as the department may require.

3. Upon receipt of a complete application for a mining permit, for a property not previously permitted pursuant to this title, a notice shall be sent by the department, by certified mail, to the chief administrative officer of the political subdivision in which the proposed mine is to be located (hereafter, "local government"). Such notice will be accompanied by copies of all documents which comprise the complete application and shall state whether the application is a major project or a minor project as described in article seventy of this chapter.

(a) The chief administrative officer may make a determination, and notify the department and applicant, in regard to:

(i) appropriate setbacks from property boundaries or public thoroughfare rights-of-way,

(ii) manmade or natural barriers designed to restrict access if needed, and, if affirmative, the type, length, height and location

thereof,

(iii) the control of dust,

(iv) hours of operation, and

(v) whether mining is prohibited at that location.

Any determination made by a local government hereunder shall be accompanied by supporting documentation justifying the particular determinations on an individual basis. The chief administrative officer must provide any determinations, notices and supporting documents according to the following schedule:

(i) within thirty days after receipt for a major project,

(ii) within thirty days after receipt for a minor project.

(b) If the department finds that the determinations made by the local government pursuant to paragraph (a) of this subdivision are reasonable and necessary, the department shall incorporate these into the permit, if one is issued. If the department does not agree that the determinations are justifiable, then the department shall provide a written statement to the local government and the applicant, as to the reason or reasons why the whole or a part of any of the determinations was not incorporated.

(c) A proposed mine of five acres or greater total acreage, regardless of length of the mining period, shall be a major project. The department shall, by regulation, provide a minimum thirty day public comment period on all permit applications for mined land reclamation permits classified as major projects.

4. Upon approval of the application by the department and receipt of financial security as provided in section 23-2715 of this title, a permit shall be issued by the department. Upon issuance of a permit by the department, the department shall forward a copy thereof by certified mail, to the chief executive officer of the county, town, village, or city in which the mining operation is located. The department may include in permits such conditions as may be required to achieve the purposes of this title.

5. A permit issued pursuant to this title or a certified copy thereof, must be publicly displayed by the permittee at the mine and must at all

times be visible, legible, and protected from the elements.

6. The department may suspend or revoke a permit to mine for repeated or willful violation of any of the terms of the permit or provisions of this title or for repeated or willful deviation from those descriptions contained in the mined land-use plan. The department may refuse to renew a permit upon a finding that the permittee is in repeated or willful violation of any of the terms of the permit, this title or any rule, regulation, standard, or condition promulgated thereto.

7. Nothing in this title shall be construed as exempting any person from the provisions of any other law or regulation not otherwise superseded by this title.

8. Notwithstanding any other provision of law, counties, cities, towns and villages shall be exempted from the fees for the permit, application, amendment and renewal required by this article.

9. Counties, cities, towns and villages shall not be required to obtain a permit if such county, city, town or village mines or proposes to mine from any mine site less than one thousand tons or seven hundred fifty cubic yards, whichever is less, of minerals from the earth within twelve successive calendar months and which does not require a permit pursuant to title five of article fifteen of this chapter.

10. The applicant, permittee or, in the event no application has been made or permit issued, the person engaged in mining shall have the primary obligation to comply with the provisions of this title as well as the conditions of any permit issued thereunder.

11. Permits issued pursuant to this title shall be renewable. A complete application for renewal shall contain the following:

(a) completed application forms;

(b) an updated mining plan map consistent with paragraph (a) of subdivision one of section 23-2713 of this title and including an identification of the area to be mined during the proposed permit term;

(c) a description of any changes to the mined land-use plan; and

(d) an identification of reclamation accomplished during the existing permit term.

12. The procedure for transfer of a permit issued pursuant to this title is the procedure for permit modification pursuant to article seventy of this chapter.

12-a. (a) Notwithstanding any provision of this section to the contrary, any person who engages in or proposes to engage in bluestone mining exploration shall not commence such exploration unless a written authorization for such exploration has been obtained from the department. The department may grant an authorization for bluestone mining exploration for a period of at least one hundred eighty days and not to exceed one year where the land affected by mining will not exceed one acre, and is not adjacent to any body of water. Bluestone to be removed from the site may not exceed five hundred tons in twelve successive calendar months and any overburden shall remain on the one acre site at all times. As used in this subdivision, the term "bluestone" means quartz/feldspathic sandstone of Devonian age, which is easily separated along bedding planes.

(b) Only persons with five or fewer employees shall be eligible to apply for an authorization for bluestone mining exploration, provided, however that a small business shall be eligible to apply on behalf of such a person. A person may possess no more than five authorizations for bluestone mining exploration at any one time, and no such authorizations shall be for adjacent sites. As used in this paragraph, "small business" means any business which is resident in this state, independently owned and operated, not dominant in its field, and employing not more than one hundred individuals.

(c) An application for authorization must be submitted on a form prescribed by the department at least forty-five days before exploration and removal of bluestone is expected to commence. The requirements of such application shall include, but not be limited to, a description of the proposed activity, a map showing the area to be affected by mining, with the location of the one acre site on which mining activities are proposed and a statement that such mining activities conform with local zoning, copies of any local permits, and measures to control erosion of

sediment and prevent contamination of groundwater or adverse impacts to aquifers. Upon receipt of a complete application for bluestone mining exploration authorization, for a property not previously authorized pursuant to this subdivision, a notice shall be sent by the department, by certified mail, to the chief administrative officer of the political subdivision in which the proposed bluestone mine is to be located. Such notice shall be accompanied by copies of all documents which comprise the complete application. The chief administrative officer may make a determination within thirty days after receipt accompanied by supporting documentation justifying the particular determinations on an individual basis pursuant to subparagraphs (i), (ii), (iii), (iv) and (v) of paragraph a of subdivision three of this section.

(d) An authorization for bluestone mining exploration issued pursuant to this subdivision must be publicly displayed by the holder at the one acre site and must at all times be visible, legible and protected from the elements.

(e) The person engaged in bluestone mining exploration shall complete reclamation, in accordance with requirements set forth by the department, no later than one year from the date of authorization by the department unless the person engaged in mining obtains a renewal of the authorization or a permit pursuant to this title. An authorization issued pursuant to this section may be renewed for an additional one year term upon application to the department at least thirty days prior to the expiration of the authorization. The total authorization period shall not exceed two years. Before the department may issue a bluestone mining exploration authorization, the applicant shall furnish acceptable financial security. Department review of acceptable financial security shall be governed by the provisions set forth in section 23-2715 of this title and the regulations promulgated pursuant to such section. There shall be no fee for such authorization.

(f) On or before March fifteenth, two thousand eight, the department shall submit a report to the governor and legislature regarding bluestone mining exploration in the state. Such report shall list the sites, including locations of sites, and detrimental environmental impacts, if any, an assessment as to the degree to which the adoption of this subdivision benefits the environment, as well as an assessment of the enforcement activities undertaken against individuals authorized

pursuant to this subdivision.

13. The rules and regulations adopted by the department to implement this title and the provisions of article seventy and rules and regulations adopted thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this title.