

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1662

BY: RHODES (Dusty)

AS INTRODUCED

AN ACT RELATING TO MINES AND MINING; AMENDING 45 O.S. 1981, SECTION 723, 724, AS LAST AMENDED BY SECTION 1, CHAPTER 139, O.S.L. 1983, 725, AS AMENDED BY SECTION 2, CHAPTER 139, O.S.L. 1983, 727, 728, AS AMENDED BY SECTION 5, CHAPTER 181, O.S.L. 1982, 731, AND 732 (45 O.S. SUPP. 1990, SECTION 724, 725 AND 728), WHICH RELATE TO THE MINING LANDS RECLAMATION ACT; MODIFYING TERMS; ADDING TO POWERS AND DUTIES OF LOCAL CONSERVATION DISTRICTS AND THE OKLAHOMA CONSERVATION COMMISSION; MODIFYING PROCEDURES; AUTHORIZING CERTAIN INSPECTIONS; MODIFYING SECURITY OR BONDING PROCEDURES; MODIFYING CERTAIN REQUIREMENTS FOR RELEASE AND INFORMATION; MODIFYING POWERS AND DUTIES OF DEPARTMENT OF MINES; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 45 O.S. 1981, Section 723, is amended to read as follows:

Section 723. Whenever used or referred to in Sections 722 through 738 of this title, unless a different meaning clearly appears from the context:

(a) "Overburden" means all of the earth and other materials which lie above natural deposits of minerals, and also means such earth and other materials disturbed from their natural state in the process of surface mining.

(b) "Mine" means an underground or surface excavation and development with or without shafts, slopes, drifts or tunnels for the extraction of minerals, with hoisting or haulage equipment and appliances for the extraction thereof, and shall embrace any and all of the land or property of the plant, and the surface and underground, that contribute directly or indirectly to the mining properties, concentration or handling of minerals.

(c) "Mining" means the extraction of minerals from natural deposits by any method or process.

(d) "Minerals" means asphalt, clay, copper, granite, gravel, gypsum, lead, marble, salt, sand, shale, stone, tripoli, volcanic ash and zinc, or any other substance commonly recognized as a mineral, and includes ores or rock containing any such substances, but excludes oil, gas and any other mineral found naturally in a liquid or gaseous state.

(e) "Underground mining" means those mining operations carried out beneath the surface by means of shafts, slopes, tunnels or other openings leading to the mineral being mined and the extraction of the mineral through such shafts, slopes, tunnels or their openings.

(f) "Surface mining" means those mining operations carried out on the surface, including strip mining, auger mining, quarrying, dredging, pumping, or the use of hydraulic methods.

Surface mining shall not include excavation or removal of shale, sand, gravel, clay, rock or other materials in remote areas by an owner or holder of a possessory interest in land for the primary purpose of construction or maintenance of access roads to or on such landowner's property. Surface mining shall not include excavations or grading conducted for forming, on-site road construction or other

on-site construction, or the extraction of minerals other than anthracite and bituminous coal by a landowner for his own noncommercial use from land owned or leased by him; nor the extraction of such noncoal minerals for commercial purposes in an amount less than five hundred (500) tons per acre of aggregate or mass of mineral matter in any permit year; nor the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes, so long as such work is performed under a bond, contract and specifications which substantially provide for and require reclamation of the area affected; nor to the handling, processing or storage of slag on the premises of a manufacturer as a part of the manufacturing process. Surface mining shall not include the surface mining of coal or the surface effects of underground coal mining.

(g) "Strip mining" means those mining operations carried out by removing the overburden lying above natural deposits of minerals, and mining directly from such natural deposits thereby exposed, but excludes auger mining, quarrying, dredging, pumping or the use of hydraulic methods.

(h) "Reclamation" means conditioning affected land to make it suitable for any uses or purposes consistent with those enumerated in Section 722 of this title, and to avoid, minimize or correct adverse environmental effects of mining operations.

(i) "Box cut" means the first open cut in strip mining which results in the placing of overburden on unmined land adjacent to the initial pit and outside the area to be mined.

(j) "Consolidated material" means material of sufficient hardness or ability to resist weathering and to inhibit erosion or sloughing.

(k) "Operator" means any person, partnership, firm or corporation engaged in and controlling a mining operation.

(l) "Pit" means a tract of land from which overburden or minerals have been or are being removed in the process of surface mining.

(m) "Affected land" means the area of land from which overburden shall have been removed, or upon which overburden or refuse has been deposited, or both.

(n) "Refuse" means all waste material directly connected with the production, cleaning or preparation of minerals which have been mined by either underground or surface mining method.

(o) "Ridge" means a lengthened elevation of overburden created in the surface mining process.

(p) "Peak" means a projecting point of overburden created in the surface mining process.

(q) "Department" means the office of the Chief Mine Inspector, herein called the Department of Mines and Mining, or such department, bureau or commission as may lawfully succeed to the powers and duties of such department.

(r) "Director" means the Chief Mine Inspector of the State of Oklahoma or such officer, bureau or commission as may lawfully succeed to the powers and duties of such Chief Mine Inspector.

(s) "Local conservation district" means a conservation district as authorized pursuant to Title 82, Oklahoma Statutes. The local conservation district is that conservation district in which the area to be located is principally located.

(t) "Oklahoma Conservation Commission" means the Oklahoma Conservation Commission established pursuant to Title 82, Oklahoma Statutes.

SECTION 2. AMENDATORY 45 O.S. 1981, Section 724, as last amended by Section 1, Chapter 282, O.S.L. 1989 (45 O.S. Supp. 1990, Section 724), is amended to read as follows:

Section 724. A. It shall be unlawful for any operator to engage in any mining operations in this state without first

obtaining from the Department a permit to do so for each separate mining operation. The Department shall determine what constitutes a separate mining operation by rules and regulations promulgated under the Mining Lands Reclamation Act, ~~Sections 721 et seq. of this title.~~

B. Any operator desiring to engage in surface mining shall make written application to the Department for a permit. Application for such permit shall be made upon a form furnished by the Department. The form shall contain a description of the tract or tracts of land and the estimated number of acres to be affected by surface mining by the operator for each year of the proposed mining plan, for a period of not more than five (5) years. The description shall include the section, township, range and county in which the land is located and shall otherwise describe the land with sufficient certainty so that it may be located and distinguished from other lands. Transmission lines shall be plotted on a location map submitted with the application. A statement that the operator has the right and power by legal estate owned to mine by surface mining the land so described shall be included with the application.

C. Any operator desiring to engage in underground mining shall make written application to the Department for a permit. Application for such permit shall be made upon a form furnished by the Department. The form shall contain a description of the tract or tracts of land to be used as refuse disposal areas for each year of the proposed mining plan, for a period of not more than five (5) years. The description shall include the section, township, range and county in which the land is located and shall otherwise describe the land with sufficient certainty so that it may be located and distinguished from other lands. A statement that the applicant has the right and power by legal estate owned to use the land so described as a refuse disposal area shall be included with the application.

D. Each application for a permit under subsections B and C of this section shall be accompanied by a plan of reclamation of the affected land that meets the requirements of the Mining Lands Reclamation Act as approved by the local Conservation District and the Oklahoma Conservation Commission. The application shall set forth the proposed use to be made of the affected land, the grading to be accomplished, the type of revegetation, and shall include the approximate time of grading and initial revegetation effort.

E. Each application for a permit under subsections B and C of this section shall be accompanied by the bond or security meeting the requirements of Section 728 of this title, or proof that such bond or security is still in effect, and a fee of One Hundred Fifty Dollars (\$150.00) for each permit year, payable at the rate of One Hundred Fifty Dollars (\$150.00) per year on the anniversary date of the year in which the permit or permit renewal was issued. All application fees shall be submitted to the State Treasurer, who shall deposit them in the Department of Mines Revolving Fund.

F. Upon the receipt of such application, bond or security and fee due from the operator, the Department may issue a permit to the applicant which shall entitle him to engage in mining on the land therein described in accordance with the rules and regulations promulgated by the Department, for a period of not more than five (5) years, in accordance with the permit application submitted under subsection B or C of this section. All applications for renewal of existing permits shall be filed a minimum of forty-five (45) days prior to the expiration of the existing permit. No permit shall be issued except upon proper application and public hearing, if requested. Upon filing the application with the Department, the applicant shall place an advertisement in a newspaper of general circulation in the vicinity of the mining operation, containing such information as is required by the Department. Any property owner or resident of an occupied dwelling who may be adversely affected

located within one (1) mile of the mining operation shall have the right to protest the issuance of a permit and request a public hearing. The Department shall notify the surface owners of any hearings in connection with applications or permits in the same manner as the operator is notified. Such protests must be received by the Department within fourteen (14) days after the date of publication of the newspaper advertisement. If a public hearing is requested, the Department shall then hold an informal hearing in the vicinity of the proposed mining. Upon completion of findings after the hearing, the Department shall determine whether to issue or deny the permit, and shall notify all parties of its decision. Any decision regarding the issuance of a permit under this section shall be appealable when entered, as provided in the Administrative Procedures Act, Sections 250 et seq. and 301 et seq. of Title 75 of the Oklahoma Statutes.

G. An operator desiring to have his permit amended to cover additional land may file an amended application with the Department. The amended application shall include an amended reclamation plan. Upon receipt of the amended application, the Department shall forward such application to the Oklahoma Conservation Commission for approval. Upon receipt of approval from the Oklahoma Conservation Commission and such additional bond as may be required under the provisions of the Mining Lands Reclamation Act, the Department shall issue an amendment to the original permit covering the additional land described in the amended application, without the payment of any additional fee.

H. An operator may withdraw any land covered by a permit, deleting affected land therefrom, by notifying the Department, in which case the penalty of the bond or security filed by such operator pursuant to the provisions of the Mining Lands Reclamation Act shall be reduced proportionately.

I. Permits issued to an operator shall not be transferable to another operator.

J. The perimeter of the permit area shall be clearly marked by durable and recognizable markers or by other means approved by the Department.

K. The Department shall determine the blasting distance to transmission lines by rule and regulation.

SECTION 3. AMENDATORY 45 O.S. 1981, Section 725, as amended by Section 2, Chapter 139, O.S.L. 1983 (45 O.S. Supp. 1990, Section 725), is amended to read as follows:

Section 725. A. All affected land other than lands affected by coal mining operations shall be reclaimed as provided in this section.

B. The operator shall determine which parts of the affected land shall be reclaimed for forest, pasture, crop, horticultural, homesite, recreational, industrial or other use including food, shelter and ground cover for wildlife.

C. All ridges and peaks of overburden created by surface mining shall be graded to a rolling topography traversable by machines or equipment customarily used in connection with the use to be made of the land after reclamation, but such slopes need not be reduced to less than the original grade of the area prior to mining, and the slope of the ridge of overburden resulting from a box cut need not be reduced to less than twenty-five degrees (25o) from horizontal. Surface mining operations conducted in the flood plains of streams and rivers and subject to periodic flooding shall be exempt from the grading requirements of this section.

D. The operator may construct earth dams to form lakes in pits resulting from surface mining operations, provided that the formation of lakes shall not interfere with other mining operations or damage property of others.



E. The operator shall cover the exposed face of a mineral seam, where significant concentrations of acid-forming materials are present, to a depth of not less than three (3) feet with earth that will support plant life or with a permanent water impoundment.

F. The operator shall grade down the banks of any pits or depressions created by the removal of sand or gravel by surface mining to a degree of slope determined by the Department, which shall give due consideration to the natural topography of the land affected and adjacent lands, the composition of such banks and the most beneficial use of the pits and depressions comprising the affected land after reclamation. If the pits or depressions are deeper than ten (10) feet, the operator may elect to bench the highwall, provided that such benches are not in excess of ten (10) feet in height.

G. All affected land except that which is to be covered with water or used for homesites or industrial purposes shall be revegetated by the planting of seeds, plants, trees, shrubs or other plantings appropriate to the use to be made of the land as determined by the operator. No planting of any kind shall be required on any affected land so long as the chemical and physical characteristics of the soil of such affected land are toxic, deficient in plant nutrients or composed of sand, gravel, shale or stone to such an extent as to seriously inhibit plant growth. The Department may prescribe by rules and regulations the required density of such plantings, and may make replanting requirements.

H. Except where prevented by weather conditions, all grading shall be completed within one (1) year after mining of the affected land has been completed. Initial seeding or planting shall be made at the first appropriate time following completion of grading. If the operator is unable to acquire sufficient planting stock of desired species from state nurseries, or acquire such species elsewhere at comparable prices the ~~Department~~ Oklahoma Conservation

Commission shall grant the operator an extension of time until planting stock is available to plant such land as originally planned as provided in the reclamation plan.

I. In any noncoal mining operation where the type and amount of material removed precludes the filling of the quarry, the Department of Mines shall prescribe necessary measures for the protection of the public and animal life.

SECTION 4. AMENDATORY 45 O.S. 1981, Section 727, is amended to read as follows:

Section 727. The Department, or its accredited representatives, and the Oklahoma Conservation Commission or the local conservation district representatives or both such Commission and representatives may enter upon the lands of the operator at all reasonable times, for the purpose of inspection, to determine whether the provisions of this act have been complied with.

SECTION 5. AMENDATORY 45 O.S. 1981, Section 728, as amended by Section 5, Chapter 181, O.S.L. 1982 (45 O.S. Supp. 1990, Section 728), is amended to read as follows:

Section 728 A. Any bond required to be filed with the Department by the operator shall be in such form as the Director prescribes, payable to the State of Oklahoma, conditioned that the operator shall faithfully perform all requirements of the Mining Lands Reclamation Act and comply with all rules of the Department made in accordance with the provisions of the Mining Lands Reclamation Act. Such bond shall be signed by the operator as principal, and by a good and sufficient corporate surety, licensed to do business in the state, as surety.

B. The penal sum of such bond shall be determined by the Department and shall depend on the performance requirements of the approved permit. The minimum bond shall be Two Thousand Dollars (\$2,000.00).

In determining the amount of the bond, the Department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of reclamation to be required.

C. A bond shall not be cancelable by the surety except after not less than ninety (90) days' prior written notice to the Department. Bonds may be continued in effect from year to year, and a new bond need not be provided for each permit application. A single bond may cover all of the operator's mining operations in the state. The penalty of the bond or amount of cash and securities, as provided in subsection E of this section, shall be increased or reduced from time to time as provided in the Mining Lands Reclamation Act.

D. If the license to do business in the state of any surety upon a bond filed with the Department pursuant to the Mining Lands Reclamation Act shall be suspended or revoked, the operator, within thirty (30) days after receiving notice from the Department, shall substitute for such surety a good and sufficient corporate surety licensed to do business in the state. Upon failure of the operator to make substitution of surety as required, the Department shall have the right to suspend the permit of the operator to conduct operations upon the land described in such permit until such substitution has been made.

E. In lieu of such bond, the operator may deposit cash government securities, Certificates of Deposit or an irrevocable letter of credit with the Department in an amount equal to that of the required bond on conditions as prescribed by the Department. In the discretion of the Department surety bond requirements may also be fulfilled by using existing reclaimed areas, in excess of cumulative permit or mined acres, that have been completed under the jurisdiction of the Mining Lands Reclamation Act and approved by the Department and by the Oklahoma Conservation Commission.

F. Such bond or security shall remain in effect until the mined acres have been reclaimed, ~~approved and released by the Department~~ and the reclamation has been approved by the Oklahoma Conservation Commission. The Commission shall notify the Department when the reclamation has been approved. Upon receipt of notification the Department shall release the bond or security. If the Department and the Oklahoma Conservation Commission determines that grading has been satisfactorily completed pursuant to the Mining Lands Reclamation Act, the Department may release up to eighty percent (80%) of the penal sum of the bond filed for each acre of land graded. The remaining portion of the bond shall continue in effect until the completion of the requirements pursuant to Section 725 of this title.

SECTION 6. AMENDATORY 45 O.S. 1981, Section 731, is amended to read as follows:

Section 731. The operator shall submit to the Department, no later than September 1 following the end of each permit year, a map in a form approved by the Department showing the location of the pit or pits by section, township, range and county, with such other description as will identify the land which the operator has affected by mining during such permit year and has completed mining operations thereon, with a legend upon such map showing the number of acres of affected land. Such map shall also show in acres the extent of the reclamation accomplished on the affected land, including grading and revegetation efforts, as of the end of the permit year, and shall show by appropriate designation any deviation from the plan of reclamation filed under subsection (c) of Section 724 of this title and the reasons therefor. The Department shall provide copies of all maps submitted to the Oklahoma Conservation Commission.

Whenever an operator shall have completed all requirements under the provisions of this act as to any affected land, he shall notify

the Department thereof.—If, and the Department shall notify the Oklahoma Conservation Commission. If the Oklahoma Conservation Commission determines that the operator has completed reclamation requirements and achieved results appropriate to the use for which the area was reclaimed, the Oklahoma Conservation Commission shall notify the Department. The Department shall then release the operator from further obligations regarding such affected land and the penalty of the bond shall be reduced proportionately.

SECTION 7. AMENDATORY 45 O.S. 1981, Section 732, is amended to read as follows:

Section 732. In addition to the duties and powers conferred on the Department in other provisions of this act, the Department shall have authority and power to:

(a) Adopt and promulgate reasonable rules and regulations respecting the administration of this act and in conformity therewith and the Administrative Procedures Act.

(b) Order, after hearing, the revocation of any permit issued hereunder for violation of this act.

(c) Cause to be instituted, in any court of competent jurisdiction, legal proceedings for injunctive or other appropriate relief to enforce this act.

(d) Make investigations and inspections which are necessary or appropriate to insure compliance with this act.

(e) Collect and disseminate information relating to reclamation of affected lands to the Oklahoma Conservation Commission and to others upon request.

(f) Request the assistance of any federal or state agency for technical advice or any other type of assistance deemed necessary to carry out the purposes of this act.

(g) Enter into an agreement with the Oklahoma Conservation Commission. Such agreement shall provide that the Oklahoma Conservation Commission and/or local conservation district

representatives shall be responsible for inspection and approval of  
reclamation plans and reclamation work performed by the operator.  
Such agreement shall provide for the reimbursement by the Department  
to the Oklahoma Conservation Commission for all associated costs.

SECTION 8. This act shall become effective September 1, 1991.

43-1-5689

KSM