

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**  
4 **By: Representative Wallis**

# **A Bill**

**ACT 814 OF 1995**  
**HOUSE BILL 1784**

## **For An Act To Be Entitled**

8 "AN ACT TO PROVIDE STANDARDS FOR BLASTING AT QUARRIES AND  
9 OPEN PIT MINES; TO PROVIDE CRIMINAL AND CIVIL PENALTIES  
10 AND REMEDIES FOR VIOLATIONS; TO AUTHORIZE THE DIRECTOR OF  
11 LABOR TO ENFORCE AND ADMINISTER THE ACT AND PROMULGATE  
12 REGULATIONS; TO REQUIRE NOTICE TO THE DIRECTOR OF LABOR OF  
13 BLASTING OPERATIONS; TO REQUIRE BLASTING RECORDS; AND FOR  
14 OTHER PURPOSES."

## **Subtitle**

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17 "AN ACT TO PROVIDE STANDARDS FOR  
18 BLASTING AT QUARRIES AND OPEN PIT  
19 MINES."

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

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25 SECTION 1. Title. This act may be called the "Arkansas Quarry and Open  
26 Pit Mine Blasting Control Act".

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28 SECTION 2. Definitions. As used in this act, unless the context  
29 otherwise requires:

30 (1) "Blasting" means the use of explosives or a blasting agent;

31 (2) "Blasting agent" means any material or mixture, consisting of fuel  
32 and oxidizer, that is intended for blasting; if the finished product, as mixed  
33 for use or shipment, cannot be detonated by means of a number 8 test blasting  
34 cap when unconfined;

35 (3) "Contractor" means any person conducting blasting at a quarry or  
36 open pit mine other than the owner or operator and its employees;

1 (4) "Department" means the Arkansas Department of Labor;

2 (5) "Director" means the Director of the Arkansas Department of Labor;

3 (6) "Explosives" means any substance classified as an explosive by  
4 either state or federal law;

5 (7) "Mine" means any quarry or open pit;

6 (8) "Operator" means any person conducting surface mining operations at  
7 a quarry or open pit;

8 (9) "Owner" means the actual owner of the mine;

9 (10) "Person" means any individual, partnership, corporation, business,  
10 or other entity;

11 (11) "Quarry" or "open pit mine" means any open excavation, prospect  
12 opening, pit, bank or open-cut workings for the surface extraction of  
13 minerals, stone or other product for commercial use, excluding coal.

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15 SECTION 3. Criminal, civil, and administrative penalties.

16 (a) Criminal penalties.

17 (1) Any person who violates any provision of this act, or who  
18 violates any rule, regulation, or order issued thereunder, shall be guilty of  
19 a Class A misdemeanor, except as provided in subsection (a)(2) of this  
20 section.

21 (2)(A) It shall be unlawful for a person to:

22 (i) Violate any provision of this act, or any rule,  
23 regulation, or order issued thereunder and leave the state or remove his  
24 person from the jurisdiction of this state;

25 (ii) Purposely, knowingly, or recklessly conduct blasting  
26 in a manner prohibited by this act, or any rule, regulation or order issued  
27 thereunder, and thereby create a substantial likelihood of adversely affecting  
28 the health, safety, welfare, or property of any person, including the state or  
29 any political subdivision of the state; or

30 (iii) Purposely or knowingly make any false statement,  
31 representation, omission, or certification in any document required to be  
32 maintained under this act, or falsify, tamper with, or render inaccurate any  
33 monitoring device, method, or record required to be maintained under this act.

34 (B) A person who violates the provisions of subsection (a)(2)(A)  
35 of this section shall be guilty of a Class D felony.

1 (b) Civil Penalties. (1)(A) Any person who violates any provision of  
2 this act or who violates any rule, regulation or order issued thereunder may  
3 be assessed an administrative civil penalty by the director in an amount not  
4 to exceed ten thousand dollars (\$10,000) per violation. Each day of a  
5 continuing violation may be deemed a separate violation for purposes of  
6 penalty assessment.

7 (B) The assessment by the director shall be final, unless within  
8 twenty (20) days after service of notice thereof by certified mail, the person  
9 charged with the violation or any complainant entitled to such notice,  
10 notifies the director in writing that the proposed assessment is contested.  
11 In the event an assessment is contested, a final administrative determination  
12 shall be made pursuant to the Arkansas Administrative Procedures Act, Arkansas  
13 Code 25-15-201 et seq.

14 (C) Notice of any assessment by the director shall be served on  
15 any person who has made a written complaint within the past three (3) years to  
16 the department regarding the blasting operations of the person charged with  
17 the violation.

18 (D) The amount of any assessment when finally determined may be  
19 recovered in a civil action brought by the director in a court of competent  
20 jurisdiction, without paying costs or giving bond for costs.

21 (E) (i) Sums collected as reimbursement for expenses, costs, and  
22 damages to the department shall be deposited in the operating fund of the  
23 department.

24 (ii) Sums collected as civil penalties shall be deposited  
25 into the general fund of the State Treasury.

26 (iii) The director, in his discretion, may accept payment  
27 of assessed civil penalties in installments.

28 (F) Assessment of a civil penalty by the director shall be made  
29 no later than three (3) years from the date of the occurrence of the  
30 violation.

31 (2) In addition to the civil penalty provided in subsection (b)(1) of  
32 this section, the director is authorized to petition any court of competent  
33 jurisdiction, without paying costs or giving bond for costs, to:

34 (A) Enjoin or restrain any violation of, or compel compliance  
35 with, the provisions of this act and any rules, regulations, or orders issued

1 thereunder. In situations where there is an imminent threat to public or  
2 worker safety or to property, the director may seek a temporary restraining  
3 order for the cessation of any blasting;

4 (B) Affirmatively order that remedial measures be taken as may be  
5 necessary or appropriate to implement or effectuate the purposes and intent of  
6 this act; and

7 (C) Recover all costs, expenses, and damages to the department  
8 and any other agency or subdivision of the state in enforcing or effectuating  
9 the provisions of this subchapter.

10 (c) Private right of action. Any person adversely affected by a  
11 violation of this subchapter or any rules, regulations, or orders issued  
12 pursuant thereto shall have a private right of action for relief against the  
13 violator.

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15 SECTION 4. Director of Labor. Powers and duties generally.

16 (a) In addition to other powers and authority provided by law, the  
17 director or his authorized representative shall have the following authority:

18 (1) To administer oaths, take or cause to be taken the  
19 depositions of witnesses, and require by subpoena the attendance and testimony  
20 of witnesses and the production of all records, and other evidence relative to  
21 any matter under investigation or hearing;

22 (2) To enter and inspect, during normal business hours, any mine,  
23 any place of business of a mine owner or operator, or any place of business of  
24 any contractor engaged in blasting operations at any mine for the purpose of  
25 ascertaining compliance with the provisions of this act and any rule,  
26 regulation or order issued thereunder. This right of entry includes the right  
27 to examine, inspect, and copy any appropriate records and to question any  
28 employees;

29 (3) To certify to official acts;

30 (4) To promulgate rules and regulations for the administration  
31 and enforcement of this act after public hearing and opportunity for public  
32 comment;

33 (5) To assess civil penalties as provided in section 3 of this  
34 act;

35 (6) To issue cease and desist orders, as well as orders

1 directing affirmative measures be taken to comply with this act and any rule  
2 or regulation issued thereunder;

3           (7) To issue a variance from any specific requirement of this act  
4 or any rule or regulation issued thereunder, provided that literal compliance  
5 would constitute an undue hardship and that reasonable safety of persons and  
6 property is secured;

7           (8) To investigate as to any violation of this act or any rule,  
8 regulation, or order issued thereunder;

9           (9) To establish by rule or regulation standards for the  
10 performance of blasting operations at mines after public hearing and  
11 opportunity for public comment;

12           (10) To require, at his discretion, a mine owner or operator or  
13 contractor to offer a pre-blast survey of all buildings or structures up to a  
14 radius of one-half (1/2) of a mile of the perimeter of the mine prior to the  
15 initiation of blasting or the continuation of blasting under such terms and  
16 conditions as may be established by order of the director;

17           (11) To require, at his discretion, a mine owner or operator or  
18 contractor to monitor and measure air blasts and/or ground vibration under  
19 such terms and conditions as may be established by order of the director or to  
20 conduct such monitoring and measuring through his authorized representative;

21           (12) To require, at his discretion, a mine owner or operator or  
22 contractor to develop and submit a blasting plan for approval; and

23           (13) To enforce generally the provisions of this act and the  
24 rules, regulations, and orders issued thereunder.

25           (b) In case of failure of any person to comply with any subpoena  
26 lawfully issued under this section or upon the refusal of any witness to  
27 produce evidence or to testify to any matter regarding which he may be  
28 lawfully interrogated, it shall be the duty of any circuit court or judge  
29 thereof, upon application of the department, to compel obedience by  
30 proceedings for contempt, as in the case of disobedience of the requirements  
31 of a subpoena issued by the court or a refusal to testify therein.

32           (c) In determining whether to order a pre-blast survey or whether to  
33 order monitoring and measurement of air blasts and ground vibration, the  
34 director may consider the nature of any written complaints made against that  
35 owner or operator or contractor or any written complaints about that specific

1 mine location, as well as the number and frequency of such complaints.

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3       SECTION 5. Exemptions - owners and operators.

4       (a) The provisions of this act shall not apply to any mine in existence  
5 or operation on the effective date of this act, unless the mine or quarry site  
6 has been the subject of a criminal or civil proceeding resulting from its  
7 blasting operations within the three (3) year period prior to January 1, 1995.

8       (b) Notwithstanding the provisions of subsection (a) of this section,  
9 the director's authority shall not be restricted with respect to:

10               (1) Mines or quarries which were in existence and operation on  
11 the effective date of this act, but which change owners or operators after the  
12 effective date of this act; or

13               (2) New or existing mines or quarries which were not in operation  
14 on the effective date of this act.

15

16       SECTION 6. Blasting standards.

17       (a) General requirements. Blasting shall be conducted to prevent  
18 injury to persons, damage to public or private property, adverse impacts on  
19 any underground mine, and change in the course, channel or availability of  
20 surface or ground water outside the mine's perimeter.

21       (b) Airblasts.

22               (1) In blasting operations, airblast shall not exceed the maximum  
23 limits set forth in the Code of Federal Regulations at 30 C.F.R. 816.67(b), at  
24 the location of any structure, residence, public building, school, church, or  
25 commercial or institutional building outside the perimeter of a mine and owned  
26 or leased by a person other than the mine owner or operator.

27               (2) If necessary to prevent damage, the director may require  
28 lower maximum allowable airblast levels than those specified in subsection  
29 (b)(1) of this section for use in the vicinity of a specific blasting  
30 operation. Such action shall only be taken following consultation with what  
31 expert(s) the director deems appropriate.

32               (3) The director may require airblast measurement of any or all  
33 blasts and may specify the locations at which such measurements are taken.

34               (4) The measuring system shall have an upper-end flat frequency  
35 response of at least 200 hertz. The measuring system shall also have a low

1 end frequency response of 2 hertz and be within -3dB at 2 hertz.

2 (c) Flyrock. Flyrock from blasting operations, travelling in the air  
3 or along the ground, should not be cast from the mine site. In the event  
4 flyrock is cast from the mine site, the owner or operator and contractor shall  
5 be liable and responsible for any damages, including clean-up and removal of  
6 the flyrock.

7 (d) Ground vibration. (1) In blasting operations, ground vibration  
8 shall not exceed the maximum limits established in accordance with either the  
9 maximum peak particle velocity limits contained in the Code of Federal  
10 Regulations at 30 C.F.R. 816.67(d) (2) or the scaled-distance equation  
11 established at 30 C.F.R. 816.67(d) (3), at the location of any structure,  
12 residence, public building, school, church, or commercial or institutional  
13 building outside the perimeter of a mine and owned or leased by a person other  
14 than the mine owner or operator. If a seismographic record for a blast exists  
15 or is required, the maximum limit for ground vibration shall be the peak  
16 particle velocity limits contained at 30 C.F.R. 816.67(d) (2) at any structure,  
17 residence, public building, school, church, or commercial or institutional  
18 building.

19 (2) If necessary to prevent damage, the director may require  
20 lower maximum allowable ground vibration levels than those specified in  
21 subsection (d) (1) of this section for use in the vicinity of a specific  
22 blasting operation. Such action shall only be taken following consultation  
23 with what expert(s) the director deems appropriate.

24 (3) The director may require an owner or operator to conduct  
25 seismic monitoring of any or all blasts or may specify the location at which  
26 the measurements are taken and the degree of detail necessary in the  
27 measurement.

28 (e) In the event that a pit or quarry is closer than three hundred  
29 (300) feet from any public highway, road, or street, no blasting shall be  
30 conducted without the prior written approval of the director. Notwithstanding  
31 the provisions of this subsection, any quarry or pit in existence on the  
32 effective date of this act shall be allowed to continue operations without  
33 obtaining the written approval of the director.

34 (f) Prior to the firing of a blast, the owner or operator or contractor  
35 shall follow a definite plan of warning signals that can be clearly seen or

1 heard by anyone in the blasting area. The owner or operator shall inform all  
2 employees at the operation as to the established procedure.

3 (g) The maximum limits for airblast and ground vibration as specified  
4 in subsections (b)(1) and (d)(1) of this section shall be construed as the  
5 threshold below which blasting damage is unlikely to occur. The director,  
6 however, shall have the authority to promulgate regulations requiring more or  
7 less restrictive limits as appropriate. Such action shall only be taken  
8 following consultation with what expert(s) the director deems appropriate.

9 (h) All blasting operations shall be conducted between sunrise and  
10 sunset, unless extraordinary circumstances arise which would necessitate  
11 conducting a blast outside these hours. Such circumstances shall be  
12 documented in the blast records required by section 7 of this act.

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14 SECTION 7. Notice of blasting operations.

15 (a) Any owner or operator and contractor conducting blasting operations  
16 in this state on the effective date of this act, shall notify the director of  
17 each site or location on which blasting operations are conducted. Such notice  
18 shall be filed with the department no later than October 1, 1995.

19 (b) Any owner or operator and contractor which after the effective date  
20 of this act begins blasting at a new site or location, or at a site on which  
21 no blasting has occurred for a period of six (6) consecutive months, shall  
22 notify the director of their operation at least twenty-four (24) hours in  
23 advance of the initial blast.

24 (c) The notice required by subsections (a) and (b) of this section  
25 shall be on a form approved by the director and shall include, but is not  
26 limited to, the following information:

27 (1) Name, address, and telephone number of the mine owner or  
28 operator;

29 (2) Name, address, and telephone number of the operator or  
30 contractor performing the blast;

31 (3) Location of the quarry site or open pit mine; and

32 (4) Location where the records of the blasting operations are to  
33 be maintained.

34 (d) All owners and operators and contractors shall notify the director  
35 in writing of any change of address or location.

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SECTION 8. Record keeping.

(a) The owner or operator shall retain a record of all blasts for at least three (3) years. Upon request, copies of these records shall be made available to the department for inspection. Such records shall contain the following data:

(1) Name of the operator or contractor conducting the blast;

(2) Location, date, and time of the blast;

(3) Name and signature, and state certification number of the blaster conducting the blast;

(4) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest structure, residence, public building, school, church, or commercial or institutional building outside the perimeter of the mine which is owned or leased by a person other than the mine owner or operator;

(5) Weather conditions, including those which may cause possible adverse blasting effects;

(6) Type of material blasted;

(7) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern;

(8) Diameter and depth of holes;

(9) Types of explosives used;

(10) Total weight of explosives used per hole;

(11) The maximum weight of explosives detonated in an 8-millisecond period;

(12) Initiation system;

(13) Type and length of stemming;

(14) Mats or other protection used;

(15) Seismographic and airblast records, if required, which shall include:

(A) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(B) Exact location of instrument and the date, time, and distance from the blast;

(C) Name of the person and firm who set up instrument;

- 1 (D) Name of the person and firm taking the reading;
- 2 (E) Name of the person and firm analyzing the seismographic
- 3 record; and
- 4 (F) The vibration and/or airblast level recorded;
- 5 (16) Reasons and conditions for each unscheduled blast; and
- 6 (17) Reasons and conditions for any blast conducted before
- 7 sunrise or after sunset.

8 (b) The records required by subsection (a) of this section shall be  
9 maintained at the mine where the blast was conducted or at the regular  
10 business location of the owner or operator. Copies of the records required by  
11 subsection (a) of this section shall be maintained by the contractor.

12  
13 SECTION 9. All owners, operators and contractors covered by the  
14 provisions of this act shall maintain a policy of insurance issued by an  
15 insurance company authorized to do business in Arkansas and insuring the  
16 owner, operator or contractor against liability for personal injury or  
17 property damage arising out of the operation or use of the mine in the minimum  
18 amount of one million dollars (\$1,000,000) for each incident or occurrence.  
19 Proof of such coverage shall be made available to the director or his  
20 authorized representative upon request.

21  
22 SECTION 10. Hearings, orders, and notices.

23 (a) Any administrative order issued by the director shall be final,  
24 unless within twenty (20) days after service of notice thereof, the person  
25 charged with the violation or any complainant entitled to such notice,  
26 notifies the director in writing that the order is contested. In the event an  
27 order is contested, a final administrative order shall be made after hearing.  
28 A complainant entitled to notice is any person who has made a written  
29 complaint within the past three (3) years to the department regarding the  
30 blasting operations of the person charged with the violation.

31 (b) All hearings conducted by the director and all orders, notices, and  
32 assessments shall conform to the requirements of the Arkansas Administrative  
33 Procedures Act, Arkansas Code 25-15-201 et seq.

34 (c) Any final administrative action is subject to appeal pursuant to  
35 the Arkansas Administrative Procedures Act, Arkansas Code 25-15-201 et seq.

1 (d) Service of any notice, order, or assessment may be made by delivery  
2 to the person to be ordered or notified or by mailing it, postage prepaid,  
3 addressed to the person at his principal place of business as last of record  
4 with the department.

5

6 SECTION 11. Joint and several liability. The owner or operator of any  
7 quarry or open pit mine where a blast is conducted and any contractor  
8 conducting the blast, shall be jointly and severally liable for violations of  
9 this act and any rules or regulations issued thereunder.

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11 SECTION 12. Cooperation with the State Fire Marshall. The Director of  
12 the Department of Labor shall consult the State Fire Marshall regarding the  
13 adoption of any rules or regulations. The Department of Labor and the State  
14 Fire Marshall shall cooperate and coordinate their activities in order to  
15 avoid duplication of services.

16

17 SECTION 13. Existing rules and regulations, etc.

18 (a) All existing rules and regulations of any other state agency  
19 relating to subjects embraced within this subchapter shall remain in full  
20 force and effect unless expressly repealed, amended or superseded by the state  
21 agency affected.

22 (b) All orders entered, permits granted, and pending legal proceedings  
23 instituted by any person, public or private, relating to subjects embraced  
24 within this subchapter shall remain unimpaired and in full force and effect  
25 until or unless superseded by actions taken by the director under this  
26 subchapter.

27 (c) No existing civil or criminal remedies, public or private, for any  
28 wrongful action relating to subjects embraced by this subchapter shall be  
29 excluded or impaired by the provisions of this subchapter.

30

31 SECTION 14. Injunctive relief. In addition to all other remedies  
32 provided by this subchapter, the Attorney General of this state and the  
33 prosecuting attorney of a county may apply to the chancery court or the judge  
34 in vacation of the county where the quarry or open pit mine is located for an  
35 injunction to restrain, prevent, or abate a public nuisance related to the

1 subjects embraced by this subchapter or any violation of any provision of this  
2 subchapter or the rules, regulations or orders issued thereunder.

3

4 SECTION 15. All provisions of this act of general and permanent nature  
5 are amendatory to the Arkansas Code 1987 Annotated and the Arkansas Code  
6 Revision Commission shall incorporate the same in the Code.

7

8 SECTION 16. If any provision of this act or the application thereof to  
9 any person or circumstance is held invalid, such invalidity shall not affect  
10 other provisions or applications of the act which can be given effect without  
11 the invalid provisions or application, and to this end the provisions of this  
12 act are declared to be severable.

13

14 SECTION 17. All laws or parts of laws in conflict with this act are  
15 hereby repealed.

16

17 SECTION 18. It is hereby found and determined by the General Assembly  
18 that the lack of state standards and regulations regarding blasting operations  
19 at quarries threatens the safety and property of Arkansas citizens.  
20 Therefore, an emergency is hereby declared to exist and this act being  
21 necessary for the immediate preservation of the public peace, health and  
22 safety shall be in full force and effect from and after July 1, 1995.

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25 /s/Rep. Wallis

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27 APPROVED: 3-28-95

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