

Arkansas Code Annotated 15-57-301 to 15-57-321
(Act 827 of 1991, As Amended)

The Arkansas Open-Cut Land Reclamation Act

Arkansas Department of Environmental Quality
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CHAPTER 57

MINING AND RECLAMATION GENERALLY

SUBCHAPTER.

3. ARKANSAS OPEN-CUT LAND RECLAMATION ACT.

SUBCHAPTER 3 - ARKANSAS OPEN-CUT LAND RECLAMATION ACT

SECTION.

15-57-301. Title
15-57-302. Declaration of policy.
15-57-303. Definitions.
15-57-304. Violations.
15-57-305. Penalties - Enforcement.
15-57-306. Administration.
15-57-307. Rules and regulations
15-57-308. Technical and financial assistance.
15-57-309. Entry on lands of permit.
15-57-310. Necessity of permit - Effective date.
15-57-311. Application for permit - Fee Bond

Publisher's Notes. Former subchapter 3, concerning the Arkansas Open-Cut Land Reclamation Act, was repealed by Acts 1991, No. 827, § 20. The former subchapter was derived from the following sources:

15-57-301. Acts 1977, No. 336, § 1; A.S.A. 1947, § 52-917.
 15-57-302. Acts 1977, No. 336, § 2; A.S.A. 1947, § 52-918.
 15-57-303. Acts 1977, No. 336, § 3; 1985, No. 930, § 2; A.S.A. 1947, § 52-919; Acts 1987, No. 664, § 1.
 15-57-304. Acts 1977, No. 336, § 16; 1981, No. 895, § 1; A.S.A. 1947, § 52-932.
 15-57-305. Acts 1977, No. 336, § 15; A.S.A. 1947, § 52-931.
 15-57-306. Acts 1977, No. 336, § 12; 1977, No. 824, § 1; A.S.A. 1947, § 52-928.
 15-57-307. Acts 1977, No. 336, § 17; A.S.A. 1947, § 52-933.
 15-57-308. Acts 1977, No. 336, § 8; A.S.A. 1947, § 52-924.
 15-57-318. Acts 1977, No. 336, § 13; A.S.A. 1947, § 52-929.
 15-57-319. Acts 1977, No. 336, § 14; A.S.A. 1947, § 52-930.
 15-57320. Acts 1977, No. 336, § 10; A.S.A. 1947, § 52-296.
 15-57-321. Acts 1977, No. 336, § 18; A.S.A. 1947, § 52-934.

Cross References. Surface coal mining and reclamation, §15-58-101 et seq.

SECTION.

15-57-312. Permit as state property.
15-57-313. Withdrawal of land covered by permit.
15-57-314. Extension of permit.
15-57-315. Duties of operator.
15-57-316. Bond of operator.
15-57-317. Bond forfeiture proceedings.
15-57-318. Registration of existing open-cut mines.
15-57-319. Land Reclamation Fund - Permit Fee.
15-57-320. Exemptions.
15-57-321. [Repealed.]

15-57-309. Acts 1977, No. 336, § 4; A.S.A. 1947, § 52-920.
 15-57-310. Acts 1977, No. 336, § 5; A.S.A. 1947, § 52-921; Acts 1987, No. 664, § 2.
 15-57-311. Acts 1977, No. 336, § 6; 1981, No. 896, § 1; A.S.A. 1947, § 52-922; Acts 1987, No. 664, § 3.
 15-57-312. Acts 1977, No. 336, § 6; A.S.A. 1947, § 52-922.
 15-57-313. Acts 1977, No. 336, § 6; A.S.A. 1947, § 52-922.
 15-57-314. Acts 1977, No. 336, § 6; A.S.A. 1947, § 52-922; Acts 1987, No. 664, § 3.
 15-57-315. Acts 1977, No. 336, § 7; A.S.A. 1947, § 52-923; Acts 1987, No. 664, § 4.
 15-57-316. Acts 1977, No. 336, § 9; A.S.A. 1947, § 52-925.
 15-57317-. Acts 1977, No. 336, § 11; A.S.A. 1947, § 52-927.

Effective Dates. Acts 1993, No. 368, § 5: Mar. 5, 1993.

Emergency clause provided: "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, however, the construction and the maintenance of streets and highways are also a very productive use of land resources and such uses should be exempt from the provisions of the "Arkansas Open-Cut land Reclamation Act" when conducted under the auspices of the Arkansas Highway Department or any county or municipal government. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1345 '7: April 17, 1995.

Emergency clause provided: "It is hereby found and determined by the Eighteenth General Assembly that protection of Arkansas' streams is necessary to prevent degradation of the water quality and existing designated uses. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from after its passage and approval."

Acts 1999, No. 1526: April 15, 1999.

Emergency clause provided: "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 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."

RESEARCH REFERENCES

Ark. L. Notes. Looney, Handling Administrative Proceedings before the Arkansas Pollution Control and Ecology Department and Commission, 1988 Ark. L. Notes 23.

15-57-301. Title

This subchapter shall be known and cited as "The Arkansas Open-Cut Land Reclamation Act".

History. Acts 1991, No. 827, § 1.

15-57-302. Declaration of policy.

It is declared to be the policy of this state to provide, during and after completion of open-cut mining operations, for the reclamation and restoration of affected lands to productive use, including, but not limited to, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest, the enhancement of wildlife and aquatic resources, the establishment of recreational, home, and industrial sites, and the conservation, development, management, and appropriate use of all the natural resources of affected areas for compatible multiple purposes, in order to aid in maintaining or improving the tax base and protecting the health, safety, and general welfare of the people as well as the natural beauty and aesthetic value in the affected areas of this state.

History. Acts 1991, No. 827, § 2.

15-57-303. Definitions.

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

(1) "Affected land" means the area of land where open-cut mining has been or is taking place or upon which spoil has been deposited, or any other surface disturbance including haul roads, processing and loading facilities, or appurtenances related to the mining operations on or after July 1, 1977, until the land is reclaimed;

(2) "Commercial purposes" means the sale of material from an open-cut mine as either a cash transaction, part of a contractual agreement involving payment for materials provided, or use in another process to create a product with value;

(3) "Commission" means the Arkansas Pollution Control and Ecology Commission, or such commission or other entity as may lawfully succeed to the powers and duties of the commission;

(4) "Department" means the Arkansas Department of Environmental Quality or such department or other entity which may lawfully succeed to the powers and duties of the department;

(5) "Director" means the executive head and active administrator of the department;

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

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

(8) "Open-cut mining" means the surface extraction of clay, bauxite, sand, gravel, soil, shale or other materials for commercial purposes;

(9) "Operator" means any person engaged in or controlling an open-cut mining operation;

(10) "Peak" means a projecting point of spoil created in the open-cut mining process;

(11) "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 subchapter and ending on the date requested by the operator and specified by the department, though not to exceed five (5) years;

(12) "Person" means any individual, partnership, firm, company, public or private corporation, cooperative, association, joint-stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or any other legal entity whatever which is recognized by law as the subject of rights and duties;

(13) "Pit" means a tract of land where open-cut mining is taking place;

(14) "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 policy;

(15) "Ridge" means a lengthened elevation of spoil created in the open-cut mining process;

(16) "Right-of-way" means the portion of land over or under which certain facilities, including, but not limited to, roadways, pipelines, or power lines, are built;

(17) "Spoil" means all waste material and debris connected with open-cut mining and with the mechanical removal, cleaning, and preparation of materials at the mine site.

History. Acts 1991, No. 827, § 3; 1999, No. 1164, § 139; 1999, No. 1526, § 1.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: "'Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'." "(a) Effective March 31, 1999 the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in or to effect this change by March 31, 1999. "(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name

change.”

15-57-304. Violations.

- (a) It shall be unlawful for any person to:
- (1) Violate any provision of this subchapter or any rule, regulation, or order of the commission or the department issued pursuant to this subchapter;
 - (2) Engage in open-cut mining without a permit issued pursuant to this subchapter;
 - (3) Violate any conditions of a permit or reclamation plan issued pursuant to this subchapter;
 - (4) Knowingly make any false statement, representation, or certification, or knowingly fail to make a statement, representation, or certification, in any application, plan, record, report, or other document filed or required to be maintained under this subchapter; or
 - (5) Willfully resist, prevent, impede, or interfere with the director or any of his authorized representatives in the performance of duties pursuant to this subchapter.
- (b) For the purposes of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

History. Acts 1991, No. 827, § 19; 1999, No. 1526, § 2.

15-57-305. Civil and administrative penalties.

- (a) Civil Penalties. The Arkansas Department of Environmental Quality is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:
- (1) To restrain any violation of or to compel compliance with, the provisions of this subchapter or of any order, rule, regulation, permit, or reclamation plan issued pursuant thereto;
 - (2) To accomplish remedial measures as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter, including the reclamation of affected land;
 - (3) To recover all costs, expenses, and damages to the department or any other agency of the state in enforcing the provisions of this subchapter and reclaiming affected land;
 - (4) To assess civil penalties for violations of this subchapter or of any order, rule, regulation, permit, or reclamation plan issued pursuant thereto, in an amount not to exceed:
 - (a) One thousand dollars (\$1,000) for the first violation;
 - (b) Two thousand five hundred dollars (\$2,500) for a second separate violation of the same offense within two (2) years; and
 - (c) Five thousand dollars (\$5,000) for a third separate or subsequent violation of the same offense within two (2) years;
 - (5) Recover civil penalties assessed pursuant to subsections (b) and (c) of this section; or
 - (6) Forfeit reclamation bond.
- (b) ADMINISTRATIVE PENALTIES.
- (1) Any person who engages in open-cut mining without first securing a permit as required by this subchapter or who fails to reclaim affected lands in accordance with this subchapter or who violates any provision of this or any order, regulation, rule, permit, or reclamation plan issued pursuant thereto, may be assessed an administrative civil penalty by the department not to exceed :
 - (a) One thousand dollars (\$1,000) for the first violation;
 - (b) Two thousand five hundred dollars (\$2,500) for a second separate violation of the same

offense within two (2) years;

(c) Five thousand dollars (\$5,000) for a third separate or subsequent violation of the same offense within two (2) years.

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

(3) The amount of the administrative civil penalty shall be determined in accordance with regulations adopted by the commission, including, but not limited to, the regulations on civil penalties.

(c) All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures described in §§ 8-4-218 — 8-4-229 and in accordance with regulations adopted by the commission, including, but not limited to, the regulations on administrative procedures.

(d) As an alternative to the limits on civil or administrative penalties under subsection (a) or subsection (b) of this section, if a person who is found liable in an action brought under subsection (a) or subsection (b) of this section has derived pecuniary gain from the commission of mining without a permit or mining outside of the area authorized in the permit, then the person may be ordered to pay civil penalty equal to the amount of the pecuniary gain.

History. Acts 1991, No. 827, § 4; 1999, No. 1526, § 3; 2001, No. 550, § 1; 2011, No.609, § 1.

Amendments. The 2011 amendment added (d).

15-57-306. Administration.

The department through its director, and any representatives designated by the director, shall administer and enforce the provisions of this subchapter, except for those provisions specifically designated to the commission.

History. Acts 1991, No. 827, § 5.

15-57-307. Rules and regulations.

The commission may adopt and promulgate rules and regulations necessary to administer the provisions of this subchapter.

History. Acts 1991, No. 827, § 6.

15-57 308. Technical and financial assistance.

The department shall have the authority to cooperate with and receive technical and financial assistance from the United States, or any department, agency, or officer thereof, for any purposes relating to the reclamation of affected lands.

History. Acts 1991, No. 827, § 7.

15-57-309. Entry on lands for inspection.

The Arkansas Department of Environmental Quality or its designated representatives may enter upon the lands affected by open-cut mining at all reasonable times for the purpose of determining compliance with the provisions of this subchapter.

History. Acts 1991, No. 827, § 8; 2001, No. 550, § 2.

15-57-310. Necessity of permit — Effective date.

(a) It shall be unlawful for any operator to engage in open-cut mining without first obtaining from the department a permit to do so, in the form required by the department.

(b) An operator shall be deemed to be engaged in open-cut mining when he or she affects any land in preparation for open-cut mining.

(c) (1) Notwithstanding the provisions of this section, the Arkansas State Highway and Transportation Department or its contractor shall not be required to obtain a permit for an open-cut mine where the material is used exclusively in the construction, reconstruction, improvement or maintenance of roadways.

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

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

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

(d) (1) Nothing in this subchapter shall be construed to require any operator to reclaim or revegetate any area affected by open-cut mining prior to July 1, 1971.

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

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

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

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

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

(2) There shall be no mining in streams designated as 'extraordinary resource waters' of the State as established in water quality standards duly promulgated by the Commission for all surface waters of the State of Arkansas.

(g)(1) The Arkansas Department of Environmental Quality shall develop regulations to implement the provisions of this chapter.

(2) The Arkansas Department of Environmental Quality shall develop documentation that will guide an operator through the permitting process.

History. Acts 1991, No. 827, § 9; 1993, No. 378, § 1; 1995, No. 1345, § 2; 1999, No. 1526, § 4.

15-57-311. Application for permit — Fee — Bond.

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

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

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

(d) The application shall be accompanied by the applicant's detailed plan of reclamation of the area to be 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.

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

(f) The application for a permit shall be accompanied by a fee of ten dollars (\$10.00) per acre with a two hundred dollar (\$200) minimum.

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

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

(i) Variances and interim authority issued under this subchapter shall comply with the requirements of § 8-4-230.

(j)(1)(A) After notice and opportunity for a public hearing, the department may develop and issue general permits for any category of activities involving open-cut mining operations if the department determines that the activities in a category:

- (i) Are similar in nature;
 - (ii) Will cause only minimal temporary adverse environmental effects if performed separately; and
 - (iii) Will have only minimal cumulative adverse effects on the environment.
- (B) To qualify for inclusion under the general permit, applicants shall submit a notice of intent and supporting documentation on forms developed by the department.
- (C) Facilities and practices not qualifying for inclusion under the conditions of a general permit shall obtain an individual permit.
- (2) The Director of the Arkansas Department of Environmental Quality at his or her discretion may require an applicant to seek coverage under an individual permit.
- (3)(A) Unless extended by the director, no general permit issued under this subsection shall be effective for a period of more than five (5) years after the date of its issuance.
- (B) The general permit may be revoked or modified by the department if after opportunity for a public hearing the department determines that the activities authorized by the general permit:
- (i) May have an adverse impact on the environment; or
 - (ii) Are more appropriately authorized by individual permits.
- (4) Before issuing general permits, the Arkansas Pollution Control and Ecology Commission shall promulgate rules necessary to implement and administer the provisions of this subsection.

History. Acts 1991, No. 827, § 10; 1999, No. 1526, § 5; 2001, No. 550, § 3; 2005, No. 855, § 1.

Amendments. The 2005 amendment added (j).

15-57-312. Permit as state property.

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.

History. Acts 1991, No. 827, § 11.

15-57-313. Withdrawal of land covered by permit.

An operator may withdraw any land covered by a permit, except affected land, by notifying the department, in which case the penalty of the bond or substituted security filed by the operator pursuant to the provisions of this subchapter shall be reduced proportionately.

History. Acts 1991, No. 827, § 12.

15-57-314. Extension of permit.

Where the area for which a permit is in effect is not mined or where open-cut mining operations have not been completed during the permit term, the permit as to such area may be

extended by the department on the terms and conditions required by the department.

History. Acts 1991, No. 827, § 13.

15-57-315. Duties of operator.

Any operator of an open-cut mine will be subject to the following requirements with respect to the mining and reclamation of the site:

(1)(A)(i) All affected land shall be graded to a rolling or terraced topography with adequate drainage.

(ii)(a) No final slope will be steeper than one (1) vertical to three (3) horizontal.

(b) The department may approve a steeper final slope where the original contour of the affected land was steeper than the one (1) to three (3) ratio if the operator can assure, to the satisfaction of the department, the integrity of the final contour.

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

(2)(A) The operator may construct earthen dams where lakes may be formed in accordance with sound engineering practices.

(B)(i) If a lake is to be left as a part of the reclamation plan, provisions must be made by the operator to assure that a pH factor of six (6) to nine (9) is maintained.

(ii) However, where water runoff from outside the affected area into such lake has a pH factor of less than six (6) or greater than nine (9) or in order to allow the lake to more closely match the natural environment, the department, in its discretion allow a deviation in pH levels;

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

(4)(A) Requirements for both establishment and maintenance of the vegetative cover shall be established by the department, and the operator shall comply with the requirements or use other equally effective means.

(B) When the site slope is in condition for vegetating, a soil test may be made as a basis for soil amendments. Amendments may include lime, fertilizer, secondary micronutrients, an application of topsoil, or other means reasonably calculated to restore the slope to vegetating capabilities.

(C)(i) Laboratory soil tests and recommendations shall be obtained from the University of Arkansas Cooperative Extension Service Office or any other public or private organization or person approved by the department.

(ii) The operator shall furnish copies of the soil sample report and recommendations to the department.

(D) 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;

(5)(A) Open-cut mining operations must maintain an undisturbed buffer zone of fifty (50) feet from any adjacent property line or right-of-way until reclamation begins.

(B)(i) For the department to approve a variance on the fifty-foot buffer zone, there must be an agreement between affected property owner or right-of-way holder and the operator.

(ii) Proof of such agreement must be provided to the department.

(C) The operator may begin creating the final slope during reclamation at ten (10) feet from the adjacent property line or right-of way.

(D) For purposes of subdivision (5) of this section, the terms "property line", "property owner", or "right-of-way holder" means and includes boundaries and owners of reserved or granted mineral rights where the fee simple interest and mineral interest have been severed;

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

(B) Alternatively, the department may approve any other course or conduct proposed by the operator which will assure protection of the 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;

(7)(A) The operator shall submit to the department, no later than June 1 of each year of the permit term:

(i) A map in a form acceptable to the department showing the location of the affected areas by section, township, range, and county, with other legal description as will identify the affected land during the permit term upon which the operator has completed mining operations;

(ii) The extent of completed reclamation as required under § 15-57-311(b); and

(iii) A legend upon the map showing the number of acres of affected land.

(B) The annual report shall include the amount of material mined during each twelve-month period;

(8)(A) The department's approval of the operator's reclamation plan may be based upon the advice and technical assistance of the Arkansas State Soil and Water Conservation Commission, the State Forester, the Arkansas Geological Commission, and other agencies or persons 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.

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

(9)(A)(i) All reclamation shall be completed by the operator in compliance with its detailed plan of reclamation.

(ii) Where natural weathering and leaching of affected land fails to support plant growth at the end of the reclamation period as required under § 15-57-311(b), the department may, at the request of the operator, approve a permit extension from year-to-year from the termination of the

permit on the permitted area.

(B) In the event that the operator does not comply with its schedule of reclamation or extensions granted within a reasonable period of time, to be determined by the department, the bond or substituted security of affected land not satisfactorily reclaimed shall be forfeited;

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

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

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

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

(14) Upon approval from the department, stockpiles of processed materials may be left without being reclaimed if there is a likelihood that there will be a market for the material in the future and that there will be no form of pollution from the stockpiles remaining on or leaving the property.

History. Acts 1991, No. 827, § 14; 1993, No. 378, § 2; 1995, No. 1345, § 1; 1999, No. 1526, § 6; 2001, No. 550, § 4.

15-57-316. Bond of operator.

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

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

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

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

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

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

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

(2) The bond or substituted security may be increased or reduced from time to time as

provided in this subchapter.

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

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

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

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

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

(e)(1) The department shall give written notice to the operator of any violation of this subchapter or noncompliance with any of the rules, regulations, or orders promulgated under this subchapter.

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

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

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

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

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

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

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

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

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

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

History. Acts 1991, No. 827, § 15; 1999, No. 1526, § 7.

15-57-317. Bond Forfeiture Proceedings.

(a) The department may institute proceedings to have the bond or substituted security of the operator forfeited for any of the following reasons including but not limited to;

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

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

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

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

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

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

History. Acts 1991, No. 827, § 16; 1999, No. 1526, § 8.

15-57-318. Registration of existing open-cut mines.

The department shall require registration of all existing unpermitted open-cut mines in which mining operations are not being conducted.

History. Acts 1991, No. 827, § 16.

15-57-319. Land Reclamation Fund — Permit fee.

(a) A Land Reclamation Fund is established on the books of the State Treasurer, State Auditor, and Chief Fiscal Officer of the State. The fund shall consist of civil penalty and bond forfeiture amounts, gifts, grants, donations, and other funds as may be made available by the General Assembly, including all interest earned upon moneys deposited into the fund. The department shall use the funds to accomplish reclamation of affected lands.

(b) All fees and any moneys collected as reimbursement for expenses, costs, and damages to the state under the provisions of this subchapter shall be deposited in the general revenue fund of the department and shall be used to defray the administrative and enforcement costs of this subchapter.

(c) The commission may by regulation prescribe an annual permit fee on affected lands.

History. Acts 1991, No. 827, § 17.

15-57-320. Exemptions.

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

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

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

(c) An agent or employee of a county or municipal government may remove gravel or other materials from any stream in order to protect the integrity of bridges or low water crossing of any public roadway without obtaining a permit.

(d) A governmental unit may remove gravel or other material from any stream in order to protect the integrity of a government owned or controlled structure without obtaining a permit.

(e) (1) Flood control projects authorized by the U.S. Army Corp of Engineers shall be exempt from the permitting requirement provided, however, that certification under Section 401 of the Federal Clean Water Act is obtained for said project.

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

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

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

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

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

History. Acts 1993, No. 368, § 1; 1995, No. 1345 § 3; 1999, No. 1526, § 9.

A.C.R.C. Notes. Acts 1997, No. 1219, § 2, provided: " 'Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'. "(a) Effective March 31, 1999, the Arkansas Department of Pollution Control & Ecology' or 'Department' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed . In its place, the Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999. "(b) Nothing in this Act shall be construed

as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change." Pursuant to § 1-2-207, the amendment by Acts 1999, No. 1164 is deemed to be superseded by the amendment by Acts 1999, No. 1526.

Publisher's Notes. As to the repeal of former § 15-57-320, see the Publisher's Notes at the beginning of this subchapter.

U.S. Code. The reference in this section to § 401 of the Federal Clean Water Act is presumably a reference to § 401 of the Water Pollution Control Act, which is codified as 33 U.S.C. § 1341.

15-57-321. [Repealed.]

Publisher's Notes. As to the repeal of this section, see the Publisher's Note at the beginning of this subchapter.