ENGROSSED SENATE
BILL NO. 1697 By: Lerblance of the Senate

and

Terrill of the House

[mines and mining - creating a Limited Use Permit - emergency]

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

SECTION 1. AMENDATORY 45 O.S. 2001, Section 723, as amended by Section 1, Chapter 194, O.S.L. 2004 (45 O.S. Supp. 2007, 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:

1. "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;

2. "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;

3. "Mining" means the extraction of minerals from natural deposits by any method or process;

4. "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;

5. "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;

6. "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~~ the landowner; ~~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 mining for commercial purposes conducted under a Limited Use Permit issued by the Department, 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;

7. "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;

8. "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;

9. "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;

10. "Consolidated material" means material of sufficient hardness or ability to resist weathering and to inhibit erosion or sloughing;

11. "Operator" means any person, partnership, firm or corporation engaged in and controlling a mining operation;

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

13. "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;

14. "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;

15. "Ridge" means a lengthened elevation of overburden created in the surface mining process;

16. "Peak" means a projecting point of overburden created in the surface mining process;

17. "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;

18. "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;

19. "Borrow pit" means the one-time or intermittent extraction of sand, gravel, rock, stone, earth or fill in its natural state, not being mechanically altered to affect its size for government-financed construction purposes. Such work shall be performed under a bond, contract and specifications which substantially provide for and require reclamation of the affected area; and

20. “Dimension stone quarry” means a site where natural stone used as building material is excavated and the stones are selected, trimmed, or cut to specified shapes or sizes.

SECTION 2. AMENDATORY 45 O.S. 2001, Section 724, as last amended by Section 1, Chapter 221, O.S.L. 2005 (45 O.S. Supp. 2007, 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 a permit or <u>a Limited Use Permit</u> from the Department of Mines for each separate mining operation. The Department shall determine what constitutes a separate mining operation by rules promulgated under the Mining Lands Reclamation Act.

B. Any operator desiring to engage in limited mining activity may apply for a Limited Use Permit for those mining operations not eligible for a surface mining permit. Application for such permit shall be made upon forms furnished by the Department. The form shall contain a description of the tract or tracts of land and shall include the section, township, range and county in which the land is located. A map shall be attached to the application which accurately outlines and locates the tract of land. A statement that the applicant has the right and power by legal estate owned to mine the land so described shall be included with the application. In addition, the following conditions and requirements shall apply to Limited Use Permits:

1. The maximum acreage shall be restricted to two (2) acres;

2. The term of a Limited Use Permit shall not exceed twelve (12) months from the date of issuance;

3. A Limited Use Permit shall not carry a right of successive renewal;

4. A Limited Use Permit site must be reclaimed as required by Section 725 of this title within six (6) months following the expiration of the permit term;

5. A Three Thousand Five Hundred Dollar ($3,500.00) reclamation bond must be filed with the Department prior to issuance of the permit;

6. Failure to reclaim the site disturbance within the permitted time frame or revocation of the Limited Use Permit will be cause for bond forfeiture or other action as may be ordered by the Department;

7. The use of processing equipment shall not be approved for a Limited Use Permit;

8. The use of explosives shall not be approved under a Limited Use Permit;

9. A processing fee of One Hundred Dollars ($100.00) shall accompany the application for a Limited Use Permit; and

10. Mining production shall be reported and paid as required by Section 931 of this title.

If the above listed conditions and requirements are met, the Department may issue a Limited Use Permit which shall not be subject to the notice and publication requirements as otherwise required by this section.

C. 1. 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. 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.

2. 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.~~ D. 1. 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. 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.

2. 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.~~ E. Each application for a permit under subsections ~~B~~ C and ~~C~~ D 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. 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.~~ F. Each application for a permit under subsections ~~B~~ C and ~~C~~ D 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 Seventy-five Dollars ($175.00) for each permit year, payable at the rate of One Hundred Seventy-five Dollars ($175.00) 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.~~ G. 1. 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 the applicant to engage in mining on the land therein described in accordance with the rules promulgated by the Department, for the life expectancy of the operation unless the operator is in violation of any state statute or rule of the Department in which case the Department shall take appropriate action against the operator.

2. All applications for renewal of existing permits shall be filed prior to the expiration of the existing permit in accordance with the rules promulgated by the Department.

3. No permit shall be issued except upon proper application and public hearing, if requested.

~~G.~~

H. 1. a. 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, at least once a week for four (4) consecutive weeks.

b. The advertisement shall contain, at a minimum, the following:

(1) the name and business address of the applicant,

(2) a description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location,

(3) the location where a copy of the application is available for public inspection,

(4) the name and address of the Department where written comments, objections, or requests for informal conferences on the application may be submitted pursuant to subsection Q of this section,

(5) if an applicant seeks a permit to mine which includes relocation or closing of a public road, a copy of the county resolution pertaining to the affected county road, and

(6) such other information as is required by the Department.

2. 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.

3. 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.

4. 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.

5. 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.

6. Any decision regarding the issuance of a permit under this section shall be appealable when entered, as provided in the Administrative Procedures Act.

~~H.~~ I. Each application for a new operation shall contain, where applicable, a list of all other licenses and permits needed by the applicant to conduct the proposed mining operation. This list shall identify each license and permit by:

1. Type of permit or license;

2. Name and address of issuing authority;

3. Identification number or a copy of the application for permits or licenses or, if issued a copy of the permit or license; and

4. If a decision has been made, the date of approval or disapproval by each issuing authority.

An existing operation which does not have on file a list of the applicable licenses or permits with the Department on the date of enactment of this act shall not be out of compliance with the provisions of this section. Any renewal of an existing permit or expansion or amendment to an existing operation upon time of application shall submit a copy of all approved licenses and permits issued by other agencies or jurisdictions.

Identifications of all permits and licenses shall include local government agencies with jurisdiction over or an interest in the area of the proposed mining operation including, but not limited to, planning agencies, water and sewer authorities; and all state and federal government agencies with authority to issue permits and licenses applicable to the proposed mining operation, including all

state environmental agencies, U.S. Army Corps of Engineers, U.S. Department of Agriculture Soil Conservation Service district office, and federal fish and wildlife agencies.

~~I.~~ J. An operator desiring to have such operator's permit amended to cover additional land may file an amended application with the Department. Upon receipt of the amended application, 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.

~~J.~~ K. 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.

~~K.~~ L. Permits issued to an operator may be transferable to another operator, provided the new operator can demonstrate to the Department, prior to the transfer of ownership, that conditions and obligations required for the permit will be met and the new operator has submitted a performance bond or other guarantee, or has obtained the bond coverage of the original permittee.

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

~~M.~~ N. The Department shall determine the blasting distance to transmission lines by rule.

~~N.~~ O. 1. If any mining operations where blasting is required occur within the limits of a municipality with a population in excess of three hundred thousand (300,000) according to the latest Federal Decennial Census or within the limits of a municipality within a county with a population in excess of three hundred thousand (300,000) according to the latest Federal Decennial Census, the application for a permit pursuant to subsections ~~B~~ C and ~~C~~ D of this section shall be accompanied by proof that the operator is in full compliance with all applicable regulations of the municipality. Certified copies of any required municipal permits and any other required written municipal approvals shall be attached to the application. No mining permit shall be issued by the Department unless the applicant first complies with the requirements of this subsection.

2. The provisions of paragraph 1 of this subsection shall not apply to existing permitted operations, revisions or amendments thereto, or any application on file with the Department prior to ~~the effective date of this act~~ May 25, 2005. In addition, the provisions of paragraph 1 of this subsection shall not apply to any

future operation on property directly adjacent to property on which a permitted operation is located, provided that the operation is permitted and the adjacent property is owned or leased by the operator on the effective date of this act. For purposes of this subsection, properties separated by a public road shall be considered to be adjacent.

~~O.~~ P. Within a reasonable time, as established by the Department, written comments or objections on permit or bond release applications may be submitted to the Department by public entities including but not limited to the local soil conservation district, with respect to the effects of the proposed mining operations on the environment.

~~P.~~ Q. Any person having an interest in or who is or may be adversely affected by the decision on a permit or bond release application, or any federal, state or local agency, shall have the right to request in writing that the Department hold an informal conference on the application. The Department shall hold the informal conference within a reasonable time following the receipt of the written request at a location in the vicinity of the proposed or active surface mining or reclamation operation.

SECTION 3. 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.

Passed the Senate the 10th day of March, 2008.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2008.

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Presiding Officer of the House
of Representatives