SB 19

THE STATE SENATE
Tuesday, February 15, 2005

Senate Bill No. 19

SENATE BILL NO. 19 - By: LERBLANCE of the Senate and WILT of the House.

An Act relating to mines and mining; amending 45 O.S. 2001, Section 729, which relates to the Mining Lands Reclamation Act; providing for certain violations reported by citizens' complaints to be kept confidential; requiring the Department of Mines to make certain detailed findings of fact and conclusions of law; authorizing Department to proceed with permit revocation or bond forfeiture under certain conditions; stating procedure for Department to proceed with certain work; authorizing Department to assess certain fine for violation; stating liability for certain entities; authorizing Department to seek certain civil action for relief in certain district courts; authorizing Department to recover certain penalties or fines for violations; providing for attorneys fees; requiring Department to deposit certain monies in certain fund; removing authorization and procedure for the Attorney General to institute certain damage proceedings; and declaring an emergency.

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

SECTION 1. AMENDATORY 45 O.S. 2001, Section 729, is amended to read as follows:

Section 729. The Department of Mines shall notify the operator and the surety in writing of any claimed violation of the provisions of ~~this act~~ <u>the Mining Lands Reclamation Act</u> or the rules ~~and regulations~~ of the Department. If the <u>alleged violation is discovered as a result of a citizen complaint and the</u> person claiming the violation states in writing ~~that he desires~~ <u>the desire that</u> the source of the complaint ~~to~~ be kept confidential, the

(Bold face denotes Committee Amendments)

Department shall maintain such information in confidence. If the operator denies the alleged violation, the Department shall hold a hearing on said charges. Said hearing shall be held not less than thirty (30) days from the notice of hearing.

At such hearing the operator shall have the right to present evidence in opposition to the claimed violation.

If upon such hearing the Department shall determine that a violation has occurred, the Department shall make detailed findings of ~~the violation and the necessary corrective measures. The order shall provide a reasonable time, commensurate with the work to be done, for the operator to perform the corrective measures~~ fact and conclusions of law. The surety, if applicable, may perform for the operator.

If the operator or surety, if applicable, fails to perform the corrective work required by the Department or fails to properly perform said work, the Department may initiate permit revocation and/or bond forfeiture proceedings. After successful collection of the security required by Section 728 of this title, the Department shall contract for the work to be done consistent with all state requirements. The Department shall not issue any permits to an operator who has failed to perform such corrective work, or has defaulted with respect to the bond or other security required by

Section 728 of this title, until such obligations are met by the operator or his surety or agent, as determined by the Department.

~~The Attorney General, upon request of the Department, shall institute proceedings to recover any damages and expense which the Department may have sustained by reason of the default of the operator but in no event shall such recovery exceed the face amount of the bond. Such proceedings shall be brought against the operator and surety either in Oklahoma County or the county in which the violation occurred.~~

If the Department determines that an entity or individual has mined without a permit in violation of Section 724 of this title, the Department shall assess a fine of up to Ten Thousand Dollars ($10,000.00) against the entity, individuals, or agents of said entity. Any agent is jointly and severally liable with its principal for such violation and any resulting fines.

The Department may pursue civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court for the district in which the illegal mining operation is located, in which the entity, individuals, or agents of said entity, have their principal offices, or in Oklahoma County, to enforce any Department action against the entity, individual, or agents. Further, the Department shall be entitled to recover penalties or fines assessed for mining without a

permit from the entity, individuals or agents conducting said mining in violation of this title. The Department shall also be entitled to reasonable attorneys fees incurred in enforcing this provision. All monies collected pursuant to this section shall be deposited in the Department of Mines Revolving Fund.

In order to fully inform affected surface owners who have filed a complaint of any alleged violations affecting the surface estate by an operator, the Department shall:

1. Provide by mail to the affected surface owners who have filed a complaint, a copy of any alleged violations affecting the surface estate issued to the operator within five (5) days after such violation is cited;

2. Notify the surface owners who have filed a complaint of any hearings in connection to alleged violations affecting the surface estate in the same manner and at the same time as the operator; and

3. Provide surface owners who have filed a complaint with complete information on the disposition of all violations affecting the surface estate cited at the same time the operator is notified.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

COMMITTEE REPORT BY: COMMITTEE ON ENERGY & ENVIRONMENT, dated 2-10-05 - DO PASS, As Coauthored.