

ENROLLED SENATE
BILL NO. 706

By: Bingman, Riley and Johnson
(Constance) of the Senate

and

Adkins and Lamons of the
House

An Act relating to mines and mining; amending 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), which relates to mining permits; authorizing municipalities to limit consideration of certain proof of compliance requests; amending Section 1, Chapter 18, O.S.L. 2003 (11 O.S. Supp. 2007, Section 43-113), which relates to specific use permits; adding certain conditions; adding requirement for submission of certain deposit; and declaring an emergency.

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

SECTION 1. 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 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. 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. 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. 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. 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 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. 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. 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 P 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. 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. 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. 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. 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. The perimeter of the permit area shall be clearly marked by durable and recognizable markers or by other means approved by the Department.

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

N. 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 and C 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 when submitted to the Department. No mining permit shall be issued by the Department unless the applicant first complies with the requirements of this subsection. A municipality is not required to reconsider requests denied by the municipality related to the same site unless the municipality determines there has been a material change in the application.

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. 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. 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. 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 2. AMENDATORY Section 1, Chapter 18, O.S.L. 2003 (11 O.S. Supp. 2007, Section 43-113), is amended to read as follows:

Section 43-113. A. As used in this act, "specific use permit" means a permit granted by a municipal governing body, after notice and a hearing and preliminary review and recommendation of a municipal planning commission, for a specific use within any zoning district. Municipalities may enact an ordinance provision for specific use permit. Any municipality enacting an ordinance providing for specific use permits shall enumerate a list of uses which it has determined more intensely dominate the area in which they are to be located or their effects on the general public are broader in scope than other types of uses which are permitted in a zoning district. An entity with a use which is enumerated on the list may, by application for a specific use permit, locate in a zoning district for which such use would not normally be allowed or could be allowed, but due to its potential impact on surrounding properties, must secure a specific use permit.

B. The types of uses for which a specific use permit may be required shall be those types of uses which, because of the size of the land they require or the specialized nature of the use, may more intensely dominate the area in which they are located and their effects on the general public are broader in scope than other uses permitted in the district.

C. The designation of a specific use as possible on the specific use list shall not constitute an authorization or an assurance that such use will be permitted. Rather, each specific use permit application shall be viewed as to its probable effect on the adjacent properties and community welfare and may be approved or denied as the findings indicate appropriate.

D. In granting a specific use permit, the governing body of the municipality may require conditions related to the use of land, including, but not limited to, permitted uses, lot sizes, setback, height limits, required facilities, buffers, open space areas, lighting, signage, landscaping, parking and loading, compatibility, land use density, bonding, insurance and such other development standards and operational conditions and safeguards as are indicated to be important to the welfare and protection of adjacent property and the community as a whole. This may include having the property platted and/or the requirement of the dedication of sufficient right-of-way or easement as necessary to further the public good. Such conditions shall be determined in accordance with the regulations specified in the zoning ordinance. The conditions need not be uniform with regard to each type of land use if equitable procedures recognizing due process principles and avoiding arbitrary decisions have been followed in making regulatory decisions.

E. The specific use permit regulations established by a municipality shall specify the following:

1. The body which shall review and approve specific use permit requests and amend the same;

2. The conditions which create specific use permit eligibility, the persons and agencies involved in the review process, if any, and the requirements and standards upon which applications will be reviewed and approval granted; and

3. The procedures required for application, review and approval.

F. Following receipt of a request for a specific use permit, at least one public hearing shall be held. An ordinance may provide for one or more preapplication conferences before submission of a request, the submission of a deposit necessary for payment of application and permit expenses, and the submission of preliminary site plans before the public hearing. Notification of the public hearing shall be given by mail in the same manner as required by Section 43-106 of Title 11 of the Oklahoma Statutes for public hearings on proposed zoning changes. Within a reasonable time following the public hearing, the body responsible for approving a specific use permit shall deny the request, approve the request, or approve the request with the following conditions:

1. The planning commission shall conduct a public hearing and make recommendations on the specific use permit request which shall be transmitted to the municipal governing body for consideration in making a final decision. If an amendment of a zoning ordinance is required by the specific use permit regulations of a municipal zoning ordinance, the requirements for amendment of a zoning ordinance shall be followed; and

2. If the specific use permit regulations of a municipal zoning ordinance do not require amendment of the ordinance with review and approval of specific use permits, the municipal governing body may approve, approve with conditions, or deny a request.

G. In establishing specific use permit ordinances, the municipal governing body may incorporate by reference other available and applicable ordinances or statutes which regulate land development.

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 31st day of March, 2008.

Presiding Officer of the Senate

Passed the House of Representatives the 13th day of March, 2008.

Presiding Officer of the House
of Representatives