

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H2/19/01

A Bill

HOUSE BILL 1763

5 By: Representatives Haak, *Scroggin*
6 By: Senators Horn, Faris
7
8

For An Act To Be Entitled

9
10 AN ACT TO AMEND ARKANSAS CODE TITLE 15, CHAPTER 57,
11 SUBCHAPTER 3 TO CHANGE THE MAXIMUM AMOUNT OF CIVIL
12 PENALTY THAT THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL
13 QUALITY CAN ASSESS; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 TO AMEND ARKANSAS CODE TITLE 15, CHAPTER
17 57, SUBCHAPTER 3 TO CHANGE THE MAXIMUM
18 AMOUNT OF CIVIL PENALTY THAT THE
19 ARKANSAS DEPARTMENT OF ENVIRONMENTAL
20 QUALITY CAN ASSESS.
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22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code 15-57-305 is amended to read as follows:

26 15-57-305. Civil and administrative penalties.

27 (a) Civil Penalties. The Arkansas Department of Environmental Quality
28 is authorized to institute a civil action in any court of competent
29 jurisdiction to accomplish any or all of the following:

30 (1) To restrain any violation of or to compel compliance with,
31 the provisions of this subchapter or of any order, rule, regulation, permit,
32 or reclamation plan issued pursuant thereto;

33 (2) To accomplish remedial measures as may be necessary or
34 appropriate to implement or effectuate the purposes and intent of this
35 subchapter, including the reclamation of affected land;

36 (3) To recover all costs, expenses, and damages to the department

1 or any other agency of the state in enforcing the provisions of this
2 subchapter and reclaiming affected land;

3 (4) To assess civil penalties for violations of this subchapter
4 or of any order, rule, regulation, permit, or reclamation plan issued pursuant
5 thereto, in an amount not to exceed five thousand dollars (\$5,000) per day per
6 violation of this subchapter or of any order, rule, regulation, permit, or
7 reclamation plan issued pursuant thereto;

8 (A) One thousand dollars (\$1,000) for the first violation;

9 (B) Two thousand five hundred dollars (\$2,500) for a second
10 separate violation of the same offense within two (2) years; and

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

13 (5) To recover civil penalties assessed pursuant to subsections
14 (b) and (c) of this section; or

15 (6) To forfeit a reclamation bond.

16 (b) Administrative Penalties. (1) Any person who engages in open-cut
17 mining without first securing a permit as required by this subchapter or who
18 fails to reclaim affected lands in accordance with this subchapter or who
19 violates any provision of this or any order, regulation, rule, permit, or
20 reclamation plan issued pursuant thereto, may be assessed an administrative
21 civil penalty by the department not to exceed ~~five hundred dollars (\$500) for~~
22 ~~a first violation and not more than one thousand dollars (\$1,000) for a second~~
23 ~~or subsequent violation.~~

24 (A) One thousand dollars (\$1,000) for the first violation;

25 (B) Two thousand five hundred dollars (\$2,500) for a second
26 separate violation of the same offense within two (2) years; and

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

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

32 (3) The amount of the administrative civil penalty shall be
33 determined in accordance with regulations adopted by the Arkansas Pollution
34 Control and Ecology Commission, including, but not limited to, the
35 ~~department's~~ regulations on civil penalties.

36 (c) All hearings and appeals arising under this subchapter shall be

1 conducted in accordance with the procedures described in §§ 8-4-218 - 8-4-229
2 and in accordance with regulations adopted by the commission, including, but
3 not limited to, the ~~department's~~ regulations on administrative procedures.

4
5 SECTION 2. Arkansas Code 15-57-309 is amended to read as follows:

6 15-57-309. Entry on lands for inspection.

7 The department or its designated representatives may enter upon the lands
8 ~~mined by the operator~~ affected by open-cut mining at all reasonable times for
9 the purpose of determining compliance with the provisions of this subchapter.

10
11 SECTION 3. Arkansas Code 15-57-311(f), pertaining to the application for
12 a permit to engage in open-cut mining, is amended to read as follows:

13 (f) The application for a permit shall be accompanied by a fee as
14 follows:-

15 ~~(1) Fifty dollars (\$50.00) for less than two (2) acres;~~

16 ~~(2) Two hundred fifty dollars (\$250) for two (2) acres or more but~~
17 ~~less than ten (10) acres; and~~

18 ~~(3) Ten dollars (\$10.00) per acre with a five hundred dollar~~
19 ~~(\$500) minimum for ten (10) acres or more~~ of ten dollars (\$10.00) per acre with
20 a two hundred dollar (\$200) minimum.

21
22 SECTION 4. Arkansas Code 15-57-315 is amended to read as follows:

23 15-57-315. Duties of operator.

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

26 (1)(A) All affected land shall be graded to a rolling or terraced
27 topography with adequate drainage. No final slope will be steeper than one (1)
28 vertical to three (3) horizontal. The Arkansas Department of Environmental
29 Quality may approve a steeper final slope where the original contour of the
30 affected land was steeper than the one (1) to three (3) ratio if the operator
31 can assure, to the satisfaction of the department, the integrity of the final
32 contour.

33 (B) The Director of the Arkansas Department of
34 Environmental Quality shall develop regulations which will allow the
35 department the discretion to permit deviations from certain reclamation
36 standards, including final slope steepness requirements within subdivision (1)

1 of this section, because of unique mining situations, provided the deviations
2 are consistent with the declaration of policy in this subchapter;

3 (2) The operator may construct earthen dams where lakes may be
4 formed in accordance with sound engineering practices. If a lake is to be left
5 as a part of the reclamation plan, provisions must be made by the operator to
6 assure that a pH factor of six (6) to nine (9) is maintained. However, where
7 water runoff from outside the affected area into such lake has a pH factor of
8 less than six (6) or greater than nine (9) or in order to allow the lake to
9 more closely match the natural environment, the department, in its discretion,
10 may allow a deviation in pH levels;

11 (3) On all affected land which is to be reforested, the operator
12 shall construct reasonable fire lanes or access roads of at least ten feet
13 (10') in width through the land unless this requirement is waived by the
14 department;

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

30 (5)(A) ~~Open-cut mining operations that remove and do not replace~~
31 ~~the lateral support closer than ten feet (10') plus one and one-half (1.5)~~
32 ~~times the depth of the excavation~~ must maintain an undisturbed buffer zone of
33 fifty (50) feet from any adjacent property line or right-of-way ~~shall not be~~
34 ~~allowed without the consent of any affected property owner or right-of-way~~
35 ~~holder~~ until reclamation begins.

36 (B) ~~As to requirements for replacement of lateral support~~

1 For the department to approve a variance on the fifty-foot buffer zone, there
2 must be an agreement between ~~the department~~, the affected property owner or
3 right-of-way holder, and the operator. Proof of such ~~consent~~ agreement must
4 be provided to the department.

5 (C) ~~Where consolidated material of sufficient hardness or~~
6 ~~ability to resist weathering and inhibit erosion or sloughing exists in the~~
7 ~~high wall, the depth of the excavation may be measured from the natural ground~~
8 ~~surface to the top of the consolidated material.~~ The operator may begin
9 creating the final slope during reclamation at ten (10) feet from the adjacent
10 property line or right-of-way.

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

15 (6) Whenever the exposed face of mined seams that contain acid-
16 forming materials is not covered by water or by permanent water impoundment,
17 the operator who mined the seams shall cover the exposed face of the seams
18 with earth or spoil materials to a depth of not less than three feet (3') upon
19 receiving approval from the department. Alternatively, the department may
20 approve any other course or conduct proposed by the operator which will assure
21 protection of the seams from atmospheric exposure, minimize leaching action,
22 or otherwise conform with water pollution control criteria to prevent
23 formation of acid mine water or discharge mine water;

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

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

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

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

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

36 (8) The department's approval of the operator's reclamation plan

1 may be based upon the advice and technical assistance of the Arkansas Soil and
2 Water Conservation Commission, the Arkansas State Game and Fish Commission,
3 the State Forester, the Arkansas Geological Commission, and other agencies or
4 persons having experience in foresting and reclaiming open-cut mined lands
5 with forest or agronomic or horticultural species, based upon scientific
6 knowledge from research into reclaiming and utilizing forest and agronomic
7 species on open-cut mined lands. The operator shall designate which parts of
8 the affected land shall be reclaimed for forest, pasture, crop, horticulture,
9 homesite, recreational, industrial, or other use, including food, shelter, or
10 ground cover for wildlife, and shall show each use by appropriate designation
11 on the reclamation map;

12 (9) All reclamation shall be completed by the operator in
13 compliance with its detailed plan of reclamation. Where natural weathering and
14 leaching of affected land fails to support plant growth at the end of the
15 reclamation period as required under § 15-57-311(b), the department, at the
16 request of the operator, may approve a permit extension from year-to-year from
17 the termination of the permit on the permitted area. In the event that the
18 operator does not comply with its schedule of reclamation or extensions
19 granted within a reasonable period of time, to be determined by the
20 department, the bond or substituted security of affected land not
21 satisfactorily reclaimed shall be forfeited;

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

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

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

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

36 (14) Upon approval from the department, stockpiles of processed

1 materials may be left without being reclaimed if there is a likelihood that
2 there will be a market for the material in the future and that there will be no
3 form of pollution from the stockpiles remaining on or leaving the property.

4 */s/ Haak, et al.*

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