

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S3/17/99 H4/7/99

A Bill

Act 1526 of 1999
SENATE BILL 384

5 By: Senators Hopkins, Russ
6
7

For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE TITLE 15, CHAPTER 57,
10 SUBCHAPTER 3 *THE ARKANSAS OPEN-CUT LAND RECLAMATION*
11 *ACT.* "

Subtitle

14 "AN ACT TO AMEND THE ARKANSAS OPEN-CUT
15 LAND RECLAMATION ACT. "

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17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code 15-57-303 is amended to read as follows:

21 "15-57-303. Definitions.

22 As used in this subchapter, unless the context otherwise requires:

23 (1) 'Reclamation for productive use' means conditioning areas affected
24 by open-cut mining to make them suitable for any uses or purposes consistent
25 with those enumerated in the declaration policy;

26 (2) ~~'Overburden' means the soil and other materials which lie above~~
27 ~~natural mineral deposits such as clay, sand, gravel, bauxite, or other~~
28 ~~minerals and also means earth and other materials disturbed from their natural~~
29 ~~state in the process of open-cut mining; 'Commercial purposes' means the sale~~
30 of material from an open-cut mine as either a cash transaction, part of a
31 contractual agreement involving payment for materials provided, or use in
32 another process to create a product with value;

33 (3) 'Open-cut mining' means the mining surface extraction of clay,
34 bauxite, sand, gravel, soil, shale or other ~~minerals by removing the~~
35 ~~overburden lying above natural deposits and mining directly for the natural~~
36 ~~deposits exposed~~ materials for commercial purposes;

1 (4) 'Operator' means any person engaged in or controlling an open-cut
2 mining operation;

3 (5) 'Pit' means a tract of land ~~from which overburden has been or is~~
4 ~~being removed for the purpose of~~ where open-cut mining is taking place;

5 (6) 'Final cut' means the last pit created in an open-cut mined area;

6 (7) 'High wall' means that side of the pit adjacent to unmined land;

7 (8) 'Affected land' means the area of land ~~from which overburden has~~
8 ~~been removed for open-cut mining~~ where open-cut mining has been or is taking
9 place or upon which ~~overburden or refuse~~ spoil has been deposited, or both, or
10 any other surface disturbance, including haul roads, processing and loading
11 facilities, or appurtenances related to the mining operations on or after July
12 1, 1977, until the land is reclaimed ~~according to the operator's approved plan~~
13 ~~of reclamation~~;

14 (9) ~~'Refuse'~~ 'Spoil' means all waste material and debris connected with
15 open-cut mining and with the mechanical removal, cleaning, and preparation of
16 ~~minerals~~ materials at the mine site;

17 (10) 'Ridge' means a lengthened elevation of ~~overburden~~ spoil created in
18 the open-cut mining process;

19 (11) 'Peak' means a projecting point of ~~overburden~~ spoil created in the
20 open-cut mining process;

21 (12) 'Commission' means the Arkansas Pollution Control and Ecology
22 Commission, or such commission or other entity as may lawfully succeed to the
23 powers and duties of the commission;

24 (13) 'Permit term' means the period of time beginning with the date upon
25 which a permit is granted for open-cut mining of lands under the provisions of
26 this subchapter and ending on the date requested by the operator and specified
27 by the department, though not to exceed five (5) years;

28 ~~(14) 'Borrow pit' means an excavated area where material has been~~
29 ~~removed for use as fill at another location;~~

30 ~~(15)~~(14) 'Right-of-way' means the portion of land over or under which
31 certain facilities, including, but not limited to, roadways, pipelines, or
32 power lines, are built;

33 ~~(16)~~(15) 'Department' means the Arkansas Department of Pollution Control
34 ~~and Ecology~~ Environmental Quality or such department or other entity which may
35 lawfully succeed to the powers and duties of the department;

36 ~~(17)~~(16) 'Director' means the executive head and active administrator of

1 the department; ~~and~~

2 ~~(18)~~(17) 'Person' means any individual, partnership, firm, company,
3 public or private corporation, cooperative, association, joint-stock company,
4 trust, estate, political subdivision, or any agency, board, department, or
5 bureau of the state or any other legal entity whatever which is recognized by
6 law as the *subject of rights and duties.*"

7

8 SECTION 2. Arkansas Code 15-57-304 is amended to read as follows:

9 "15-57-304. Violations.

10 (a) It shall be unlawful for any person to:

11 (1) Violate any provision of this subchapter or any rule,
12 regulation, or order of the commission or the department issued pursuant to
13 this subchapter;

14 (2) Engage in open-cut mining without a permit issued pursuant to
15 this subchapter;

16 (3) Violate any conditions of a permit or reclamation plan issued
17 pursuant to this subchapter;

18 (4) Knowingly make any false statement, representation, or
19 certification, or knowingly fail to make a statement, representation, or
20 certification, in any application, plan, record, report, or other document
21 filed or required to be maintained under this subchapter; or

22 (5) Willfully resist, prevent, impede, or interfere with the
23 director or any of his authorized representatives in the performance of duties
24 pursuant to this subchapter.

25 (b) For the purposes of fines only, each day or part of a day during
26 which the violation is continued or repeated shall constitute a separate
27 offense."

28

29 SECTION 3. Arkansas Code 15-57-305 is amended to read as follows:

30 "15-57-305. ~~Penalties — Enforcement~~ Civil, and administrative penalties.

31 (a) CIVIL PENALTIES. The department is authorized to institute a civil
32 action in any court of competent jurisdiction to accomplish any or all of the
33 following:

34 (1) ~~Restraining~~ any violation of, or ~~compelling~~ compliance with,
35 the provisions of this subchapter or of any order, rule, regulation, permit,
36 or reclamation plan issued pursuant thereto;

1 (2) ~~Accomplishing~~ Accomplish remedial measures as may be necessary
2 or appropriate to implement or effectuate the purposes and intent of this
3 subchapter, including the reclamation of affected land;

4 (3) ~~Recovering~~ Recover all costs, expenses, and damages to the
5 department or any other agency of the state in enforcing the provisions of
6 this subchapter and reclaiming affected land;

7 (4) ~~Assessing~~ Assess civil penalties in an amount not to exceed
8 five thousand dollars (\$5,000) per day per violation of this subchapter or of
9 any order, rule, regulation, permit, or reclamation plan issued pursuant
10 thereto; ~~or~~

11 (5) ~~Recovering~~ Recover civil penalties assessed pursuant to
12 subsections (b) and (c) of this section; ~~or~~

13 (6) Forfeit reclamation bond.

14 ~~(b) The amount of civil penalties shall reasonably reflect the~~
15 ~~seriousness of the violation in the judgement of the department. Any~~
16 ~~violation repeated or continued after a reasonable abatement period~~
17 ~~established by the department shall constitute a separate violation.~~

18 (b) ADMINISTRATIVE PENALTIES.

19 (1) Any person who engages in open-cut mining without first
20 securing a permit as required by this subchapter or who fails to reclaim
21 affected lands in accordance with this subchapter or who violates any
22 provision of this or any order, regulation, rule, permit, or reclamation plan
23 issued pursuant thereto, may be assessed an administrative civil penalty by
24 the department not to exceed ~~five thousand dollars (\$5,000)~~ per violation five
25 hundred dollars (\$500) for a first violation, and not more than one thousand
26 dollars (\$1,000) for a second or subsequent violation.

27 ~~(2) Any violation repeated or continued after a reasonable~~
28 ~~abatement period established by the department shall constitute a separate~~
29 ~~offense.~~

30 ~~(3)~~(2) No administrative civil penalty may be assessed until the
31 person charged with the violation has been given the opportunity for a hearing
32 and has exhausted all administrative appellate remedies.

33 ~~(4)~~(3) The amount of the administrative civil penalty shall be
34 determined in accordance with regulations adopted by the commission,
35 including, but not limited to, the department's regulations on civil
36 penalties.

1 ~~(d)~~ (c) All hearings and appeals arising under this subchapter shall be
 2 conducted in accordance with the procedures described in §§ 8-4-218 – 8-4-229
 3 and in accordance with regulations adopted by the commission, including, but
 4 not limited to, the department's regulations on administrative procedures.”

5
 6 SECTION 4. Arkansas Code 15-57-310 is amended to read as follows:

7 “15-57-310. Necessity of permit – Effective date.

8 (a) It shall be unlawful for any operator to engage in open-cut mining
 9 without first obtaining from the department a permit to do so, in the form
 10 required by the department. ~~However, any operator presently engaged in open-~~
 11 ~~cut mining with a permit issued under the authority of Acts 1971, No. 236~~
 12 ~~[repealed], shall not be required to obtain a new permit under this subchapter~~
 13 ~~for land presently being mined until the termination of that permit.~~

14 (b) An operator shall be deemed to be engaged in open-cut mining when ~~it~~
 15 ~~removes or deposits any amount of overburden~~ he or she affects any land in
 16 preparation for open-cut mining.

17 (c) (1) Notwithstanding the provisions of this section, the Arkansas
 18 State Highway and Transportation Department or its contractor shall not be
 19 required to obtain a permit for ~~borrow pits~~ an open-cut mine where the
 20 material is used exclusively in the construction, reconstruction, improvement
 21 or maintenance of roadways, ~~where the Arkansas State Highway and~~
 22 ~~Transportation Department performs the actual extraction, although reclamation~~

23 (2) Reclamation of the area is recommended shall conform to the
 24 provisions of the standard specifications for highway construction upon
 25 discontinuation of use of the pit for the above listed purposes.

26 (3) The occasional sale of material to the Arkansas State Highway
 27 and Transportation Department by an open-cut mine operator does not exempt the
 28 operator from complying with ~~its~~ his or her permit requirements or of the
 29 requirements of this subchapter.

30 (4) Where reclamation requirements of the operator will interfere
 31 with a contractual agreement with the Arkansas State Highway and
 32 Transportation Department, the operator shall be allowed to revise ~~its~~ his or
 33 her reclamation plan and schedule of completion accordingly and in keeping
 34 with the declaration of policy of this subchapter.

35 (d) (1) Nothing in this subchapter shall be construed to require any
 36 operator to reclaim or revegetate any area affected by open-cut mining prior

1 to ~~March 9, 1971~~ July 1, 1971.

2 (2) Nothing in this subchapter shall be construed to require any
3 operator to reclaim or revegetate any previously exempted excavation sites
4 such as soil and shale pits that were affected and abandoned prior to January
5 1, 1999.

6 (3) Nothing in this subchapter shall be construed to apply to the
7 removal of soil, shale, or stone at a quarry operation that is regulated under
8 §§ 15-57-401 through 15-57-414.

9 (4) Nothing in this subchapter shall be construed to apply to any
10 excavation activity associated with the improvement or maintenance of any
11 agricultural lands or associated irrigation systems.

12 (e) The requirements of this subchapter shall not apply to the non-
13 commercial removal of clay, bauxite, sand, gravel, soil, shale or other
14 materials from lands by the owner of said lands or by a contractor hired by
15 the owner for the exclusive use by the landowner for construction,
16 improvement, or maintenance of roads on ~~said~~ any of the owner's lands, or any
17 environmental improvements to previously disturbed lands, or the concurrent or
18 short term, ninety (90) days or less, excavation of materials during the
19 construction of buildings either for residential, commercial or industrial
20 purposes.

21 (f)(1) The mining of gravel or other materials from streams or stream
22 beds shall comply with the permitting requirements of this subchapter.

23 (2) There shall be no mining in streams designated as
24 'extraordinary resource waters' of the state, as established in water quality
25 standards duly promulgated by the commission for all surface waters of the
26 State of Arkansas.

27 (g)(1) The department shall develop regulations to implement the
28 provisions of this chapter.

29 (2) The department shall develop documentation that will guide an
30 operator through the permitting process."

31
32 SECTION 5. Arkansas Code 15-57-311 is amended to read as follows:

33 "15-57-311. Application for permit – Fee – Bond.

34 (a) Any person desiring to engage in open-cut mining shall make written
35 application to the department for a permit. The application shall be made
36 upon a form furnished by the department.

1 **(b)** The applicant shall fully state the information required on the form
2 and provide a legal description of the area of land to be permitted and proof
3 that the applicant has the right to mine the area.

4 **(c)** The perimeter of the area to be permitted must be clearly marked on
5 the ground at all times until such time as the permitted area is released from
6 reclamation liability by the department.

7 ~~(b)~~ **(d)** The application shall be accompanied by the applicant's detailed
8 plan of reclamation of the area to be affected, which plan shall include a
9 time schedule for the completion of each phase of reclamation and an estimate
10 of the cost of each phase of reclamation.

11 ~~(e)~~ **(e)**~~(1)~~ The application for a mining permit shall be accompanied by a
12 bond or substituted security for the ~~permitted~~ affected or the proposed
13 affected area in favor of the ~~state~~ State of Arkansas through the department,
14 to be effective from and after the time that the operator has affected land in
15 the process of open-cut mining or after the time that a permit is granted and
16 which shall meet the requirements of § 15-57-316.

17 ~~(2)~~ **(f)** The application for a permit shall be accompanied by a fee as
18 follows:

19 ~~(A)~~ **(1)** *Less than two (2) acres: fifty dollars (\$50.00);*

20 ~~(B)~~ **(2)** *Two (2) acres or more but less than ten (10) acres: two hundred*
21 *fifty dollars (\$250.00);*

22 ~~(C)~~ **(3)** *Ten (10) acres or more: ten dollars (\$10.00) per acre with a*
23 *five hundred dollar (\$500.00) minimum.*

24 ~~(3)~~ **(g)** The department may approve a permit for mining and reclaiming the
25 permitted area in increments, provided that the permit application contains an
26 acceptable incremental mining plan and is accompanied by a bond or substituted
27 security to cover reclamation of each successive increment prior to ~~effecting~~
28 affecting it.

29 ~~(4)~~ **(h)** The permit shall require a bond or substituted security to be
30 submitted for the cost of reclamation of each successive increment prior to
31 the time that any area within the increment is affected by the operator.

32 ~~(d)~~ **(i)** ~~Where the administrative processing time for an application for~~
33 ~~a permit under this subchapter exceeds sixty (60) days, and such delay in the~~
34 ~~judgement of the department effects an economic hardship upon the applicant,~~
35 ~~and the department has no reason to believe that such permit will be denied,~~
36 ~~the department shall issue an interim permit to be effective for a period not~~

1 ~~to exceed ninety (90) days. Such interim permit shall be subject to immediate~~
2 ~~revocation by the department upon denial of the application or misconduct by~~
3 ~~the applicant. Variances and interim authority issued under this subchapter~~
4 ~~shall comply with the requirements of § 8-4-230.~~"

5
6 SECTION 6. Arkansas Code 15-57-315 is amended to read as follows:

7 "15-57-315. Duties of operator.

8 ~~Every operator to whom a permit is issued pursuant to the provisions of~~
9 ~~this subchapter may engage in open-cut mining during the permit term on the~~
10 ~~area described in the permit upon the performance of and subject to the~~
11 ~~following requirements with respect to the permitted area. Any operator of an~~
12 ~~open-cut mine will be subject to the following requirements with respect to~~
13 ~~the mining and reclamation of the site:~~

14 (1)(A) All affected land shall be graded to a rolling or terraced
15 topography with adequate drainage. No final slope will be steeper than one
16 (1) vertical to three (3) horizontal. The department may approve a steeper
17 final slope where the original contour of the affected land was steeper than
18 the one (1) to three (3) ratio if the operator can assure, to the satisfaction
19 of the department, the integrity of the final contour;

20 (B) The director shall develop regulations which will allow
21 the department the discretion to permit deviations from certain reclamation
22 standards, including final slope steepness requirements within this
23 subdivision (1), because of unique mining situations, provided the deviations
24 are consistent with the declaration of policy in this subchapter;

25 (2) The operator may construct earthen dams, where lakes may be
26 formed, in accordance with sound engineering practices. If a lake is to be
27 left as a part of the reclamation plan, provisions must be made by the
28 operator to assure that a pH factor of six (6) to nine (9) is maintained.
29 However, where water runoff from outside the affected area into such lake has
30 a pH factor of less than six (6) or greater than nine (9), or in order to
31 allow the lake to more closely match the natural environment, the department
32 may in its discretion allow a deviation in pH levels;

33 (3) On all affected land which is to be reforested, the operator
34 shall construct reasonable fire lanes or access roads of at least ten feet
35 (10') in width through the land unless this requirement is waived by the
36 department;

1 (4) Requirements for both establishment and maintenance of the
2 vegetative cover shall be established by the department, and the operator
3 shall comply with the requirements or use other equally effective means. When
4 the site slope is in condition for vegetating, a soil test ~~shall~~ may be made
5 as a basis for soil amendments. Amendments may include lime, fertilizer,
6 secondary micronutrients, an application of topsoil, or other means reasonably
7 calculated to restore the slope to vegetating capabilities. Laboratory soil
8 tests and recommendations shall be obtained from the University of Arkansas
9 Cooperative Extension Service or any other public or private organization or
10 person approved by the department. The operator shall furnish copies of the
11 soil sample report and recommendations to the department. Specifications
12 concerning species to be grown, intended use, and associated information shall
13 be provided by the operator on soil sample information sheets, and varieties
14 and seeding rates of the species to be planted must conform to the
15 recommendations of state and federal agricultural or forestry agencies;

16 (5)(A) Open-cut mining operations that remove and do not replace
17 the lateral support closer than ten feet (10') plus one and one-half (1.5)
18 times the depth of the excavation from any adjacent property line or right-of-
19 way shall not be allowed without the consent of any affected property owner or
20 right-of-way holder;

21 (B) As to requirements for replacement of lateral support,
22 there must be an agreement between the department, affected property owner or
23 right-of-way holder, and the operator. Proof of such consent must be provided
24 to the department;

25 (C) Where consolidated material of sufficient hardness or
26 ability to resist weathering and inhibit erosion or sloughing exists in the
27 high wall, the depth of the excavation may be measured from the natural ground
28 surface to the top of the consolidated material;

29 (D) For purposes of this subdivision, the terms 'property
30 line', 'property owner', or 'right-of-way holder' shall include boundaries and
31 owners of reserved or granted mineral rights where the fee simple interest and
32 mineral interest have been severed;

33 (6) Whenever the exposed face of mined seams that contain acid-
34 forming materials is not covered by water or by permanent water impoundment,
35 the operator who mined the seams shall cover the exposed face of the seams
36 with earth or spoil materials to a depth of not less than three feet (3') upon

1 receiving approval from the department. Alternatively, the department may
2 approve any other course or conduct proposed by the operator which will assure
3 protection of the seams from atmospheric exposure, minimize leaching action,
4 or otherwise conform with water pollution control criteria to prevent
5 formation of acid mine water or discharge mine water;

6 (7) The operator shall submit to the department, no later than
7 June 1 of each year of the permit term, a map in a form acceptable to the
8 department showing the location of the ~~pits~~ affected areas by section,
9 township, range, and county, with other legal description as will identify the
10 affected land during the permit term upon which the operator has completed
11 mining operations; the extent of completed reclamation as required under § 15-
12 57-311(b); and a legend upon the map showing the number of acres of affected
13 land. The annual report shall include the amount of material mined during
14 each twelve-month period;

15 (8) The department's approval of the operator's reclamation plan
16 ~~shall may~~ be based upon the advice and technical assistance of ~~the State~~
17 ~~Highway Commission,~~ the Arkansas Soil and Water Conservation Commission, the
18 Arkansas State Game and Fish Commission, the State Forester, ~~the University of~~
19 ~~Arkansas Agricultural Extension Service, the department,~~ the Arkansas
20 Geological Commission, and other agencies or persons having experience in
21 foresting and reclaiming open-cut mined lands with forest or agronomic or
22 horticultural species, based upon scientific knowledge from research into
23 reclaiming and utilizing forest and agronomic species on open-cut mined lands.

24 The operator shall designate which parts of the affected land shall be
25 reclaimed for forest, pasture, crop, horticulture, homesite, recreational,
26 industrial, or other use, including food, shelter, or ground cover for
27 wildlife, and shall show each use by appropriate designation on the
28 reclamation map;

29 (9) All reclamation shall be completed by the operator in
30 compliance with its detailed plan of reclamation. Where natural weathering
31 and leaching of affected land fails to support plant growth at the end of the
32 reclamation period as required under § 15-57-311(b), the department may, at
33 the request of the operator, approve a permit extension from year-to-year from
34 the termination of the permit on the permitted area. In the event that the
35 operator does not comply with its schedule of reclamation or extensions
36 granted within a reasonable period of time, to be determined by the

1 department, the bond or substituted security of affected land not
2 satisfactorily reclaimed shall be forfeited;

3 (10) In the event that the operator's reclamation plan is found
4 impracticable by the operator, upon the application of the operator, the
5 department in its discretion may allow the modification of the reclamation
6 plan, provided that the modified plan will carry out the purposes of this
7 subchapter;

8 (11) All mine ~~refuse~~ spoil generated by the operator shall be
9 disposed of in a manner approved by the department and designed to control
10 siltation, erosion, or other damage to streams and natural watercourses, as
11 best allowed by the soil conditions of the permitted area;

12 (12) The operator shall preserve any topsoil for redistribution
13 during reclamation unless otherwise approved by the director; and

14 (13) The operator shall protect the public from the dangers
15 inherent in an open-cut mining operation by restricting access to the mine
16 site and posting adequate warning signs."
17

18 SECTION 7. Arkansas Code 15-57-316 is amended to read as follows:

19 "15-57-316. Bond of operator.

20 (a)(1)(A) Any bond provided in this subchapter to be filed with the
21 department by the operator shall be in such form as the department shall
22 prescribe, payable to the State of Arkansas through the department,
23 conditioned that the operator shall faithfully perform all requirements of
24 this subchapter and comply with all rules, regulations, and orders made in
25 accordance with the provisions of this subchapter.

26 (B) The bond shall be signed by the operator and a good and
27 sufficient corporate surety authorized to do business in the United States.

28 (2) The penalty of the bond shall be in an amount equal to the
29 estimated cost of reclamation, as required in § 15-57-311(b).

30 (3)(A) In the event that the department finds the cost of
31 reclamation to be an underestimate, the department shall make use of available
32 expertise to establish the estimated cost of reclamation, which shall be the
33 amount of the bond.

34 (B) In the event of disagreement concerning the estimate of
35 the proper amount of the bond, the department may retain independent expertise
36 as is necessary to establish the amount of the bond.

1 (4) The ~~department~~ commission shall promulgate regulations
2 concerning bonds and substituted security which will attempt to ensure that
3 small operators are not precluded from development of mineral resources as a
4 result of high bond amounts but which will provide reasonable security.

5 (b)(1) The department may accept cash, securities, or other collateral,
6 including, but not limited to, letters of credit, and mortgages on real
7 property, provided by the operator in an amount equal to that of the required
8 bond as provided in subsection (a) of this section.

9 (2) The bond or substituted security may be increased or reduced
10 from time to time as provided in this subchapter.

11 (3) The bond or substituted security shall be in effect and
12 subject to forfeiture in accordance with this subchapter from and after the
13 time that the operator has affected land in the process of open-cut mining or
14 after the time a permit is granted by the department until the ~~permitted~~
15 affected area has been reclaimed, approved, and released.

16 (c)(1) Any bond or substituted security shall not be cancelled by the
17 surety unless it has given no less than ninety (90) days' notice of the
18 cancellation to the department.

19 (2) In no event shall a bond be cancelled on a ~~permitted~~ an area
20 that at the time of cancellation has become affected land under the provisions
21 of this subchapter.

22 (d)(1) If the license to do business of any surety upon a bond or
23 substituted security filed with the department pursuant to this subchapter
24 shall be suspended or revoked, the operator, within thirty (30) days after
25 receiving notice of the revocation, shall substitute for the surety a licensed
26 corporate surety.

27 (2) Upon the failure of the operator to make substitution of the
28 surety, the department shall suspend the permit of the operator until the
29 substitution is made.

30 (e)(1) The department shall give written notice to the operator of any
31 violation of this subchapter or noncompliance with any of the rules,
32 regulations, or orders promulgated under this subchapter, ~~and if,~~

33 (2) If corrective measures determined by the department,
34 including, but not limited to, increase of the bond or substituted security,
35 are not commenced or agreed to by the operator within a reasonable period of
36 time to be determined by the department, the department may terminate the

1 permit of the operator and forfeit the bond or substituted security.

2 (3) If a permit has not been issued, but a bond has been posted
 3 during the application process and this process will not be completed and
 4 there is affected land at the site, the department may forfeit the bond or
 5 substituted security as provided in § 15-57-317.

6 (f) The department may reclaim any affected land of which a bond has
 7 been forfeited.

8 (g) (1) Whenever an operator shall have completed all requirements under
 9 the provisions of this subchapter as to any affected land, it shall so notify
 10 the department.

11 (2) If the department determines that the operator has completed
 12 reclamation requirements and achieved results appropriate to the use for which
 13 the affected land was reclaimed, the department shall release the operator
 14 from further obligations regarding the affected land and the penalty of the
 15 bond or substituted security shall be reduced accordingly.

16 (h) (1) Upon partial completion of reclamation, the operator may submit a
 17 written request to the department for the purpose of proportionately reducing
 18 the amount of the bond or substituted security upon affected lands.

19 (2) If the department determines that proper reclamation has been
 20 accomplished under the provisions of this subchapter on an area less than the
 21 total area of the ~~permitted~~ affected area, the department shall
 22 proportionately reduce the amount of the bond or substituted security.

23 (i) No operator shall be eligible to receive a new or renewed permit who
 24 has had a permit revoked, bond forfeited, or who has outstanding substantial
 25 unmitigated violations of this subchapter, including failure to reclaim,
 26 unless the department finds, upon review, a demonstrable change of
 27 circumstances justifying an exception to these prohibitions.

28 (j) Liability under the bond or substituted security shall be for the
 29 duration of the open-cut mining operation and for that period required to
 30 establish successful reclamation of the ~~permitted~~ affected area.

31 (k) Nothing contained herein shall be deemed to preclude the right of
 32 the department to recover the actual cost of reclamation over and above the
 33 amount of bond."
 34

35 SECTION 8. Arkansas Code 15-57-317 is amended to read as follows:

36 "15-57-317. Bond forfeiture proceedings.

1 (a) The department may institute proceedings to have the bond or
 2 substituted security of the operator forfeited for ~~violation by the operator~~
 3 ~~of its permit, any of the provisions of this subchapter, or for noncompliance~~
 4 ~~with any rule, regulation, or order promulgated thereunder.~~ any of the
 5 following reasons including but not limited to:

6 (1) Failure to abate any violation of this subchapter or any rule
 7 or regulation promulgated thereunder;

8 (2) Failure to comply with the terms and conditions of the open-
 9 cut mining permit or the bond;

10 (3) Failure to comply with any order of the department;

11 (4) Failure to reclaim any affected land in accordance with this
 12 subchapter; or

13 (5) Insolvency, bankruptcy or receivership of the operator.

14 (b) The department shall notify the operator in writing of the bond
 15 forfeiture, and the operator shall be given an opportunity for a hearing as
 16 provided in this subchapter."
 17

18 SECTION 9. Arkansas Code 15-57-320 is amended to read as follows:

19 "15-57-320. Exemptions.

20 (a) Nothing in this subchapter shall be construed to require any agent
 21 or employee of a county or municipal government, or a landowner selling
 22 exclusively to those government entities, to comply with any of the provisions
 23 of this subchapter when engaged in open-cut mining outside of the channel of a
 24 stream for the construction, reconstruction, improvement, or maintenance of
 25 streets and highways or private roads, streets, driveways, or highways, or
 26 other public projects of a county or municipality when it is conducted under
 27 the authority of said government for such activities and on lands for which
 28 the county or municipal government has established rights.

29 (b)(1) The county and municipal governments shall remove topsoil and
 30 ~~overburden~~ spoil and store it on the mining site.

31 (2) Upon completion of mining, the site shall be graded such that
 32 no slope will be steeper than one foot (1') vertical to three feet (3')
 33 horizontal, and the topsoil shall be respread and the site revegetated in a
 34 manner to prevent pollution of the waters of Arkansas.

35 (c) ~~Upon prior notice to the Department of Pollution Control and Ecology~~
 36 ~~an~~ An agent or employee of a county or municipal government may remove

1 gravel or other materials from any stream in order to protect the integrity of
 2 bridges or low water crossing of any public roadway without obtaining a
 3 permit.

4 ~~(d) Upon prior notice to the Department of Pollution Control and Ecology~~
 5 ~~and a~~ governmental unit may remove gravel or other material from any stream in
 6 order to protect the integrity of a government-owned or government-controlled
 7 structure without obtaining a permit.

8 (e)(1) Flood control projects authorized by the United States Army Corps
 9 of Engineers shall be exempt from the permitting requirement; provided,
 10 however, that certification under Section 401 of the Federal Clean Water Act
 11 is obtained for said project.

12 (2) In the event that authorization pursuant to Section 404 of the
 13 Federal Clean Water Act is determined by the U.S. Army Corps of Engineers not
 14 to be required for a specific flood control or bank stabilization project, the
 15 department will review the proposed project plan using the Section 401 water
 16 quality certification criteria.

17 (3) The department shall provide the necessary authorization for
 18 the project once it has been determined that the activity will not adversely
 19 affect water quality.

20 (f)(1) All stream gravel mining operations on streams designated as
 21 extraordinary resource waters after January 1, 1995, may continue to operate
 22 under a permit issued by the ~~Department~~ department for a period of two (2)
 23 years from the date of such designation.

24 (2) At the end of ~~said~~ the two (2) year period, all mining
 25 activities must be terminated and the affected area reclaimed in accordance
 26 with the operator's approved reclamation plan.

27 (g) The permitting provisions of this subchapter shall not apply to any
 28 area being excavated for soil or shale that is less than three (3) acres where
 29 an undisturbed buffer zone of not less than fifty (50) feet exists between the
 30 highwalls of the excavation site and any adjacent property line or to an size
 31 area being excavated if the area being excavated is at least one-fourth (1/4)
 32 of a mile from any adjacent property line.

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 34 SECTION 10. All provisions of this act of a general and permanent
 35 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
 36 Code Revision Commission shall incorporate the same in the Code.

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SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 12. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 13. EMERGENCY. It is hereby found and determined by the General Assembly of the State of Arkansas that the reclamation and restoration of land affected by open-cut mining operations are essential to the preservation for productive use of the land resources of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

/s/ Hopkins, et al

APPROVED: 4/15/1999