

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

A Bill

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:

24
25 SECTION 1. Title. This act may be called the "Arkansas Quarry and
26 Open Pit Mine Blasting Control Act".

27
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
33 mixed for use or shipment, cannot be detonated by means of a number 8 test
34 blasting cap when unconfined;

35 (3) "Contractor" means any person conducting blasting at a quarry or

1 open pit mine other than the owner or operator and its employees;

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

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

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

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

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

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

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

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

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

17 (a) Criminal penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (A) Enjoin or restrain any violation of, or compel compliance
2 with, the provisions of this act and any rules, regulations, or orders issued
3 thereunder. In situations where there is an imminent threat to public or
4 worker safety or to property, the director may seek a temporary restraining
5 order for the cessation of any blasting;

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

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

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

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

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

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

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

31 (3) To certify to official acts;

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

35 (5) To assess civil penalties as provided in section 3 of this

1 act;

2 (6) To issue cease and desist orders, as well as orders
3 directing affirmative measures be taken to comply with this act and any rule
4 or regulation issued thereunder;

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

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

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

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

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

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

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

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

35 (c) In determining whether to order a pre-blast survey or whether to

1 order monitoring and measurement of air blasts and ground vibration, the
2 director may consider the nature of any written complaints made against that
3 owner or operator or contractor or any written complaints about that specific
4 mine location, as well as the number and frequency of such complaints.

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6 *SECTION 5. Exemptions - owners and operators.*

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

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

14 *(1) Mines or quarries which were in existence and operation on*
15 *the effective date of this act, but which change owners or operators after*
16 *the effective date of this act; or*

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

19

20 *SECTION 6. Blasting standards.*

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

25 *(b) Airblasts.*

26 *(1) In blasting operations, airblast shall not exceed the*
27 *maximum limits set forth in the Code of Federal Regulations at 30 C.F.R.*
28 *816.67(b), at the location of any structure, residence, public building,*
29 *school, church, or commercial or institutional building outside the perimeter*
30 *of a mine and owned or leased by a person other than the mine owner or*
31 *operator.*

32 *(2) If necessary to prevent damage, the director may require*
33 *lower maximum allowable airblast levels than those specified in subsection*
34 *(b)(1) of this section for use in the vicinity of a specific blasting*
35 *operation. Such action shall only be taken following consultation with what*

1 expert(s) the director deems appropriate.

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

4 (4) The measuring system shall have an upper-end flat frequency
5 response of at least 200 hertz. The measuring system shall also have a low
6 end frequency response of 2 hertz and be within -3dB at 2 hertz.

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

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

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

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

33 (e) In the event that a pit or quarry is closer than three hundred
34 (300) feet from any public highway, road, or street, no blasting shall be
35 conducted without the prior written approval of the director.

1 Notwithstanding the provisions of this subsection, any quarry or pit in
2 existence on the effective date of this act shall be allowed to continue
3 operations without obtaining the written approval of the director.

4 (f) Prior to the firing of a blast, the owner or operator or
5 contractor shall follow a definite plan of warning signals that can be
6 clearly seen or heard by anyone in the blasting area. The owner or operator
7 shall inform all employees at the operation as to the established procedure.

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

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

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19 SECTION 7. Notice of blasting operations.

20 (a) Any owner or operator and contractor conducting blasting
21 operations in this state on the effective date of this act, shall notify the
22 director of each site or location on which blasting operations are conducted.
23 Such notice shall be filed with the department no later than October 1,
24 1995.

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

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

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

35 (2) Name, address, and telephone number of the operator or

1 contractor performing the blast;

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

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

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

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8 SECTION 8. Record keeping.

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

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

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

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

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

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

24 (6) Type of material blasted;

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

27 (8) Diameter and depth of holes;

28 (9) Types of explosives used;

29 (10) Total weight of explosives used per hole;

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

32 (12) Initiation system;

33 (13) Type and length of stemming;

34 (14) Mats or other protection used;

35 (15) Seismographic and airblast records, if required, which

1 shall include:

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

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

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

7 (D) Name of the person and firm taking the reading;

8 (E) Name of the person and firm analyzing the
9 seismographic record; and

10 (F) The vibration and/or airblast level recorded;

11 (16) Reasons and conditions for each unscheduled blast; and

12 (17) Reasons and conditions for any blast conducted before
13 sunrise or after sunset.

14 (b) The records required by subsection (a) of this section shall be
15 maintained at the mine where the blast was conducted or at the regular
16 business location of the owner or operator. Copies of the records required
17 by subsection (a) of this section shall be maintained by the contractor.

18

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

27

28 SECTION 10. Hearings, orders, and notices.

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

1 the blasting operations of the person charged with the violation.

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

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

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

11

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

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17 SECTION 12. Cooperation with the State Fire Marshall. The Director of
18 the Department of Labor shall consult the State Fire Marshall regarding the
19 adoption of any rules or regulations. The Department of Labor and the State
20 Fire Marshall shall cooperate and coordinate their activities in order to
21 avoid duplication of services.

22

23 SECTION 13. Existing rules and regulations, etc.

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

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

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

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SECTION 14. Injunctive relief. In addition to all other remedies provided by this subchapter, the Attorney General of this state and the prosecuting attorney of a county may apply to the chancery court or the judge in vacation of the county where the quarry or open pit mine is located for an injunction to restrain, prevent, or abate a public nuisance related to the subjects embraced by this subchapter or any violation of any provision of this subchapter or the rules, regulations or orders issued thereunder.

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

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

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

SECTION 18. It is hereby found and determined by the General Assembly that the lack of state standards and regulations regarding blasting operations at quarries threatens the safety and property of Arkansas citizens. 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 July 1, 1995.

/s/Rep. Wallis

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