

As Engrossed: 3/5/91, 3/7/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Cassidy**

A Bill

SENATE BILL 611

For An Act To Be Entitled

8 "AN ACT TO ALLOW GREATER FLEXIBILITY IN BONDING
9 REQUIREMENTS FOR OPERATORS OF OPEN-CUT MINING; TO CLARIFY
10 CERTAIN PERMITTING AND RECLAMATION REQUIREMENTS FOR
11 OPERATORS OF OPEN-CUT MINING; AND FOR OTHER PURPOSES."

12
13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

14
15 SECTION 1. Title. This Act shall be known and cited as "The Arkansas
16 Open-Cut Land Reclamation Act".

17
18 SECTION 2. Declaration of policy.

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

30
31 SECTION 3. Definitions.

32 As used in this Act, unless the context otherwise requires:

33 (1) "Reclamation for productive use" means conditioning areas affected
34 by open-cut mining to make them suitable for any uses or purposes consistent
35 with those enumerated in the declaration of policy;

1 (2) "Overburden" means the soil and other materials which lie above
2 natural mineral deposits such as clay, sand, gravel, bauxite, or other
3 minerals and also means earth and other materials
4 disturbed from their natural state in the process of open-cut mining;

5 (3) "Open-cut mining" means the mining of clay, bauxite, sand, gravel
6 or other minerals by removing the overburden lying above natural deposits and
7 mining directly for the natural deposits exposed.

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

10 (5) "Pit" means a tract of land from which overburden has been or is
11 being removed for the purpose of open-cut mining;

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

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

14 (8) "Affected land" means the area of land from which overburden has
15 been removed for open-cut mining or upon which overburden or refuse has been
16 deposited, or both, or any other surface disturbance including haul roads,
17 processing and loading facilities, or appurtenances related to the mining
18 operations on or after July 1, 1977; until the land is reclaimed according to
19 the operator's approved plan of reclamation.

20 (9) "Refuse" means all waste material and debris connected with open-
21 cut mining and with the mechanical removal, cleaning and preparation of
22 minerals at the mine site;

23 (10) "Ridge" means a lengthened elevation of overburden created in the
24 open-cut mining process;

25 (11) "Peak" means a projecting point of overburden created in the open-
26 cut mining process;

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

30 (13) "Permit term" means the period of time beginning with the date
31 upon which a permit is granted for open-cut mining of lands under the
32 provisions of this act and ending on the date requested by the operator and
33 specified by the Department, though not to exceed five (5) years.

34 (14) "Borrow pit" means an excavated area where material has been
35 removed for use as fill at another location;

36 (15) "Right-of-way" means the portion of land over or under which

1 certain facilities, including, but not limited to roadways, pipelines or power
2 lines, are built;

3 (16) "Department" means the Department of Pollution Control and Ecology
4 or such department or other entity which may lawfully succeed to the powers
5 and duties of the Department;

6 (17) "Director" means the executive head and active administrator of
7 the Department;

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

13

14 SECTION 4. Penalties - Enforcement.

15 (a) The Department is authorized to institute a civil action in any
16 court of competent jurisdiction to accomplish any or all of the following:

17 (1) Restrain any violation of, or compel compliance with, the
18 provisions of this act or of any order, rule, regulation, permit or
19 reclamation plan issued pursuant thereto;

20 (2) Accomplish remedial measures as may be necessary or appropriate to
21 implement or effectuate the purposes and intent of this act, including the
22 reclamation of affected land;

23 (3) Recover all costs, expenses and damages to the Department or any
24 other agency of the State in enforcing the provisions of this act and
25 reclaiming affected land;

26 (4) Assess civil penalties in an amount not to exceed five thousand
27 dollars (\$5,000.00) per day per violation of this act or of any order, rule,
28 regulation, permit or reclamation plan issued pursuant thereto; or

29 (5) Recover civil penalties assessed pursuant to subsections (b) and
30 (c) of this section.

31 (6) The amount of civil penalties shall reasonably reflect the
32 seriousness of the violation in the judgement of the Department. Any
33 violation repeated or continued after a reasonable abatement period
34 established by the Department shall constitute a separate violation.

35 (b) Any person who engages in open-cut mining without first securing a

1 permit as required by this Act or who fails to reclaim affected lands in
2 accordance with this Act or who violates any provision of this Act or any
3 order, regulation, rule, permit or reclamation plan issued pursuant thereto,
4 may be assessed an administrative civil penalty by the Department not to
5 exceed five thousand dollars (\$5,000.00) per violation. Any violation
6 repeated or continued after a reasonable abatement period established by the
7 Department shall constitute a separate offense. No civil penalty may be
8 assessed until the person charged with the violation has been given the
9 opportunity for a hearing and has exhausted all administrative appellate
10 remedies. The amount of civil penalty shall be determined in accordance with
11 regulations adopted by the Commission, including, but not limited to, the
12 Department's regulations on civil penalties.

13 (c) All hearings and appeals arising under this act shall be conducted
14 in accordance with the procedures described in Arkansas Code §§ 8-4-218--8-4-
15 229 and in accordance with regulations adopted by the Commission, including,
16 but not limited to, the Department's regulations on administrative procedures.
17

18 SECTION 5. Administration.

19 The Department through its Director, and any representatives designated
20 by the Director, shall administer and enforce the provisions of this act,
21 except for those provisions specifically designated to the Commission.
22

23 SECTION 6. Rules and regulations.

24 The Commission may adopt and promulgate rules and regulations necessary
25 to administer the provisions of this Act.
26

27 SECTION 7. Technical and financial assistance.

28 The Department shall have the authority to cooperate with and receive
29 technical and financial assistance from the United States, or any department,
30 agency or officer thereof, for any purposes relating to the reclamation of
31 affected lands.
32

33 SECTION 8. Entry on lands for inspection.

34 The Department or its designated representatives may enter upon the
35 lands mined by the operator at all reasonable times for the purpose of

1 determining compliance with the provisions of this Act.

2

3 SECTION 9. Necessity of permit - Effective date.

4 (a) It shall be unlawful for any operator to engage in open-cut mining
5 without first obtaining from the Department a permit to do so, in the form
6 required by the Department. However, any operator presently engaged in open-
7 cut mining with a permit issued under the authority of Acts 1971, No. 236 as
8 amended, shall not be required to obtain a new permit under this Act for land
9 presently being mined until the termination of that permit.

10 (b) An operator shall be deemed to be engaged in open-cut mining when
11 it removes or deposits any amount of overburden in preparation for open-cut
12 mining.

13 (c) Notwithstanding the provisions of this section, the Arkansas State
14 Highway Department shall not be required to obtain a permit for borrow pits
15 used in the construction, reconstruction, improvements or maintenance of
16 roadways where the Highway Department performs the actual extraction, although
17 reclamation of the area is recommended upon discontinuation of use of the pit.
18 The sale of material to the Highway Department by an open-cut mine operator
19 does not exempt the operator from complying with its permit requirements or of
20 the requirements of this Act. Where reclamation requirements of the operator
21 will interfere with a contractual agreement with the Highway Department, the
22 operator shall be allowed to revise its reclamation plan and schedule of
23 completion accordingly and in keeping with the declaration of policy of this
24 Act.

25 (d) Nothing in this Act shall be construed to require any operator to
26 reclaim or revegetate any area affected by open cut mining prior to the
27 effective date of Act No. 236 of 1971.

28

29 SECTION 10. Application for permit.

30 (a) Any person desiring to engage in open-cut mining shall make written
31 application to the Department for a permit. The application shall be made
32 upon a form furnished by the Department. The applicant shall fully state the
33 information required on the form and provide a legal description of the area
34 of land to be permitted and proof that the applicant has the right to mine the
35 area. The perimeter of the area to be permitted must be clearly marked on the

1 ground at all times until such time as the permitted area is released from
2 reclamation liability by the Department.

3 (b) The application shall be accompanied by the applicant's detailed
4 plan of reclamation of the area to be affected, which plan shall include a
5 time schedule for the completion of each phase of reclamation and an estimate
6 of the cost of each phase of reclamation.

7 (c) (1) The application for a mining permit shall be accompanied by a
8 bond or substituted security for the permitted area in favor of the State of
9 Arkansas through the Department, to be effective from and after the time a
10 permit is granted and which shall meet the requirements of § 15.

11 (d) Where the administrative processing time for an application for a
12 permit under this act exceeds sixty (60) days and, such delay in the judgement
13 of the Department affects an economic hardship upon the applicant and, the
14 Department has no reason to believe that such permit will be denied, the
15 Department shall issue an interim permit to be effective for a period not to
16 exceed ninety (90) days. Such interim permit shall be subject to immediate
17 revocation by the Department upon denial of the application or misconduct by
18 the applicant.

19 (2) The application for a permit shall be accompanied by a fee as
20 follows:

21 (A) Less than two (2) acres: fifty dollars (\$50.00);

22 (B) Two (2) acres or more but less than ten (10) acres: two hundred
23 fifty dollars (\$250.00);

24 (C) Ten (10) acres or more: ten dollars (\$10.00) per acre with a five
25 hundred dollar (\$500.00) minimum.

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

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

34

35 SECTION 11. Permit as state property.

1 Although issued to the operator, the permit is at all times the property
2 of the State of Arkansas. Upon the expiration, suspension, or termination
3 thereof, the operator shall promptly deliver the permit to the commission.
4

5 SECTION 12. Withdrawal of land covered by permit.

6 An operator may withdraw any land covered by a permit, except affected
7 land, by notifying the Department, in which case the penalty of the bond or
8 substituted security filed by the operator pursuant to the provisions of this
9 Act shall be reduced proportionately.
10

11 SECTION 13. Extension of permit.

12 Where the area for which a permit is in effect is not mined or where
13 open-cut mining operations have not been completed during the permit term, the
14 permit as to such area may be extended by the Department on the terms and
15 conditions required by the Department.
16

17 SECTION 14. Duties of operator.

18 Every operator to whom a permit is issued pursuant to the provisions of
19 this Act may engage in open-cut mining during the permit term on the area
20 described in the permit upon the performance of and subject to the following
21 requirements with respect to the permitted area:

22 (a) All affected land shall be graded to a rolling or terraced
23 topography with adequate drainage. No final slope will be steeper than one
24 (1) vertical to three (3) horizontal. The Department may approve a steeper
25 final slope where the original contour of the affected land was steeper than
26 the one (1) to three (3) ratio if the operator can assure, to the satisfaction
27 of the Department, the integrity of the final contour. The Director shall
28 develop regulations which will allow the department the discretion to permit
29 deviations from certain reclamation standards (including final slope steepness
30 requirements within this subsection) because of unique mining situations,
31 provided the deviations are consistent with the Declaration of Policy in this
32 Act.

33 (b) The operator may construct earth dams, where lakes may be formed,
34 in accordance with sound engineering practices. If a lake is to be left as a
35 part of the reclamation plan, provisions must be made by the operator to

1 assure that a pH factor of six (6) to nine (9) is maintained. However, where
2 water runoff from outside the affected area into such lake has a pH factor of
3 less than 6 or greater than 9, or in order to allow the lake to more closely
4 match the natural environment the Department may in its discretion allow a
5 deviation in pH levels.

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

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

24 (e) Open-cut mining operations that remove and do not replace the
25 lateral support closer than ten feet (10') plus one and one-half (1 1/2) times
26 the depth of the excavation from any adjacent property line or right-of-way
27 shall not be allowed without the consent of any affected property owner or
28 right-of-way holder. As to requirements for replacement of lateral support
29 there must be an agreement between the Department, affected property owner or
30 right-of-way holder and the operator, proof of such consent must be provided
31 to the Department. For purposes of this subsection, the terms "property line",
32 "property owner", or "right-of-way holder" shall include boundaries and owners
33 of reserved or granted mineral rights where the fee simple interest and
34 mineral interest have been severed. Where consolidated material of sufficient
35 hardness or ability to resist weathering and inhibit erosion or sloughing

1 exists in the highwall, the depth of the excavation may be measured from the
2 natural ground surface to the top of the consolidated material.

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

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

20 (h) The Department's approval of the operator's reclamation plan shall
21 be based upon the advice and technical assistance of the State Highway
22 Commission, Arkansas State Soil and Water Conservation Commission, Arkansas
23 State Game and Fish Commission, the State Forester, the Agricultural Extension
24 Service, the Department, the Arkansas Geological Commission, and other
25 agencies or persons having experience in foresting and reclaiming open-cut
26 mined lands with forest or agronomic or horticultural species, based upon
27 scientific knowledge from research into reclaiming and utilizing forest and
28 agronomic species on open-cut mined lands. The operator shall designate which
29 parts of the affected land shall be reclaimed for forest, pasture, crop,
30 horticulture, homesite, recreational, industrial or other use, including food,
31 shelter or ground cover for wildlife, and shall show each use by appropriate
32 designation on the reclamation map.

33 (i) All reclamation shall be completed by the operator in compliance
34 with its detailed plan of reclamation. Where natural weathering and leaching
35 of affected land fails to support plant growth at the end of the reclamation

1 period as required under § 10(b), the Department may, at the request of the
2 operator, approve a permit extension from year-to-year from the termination of
3 the permit on the permitted area. In the event that the operator does not
4 comply with its schedule of reclamation or extensions granted within a
5 reasonable period of time, to be determined by the Department, the bond or
6 substituted security of affected land not satisfactorily reclaimed shall be
7 forfeited.

8 (j) In the event that the operator's reclamation plan is found
9 impracticable by the operator, upon the application of the operator, the
10 Department in its discretion may allow the modification of the reclamation
11 plan provided that the modified plan will carry out the purposes of this Act.

12 (k) All mine refuse generated by the operator shall be disposed in a
13 manner approved by the Department and designed to control siltation, erosion
14 or other damage to streams and natural water courses, as best allowed by the
15 soil conditions of the permitted area.

16 (1) The operator shall preserve any topsoil for redistribution during
17 reclamation unless otherwise approved by the Director.

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

21

22 SECTION 15. Bond of operator.

23 (a) Any bond provided in this Act to be filed with the Department by
24 the operator shall be in such form as the Department shall prescribe, payable
25 to the State of Arkansas through the Department, conditioned that the operator
26 shall faithfully perform all requirements of this Act and comply with all
27 rules, regulations and orders made in accordance with the provisions of this
28 Act. The bond shall be signed by the operator and a good and sufficient
29 corporate surety authorized to do business in the United States. The penalty
30 of the bond shall be in an amount equal to the estimated cost of reclamation,
31 as required in § 10(b). In the event that the Department finds the cost of
32 reclamation to be an underestimate, the Department shall make use of available
33 expertise to establish the estimated cost of reclamation, which shall be the
34 amount of the bond. In the event of disagreement concerning the estimate of
35 the proper amount of the bond, the Department may retain independent expertise

1 as is necessary to establish the amount of the bond. The Department shall
2 promulgate regulations concerning bonds and substituted security which will
3 attempt to ensure that small operators are not precluded from development of
4 mineral resources as a result of high bond amounts but which still provide
5 reasonable security.

6 (b) The Department may accept cash, securities or other collateral,
7 including but not limited to letters of credit, and mortgages on real
8 property, provided by the operator in an amount equal to that of the required
9 bond as provided in subsection (a) above. The bond or substituted security
10 may be increased or reduced from time to time as provided in this act. The
11 bond or substituted security shall be in effect and subject to forfeiture in
12 accordance with this Act from and after the time a permit is granted by the
13 Department until the permitted area has been reclaimed, approved and released.

14 (c) Any bond or substituted security shall not be canceled by the
15 surety unless it has given no less than ninety (90) days' notice of the
16 cancellation to the Department. In no event shall a bond be canceled on a
17 permitted area that at the time of cancellation has become affected land under
18 the provisions of this Act.

19 (d) If the license to do business of any surety upon a bond or
20 substituted security filed with the Department pursuant to this act shall be
21 suspended or revoked, the operator, within thirty (30) days after receiving
22 notice of the revocation, shall substitute for the surety a licensed corporate
23 surety. Upon the failure of the operator to make substitution of the surety,
24 the Department shall suspend the permit of the operator until the substitution
25 is made.

26 (e) The Department shall give written notice to the operator of any
27 violation of this Act or noncompliance with any of the rules, regulations or
28 orders promulgated under this Act, and if corrective measures determined by
29 the Department, including, but not limited to, increase of the bond or
30 substituted security, are not commenced or agreed to by the operator within a
31 reasonable period of time to be determined by the Department, the Department
32 may terminate the permit of the operator and forfeit the bond or substituted
33 security as provided in § 16.

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

1 (g) Whenever an operator shall have completed all requirements under
2 the provisions of this act as to any affected land, it shall so notify the
3 Department. If the Department determines that the operator has completed
4 reclamation requirements and achieved results appropriate to the use for which
5 the affected land was reclaimed, the Department shall release the operator
6 from further obligations regarding the affected land and the penalty of the
7 bond or substituted security shall be reduced accordingly.

8 (h) Upon partial completion of reclamation, the operator may submit a
9 written request to the Department for the purpose of proportionately reducing
10 the amount of the bond or substituted security upon affected lands. If the
11 Department determines that proper reclamation has been accomplished under the
12 provisions of this act on an area less than the total area of the permitted
13 area, the Department shall proportionately reduce the amount of the bond or
14 substituted security.

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

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

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

26

27 SECTION 16. Bond forfeiture proceedings - Prerequisites.

28 (a) The Department may institute proceedings to have the bond or
29 substituted security of the operator forfeited for violation by the operator
30 of its permit, any of the provisions of this act or for noncompliance with any
31 rule, regulation or order promulgated thereunder.

32 (b) The Department shall notify the operator in writing of the bond
33 forfeiture and the operator shall be given an opportunity for a hearing as
34 provided in this Act.

35

1 SECTION 17. Forfeitures and fees.

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

8 (b) All fees and any monies collected as reimbursement for expenses,
9 costs and damages to the State under the provisions of this Act shall be
10 deposited in the general revenue fund of the Department and shall be used to
11 defray the administrative and enforcement costs of this Act.

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

14

15 SECTION 18. Registration of existing open-cut mines.

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

18

19 SECTION 19. It shall be unlawful for any person to:

20 (a) Violate any provision of this act or any rule, regulation or order
21 of the Commission or the Department issued pursuant to this Act; or

22 (b) Engage in open-cut mining without a permit issued pursuant to this
23 Act; or

24 (c) Violate any conditions of a permit or reclamation plan issued
25 pursuant to this Act; or

26 (d) Knowingly make any false statement, representation or certification
27 or knowingly fail to make a statement, representation or certification in any
28 application, plan, record, report or other document filed or required to be
29 maintained under this Act; or

30 (e) Willfully resist, prevent, impede or interfere with the Director or
31 any of his authorized representatives in the performance of duties pursuant to
32 this Act.

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34 SECTION 20. Subchapter 3 of Chapter 57 of Title 15 of the Arkansas Code
35 is hereby repealed.

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SECTION 21. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 22. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 23. If any provision of this Act or its application 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.

/s/Cassady

