

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 HOUSE BILL 1781

By: McCall

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6 AS INTRODUCED

7 An Act relating to mines and mining; amending 45 O.S.
8 2011, Section 724, which relates to mining operation
9 permits; replacing certain hearings with formal
10 hearings; extending deadline certain protests must be
11 received; requiring certain hearings be in accordance
12 with the Administrative Procedure Act; authorizing
applicant to file certain amendments; requiring
certain publications and hearings; updating
references; modifying what persons may request
hearing; requiring an informal conference under
certain circumstances; and declaring an emergency.

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15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 45 O.S. 2011, Section 724, is
17 amended to read as follows:

18 Section 724. A. It shall be unlawful for any operator to
19 engage in any mining operations in this state without first
20 obtaining a permit or a Limited Use Permit from the Department of
21 Mines for each separate mining operation. The Department shall
22 determine what constitutes a separate mining operation by rules
23 promulgated under the Mining Lands Reclamation Act.
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1 B. Any operator desiring to engage in limited mining activity
2 may apply for a Limited Use Permit for those mining operations not
3 eligible for a surface mining permit. Application for such permit
4 shall be made upon forms furnished by the Department. The form
5 shall contain a description of the tract or tracts of land and shall
6 include the section, township, range and county in which the land is
7 located. A map shall be attached to the application which
8 accurately outlines and locates the tract of land. A statement that
9 the applicant has the right and power by legal estate owned to mine
10 the land so described shall be included with the application. In
11 addition, the following conditions and requirements shall apply to
12 Limited Use Permits:

- 13 1. The maximum acreage shall be restricted to two (2) acres;
- 14 2. The term of a Limited Use Permit shall not exceed twelve
15 (12) months from the date of issuance;
- 16 3. A Limited Use Permit shall not carry a right of successive
17 renewal;
- 18 4. A Limited Use Permit site must be reclaimed as required by
19 Section 725 of this title within six (6) months following the
20 expiration of the permit term;
- 21 5. A three-thousand-five-hundred-dollar reclamation bond must
22 be filed with the Department prior to issuance of the permit;

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1 6. Failure to reclaim the site disturbance within the permitted
2 time frame or revocation of the Limited Use Permit will be cause for
3 bond forfeiture or other action as may be ordered by the Department;

4 7. The use of processing equipment shall not be approved for a
5 Limited Use Permit;

6 8. The use of explosives shall not be approved under a Limited
7 Use Permit;

8 9. A processing fee of One Hundred Dollars (\$100.00) shall
9 accompany the application for a Limited Use Permit; and

10 10. Mining production shall be reported and paid as required by
11 Section 931 of this title.

12 If the above listed conditions and requirements are met, the
13 Department may issue a Limited Use Permit which shall not be subject
14 to the notice and publication requirements as otherwise required by
15 this section.

16 C. 1. Any operator desiring to engage in surface mining shall
17 make written application to the Department for a permit.
18 Application for such permit shall be made upon a form furnished by
19 the Department. The form shall contain a description of the tract
20 or tracts of land and the estimated number of acres to be affected
21 by surface mining by the operator. The description shall include
22 the section, township, range and county in which the land is located
23 and shall otherwise describe the land with sufficient certainty so
24 that it may be located and distinguished from other lands.

1 2. Transmission lines shall be plotted on a location map
2 submitted with the application. A statement that the operator has
3 the right and power by legal estate owned to mine by surface mining
4 the land so described shall be included with the application.

5 D. 1. Any operator desiring to engage in underground mining
6 shall make written application to the Department for a permit.
7 Application for such permit shall be made upon a form furnished by
8 the Department. The form shall contain a description of the tract
9 or tracts of land to be used as refuse disposal areas. The
10 description shall include the section, township, range and county in
11 which the land is located and shall otherwise describe the land with
12 sufficient certainty so that it may be located and distinguished
13 from other lands.

14 2. A statement that the applicant has the right and power by
15 legal estate owned to use the land so described as a refuse disposal
16 area shall be included with the application.

17 E. Each application for a permit under subsections C and D of
18 this section shall be accompanied by a plan of reclamation of the
19 affected land that meets the requirements of the Mining Lands
20 Reclamation Act. The application shall set forth the proposed use
21 to be made of the affected land, the grading to be accomplished, the
22 type of revegetation, and shall include the approximate time of
23 grading and initial revegetation effort.

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1 F. Each application for a permit under subsections C and D of
2 this section shall be accompanied by the bond or security meeting
3 the requirements of Section 728 of this title, or proof that such
4 bond or security is still in effect, and a fee of One Hundred
5 Seventy-five Dollars (\$175.00) for each permit year, payable at the
6 rate of One Hundred Seventy-five Dollars (\$175.00) per year on the
7 anniversary date of the year in which the permit or permit renewal
8 was issued. All application fees shall be submitted to the State
9 Treasurer, who shall deposit them in the Department of Mines
10 Revolving Fund.

11 G. 1. Upon the receipt of such application, bond or security
12 and fee due from the operator, the Department may issue a permit to
13 the applicant which shall entitle the applicant to engage in mining
14 on the land therein described in accordance with the rules
15 promulgated by the Department, for the life expectancy of the
16 operation unless the operator is in violation of any state statute
17 or rule of the Department in which case the Department shall take
18 appropriate action against the operator.

19 2. All applications for renewal of existing permits shall be
20 filed prior to the expiration of the existing permit in accordance
21 with the rules promulgated by the Department.

22 3. No permit shall be issued except upon proper application and
23 public formal hearing, if requested.

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1 H. 1. a. Upon filing the application with the Department, the
2 applicant shall place an advertisement in a newspaper
3 of general circulation in the vicinity of the mining
4 operation, containing such information as is required
5 by the Department, at least once a week for four (4)
6 consecutive weeks.

7 b. The advertisement shall contain, at a minimum, the
8 following:

9 (1) the name and business address of the applicant,

10 (2) a description which clearly shows or describes
11 the precise location and boundaries of the
12 proposed permit area and is sufficient to enable
13 local residents to readily identify the proposed
14 permit area. It may include towns, bodies of
15 water, local landmarks, and any other information
16 which would identify the location,

17 (3) the location where a copy of the application is
18 available for public inspection,

19 (4) the name and address of the Department where
20 written comments, objections, or requests for
21 informal conferences on the application may be
22 submitted pursuant to subsection P of this
23 section,
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- 1 (5) if an applicant seeks a permit to mine which
2 includes relocation or closing of a public road,
3 a copy of the county resolution pertaining to the
4 affected county road, and
5 (6) such other information as is required by the
6 Department.

7 2. Any property owner or resident of an occupied dwelling who
8 may be adversely affected located within one (1) mile of the mining
9 operation shall have the right to protest the issuance of a permit
10 and request a ~~public~~ formal hearing.

11 3. The Department shall notify the surface owners of any formal
12 hearings in connection with applications or permits in the same
13 manner as the operator is notified.

14 4. Such protests must be received by the Department within
15 ~~fourteen (14)~~ thirty (30) days after the date of publication of the
16 newspaper advertisement. If a ~~public~~ formal hearing is requested,
17 the Department shall then hold ~~an informal~~ a formal hearing in ~~the~~
18 ~~vicinity of the proposed mining~~ accordance with the Administrative
19 Procedures Act.

20 5. Upon completion of findings after the formal hearing, the
21 Department shall determine whether to issue or deny the permit, and
22 shall notify all parties of its decision.
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1 6. Any decision regarding the issuance of a permit under this
2 section shall be appealable when entered, as provided in the
3 Administrative Procedures Act.

4 7. An applicant desiring to have such applicant's original
5 permit application amended may file an amendment to the application
6 with the Department prior to any decision by the Department
7 regarding the issuance of a permit. The Department shall not issue
8 a decision regarding the issuance of a permit if an applicant has
9 filed an amendment pursuant to this paragraph.

10 a. Upon filing the amendment, the applicant shall place
11 an advertisement in a newspaper of general circulation
12 in the vicinity of the mining operation containing
13 such information as is required by the Department at
14 least once a week for four (4) consecutive weeks. The
15 advertisement shall contain, at a minimum, a
16 description of the amendment and the changes from the
17 original application.

18 b. Any property owner or resident of an occupied dwelling
19 who may be adversely affected located within one (1)
20 mile of the mining operation shall have the right to
21 protest the amendment by requesting, to the
22 Department, a formal hearing thirty (30) days after
23 the date of publication of the newspaper advertisement
24 that describes the amendment.

1 c. The Department shall notify the surface owners of any
2 formal hearings in connection with amendments to the
3 application in the same manner as the operator is
4 notified.

5 d. If a formal hearing is requested, the Department shall
6 then hold a formal hearing on the amendment in
7 accordance with the Administrative Procedures Act.
8 Upon completion of findings after the formal hearing
9 on the amendment, the Department shall determine
10 whether to issue or deny an amendment to the original
11 application and shall notify all parties of its
12 decision.

13 I. Each application for a new operation shall contain, where
14 applicable, a list of all other licenses and permits needed by the
15 applicant to conduct the proposed mining operation. This list shall
16 identify each license and permit by:

17 1. Type of permit or license;

18 2. Name and address of issuing authority;

19 3. Identification number or a copy of the application for
20 permits or licenses or, if issued, a copy of the permit or license;
21 and

22 4. If a decision has been made, the date of approval or
23 disapproval by each issuing authority.

1 An existing operation which does not have on file a list of the
2 applicable licenses or permits with the Department on ~~the date of~~
3 ~~enactment of this act~~ June 5, 1998, shall not be out of compliance
4 with the provisions of this section. Any renewal of an existing
5 permit or expansion or amendment to an existing operation upon time
6 of application shall submit a copy of all approved licenses and
7 permits issued by other agencies or jurisdictions.

8 Identifications of all permits and licenses shall include local
9 government agencies with jurisdiction over or an interest in the
10 area of the proposed mining operation including, but not limited to,
11 planning agencies, water and sewer authorities; and all state and
12 federal government agencies with authority to issue permits and
13 licenses applicable to the proposed mining operation, including all
14 state environmental agencies, U.S. Army Corps of Engineers, U.S.
15 Department of Agriculture Natural Resources Conservation Service
16 district office, and federal fish and wildlife agencies.

17 J. An operator desiring to have such operator's permit amended
18 to cover additional land may file an amended application with the
19 Department. Upon receipt of the amended application, and such
20 additional bond as may be required under the provisions of the
21 Mining Lands Reclamation Act, the Department shall issue an
22 amendment to the original permit covering the additional land
23 described in the amended application, without the payment of any
24 additional fee.

1 K. An operator may withdraw any land covered by a permit,
2 deleting affected land therefrom, by notifying the Department, in
3 which case the penalty of the bond or security filed by such
4 operator pursuant to the provisions of the Mining Lands Reclamation
5 Act shall be reduced proportionately.

6 L. Permits issued to an operator may be transferable to another
7 operator, provided the new operator can demonstrate to the
8 Department, prior to the transfer of ownership, that conditions and
9 obligations required for the permit will be met and the new operator
10 has submitted a performance bond or other guarantee, or has obtained
11 the bond coverage of the original permittee.

12 M. The perimeter of the permit area shall be clearly marked by
13 durable and recognizable markers or by other means approved by the
14 Department.

15 N. The Department shall determine the blasting distance to
16 transmission lines by rule.

17 O. 1. If any mining operations where blasting is required
18 occur within the limits of a municipality with a population in
19 excess of three hundred thousand (300,000) according to the latest
20 Federal Decennial Census or within the limits of a municipality
21 within a county with a population in excess of three hundred
22 thousand (300,000) according to the latest Federal Decennial Census,
23 the application for a permit pursuant to subsections C and D of this
24 section shall be accompanied by proof that the operator is in full

1 compliance with all applicable regulations of the municipality.
2 Certified copies of any required municipal permits and any other
3 required written municipal approvals shall be attached to the
4 application when submitted to the Department. No mining permit
5 shall be issued by the Department unless the applicant first
6 complies with the requirements of this subsection. A municipality
7 is not required to reconsider requests denied by the municipality
8 related to the same site unless the municipality determines there
9 has been a material change in the application.

10 2. The provisions of paragraph 1 of this subsection shall not
11 apply to existing permitted operations, revisions or amendments
12 thereto, or any application on file with the Department prior to May
13 25, 2005. In addition, the provisions of paragraph 1 of this
14 subsection shall not apply to any future operation on property
15 directly adjacent to property on which a permitted operation is
16 located, provided that the operation is permitted and the adjacent
17 property is owned or leased by the operator on ~~the effective date of~~
18 ~~this act~~ May 25, 2005. For purposes of this subsection, properties
19 separated by a public road shall be considered to be adjacent.

20 P. Within a reasonable time, as established by the Department,
21 written comments or objections on permit or bond release
22 applications may be submitted to the Department by public entities
23 including but not limited to the local soil conservation district,
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1 with respect to the effects of the proposed mining operations on the
2 environment.

3 Q. Any ~~person having an interest in or who is or may be~~
4 adversely party affected by the decision on a permit ~~or bond release~~
5 ~~application,~~ or any federal, state or local agency, with standing
6 shall have the right to request in writing that the Department hold
7 ~~an informal conference~~ a formal hearing on the application. The
8 Department shall hold the ~~informal conference~~ formal hearing within
9 a reasonable time following the receipt of the written request ~~at a~~
10 ~~location in the vicinity of the proposed or active surface mining or~~
11 ~~reclamation operation.~~ All formal hearings shall comply with the
12 requirements of the Administrative Procedures Act.

13 R. An informal conference shall be held upon agreement of the
14 applicant and a property owner or resident of an occupied dwelling
15 who is or may be adversely affected by the proposed or active
16 surface mining operation. The informal conference shall be held in
17 the vicinity of the proposed or active surface mining or reclamation
18 operation. A property owner or resident shall retain the right to
19 request a formal hearing as provided for in this section even if an
20 informal conference is held pursuant to this subsection. If an
21 informal conference is requested the thirty-day limit on receipt of
22 a protest as provided for in paragraph 4 of subsection H of this
23 section shall be stayed until after the informal conference is held,
24 at which point a request for a formal hearing shall be received by

1 the Department within thirty (30) days after the date of the
2 informal conference.

3 SECTION 2. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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