

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Representative Willems

HOUSE BILL 1991

"AN ACT TO AMEND SECTIONS 3, 5, AND 6 OF ACT 336 OF 1977, AS AMENDED, 'THE ARKANSAS OPEN CUT LAND RECLAMATION ACT OF 1977,' TO PROVIDE THAT AFFECTED LANDS REQUIRED TO BE PERMITTED UNDER THE ACT INCLUDES ALL AREAS OF SURFACE DISTURBANCE RELATED TO THE MINING OPERATIONS; AND TO PROVIDE THAT PERSONS PRODUCING MORE THAN 100,000 TONS PER YEAR OF SAND AND GRAVEL FROM ALL OPERATIONS IN ARKANSAS ARE REQUIRED TO OBTAIN A CLASS A PERMIT FOR ALL AFFECTED LAND; AND TO PROVIDE FOR INCREASED PERMIT FEES; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Section 3 of Act 336 of 1977, as amended, is hereby amended to read as follows:

"Section 3. The following definitions shall control as to construction and interpretations of this Act, unless a different meaning clearly appears from the context:

(a) 'Reclamation for Productive Use' means conditioning areas affected by open cut mining to make them suitable for any uses or purposes consistent with those enumerated in the declaration of policy.

(b) 'Overburden' means the soil and other materials which lie above natural mineral deposits such as clay, sand, gravel, bauxite or other minerals and also means such earth and other materials disturbed from their natural state in the process of open cut mining.

(c) 'Open Cut Mining' means the mining of clay, bauxite, sand, gravel, or other minerals by removing the overburden lying above natural deposits thereof, and mining directly for the natural deposits thereby exposed. Provided, however, that this definition shall not apply to quartz crystal mined on private property by the owner of said property.

(d) 'Operator' means any person, firm, association, cooperative, corporation, any department, agency, or instrumentality of the state or any governmental subdivision thereof, engaged in or controlling an open cut mining operation.

(e) 'Pit' means a tract of land from which overburden has been or is being removed for the purpose of open cut mining.

(f) 'Final Cut' means the last pit created in an open cut mined area.

(g) 'High Wall' means that side of the pit adjacent to unmined land.

(h) 'Affected Land' means the area of land from which overburden has been removed for open cut mining or upon which overburden or refuse has been deposited or both or any other surface disturbance including haul roads, processing and loading facilities, or appurtenances related to the mining operations on or after the effective date of this Act.

(i) 'Refuse' means all waste material and debris connected with open cut mining and with the mechanical removal, cleaning and preparation of minerals at the mine site.

(j) 'Ridge' means a lengthened elevation of overburden created in the open cut mining process.

(k) 'Peak' means a projecting point of overburden created in the open cut mining process.

(l) 'Commission' means the Arkansas Pollution Control Commission, or such department, bureau or commission as may lawfully succeed to the powers and duties of said Commission. In order to perform the expanded duties imposed upon the Arkansas Pollution Control Commission as provided in this and superseded Acts, the membership terms of services and appointment procedures, of said Commission shall remain as constituted at the time of the passage of this Act.

(m) 'Permit Term' means the period of time beginning with the date upon which a permit is granted for open cut mining of lands under the provisions of this Act, and ending on the date specified by the Commission, after review of the operator's detailed plan of reclamation submitted under Section 6(b) of this Act.

(n) 'Borrow Pit' means an excavated area where material has been removed for use as fill at another location.

SECTION 2. Section 5 of Act 336 of 1977, as amended, is hereby amended

to read as follows:

"Section 5. (a) Any operator desiring to engage in open cut mining, with the exception of sand and gravel operators producing less than a combined total of 100,000 tons per year from all sites operated within this State, shall be required to obtain a Class A mining permit or permits for all affected land.

(b) Sand and gravel operators producing less than 100,000 tons per year from all sites operated within this state shall be required to obtain a Class B mining permit or permits for all affected land."

SECTION 3. Section 6 of this Act 336 of 1977, as amended, is hereby amended to read as follows:

"Section 6. (a) Any operator desiring to engage in open cut mining shall make written application to the Commission for a permit. Application for either Class A or Class B permits shall be made upon a form furnished by the Commission, which form shall contain a description of the tract or tracts of land and the estimated number of acres thereof to be affected by open cut mining by the applicant, which 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, and a sworn statement that the applicant has the right and power to mine by open cut mining and to reclaim the land so described.

(b) Such application shall be accompanied by the operator's detailed plan of reclamation of land affected, which plan shall include a time schedule for the completion of each phase of reclamation and an estimate of the cost of each phase of reclamation.

(c) Such application for a Class A mining permit shall be accompanied by a bond or security for the described lands in favor of the State of Arkansas to be effective from and after the time a permit is granted which shall meet the requirements of Section 9 of this Act and an application fee as follows: Up to 2 Acres \$50; 2 to 10 Acres \$250; 10 Acres or greater \$10 per acre with a minimum of \$500. The Commission may by regulation prescribe an annual permit fee not to exceed \$10 per acre of affected land. The Commission may approve a Class A permit for mining and reclaiming the property covered thereby in increments, provided that the permit application contains an acceptable

incremental mining plan and is accompanied by a bond or security to cover reclamation of the first increment of property proposed to be mined. The permit shall be conditioned to require a bond or security to be submitted for the cost of reclamation of each successive increment prior to the time that any land within such increment is affected by the operator.

(d) Upon the filing and completion of an application, the bond or security and all fees due from the operator, the Commission shall have thirty (30) days in which to issue the appropriate permit or disapprove the application by issuing an order setting forth the grounds for such disapproval. The Commission may extend such thirty (30) day period for an additional sixty (60) days by notifying the applicant in writing for such extension. If the application is not approved or disapproved within the time period as set forth above, but in no event to exceed ninety (90) days, the application shall be deemed approved and the Commission shall thereupon issue the appropriate permit which shall entitle the applicant to engage in open cut mining on the land therein described during the permit term. No fee or bond shall be required for a Class B permit.

(e) Although issued to the operator, the permit is at all times the property of the State of Arkansas. Upon the expiration, suspension, or termination thereof, the operator shall promptly deliver the permit to the Commission.

(f) An operator may withdraw any land covered by a permit, excepting affected land, by notifying the Commission thereof, in which case the penalty of the bond or security filed by such operator pursuant to the provisions of this Act shall be reduced proportionately.

(g) Where acreage for which a permit has been in effect is not mined, or where open cut mining operations have not been completed thereon during the permit term, the permit as to such acreage may be extended by the Commission on such terms and conditions as may be required by the Commission without payment of any additional fee, except annual permit fees that may be prescribed by the Commission.

SECTION 4. Section 7 of Act 336 of 1977, as amended, is hereby amended to read as follows:

"Section 7. DUTIES OF OPERATOR. Every operator to whom a permit is issued pursuant to the provisions of this Act may engage in open cut mining

during the permit term upon the lands described in the permit upon the performance of and subject to the following requirements with respect to such lands:

(a) All ridges and peaks of land affected by open cut mining shall be graded to a rolling or terraced topography with adequate drainage. No final slope will be steeper than one (1) vertical to three (3) horizontal.

(b) The operator may construct earth dams, where lakes may be formed, in accordance with sound engineering practices. If a lake is to be left as a part of the reclamation plan, then provisions must be made to assure that a pH factor of 6 to 9 is maintained.

(c) On all affected land which is to be reforested, the operator shall construct reasonable fire lanes or access roads of at least ten (10) feet in width through such land unless such requirement is waived by the Commission. The operator shall protect the public from the dangers created by a 'high wall' by taking reasonable precautions, which may include, but are not limited to, the construction of a fence or posting adequate warning signs.

(d) Requirements for both establishment and maintenance of the vegetative cover shall be established by the Commission and the operator shall comply with such requirements or use other equally effective means. When the site slope is in condition for vegetating a soil test shall be made as a basis for soil amendments. Such amendments may include lime, fertilizer, secondary micro-nutrients, an application of topsoil or other means reasonably calculated to restore the slope to vegetating capabilities. Laboratory soil test and recommendations shall be obtained from the University of Arkansas, Cooperative Extension Service Office or any other public or private organization or Service Office or any other public or private organization or person approved by the Commission. The operator shall furnish copies of the soil sample report and recommendations to the Commission. Specifications concerning species to be grown, intended use, and associated information shall be provided by the operator on soil sample information sheets, and varieties and seeding rates of the species to be planted must conform to the recommendations of state and federal agricultural or forestry agencies.

(e) Open cut mining operations that remove and do not replace the lateral support shall not, unless mutually agreed upon by the operator and the adjacent property owner, remove the lateral support in the vicinity of any property line or established right-of-way line of a public road, street or

highway closer than a distance equal to ten (10) feet plus one and one-half times the depth of the excavation measured from such property line or right-of-way; provided, that where consolidated material of sufficient hardness or ability to resist weathering and to inhibit erosion or sloughing existing in the highwall, such lateral support shall not be removed closer than a distance equal to ten (10) feet plus one and one-half times the depth of the excavation measured from the natural ground surface to the top of the consolidated material.

(f) Whenever the exposed face of mined seams that contain acid forming materials are (is) not covered by water or by permanent water impoundment, the operator who mined such seams shall cover the exposed face of such seams with earth or spoil material to a depth of not less than three (3) feet upon receiving approval from the Commission. Alternatively, the Commission may approve any other course of conduct proposed by the operator which will assure protection of said seams from atmospheric exposure, minimize leaching action, or otherwise conform with water pollution control criteria to prevent formation of acid mine water or discharge mine water.

(g) The operator shall submit to the Commission no later than the first day of June during each year of the permit term, a map in a form acceptable to the Commission 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 open cut mining during such permit term and has completed mining operations thereon, the extent completed reclamation as required under Section 6 (b) of this Act, and a legend upon such map showing the number of acres of affected land. The annual report shall include the amount of material mined during the 12-month period.

(h) The Commission's approval of the operator's reclamation plan shall be based upon the advice and technical assistance of State Highway Commission, State Soil and Water Conservation Commission, State Game and Fish Commission, The State Forester, Agricultural Extension Service, Pollution Control Commission, Geology Commission and other agencies or individuals having experience in foresting and reclaiming open cut mined lands with forest or agronomic or horticultural species, based upon scientific knowledge from research into reclaiming and utilizing forest and agronomic species on open cut mined lands. The operator shall designate which parts of the affected land shall be reclaimed for forest, pasture, crop, horticulture, homesite,

recreational, industrial or other uses including food, shelter, or ground cover for wildlife and shall show the same by appropriate designation on the reclamation map.

(i) All reclamation provided for hereunder shall be carried to completion by the operator in compliance with the detailed plan of reclamation. Where natural weathering and leaching of any such affected land fails to support plant growth at the end of the reclamation period as required under Section 6 (b) of this Act, the Commission shall, at the request of the operator, extend the reclamation period from year to year for a period of ten (10) years from the termination of the permit term on the land in question. If further extension of the reclamation period is necessary to accomplish acceptable reclamation, such extensions shall be made at the discretion of the Commission. In the event that the operator does not comply with his schedule of reclamation or extensions granted, the Commission shall suspend the operator's mining permit until such time that reclamation of affected lands comes into compliance. If an operator holding a Class A permit does not come into compliance within a reasonable time, to be determined by the Commission, the surety bond or security of such land not satisfactorily reclaimed shall be declared forfeited. If an operator holding a Class B permit does not comply with his schedule of reclamation after a period of one year, his Class B permit shall be cancelled. In such a case the operator may apply for a Class A mining permit under the provisions of Section 6 of this Act and upon issuance, shall continue to operate within the provisions of a Class A mining permit.

(j) If the operator is unable to acquire sufficient planting stock of desired tree species from state nurseries, or acquire such tree species elsewhere at comparable prices, the Commission may grant the operator an extension of time until planting stock is available to plant such land as originally planned, or shall permit the operator to select an alternate method of reclamation in keeping with the provisions of this Act.

(k) In the event that the approved reclamation plan is found impracticable by the operator, upon the application of the operator, the Commission in its discretion may allow the modification of the approved reclamation plan, provided that the modified plan will carry out the purpose of this Act.

(l) All refuse shall be disposed of in a manner designed to control

siltation, erosion, or other damage to streams and natural water courses, as best allowed by the soil conditions of the location involved."

SECTION 5. All laws and parts of laws in conflict with this Act are hereby repealed to the extent of such conflict.

