

TITLE 460: OKLAHOMA DEPARTMENT OF MINES
CHAPTER 10: NON-COAL RULES AND REGULATIONS

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CHAPTER 10. NON-COAL RULES AND REGULATIONS

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[Authority: 45 O.S., §§ 1.5 and 732 et seq.; 75 O.S., §§ 250 et seq.]
 [Source: Codified 12-31-91]

SUBCHAPTER 1. GENERAL PROVISIONS

Section	
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460:10-1-1. Purpose
 The regulations of this Chapter establish the procedure through which the Chief Mine Inspector of the State of Oklahoma will implement Title 45 O.S. (1981), Section 1 et seq. (excepting 45 O.S. 1981, Sec. 742.1 et seq. The Coal Reclamation Act of 1979).

460:10-1-2. Objective
 The objective of this Chapter is to fulfill the purposes of 45 O.S. (1981), Section 1 et seq. in a manner which is consistent with the language of the Title, its legislative history, other applicable laws, and judicial interpretations.

460:10-1-3. Authority
 The Chief Mine Inspector is authorized to administer the requirements of 45 O.S. (1981), Section 732, except authority which may be retained by other state agencies to enforce State Laws and Regulations which are not inconsistent with 45 O.S. (1981), Section 721 et seq., and the regulations of this Chapter.

460:10-1-4. Responsibility
 The Department is responsible for the regulation of non-coal surface mining and reclamation operations.

460:10-1-5. Definitions
 The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Affected land" means the area of land from which the overburden shall have been removed, or upon which overburden or refuse has deposited or both.

"Box cut" means the first open cut in strip mining which results in the placing of overburden on unmined land adjacent to the initial pit and outside the area to be mined.

"Consolidated material" means material of sufficient hardness or ability to resist weathering and outside the area to be mined.

"Department" means the office of the Chief Mine Inspector, herein called the Department of Mines and Mining, or such department, bureau, or commission as may be lawfully succeed to the powers and duties of such department.

"Director" means the Chief Mine Inspector of the State of Oklahoma or such officer, bureau or commission as may lawfully succeed to the powers and duties of such department.

"Limited use permit" means a restricted, non-coal surface mining and reclamation permit limited to two (2) acres and limited to a one (1) year term.

"Mine" means an underground or surface excavation and development with or without shafts, slopes, drifts or tunnels for the extraction of minerals with hoisting or haulage equipment and appliances for the extraction thereof, and shall embrace any and all of the land or property of the plant, and the surface and underground, that contribute directly or indirectly to the mining properties, concentration or handling of minerals.

"Minerals" means asphalt, clay, copper, granite, gravel, gypsum, lead, marble, salt, sand, shale, stone, tripoli, volcanic ash and zinc, or any other substance commonly recognized as a mineral, and includes ores or rock containing any such substances, but excludes oil, gas, and any other mineral found naturally in a liquid or gaseous state.

"Mining" means the extraction of minerals from natural deposits by any method or process.

"Operator" means any person, partnership, firm or corporation engaged in and controlling a mining operation.

"Overburden" means all of the earth and other materials which lie above natural deposits of minerals, and also means such earth and other materials disturbed from their natural state in the process of surface mining.

"Peak" means a projecting point of overburden created in the surface mining process.

"Pit" means a tract of land from which overburden or minerals have been or are being removed in the process of surface mining.

"Reclamation" means conditioning affected land to make it suitable for any uses or purposes consistent with those enumerated in 45 O.S. Section 725.

"Refuse" means all waste material directly connected with the production, cleaning, or preparation of minerals which have been mined by either underground or surface mining method.

"Ridge" means a lengthening elevation of overburden created in the surface mining process.

"Strip mining" means those mining operations carried out by removing the overburden lying above natural deposits of minerals, and mining directly from such natural deposits thereby exposed, but excludes auger mining, quarrying, dredging, pumping or the use of hydraulic methods.

"Surface mining" means those mining operations carried out on the surface, including strip mining, auger mining, quarrying, dredging, pumping, or the use of hydraulic methods. Surface mining shall not include excavation or removal of shale, sand, gravel, clay, rock, or other materials in remote areas by an owner or holder of a possessory interest in land for the primary purpose of construction or maintenance of access roads to or on such landowner's property. Surface

mining shall not include excavation or grading conducted for forming on-site road construction or other on-site construction, or the extraction of minerals other than anthracite and bituminous coal by a landowner for noncommercial use from land owned or leased the landowner; nor mining for commercial purpose conducted under a limited use permit issued by the Department; nor the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purpose, so long as such work is performed under a bond, contract and specifications which substantially provide for and require reclamation of the area affected; nor to the handling, processing or storage of slag on the premises of a manufacturer as part of the manufacturing process. Surface mining shall not include the surface mining of coal or the surface effects of underground coal mining.

"Ton" means 2000 pounds avoirdupois (.90718 metric ton).

"Underground mining" means those mining operations carried out beneath the surface by means of shafts, slopes, tunnels, or other openings leading to the mineral being mined and the extraction of the mineral through such shafts, slopes, tunnels or their openings.

[Source: Amended at 26 Ok Reg 3002, eff 8-27-09]

460:10-1-6. Applicability

Chapter 10 applies to all non-coal surface mining and reclamation operations, except:

- (1) The extraction of non-coal minerals by a landowner for his or her own non-commercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of non-coal minerals by one unit of an integrated company or other business or nonprofit entity which uses an integrated company or other business or nonprofit entity which uses the Non-Coal minerals in its own manufacturing or power plants;
- (2) The extraction of non-coal minerals as an incidental part of Federal, State, or local government-financed highway or other construction in accordance with Subchapter 5 of this Chapter;
- (3) The extraction of non-coal minerals incidental to the extraction of coal;
- (4) The extraction of non-coal minerals on Indian lands.

460:10-1-7. Petitions to initiate rulemaking

(a) Any interested person may petition the Director of the Department of Mines to initiate a proceeding for the issuance, amendment, or repeal of any regulation under this Chapter. The petition shall be submitted to the, Director of the Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.

(b) The petition shall be a concise statement of the facts, technical justification, and law which require issuance, amendments, or repeal of a regulation under this Chapter and shall indicate whether the petitioner desires a public hearing.

(c) Upon receipt of the petition, the Director shall determine if the petition sets forth facts, technical justification, and law

which may provide a reasonable basis for issuance, amendment, or repeal of a regulation. Facts, technical justification, or law previously considered in a petition or rule-making on the same issue shall not provide a reasonable basis. If the Director determines that the petition has a reasonable basis, a notice may be published in the Daily Oklahoman and or the Tulsa World seeking comments from the public on the proposed change. The Department may hold a public hearing, may conduct an investigation, or take other action to determine whether the petition should be granted.

(d) The Director's decision shall constitute the final decision for the Department.

(1) If the petition is granted, the Director shall initiate a rulemaking proceeding.

(2) If the petition is denied, the Department shall notify the petitioner in writing.

[Source: Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-1-8. Availability of records

Records required by this Chapter to be made available to the public shall be retained at the offices of the Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.

[Source: Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-1-9. Computation of time

(a) Except as otherwise provided, computation of time is based on calendar days.

(b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday or legal holiday on which the Department is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(c) Intermediate Saturday, Sunday and legal holidays are excluded from the computation when the period or prescribed time is seven days or less.

SUBCHAPTER 3. REGULATORY PROGRAM

Section

460:10-3-1.	Purpose
460:10-3-2.	Objective
460:10-3-3.	Authority
460:10-3-4.	Responsibility
460:10-3-5.	Definitions
460:10-3-6.	Applicability

460:10-3-1. Purpose

This Subchapter provides general introductory material for the regulatory program required by Title 45 of the Oklahoma Statutes.

460:10-3-2. Objective

The regulations in this Subchapter give a general overview of the regulatory program to be implemented by the Department of Mines, the applicability of that program to Non-Coal surface mining and reclamation operations, and the definitions that apply to the regulation of non-coal surface mining and reclamation operations.

460:10-3-3. Authority

The Director of the Department of Mines is required by Oklahoma Statutes Title 45 to promulgate rules and regulations.

[Source: Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-3-4. Responsibility

The State Department of Mines shall assume primary responsibility for the regulation of non-coal surface mining and reclamation operations during the regulatory program meeting all applicable requirements of 45 O.S. (1981), Section 721 et seq. and this Chapter. The State Department of Mines has responsibility for review and decisions on permits and bonding for Non-Coal surface mining and reclamation operations for compliance with 45 O.S. (1981), Section 721 et seq., this Chapter, permits, approvals and for enforcement of the State program.

460:10-3-5. Definitions

The following words and terms when used, in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

"**Acid water**" means water with a ph of less than 7.0 and in which total acidity exceeds total alkalinity.

"**Adjacent area**" means land located outside the affected area or permit area, depending on the context in which adjacent area is used, where air, surface or ground water, fish, wildlife, vegetation, or other resources protected by this Title may be adversely impacted by surface mining and reclamation operations.

"**Affected area**" means with respect to surface mining activities, any land or water upon which those activities are conducted or located. With respect to Underground mining activities, affected area means:

(A) any water or surface land upon or in which those activities are conducted or located; and

(B) land or water which is located above underground mine workings.

"**Agricultural use**" means that use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and cropping, cultivation, and harvesting of plants.

"**Applicant**" means any person seeking a permit from the Department of Mines to conduct Non-Coal surface mining and reclamation operations pursuant to the regulatory program.

"**Aquifer**" means a zone, stratum or group of strata that can store and transmit water in sufficient quantities for a specific use.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track or roller loads from heavy equipment.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, underground development waste, or non-coal waste is placed by Non-Coal surface mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by these regulations is released.

"Diversion" means a channel, embankment, or other man made structure constructed to divert water from one area to another.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

"Existing structure" means a structure or facility used in connection with or to facilitate non-coal surface mining and reclamation operations for which construction begins prior to the approval of the Oklahoma program.

"Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or non-coal surface mining and reclamation operations or both. During non-coal surface mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations, and other activities in which material is either removed, stored, transported or redistributed.

"Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

"Highwall" means the face of exposed overburden and mineral in an open cut of a surface mining activity or for entry to underground mining activities.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and

returns to the atmosphere as vapor by means of evaporation and transpiration.

"Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

"Intermittent stream" means:

- (A) A stream or reach of a stream that drains a watershed of at least one square mile, or
- (B) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

"Noxious plants" means species that have been included on official State lists of noxious plants for Oklahoma.

"Operator" means any person, partnership, firm, or corporation engaged in non-coal minerals mining who removes or intends to remove more than 500 tons of non-coal minerals from the earth within 12 consecutive calendar months in any one location.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated to unconsolidated, that overlies a Non-Coal mineral deposit, excluding topsoil.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as result of ground-water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

"Performance bond" means a surety bond, collateral bond or self-bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of 45 O.S. (1981), Section 721 et seq., Chapter 10, the State program and the requirements of the permit and reclamation plan.

"Permanent diversion" means a diversion remaining after non-coal surface mining and reclamation operations are completed which has been approved for retention by the Department of Mines and other appropriate State and Federal agencies.

"Permit" means a permit to conduct non-coal mining and reclamation operations issued by the State Department of Mines.

"Permit areas" means the area of land and water within the boundaries of the permit which are designated on the

permit application maps, as approved by the Department of Mines. This area shall include, at a minimum, all areas which are or will be affected by the Non-Coal surface mining and reclamation operations during the term of the permit.

"Permittee" means an operator holding or required by Chapter 10 or this Subchapter to hold a permit to conduct non-coal mining and reclamation operations issued by the State Department of Mines.

"Reclamation" means those actions taken to restore mined land as required by this Chapter to postmining land use approved by the Department.

"Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (E.G., 1v:5h). It may also be expressed as a percent or in degrees.

"Spoil" means overburden that has been removed during non-coal surface mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"Steep slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the Department after consideration of soil, climate and other characteristics of a region or State.

"Temporary diversion" means a diversion of a stream or overland flow which is used during non-coal mineral exploration of non-coal surface mining and reclamation operations and not approved by the Department to remain after reclamation as part of the approved postmining land use.

"Topsoil" means the "A" soil horizon layer of the three major soil horizons.

"Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or micro-biological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by non-coal exploration or non-coal surface mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure or impair biota commonly present in the area that might be exposed to it.

"Underground mining activities" means a combination of-

- (A) Surface operations incident to underground extraction of non-coal minerals such as construction, use, maintenance and reclamation of roads, above ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilation ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed;
- (B) Underground operations such as underground construction, operation, and reclamation of shafts,

adits, underground support facilities, in situ processing, and underground mining, hauling, storage and blasting.

460:10-3-6. Applicability

Chapter 10 requirements shall be effective and shall apply to each non-coal surface mining and reclamation operation which is required to obtain a permit under 45 O.S. (1981), Section 721 et seq., and this Chapter, on the earliest date upon which the Title 45 of the Oklahoma Statutes and This Chapter requires a permit to be obtained.

SUBCHAPTER 5. EXEMPTION FOR NON-COAL MINERALS EXTRACTION INCIDENTAL TO GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION

Section

460:10-5-1.	Purpose
460:10-5-2.	Responsibility
460:10-5-3.	Definitions
460:10-5-4.	Applicability
460:10-5-5.	Information to be maintained on site

460:10-5-1. Purpose

(a) This Subchapter establishes the procedures for determining those non-coal surface mining and reclamation operations which are exempt from 45 O.S. (1981), Section 721 et seq., and this Chapter because the extraction of non-coal minerals is an incidental part of Federal, State, or local government-financed highway or other construction.

(b) This Subchapter exempts the extraction of non-coal minerals which is incidental to government-financed construction from the requirements of 45 O.S. (1981), Section 721 et seq., and this Chapter, if that extraction meets specified criteria which ensures that the construction is government-financed and that the extraction of non-coal Minerals is incidental to it.

460:10-5-2. Responsibility

(a) The Department of Mines is responsible for enforcing the requirements of this Subchapter.

(b) Any person conducting non-coal minerals extraction as an incidental part of government financed construction is responsible for possessing, on the site of the extraction operations, the documentation required by Section 460:10-5-5.

460:10-5-3. Definitions

The following works or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Extraction of non-coal minerals as an incidental part" means the extraction of non-minerals which is necessary to enable the construction to be accomplished. For purposes of

this Subchapter only, those non-coal minerals extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of non-coal minerals outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of Title 45 O.S. Section 723(f) and this Chapter.

"**Government-financing agency**" means a Federal, State, County, Municipal or local unit of government, or a department, bureau, agency of office of the unit which, directly or through another unit of government, finances construction.

"**Government-finances construction**" means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

460:10-5-4. Applicability

(a) Non-coal minerals extraction which is an incidental part of government-financed construction is exempt from 45 O.S. (1981), Section 721 et seq., and this Chapter.

(b) Any person who conducts or intends to conduct non-coal minerals extraction which does not satisfy (a) of this Section shall not proceed until a permit has been obtained from the Department of Mines under the State program.

460:10-5-5. Information to be maintained on site

Any person extracting non-coal minerals incident to government-financed highway or other construction who extracts 500 or more tons of non-coal minerals or affects more than two (2) acres shall maintain, on the site of the extraction operation and available for inspection, documents which show:

- (1) A description of the construction project;
- (2) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and
- (3) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

SUBCHAPTER 7. LEAD AND ZINC MINING SPECIAL ENVIRONMENTAL STANDARDS [RESERVED]

SUBCHAPTER 9. GENERAL REQUIREMENTS FOR PERMITS AND APPLICATIONS

Section

460:10-9-1.	Purpose
460:10-9-2.	Objectives
460:10-9-3.	General requirements for permits-operators
460:10-9-4.	Compliance with permits
460:10-9-5.	Permit application filing deadlines
460:10-9-6.	Permit applications - maps
460:10-9-7.	Permit fees
460:10-9-8.	Verification of application

460:10-9-1. Purpose

This Subchapter establishes minimum general criteria for permits and permit applications requirements which are applicable to obtaining the Department's approval of permit applications.

460:10-9-2. Objectives

The objectives of this Subchapter are to ensure that all non-coal surface mining and reclamation operations are conducted only under permits issued in accordance with the requirements of the State regulatory program, that all persons make timely application for permits, to provide general requirements on permit fee systems, and to provide the general content requirements of permit applications.

460:10-9-3. General requirements for permits-operators

(a) **General requirements.** No person shall engage in or carry out on non-Federal or non-Indian lands within the State any non-coal surface mining and reclamation operations unless that person has first obtained a valid permit issued by the Department.

(b) **Written applications.** Any operator desiring to engage in mining shall make written application to the Department for a permit. Application for such permit shall be made upon forms furnished by the Department.

[Source: Amended at 11 Ok Reg 917, eff 12-23-93 (emergency); Amended at 11 Ok Reg 4219, eff 7-25-94]

460:10-9-4. Compliance with permits

All persons shall conduct non-coal surface mining and reclamation operations under permits issued pursuant to this Chapter and shall comply with the terms and conditions of the permit and the requirements of 45 O.S. Section 721, et seq., and this Chapter, along with all other applicable State, Federal, or local permitting and licensing requirements.

[Source: Amended at 18 Ok Reg 3199, eff 7-26-01]

460:10-9-5. Permit application filing deadlines

(a) **General.** Each person who conducts or expects to conduct new non-coal surface mining and reclamation operations

shall file a complete application for a permit for those operations within a time established by the Department as sufficient to all for review of the application.

(b) **Renewal of valid permits.** An application for renewal of a permit shall be filed with the Department before the expiration of the permit involved.

(c) **Revision of permits.** Any application for revision of a permit shall be filed with the Department before the date on which the permittee expects to revise non-coal surface mining or reclamation operations. The Department shall determine the time required for review of the application and public participation in the process of review.

[Source: Amended at 20 Ok Reg 2816, eff 8-26-03]

460:10-9-6. Permit applications - maps

Mine maps should be accurate drawings, aerial photographs or enlarged topographic maps of the entire mine area and of a scale sufficient to clearly illustrate the following:

- (1) Outline of the area to be permitted detailing the affected areas, incremental mining areas, planned future reserves if requested by the applicant, buffer zones, easements, and rights-of-ways, for the number of years the permit is requested.
- (2) Outline of stockpile areas.
- (3) Outline of overburden disposal areas.
- (4) Outline of settling ponds.
- (5) Location of plantsites or processing areas.
- (6) Location of roads both existing and planned on-site.
- (7) Location of planned and existing on-site buildings.
- (8) Location and name of streams or lakes.
- (9) Boundary of 100 year floodplain, where appropriate.

[Source: Amended at 11 Ok Reg 917, eff 12-23-93 (emergency); Amended at 11 Ok Reg 4219, eff 7-25-94]

460:10-9-7. Permit fees

Each application for a non-coal surface mining and reclamation permit pursuant to the Department shall be accompanied by a fee set by State statute.

460:10-9-8. Verification of application

Each application for permits shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

SUBCHAPTER 10. LIMITED USE SURFACE MINING PERMIT APPLICATIONS AND BONDING REQUIREMENTS

Section

- 460:10-10-1. Purpose
- 460:10-10-2. Objectives

- 460:10-10-3. Responsibility
- 460:10-10-4. Content of limited use permit applications
- 460:10-10-5. Bonding requirements
- 460:10-10-6. Limited use permit conditions and restrictions
- 460:10-10-7. Administrative review
- 460:10-10-8. Judicial review under Chapter 10. Non-Coal Mining of limited use permits

[Source: Codified 8-27-09]

460:10-10-1. Purpose

This Subchapter establishes the procedures through which the Department will implement SB 1697, which allows limited use permits by establishing the minimum general requirements for the application process, the issuance process and the regulation and enforcement process of a limited use permit.

[Source: Added at 26 Ok Reg 3002, eff 8-27-09]

460:10-10-2. Objectives

The objective of this Subchapter is to ensure that each application for a limited use permit contains all relevant information.

[Source: Added at 26 Ok Reg 3002, eff 8-27-09]

460:10-10-3. Responsibility

The Department of Mines has the responsibility to approve or disapprove Limited use permits. The Department shall assure implementation of the requirements of this Subchapter. The permit applicant shall provide all information in a complete permit application for review by the Department in accordance with this Subchapter.

[Source: Added at 26 Ok Reg 3002, eff 8-27-09]

460:10-10-4. Content of limited use permit applications

Each application for a limited use permit shall contain the following information:

- (1) The name and addresses of the limited use permit applicant, including telephone number;
- (2) The nature of the business entity, including but not limited to, sole proprietor, corporation, limited liability company, or general partnership;
- (3) A description of the tract or tracts of land, including the section, township, range and county in which the land is located;
- (4) A detailed map which accurately outlines and locates the tract or tracts to be mined utilizing a measurable scale, such as but not limited to GPS or survey maps which must accurately represent the requested area;
- (5) A statement that the applicant has the right and power by legal estate owned to mine the land so described in the application;
- (6) A reclamation plan which complies with 45.O.S. Section 725.

[Source: Added at 26 Ok Reg 3002, eff 8-27-09]

460:10-10-5. Bonding requirements

- (a) No limited use permit shall be issued until the permit applicant submits a reclamation bond to the Department in an amount of three thousand five hundred dollars (\$3,500,00).
- (b) A bond submitted to the Department for a limited use permit must comply with Subchapter 21, and Subchapter 25 of this Chapter, unless limited use permits are expressly excluded.
- (c) Liability under performance bond(s) applicable to a permit shall continue in effect until the work has been completed as determined by the Department pursuant to the requirements of the reclamation plan and this Chapter.

[Source: Added at 26 Ok Reg 3002, eff 8-27-09]

460:10-10-6. Limited use permit conditions and restrictions

- (a) The maximum acreage which can be mined under a limited use permit shall be restricted to two (2) acres.
- (b) The term of a limited use permit shall not exceed twelve (12) months from the date of issuance.
- (c) A limited use permit shall not carry a right of successive renewal.
- (d) A limited use permit site must be reclaimed as required by 45 O.S. Section 725 and the permit within six months following the expiration of the permit term.
- (e) The use of processing equipment shall not be approved for a limited use permit.
- (f) The use of explosives shall not be approved for a limited use permit.
- (g) No more than one limited use permit shall be issued within a 160 acre unit, measuring the unit with the existing limited use permit in the center.
- (h) No limited use permit shall be issued to conduct non-coal surface mining and reclamation operations on high-quality waters or outstanding resource waters, as described in OAC 460:10-13-2.

[Source: Added at 26 Ok Reg 3002, eff 8-27-09]

460:10-10-7. Administrative review

- (a) **General.** Within 30 days after an applicant or permittee is notified of the decision of the Department concerning an application for approval of a permit for mining, the applicant, permittee, or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision, in accordance with this Section.
- (b) **Administrative hearings.**
- (1) The person wishing to request administrative review shall submit such request to the Department in writing;
 - (2) The hearing shall be on the record and adjudicatory in nature;
 - (3) The Department may, under such conditions as it prescribes, grant such temporary relief as it deems appropriate, pending final determination of the proceedings, if:
 - (A) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(B) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceedings;

(C) The relief sought will not adversely effect the public health or safety, or cause significant, imminent environment harm to land, air, or water resources;

(D) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the Department.

- (4) The hearing shall be conducted in accordance with OAC 460:3-1-5 of the Non-Coal Rules of Practice and Procedures.

[Source: Added at 26 Ok Reg 3002, eff 8-27-09]

460:10-10-8. Judicial review under Chapter 10. Non-Coal Mining of limited use permits

(a) **General.** Any Applicant or person with an interest which is or maybe adversely affected may appeal pursuant to Subsection (b) of this Section if the applicant or person is aggrieved by the decision of the hearing authority in the administrative hearing conducted pursuant to Section 460:10-10-7 of this Chapter.

(b) **Judicial review of limited use permits.** The action of the hearing authority identified in Subchapter (a) of this Section shall be subject to judicial review by a court of competent jurisdiction, pursuant to Oklahoma Administrative Procedures Act, 75 O.S. Section 308 (a) et seq.

[Source: Added at 26 Ok Reg 3002, eff 8-27-09]

SUBCHAPTER 11. NON-COAL SURFACE MINING PERMIT APPLICATIONS EXCLUDING LIMITED USE PERMITS**Section**

460:10-11-1.	Purpose
460:10-11-2.	Objectives
460:10-11-3.	Responsibility
460:10-11-4.	Applicability
460:10-11-5.	Identification of interests
460:10-11-6.	Compliance information
460:10-11-7.	Newspaper advertisement and proof of publication

460:10-11-1. Purpose

This Subchapter establishes the minimum requirements regarding the legal, financial, compliance and general information that must be contained in permit applications for non-coal surface mining activities, except for limited use permit under Subchapter 10 of this Chapter.

[Source: Amended at 26 Ok Reg 3002, eff 8-27-09]

460:10-11-2. Objectives

The object of this Subchapter is to ensure that all relevant information regarding the ownership and control of the operators who conduct non-coal surface mining activities, the ownership and control of the property to be affected by the operations, the compliance status and history of such operators and other important information is provided in the application to the Department.

460:10-11-3. Responsibility

It is the responsibility of a non-coal surface mining permit applicant to provide to the Department all of the information required by this Subchapter.

460:10-11-4. Applicability

This Subchapter applies to operators who apply for a permit to conduct non-coal surface mining activities. This Subchapter does not apply to limited use permits issued pursuant to Subchapter 10 of this Chapter.

[Source: Amended at 26 Ok Reg 3002, eff 8-27-09]

460:10-11-5. Identification of interests

(a) Each application for a non-coal surface application permit shall contain the names and address of the permit applicant, including his or her telephone number.

(b) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity.

(c) Each application shall contain the names under which the applicant, partner, corporation, and or company previously operated a mining operation in this state within five years proceeding the date of application.

(d) Nothing herein shall authorize the Department to adjudicate property disputes between any interested parties.

(e) Upon the Department's notice of any such property dispute from any reasonable source, the Department's review of any pending application for a new permit, revision, transfer, amendment or renewal shall be suspended until the Department receives notice that such dispute has been conclusively resolved.

[Source: Amended at 24 Ok Reg 2921, eff 9-17-07]

460:10-11-6. Compliance information

Each non-coal surface mining permit application shall contain:

(1) statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under the common control with the applicant has:

(A) Had a mining permit suspended or revoked in the last five years; or

(B) Forfeited a mining bond or similar security deposited in lieu of such bond.

(2) If any such suspension, revocation, or forfeiture has occurred, a statement of the involved, including:

(A) Identification number and date of issuance of the permit or date and amount of the bond or similar security;

(B) The current status of the permit, bond, or similar security involved;

(C) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(D) The current status of these proceedings.

460:10-11-7. Newspaper advertisement and proof of publication

A copy of the newspaper advertisement of a non-coal surface mining permit application and proof of publication of the advertisement shall be filed with the Department and made a part of the complete application.

SUBCHAPTER 13. NON-COAL MINING PERMIT APPLICATIONS REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

Section

460:10-13-1.	Purpose
460:10-13-2.	Definitions
460:10-13-3.	Permitting for non-coal mining within scenic river areas, Outstanding resources waters and High quality waters
460:10-13-4.	Operational requirements
460:10-13-5.	Permitting for non-coal mining within a Sensitive Basin
460:10-13-6.	Operational requirements for non-coal mining within a Sensitive Basin

[Source: Codified 7-25-94]

460:10-13-1. Purpose

This Subchapter sets forth general procedures governing mining operations on Oklahoma's Scenic rivers and areas classified as Outstanding resource waters, High Quality waters, and Sensitive Basins.

[Source: Added at 11 Ok Reg 925, eff 12-23-93 (emergency); Added at 11 Ok Reg 4223, eff 7-25-94; Amended at 18 Ok Reg 3199, eff 7-26-01; Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-13-2. Definitions

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"High quality waters" (HQW) means those waters designated as high quality by the Oklahoma Water Resources Board within the Oklahoma Water Quality Standards, OAC 785:45-1-1 et seq., as possessing existing water quality which exceeds levels necessary to support propagation of fishes, shellfish, wildlife and recreation in and on the waters.

"Management plan" means a site-specific water management and conservation plan which Oklahoma Water Resources Board has determined satisfies the provisions of OAC 785:30-15-6.

"Outstanding resources water" (ORW) means certain waters of this State which have been designated as Outstanding resources waters by the Oklahoma Water Resources Board within the Oklahoma Water Quality Standards, OAC 785:45-1-1 et seq., and includes streams designated as scenic rivers and waters of the State located within the watershed of scenic rivers. They also include waters located within national parks, forests, wilderness areas, wildlife management areas, wildlife refuges and waters which contain species listed pursuant to the Federal Endangered Species Act.

"Pit water" as defined by OWRB means groundwater trapped or collecting in a producing/active mine pit that emanates from a Sensitive basin as designated by the Oklahoma Water Resources Board within OAC 785:30-15 et seq., pertaining to water trapped in producing mines.

"River bank" means the area lying directly adjacent to the river bed within a width of 100 feet on either side of the river bed.

"River bed" means any area of the river lying within the ordinary high water mark.

"Scenic river areas" conforming to the definition contained in 82 O.S. Section 1452, means the following:

- (A) The Flint Creek and Illinois River above the confluence of Barron Fork Creek, also known as Baron Fork Creek and Barren Fork Creek, in Cherokee, Adair and Delaware Counties;
- (B) The Barren Fork Creek, also known as Baron Fork Creek and Barron Fork Creek, in Adair and Cherokee Counties from the present alignment of Highway 59 west to the Illinois River;
- (C) The upper Mountain Fork River above the 600-foot elevation level of Broken Bow Reservoir in McCurtain and LeFlore Counties;
- (D) Big Lee's Creek, sometimes referred to as Lee Creek, located in Sequoyah County, above the 420-foot MSL elevation, excluding that portion necessary for a dam to be built in the State of Arkansas with a crest elevation of no more than 420-feet MSL elevation. The Oklahoma Water Resources Board shall make such classifications, designations or adjustments to Oklahoma's Water Quality Standards as required to allow the impoundments of water by said dam;

"Sensitive Basin" means a sensitive sole source groundwater basin or subbasin as designated by the Oklahoma Water Resources Board within OAC 785:30-15 et seq., pertaining to water trapped in producing mines.

[Source: Added at 11 Ok Reg 925, eff 12-23-93 (emergency); Added at 11 Ok Reg 4223, eff 7-25-94; Amended at 18 Ok Reg 3199, eff 7-26-01; Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-13-3. Permitting for non-coal mining within scenic river areas, Outstanding resources waters and High quality waters

In addition to the requirements of this Chapter and the requirements of 45 O.S. Section 721 et seq., non-coal applicants seeking permits, after August 1, 2001, for mining within Outstanding resources waters, High quality waters and scenic river areas must submit the following:

- (1) A survey outlining the area to be permitted detailing the following:
 - (A) Affected areas;
 - (B) Buffer zones with respect to river bed proximity;
 - (C) Ingress and egress areas;
 - (D) Incremental and normal sequences pattern;
 - (E) Location of plant site, stockpile, and processing areas;
 - (F) Location of roads;
 - (G) Location of river or stream;
- (2) A removal plan to include but not limited to the following:
 - (A) Designation of gravel tonnage to be removed;
 - (B) Description of the depth to which the gravel will be removed.
- (3) A stream water monitoring plan which shall include upstream and downstream monitoring sites (each monitoring point shall be designated on the site maps). Stream water samples shall be collected during the time of mining operation. Parameters for monitoring shall be established to include, but are not limited to, turbidity and sediment particle size distribution. If a monitoring plan is required under the jurisdiction of other environmental permitting agencies, the applicant shall submit the approved monitoring plan with the mining application to the Department.

[Source: Added at 11 Ok Reg 925, eff 12-23-93 (emergency); Added at 11 Ok Reg 4223, eff 7-25-94; Amended at 18 Ok Reg 3199, eff 7-26-01]

460:10-13-4. Operational requirements

(a) In addition to the requirements listed in this Chapter and those requirements within 45 O.S. Section 721 et seq., applicants for non-coal mining permits, applied for on or after August 1, 2001, in Outstanding resources waters, High quality waters, and scenic river areas must submit and satisfy the following:

- (1) Prior to permit issuance, applicants must submit approved copies of other state, federal, and local government permits or licenses that pertain to the site. These permits shall include but are not limited to, storm water permits, an approved pollution prevention plan, permits issued in compliance with Section 404 and 401 of the Clean Water Act as well as Nation Pollutant Discharge Elimination System permits and stream water use permits, flood plain permits, and copies of notifications sent to the state and federal fish and wildlife agencies.
- (2) Gravel removal from, and stockpiling on, either scenic river beds or river banks must be approved by the

Department and must not violate state water quality or environmental laws.

(3) Applicants are prohibited from mining in, or driving vehicles into; the wetted portion of the river bed.

(4) Applicants are prohibited from changing the course of the river at any time.

(5) A minimum 100-foot border of natural vegetation between the water's edge and any plant site on the permitted area shall be left undisturbed subject to the operator's right to normal access to the stream. When the materials extracted are not processed after removal and no plant is located on the property, the operator shall take all necessary precautions to preserve the integrity of the stream bank.

(b) The Department of Public Transportation may be contacted in reference to setback requirements from bridges, railroad trestles and other structures for in-stream mining activities.

(c) Where appropriate, Best Management Practices, such as sediment traps and sediment fences shall be installed and maintained to minimize the amount of sediment and spoil returning to the stream.

(d) A closure plan shall be submitted for review and approval at least 90 days prior to commencing closure operation of the site. The plan shall include the following information:

- (1) Name and forwarding address of the operating authority completing the closure procedures;
- (2) A schedule of closure activities;
- (3) Site Plan;
- (4) Disposition of any waste materials;
- (5) Schedule of steps taken to achieve vegetative stabilization of the site;
- (6) Any approved reclamation plan requirements.

[Source: Added at 11 Ok Reg 925, eff 12-23-93 (emergency); Added at 11 Ok Reg 4223, eff 7-25-94; Amended at 18 Ok Reg 3199, eff 7-26-01]

460:10-13-5. Permitting for non-coal mining within a Sensitive Basin

(a) In addition to the requirements of this Chapter and the requirements of 45 O.S. Section 721 et seq., non-coal applicants seeking new permits, or revisions to existing permits by increasing permitted acreage beyond the boundaries of the existing permit, after August 1, 2011, for mining within a Sensitive basin must submit a management plan to the Department which has been approved by the Oklahoma Water Resources Board.

(b) All non-coal applicants seeking a non-coal mining permit which contains operations including taking, using, or disposing of pit water in an amount less than the acre feet amount per year as determined by the Oklahoma Water Resources Board specified within OAC 785:30-15-3(b) shall be exempt from the requirements of this subchapter.

[Source: Added at 31 Ok Reg 2088, eff 9-12-14]

460:10-13-6. Operational requirements for non-coal mining within a Sensitive Basin

(a) In addition to the requirements listed in this Chapter and those requirements within 45 O.S. Section 721 et seq., applicants for non-coal mining permits within a Sensitive basin who submit their application to the Department after August 1, 2011, must submit to the Department a groundwater use permit approved by the Oklahoma Water Resources Board prior to taking, use, or disposal of pit water.

(b) Mines which have lost their preexisting exemptions regarding water trapped in producing/active mines as provided in 82 O.S. Section 1020.2(C) and OAC 785:30-15-1(c) and as determined by the Oklahoma Water Resources Board, must submit to the Department a copy of the management plan which has been approved by the Oklahoma Water Resources Board.

(c) An applicant who has been issued a non-coal mining permit by the Department, and who the Oklahoma Water Resources Board determines is in violation of its groundwater use permit or its management plan, may be subject to enforcement actions by the Oklahoma Water Resources Board and the Department.

[Source: Added at 31 Ok Reg 2088, eff 9-12-14]

SUBCHAPTER 15. NON-COAL MINING PERMIT APPLICATIONS REQUIREMENTS FOR RECLAMATION AND OPERATIONS PLAN

Section

460:10-15-1.	Purpose
460:10-15-2.	Simultaneous reclamation
460:10-15-3.	Reclamation plan

[Source: Codified 7-25-94]

460:10-15-1. Purpose

This subchapter establishes the basic objective of the reclamation plan which is to establish, on a continuing basis, a vegetative cover, soil stability, and water and safety conditions appropriate to the area.

[Source: Added at 11 Ok Reg 917, eff 12-23-93 (emergency); Added at 11 Ok Reg 4219, eff 7-25-94]

460:10-15-2. Simultaneous reclamation

Reclamation shall be conducted simultaneously with the mining whenever feasible and in any event shall be initiated at the earliest practicable time. Grading shall be completed within one year after completion or termination of mining on any segment of the mine.

[Source: Added at 11 Ok Reg 917, eff 12-23-93 (emergency); Added at 11 Ok Reg 4219, eff 7-25-94]

460:10-15-3. Reclamation plan

(a) The reclamation plan shall, to the extent applicable, include:

- (1) The planned land use or uses to which the affected lands will be rehabilitated;
- (2) The methods to prevent or eliminate conditions that will be hazardous to animal or fish life in or adjacent to the affected land;
- (3) The methods for rehabilitating settling ponds;
- (4) The method for the control of contaminants and disposal of the refuse including tailings;
- (5) The measure to provide safety to persons and adjoining property in all excavations;
- (6) A plan for the permanent revegetation, reforestation or other surface treatment of the affected land using accepted and recommended practices. The revegetation plan shall include but not be limited to the following:
 - (A) Planned soil rests;
 - (B) Site preparation and fertilization;
 - (C) Seed or plant selection;
 - (D) Rate of seeding or amount of planting per acre.
- (7) A time schedule of reclamation activities, particularly those relating to Best Management Practices for the sediment and erosion control which shall be keyed to the maps required by this Chapter;
- (8) In addition to the required Location Maps, a reclamation map shall be submitted with the mining permit application which shall show, to the extent applicable, the following:
 - (A) The outline of the proposed final limits of the excavation, during the number of years for which the permit is requested;
 - (B) The outline of the tailing disposal area;
 - (C) The outline of the disposal area for the spoil and refuse area;
 - (D) The approximate location of any impoundment or water body which will remain upon final reclamation;
 - (E) The approximate locations of access roads, haul roads, or ramps which will remain upon final reclamation;
 - (F) The proposed location of ditches to provide for drainage. The location of diversions, terraces, or other Best Management Practices to be used for preventing or controlling erosion and off-site siltation;
 - (G) The boundary of the permitted area;
 - (H) The boundaries of the affected area for the anticipated life of the mine;
 - (I) The boundaries of the 100-year floodplain, where appropriate.

(b) The Department shall be authorized to approve a reclamation plan despite the fact that such plan does not provide for reclamation treatment for every portion of the affected land, where the Department finds that because of special conditions such treatment would not be feasible for particular areas and that the plan takes all practical steps to minimize the extent of such areas.

(c) All reclamation plans, or amended existing plans submitted after August 1, 2003, for the placement of Coal Combustion By-products (CCB) in active or inactive mines must meet the Coal Combustion By-product Standards contained within OAC 460:30.

[Source: Added at 11 Ok Reg 917, eff 12-23-93 (emergency); Added at 11 Ok Reg 4219, eff 7-25-94; Amended at 20 Ok Reg 2816, eff 8-26-03]

SUBCHAPTER 17. REVIEW, PUBLIC PARTICIPATION AND APPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS EXCLUDING LIMITED USE PERMITS

Section

460:10-17-1.	Purpose
460:10-17-2.	Objectives
460:10-17-3.	Responsibilities
460:10-17-4.	Definitions
460:10-17-5.	Public notices of filing of permit applications
460:10-17-6.	Right to file written objections
460:10-17-7.	Informal conferences
460:10-17-8.	Public availability of information in permit
460:10-17-9.	Review of permit applications
460:10-17-10.	Criteria for permit approval or denial
460:10-17-11.	Permit approval or denial actions
460:10-17-12.	Permit terms
460:10-17-13.	General and right of entry conditions of permits
460:10-17-14.	Environment, public health and safety conditions of permits
460:10-17-15.	Administrative review
460:10-17-16.	Judicial review

460:10-17-1. Purpose

This Subchapter establishes the minimum requirements for public participation in the permit process, review of permit applications and decisions on these applications by the Department and approval or disapproval of permits to conduct non-coal surface mining and reclamation operations and for the terms and conditions of permits issued, excluding limited use.

[Source: Amended at 26 Ok Reg 3002, eff 8-27-09]

460:10-17-2. Objectives

The objectives of this Subchapter are to:

- (1) provide for public participation in the review of applications and the issuance, or denial of permits;
- (2) ensure prompt and effective review of each permit application by the Department; and
- (3) provide the minimum requirements for the terms and conditions of permits issued and the criteria for approval or denial of a permit.

460:10-17-3. Responsibilities

The Department has the responsibility to approve or disapprove permits. The Department shall assure implementation of the requirements of this Subchapter. This applicant shall provide all information in a complete permit application for review by the Department in accordance with this Subchapter.

460:10-17-4. Definitions

The following word or terms, when used in Section 460:10-17-9(d) and 460:10-17-10(c) shall have the following meaning, unless the context clearly indicates otherwise:

"Irreparable damage to the environment" means any damage to the environment that cannot be corrected by actions of the applicant.

"Willful violation" means an act or omission which violates 45 O.S. (1981) Section 721 et seq., or this Chapter, or individual permit conditions, committed by a person who intends the result which actually occurs.

460:10-17-5. Public notices of filing of permit applications

An applicant for a permit shall place an advertisement in a newspaper of general circulation in the county of the proposed non-coal surface mining and reclamation operations. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the Department and shall publish the advertisement at least once a week for four (4) consecutive weeks. The advertisement shall contain, at a minimum, the following information:

- (1) The name and business address of the applicant; and
- (2) A description which clearly shows or describes the legal location, boundaries and acreage of the proposed permit area and which is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location of the proposed permit area; and
- (3) The location where a copy of the application is available for public inspection;
- (4) The address of the Department of Mines, to which written comments, objections, or requests for conferences on the application may be submitted under Sections 460:10-17-6, 460:10-17-7;
- (5) If an applicant seeks a permit to mine which includes relocation or closing of a public road, a copy of the County Resolution pertaining to the affected county road.

[Source: Amended at 17 Ok Reg 3170, eff 7-28-00]

460:10-17-6. Right to file written objections

(a) Any person who resides or owns property that could be adversely affected by the proposed non-coal mining operation shall have the right to file written objections to an initial or revised application for a permit with the Department, within 14 days after the last date of publication of the newspaper notice required by 460:10-17-5.

(b) The Department shall, immediately upon receipt of any written objection transmit a copy of them to the applicant.

[Source: Amended at 17 Ok Reg 3170, eff 7-28-00; Amended at 29 Ok Reg 1782, eff 8-12-12]

460:10-17-7. Informal conferences

(a) Any person eligible under Section 460:10-17-6(a) may, in writing, request that the Department hold conference on any application for a permit. The request shall:

- (1) Briefly summarize the issues to be raised by the requestor at the conference;
- (2) State whether the requestor desires to have the conference conducted in the locality of the proposed mining operations;
- (3) Be filed with the Department not later than 14 days after the last date of publication of the newspaper advertisement placed by the applicant under Section 460:10-17-5.

(b) Except as provided in (c) of this section, if a conference is requested in accordance with (a) of this Section, the Department shall hold a conference within a reasonable time following the receipt of the request. The conference shall be conducted according to the following:

- (1) If requested under (a)(2) of this Section, it shall be held in the locality of the proposed mining;
- (2) The conference shall be conducted by a representative of the Department, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceeding. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee.

(c) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their request, the conference need not be held.

[Source: Amended at 17 Ok Reg 3170, eff 7-28-00]

460:10-17-8. Public availability of information in permit

Information contained in permit applications on file with the Department shall be open, upon written request, for public inspection and copying at reasonable times.

460:10-17-9. Review of permit applications

(a) The Department shall review the complete application and written comments, written objections submitted, and records of any conference held under Section 460:10-17-6 and 460:10-17-7.

(b) If the Department decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the bonding regulations.

(c) If the Department determines from either the schedule submitted as part of the application under Section 460:10-11-6, or from other available information, that any surface mining

operation owned or controlled by the applicant, is currently in violation of any law, rule, or regulation of the United States, or of any State Mining Law, or of any State Thaw, rule and regulation enacted pursuant to Federal Thaw, rule or regulation pertaining to air or water environmental protection, or of any provision of this Chapter, the Department shall require the applicant, before the issuance of the permit, to either:

- (1) Submit to the Department reviewing the application, proof which is satisfactory to the Department or agency which has jurisdiction over such violation, that the violation:
 - (A) Has been corrected; or
 - (B) Is in the process of being corrected; or
- (2) Established to the Department reviewing such application that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the Administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then any surface non-coal mining operations being conducted under a permit issued according to this Subchapter shall be immediately terminated unless and until the provisions of (c) (1) of this Section are satisfied.
- (d) Before any final determination by the Department that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of the title of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of 45 O.S. (1981), Section 721 et seq., the applicant or operator shall be afforded an opportunity for an adjudicators hearing on the determination as provided for under this Chapter. Such hearing shall be conducted pursuant to the Oklahoma Administrative Procedure Act and OAC 460:3.

460:10-17-10. Criteria for permit approval or denial

No permit or revision application shall be approved, unless the application affirmatively demonstrates and the Department finds, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that-

- (1) The permit application is accurate and complete and in compliance with all requirements of 45 O.S. (1981), Section 721 et. seq., and this Chapter.
- (2) The applicant has demonstrated that non-coal surface mining and reclamation operations, as required by 45 O.S. (1981), Section 721 et seq., and this Chapter can be feasibly accomplished under the mining and reclamation operations plan contained in the application.
- (3) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of this Chapter of such nature, durations, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this Chapter.

- (4) The applicant will submit the performance bond or other equivalent guarantee required under these regulations, prior to the issuance of the permit.

460:10-17-11. Permit approval or denial actions

- (a) The Department shall approve, require modification of, or deny all application for permits on the basis of:
 - (1) Complete applications for permits and revisions or renewals and transfers or sales thereof; and
 - (2) Public participation; and
 - (3) Process and review of application as required by this Subchapter.
- (b) The Department shall take action as required under (a) of this Section, within the following times:
 - (1) If a conference has been held under section 460:10-17-7 within a reasonable time after the close of the conference; or
 - (2) If no conference has been held under Section 460:10-17-7 then within 30 days after receipt by the Department of the complete application. The Department shall determine the time for processing and take into account:
 - (A) The time needed for proper investigation of the proposed permit and adjacent areas;
 - (B) The complexity of the application; and
 - (C) Whether written objections have been filed with the Department.
 - (3) Notwithstanding any of the foregoing provisions of this Section, no time limit under this Chapter or this section requiring the Department to act shall be considered expired from the time the Department initiates a proceeding under section 460:10-17-9(d) until the final decision of the hearing.
- (c) If a conference is held under Section 460:10-17-7 the Department shall give its written findings to the permit applicant and to each person who is a party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefore in the decision.
- (d) If no such conference has been held, the Department shall give its written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.

[Source: Amended at 21 Ok Reg 2977, eff 7-26-04]

460:10-17-12. Permit terms

- (a) Each permit shall be for a term corresponding to the life expectancy of the operation as supplied in the permit application.
- (b) Permits may be suspended, revoked, or modified by the Department, in accordance with this Chapter and the Oklahoma Administrative Procedures Act, and OAC 460:3.

[Source: Amended at 22 Ok Reg 2783, eff 9-11-05]

460:10-17-13. General and right of entry conditions of permits

Each permit issued by the Department shall ensure that:

- (1) Except to the extent that the Department otherwise directs in the permit that specific actions be taken, the permittee shall conduct all non-coal surface mining and reclamation operations as described in the complete application; and
- (2) The permittee shall allow the authorized representatives of the Department, without advance notice or search warrant, upon presentation of appropriate credentials, and without delay, to have the rights of entry provided for in Section 460:10-35-4.
- (3) The permittee shall conduct non-coal surface mining and reclamation operations only on those lands specifically designated on the maps submitted in the application and approved for the term of the permit and which are subject to the performance bond or other equivalent guarantee in effect.

460:10-17-14. Environment, public health and safety conditions of permits

Each permit issued by the Department shall ensure the following:

- (1) Permittee shall take all possible steps to minimize any hazardous impact to the environment or public health and safety resulting from non compliance with any term or condition of the permit, including, but not limited to:
 - (A) Any accelerated or additional monitoring necessary to determine the nature and extent of non-compliance and the results of noncompliance;
 - (B) Immediate implementation of measures necessary to comply; and
 - (C) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.
- (2) Appropriate Best Management Practices for sediment and erosion control shall be designed, constructed, and maintained to prevent additional contribution of sediment and erosion control measures to prevent degradation of the environment shall consist of the utilization of proper reclamation methods and sediment control practices including, but not limited to:
 - (A) Grading and backfill material to reduce the rate and volume of runoff;
 - (B) Retaining sediment within the pit and disturbed area.
- (3) The permittee shall conduct the operations in accordance with any measure specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public.
- (4) During the mining operation and reclamation of work, care must be taken to prevent any excessive drainage or accumulation or release of excess water that may damage the adjoining property of other owners.

(5) In all excavation of rock, provisions for safety to persons and to adjoining property must be provided including, but not limited to the following requirements:

- (A) Fencing may be required at any excavation in rock which exceeds twenty feet in depth.
- (B) Fencing along with "natural barriers" such as swamps, river, and marsh may not be required.
- (C) Fencing along sides of quarries on natural slopes or where no highwall is present may be required to discourage access to the highwall base of other parts of the quarry. Cultural or other barriers including, but not limited to rock barricades, elevated roadways, railroads and building facades may be accepted by the Department.

[Source: Added at 11 Ok Reg 917, eff 12-23-93 (emergency); Added at 11 Ok Reg 4219, eff 7-25-94]

460:10-17-15. Administrative review

(a) **General.** Within 30 days after an applicant or permittee is notified of the decision of the department concerning an application for approval of a permit for mining, the applicant, permittee, or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision, in accordance with this Section.

(b) **Administrative hearings.**

- (1) The hearing shall be on the record and adjudicatory in nature. No person who presided at an informal conference under Section 460:10-17-7 shall either preside at the hearing or participate in the decision following the hearing or administrative appeal.
- (2) The Department may, under such conditions as it prescribes, grant such temporary relief as it deems appropriate, pending final determination of the proceedings, if:
 - (A) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;
 - (B) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceedings;
 - (C) The relief sought will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources;
 - (D) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the Department except that continuation under an existing permit may be allowed where the operation has a valid permit issued under 45 O.S. Section 724 of the Act.
- (3) The hearing shall be conducted in accordance with OAC: 460:3-1-5 of the Non-Coal Rules of Practice and Procedures.

[Source: Added at 15 Ok Reg 3955, eff 7-22-98 (emergency); Added at 16 Ok Reg 1609, eff 5-27-99]

460:10-17-16. Judicial review

(a) **General.** Any applicant or any person with an interest which is or maybe adversely affected and who has participated in the administrative hearings as an objector may appeal as provided in Subsection (b) of this section if the applicant or person is aggrieved by the decision of the hearing authority in the administrative hearing conducted pursuant to Section 460:10-17-15 of this Chapter;

(b) **Judicial review under Chapter 10, Non-Coal Mining.** The action of the hearing authority identified in Subsection (a) of this Section shall be subject to judicial review by a court of competent jurisdiction, as provided for in the Oklahoma Administrative Procedures Act, 75 O.S. Section 308 (a) et seq.

[Source: Added at 15 Ok Reg 3955, eff 7-22-98 (emergency); Added at 16 Ok Reg 1609, eff 5-27-99]

SUBCHAPTER 19. PERMIT REVISIONS, AMENDMENTS, RENEWALS, AND TRANSFERS

Section

460:10-19-1.	Purpose
460:10-19-2.	Objectives
460:10-19-3.	Responsibilities
460:10-19-4.	Permit revisions
460:10-19-5.	Permit renewals
460:10-19-6.	Permit transfers or sales

460:10-19-1. Purpose

This Subchapter establishes the minimum requirements for revisions to permits previously issued by the Department and renewal and transfer or sale of permits previously issued by the Department.

[Source: Amended at 21 Ok Reg 2977, eff 7-26-04]

460:10-19-2. Objectives

The objectives of this Subchapter are to provide for procedures for the Department to review, renew, and transfer or sale of permits.

[Source: Amended at 21 Ok Reg 2977, eff 7-26-04]

460:10-19-3. Responsibilities

The Department shall:

- (1) Ensure that permits are revised prior to changes in non-coal surface mining and reclamation operations;
- (2) Effectively review and act on applications to renew existing permits, in a timely manner to ensure that non-coal surface mining and reclamation operations continue, if they comply with 45 O.S., Section 721 et seq., and this Chapter.
- (3) Review and ensure that all transfers or sales of non-coal mining permit comply with the requirements

of 45 O.S., Section 721 et seq., this Subchapter, and this Chapter.

[Source: Amended at 21 Ok Reg 2977, eff 7-26-04]

460:10-19-4. Permit revisions

(a) A revision to a permit shall be obtained:

(1) For changes in the non-coal surface mining and reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conduct of mining and or reclamation operations contemplated by the original permit. Significant departures would include any enlargement in the permit area.

(2) For mergers, conversions or other modifications to the nature of the business entity permitted.

(b) The application for revision shall be filed in accordance with the following: The permittee shall submit the application information, including copies of notices and hearings, applicable to revision requests as required in these regulations. Any application for a revision which proposes significant alterations in the operations described in the materials submitted in the application for the original permit under Subchapters 11, 13, or 15 of this Chapter or in the conditions of the original permit shall, at a minimum, be to the requirements of Subchapter 17 of this Chapter.

(c) The Department shall approve or disapprove the complete application for revision in accordance with the requirements of Subchapter 17 of this Chapter, within a reasonable time as established in this Chapter.

(d) Any extensions of the boundaries shown in the initial permit, except for incidental boundary revisions, shall be made by application for a new permit and shall not be approved under this Subchapter.

[Source: Amended at 18 Ok Reg 3199, eff 7-26-01]

460:10-19-5. Permit renewals

(a) **General requirements.**

(1) Any valid, existing permit issued pursuant to a regulatory program shall carry with it the right of successive renewal upon the expiration of the term of the permit, in accordance with sections (b) and (c) of this Subchapter. Successive renewal shall be available only for those areas which were specifically approved by the Department on the application for the existing permit and within the boundaries of the permit.

(2) Permit renewals shall not be available for constructing surface non-coal mining and reclamation operations on lands beyond the boundaries of the mining areas approved under the existing permit.

(b) **Completed applications.**

(1) **Contents.** Complete applications for renewal of a permit shall be made prior to the date of expiration. Renewal applications shall contain, at a minimum the following:

(A) A statement of the name and address of the permittee, the term of the renewal requested, the permit

term set forth in the original application for a permit or prior permit renewal.

(B) A copy of the newspaper notice and proof of publication of the same under Section 460:10-17-5.

(2) **Processing and review.**

(A) Complete applications for renewal shall be subject to the requirements of public notification and participation contained in Sections 460:10-17-6 and 460:10-17-7.

(B) If a complete application for a renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the completed application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new permit applications under the Chapter 10, Subchapters 11, 13, 15, 17, and 19 and the bonding regulations contained in Subchapters 21, 23, and 25 of this Chapter.

(C) Before finally acting to grant the permit renewal, the Department shall require any additional performance bond needed by the permittee to comply with the requirements of (c) (1)(D) of this Section to be filed with the Department.

(c) **Approval or denial.**

(1) The Department shall, upon the basis for a complete application for renewal and completion of all procedures required under, this Subchapter, issue a renewal of a permit, unless it is established and written findings by the Department are made that:

(A) The terms and condition of the existing permit are not being satisfactorily met;

(B) The present non-coal surfacing mining and reclamation operations are not in compliance with the environmental protection standards under 45 O.S. (1981), Section 721 et seq., and this Chapter;

(C) The requested renewal substantially jeopardizes the operator's continuing responsibility to comply with 45 O.S. (1981), Section 721 et seq., and this Chapter on existing permit areas;

(D) The operator has not provided evidence that any performance bond required to be in effect for the proposed period of renewal, as well as any additional bond the Department might require pursuant to this Chapter; or

(E) Any additional revised or updated information required by the Department has not been provided by the Applicant.

(2) In determining whether to approve or deny a renewal, the burden shall be on the opponents of the renewal.

(3) The Department shall send copies of its decision to the applicant, any person who filed an objection or comments held on the permit renewal, and to any persons who were parties to any conference held on the permit renewal.

(4) Any person having an interest which is or maybe effected by the decision of the Department shall have a right to administrative review set forth in OAC 460:3 and

the Oklahoma Procedures Act found in Oklahoma Statutes Title 75.

[Source: Amended at 15 Ok Reg 3955, eff 7-22-98 (emergency); Amended at 16 Ok Reg 1609, eff 5-27-99]

460:10-19-6. Permit transfers or sales

(a) Permits issued to an operator may be transferred to another operator, provided the new operator can demonstrate to the Department, prior to the transfer of interests, that conditions and obligations required for the permit will be met and the new operator has submitted a reclamation bond or other reclamation guarantee, or has obtained the bond coverage equivalent to the original permittee.

(b) **Application requirements.** An applicant for the transfer or sale of an existing permit or permit rights shall file a complete application for such transfer or sale with the Department. The application shall include, at a minimum:

(1) The name and address of the Applicant;

(2) The name and address of the existing permittee and the permit number to be transferred;

(3) A brief description of the proposed transfer or sale, including verification by the predecessor-in-interest of the proposed transfer or sale; and

(4) The legal, financial, compliance, and related information required by Subchapter 11 of this Chapter pertaining to the Applicant of the transfer or sale of permit rights.

(c) **Newspaper advertisement and proof of publication.**

An Applicant shall place an advertisement in a newspaper of general circulation in the county of the existing permit. The advertisement shall not be placed earlier than thirty (30) days before the filing of the application for a transfer or sale with the Department. The advertisement shall be published at least once a week for two (2) consecutive weeks and Proof of Publication of the advertisement shall be submitted to the Department prior to approval of the transfer or sale. The advertisement shall contain, at a minimum:

(1) The name and address of the Applicant;

(2) The name and business address of the existing permittee, including the permit number or other identifier;

(3) The legal description of the location of the permit;

(4) The address of the Department to which written comments or objections may be submitted.

(3) Obtain appropriate performance bond coverage in the amount sufficient to cover the proposed operations.

(d) **Public participation.** Any person having an interest which is or may be affected by a decision on the transfer or sale of permit rights, including officials of any federal, state or local governments agency, may submit written comments on the application to the Department within 14 days after the last date of publication of the advertisement.

(e) **Reclamation bond requirements.** The Applicant for the permit transfer or sale must file with the Department a reclamation bond satisfying the requirements of Subchapter 21 of this Chapter, prior to the Department's approval of the transfer or sale. The reclamation bond post with the Department by

the existing permittee shall remain in full force and effect until the Department finds that the successor-in-interest has posted the appropriate reclamation bond.

(f) **Approval criteria.** The Department may approve a transfer or sale of permit rights to a successor if it finds in writing that the successor:

- (1) Is eligible to receive a permit in accordance with rules and regulations of the Department;
- (2) Has submitted a performance bond or other reclamation guarantee in accordance with the rules and regulations of the Department;
- (3) Meets any other requirements as provided by the rules and regulations of the Department.

(g) **Continued operation under existing permit.** The existing permittee shall be entitled to continue operations until such time as the Department approves the sale or transfer of the permit. Upon approval, the successor-in-interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct surface non-coal mining and reclamation operations in full compliance with the regulatory programs, and the terms and conditions of the existing permit.

(h) The provisions of this section shall not be utilized to effect a revision to an existing permit under Section 460:10-19-4 of this Chapter.

[Source: Added at 21 Ok Reg 2977, eff 7-26-04]

SUBCHAPTER 21. GENERAL REQUIREMENTS FOR BONDING OF NON-COAL SURFACE MINING AND RECLAMATION OPERATIONS

Section

460:10-21-1.	Purpose
460:10-21-2.	Objectives
460:10-21-3.	Definitions
460:10-21-4.	Requirements to file a bond
460:10-21-5.	Department responsibilities

460:10-21-1. Purpose

This Subchapter sets forth the provisions for bonding and insuring non-coal surface mining and reclamation operations.

460:10-21-2. Objectives

The objective of this Subchapter is to set forth the minimum requirements and responsibilities for filing and maintaining bond and insurance for non-coal surface mining and reclamation activities.

[Source: Amended at 26 Ok Reg 3002, eff 8-27-09]

460:10-21-3. Definitions

The following words or terms, when used in this Subchapter shall have the following meaning, unless the context clearly indicates otherwise:

"Cash" means:

- (A) all cash items except cash
 - (i) restricted by an agreement, or
 - (ii) described as earmarked for a particular purpose; and
- (B) short-term investments such as stocks, bonds, notes, and certificates of deposit, where the intent and ability to sell them in the near future is established by the operator;
- (C) all occurred interest shall be payable to the permittee upon demand.

"Collateral bond" means an indemnity agreement in a sum certain payable to the Department or executed by the permittee and supported by one or more of the following:

- (A) The deposit of cash in one or more federally insured accounts, payable only to the Department on demand.
- (B) Negotiable bonds of the United States, the State of Oklahoma, or a municipalize, endorsed to the order of, and in the possession of, the Department;
- (C) Negotiable certificates of deposit, payable only to the Department and in its possession;
- (D) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only upon presentation by the Department.

"Surety bond" means an indemnity agreement in a sum certain payable to the Department executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in Oklahoma.

460:10-21-4. Requirements to file a bond

(a) After an application for a new, revised, or renewed permit to conduct non-coal surface mining and reclamation operations has been approved under this Chapter, but before such permit is issued, the applicant shall file with the Department a performance bond payable to the Department. The performance bond will be conditioned upon the faithful performance of all the requirements of the state law, this Chapter, and the performance bond shall conform to the requirements of Subchapters 21 and 25 of this Chapter or Subchapter 10 for limited use permits.

(b) An operator shall not disturb surface acreage or extend any underground shafts, tunnels, or operations prior to receipt of approval from the Department of a performance bond covering the surface acreage to be affected.

(1) Liability on the performance bond shall cover all non-coal surface mining and reclamation operations to be conducted within the permit area. Except for limited use permits, after the amount of the bond has been determined for the permit area in accordance with Subchapter 23 of this Chapter, the permittee or applicant may either file:

- (A) The entire performance bond required during the term of the permit;
- (B) A cumulative bond schedule and the sequence of release of acreage as it progresses through varying reclamation phases and for the addition of acreage as it is affected. The amount of bond required to obtain

a permit shall include the full reclamation cost of the initial area being affected; or

(C) An incremental bond schedule and the new performance bond required for the first increment in the schedule.

(2) When the operator elects to "increment" the amount of the performance bond during the term of the permit, he shall identify the initial and successive incremental areas for bonding on the permit application map submitted for approval as provided in Subchapter 17 of this Chapter and shall specify the proportion of the total bond amount required for the term of the permit which will be filed prior to commencing operations on each incremental area. The schedule amount of each performance bond increment shall be filed with the Department at least 45 days prior to the commencement of non-coal surface mining and reclamation operations in the next incremental area.

(c) The amount, duration, form, terms, and conditions of the performance bond shall conform to Subchapters 23 and 25 of this Chapter.

[Source: Amended at 26 Ok Reg 3002, eff 8-27-09]

460:10-21-5. Department responsibilities

(a) The Department shall prescribe and furnish forms for filing performance bonds.

(b) The Department shall prescribe terms and conditions for performance bonds.

(c) The Department shall determine the amount of the performance bond required for the permit area, including adjustments to the initial amount from time to time as land acreage in the permit area are revised, or when other relevant conditions change according to the minimum requirements of Section 460:10-23-2.

(d) The Department shall release the permittee from his bond requirements consistent with Subchapter 27 of this Chapter.

(e) The Department shall cause all or part of a bond to be forfeited consistent with Subchapter 29 of this Chapter.

SUBCHAPTER 23. AMOUNT AND DURATION OF PERFORMANCE BOND

Section

460:10-23-1.	Purpose
460:10-23-2.	Determination of bond amount
460:10-23-3.	Minimum amount
460:10-23-4.	Period of liability
460:10-23-5.	Adjustment of amount

460:10-23-1. Purpose

This Subchapter sets forth the provisions for determining the amounts and time periods of liability for performance bonds for non-coal surface mining and reclamation operations and certain exploration activities.

460:10-23-2. Determination of bond amount

The standard applied by the Department in determining the amount of the performance bond shall be the estimated cost to the Department if it had to perform the reclamation, restoration, and abatement work required of a person who conducts non-coal surface mining and reclamation operations under the act, these regulations, and the permit, and such additional work as would be required to achieve compliance with the general standards of 45 O.S. (1981), Section 725.

460:10-23-3. Minimum amount

The amount of the bond for non-coal surface mining and reclamation operations will be \$2,000.00 at a minimum, for the entire area under one permit and be sufficient to assure performance of reclamation, restoration and abatement work required of a person who conducts non-coal surface mining and reclamation operations under the Act, this Chapter, and the provisions of the permit, if the work had to be performed by the Department in the event of forfeiture.

460:10-23-4. Period of liability

(a) Liability under performance bond(s) applicable to a permit shall continue in effect until work has been completed.

(b) The bond liability of the permittee shall include only those actions which the operator is obliged to take under the permit, including completion of the reclamation plan in such a manner that the land will be capable of supporting a post-mining land use approved under 45 O.S. 1981, Sec. 725. Actions of third parties which are beyond the control or influence of the operator and for which the operator is not responsible under the permit need not be covered by the bond.

460:10-23-5. Adjustment of amount

(a) The amount of the performance bond liability applicable to a permit shall be adjusted by the Department as the acreage in the permit area is revised, methods of mining operation change, standards of reclamation change, or when the cost of future reclamation, restoration, or abatement work changes. The Department shall notify persons involved in bond coverage of any proposed bond adjustments and provide those persons an opportunity for an informal conference on the adjustment. For purposes of this Section, a person involved in bond coverage shall include the permittee, the surety and any other person with a property interest in collateral posted under the bonding regulations who has in writing to the Department requested such notification at the time the collateral is posted or the interest is acquired, whichever occurs later. The Department shall review each outstanding performance bond at the time permit reviews are conducted under 460:10-19-1, and shall re-evaluate those performance bonds in accordance with the standards in Section 460:10-23-2.

(b) A permittee, surety, or any person with property interest in collateral offered as bond coverage may request reduction of the required performance bond amount upon submission of evidence to the Department proving that the permittee's method of operation or other circumstances will reduce the maximum

estimated cost to the Department if it has to complete the reclamation and therefore warrants a reduction of the bond amount. The request shall be considered as a request for partial bond release in accordance with the procedures of Subchapter 27 of this Chapter.

[Source: Amended at 31 Ok Reg 2088, eff 9-12-14]

SUBCHAPTER 25. FORM, CONDITIONS AND TERMS OF PERFORMANCE BONDS

Section

460:10-25-1.	Purpose
460:10-25-2.	Form of the performance bond
460:10-25-3.	Terms and conditions of the bond
460:10-25-4.	Replacement of bonds

460:10-25-1. Purpose

This Subchapter establishes the provisions for the form of bond for non-coal surface mining and reclamation operations and limited use permits, and the terms and conditions applicable to bonds.

[Source: Amended at 26 Ok Reg 3002, eff 8-27-09]

460:10-25-2. Form of the performance bond

(a) The form of the performance bond shall be prescribed by the Department in accordance with the provisions of Subchapters 23 of this Chapter and this Subchapter. The Department may allow:

- (1) A Surety Bond; or
- (2) A Collateral Bond;

(b) An alternative bonding system may be approved if it will achieve the following objectives and purposes of the bonding program:

- (1) The alternative must assure that the Department will have available sufficient money to complete the reclamation, restoration, and abatement provisions for all permit areas which may be in default at any time; and
- (2) The alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

460:10-25-3. Terms and conditions of the bond

(a) The performance bond shall be in the amount determined by the Department as provided in Section 460:10-23-2 and 460:10-23-3 or as provided in 460:10-10-5 for limited use permits.

(b) The performance bond shall be payable to the Department.

(c) The performance bond shall be conditioned upon faithful performance of all the requirements of the Mining Lands Reclamation Act, this Chapter, and the conditions of the permit and shall cover the entire permit area.

(d) The duration of the bond shall be for the entire period provided in Section 460:10-23-4.

(e) Collateral Bonds, except Letters of Credit, shall be subject to the following conditions:

(1) The Department shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in the bonding regulations contained in Subchapters 21, 23, and 27 of this Chapter.

(2) The Department shall value collateral at their current market value, not face value.

(3) The Department shall require that Certificates of Deposit be assigned to the Department in writing, and upon the books of the bank issuing such certificates.

(4) The Department shall not accept an individual certificate for a denomination in excess of \$100,000.00, or maximum insurable amount as determined by FDIC and FSIC.

(5) The Department shall require the banks issuing these certificates to waive all rights to setoff or liens which it has or might have against those certificates.

(6) The Department shall only accept automatically renewable Certificates of Deposits.

(7) The Department shall require the applicant to deposit sufficient amounts of certificates of deposits, to assure that the Department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required under the bonding regulations.

(f) Letters of Credit shall be subject to the following conditions:

(1) The letter may only be issued by a bank organized or authorized to do business in the United States.

(2) Letters of Credit shall be irrevocable during their terms. The Department may approve the use of letters of credit as security in accordance with a schedule approved with the permit. Any bank issuing a letter of credit for the purpose of this paragraph shall notify the Department in writing at least 90 days prior to the maturity date of such letter of credit or expiration of the letter of credit agreement. Letters of credit utilized as security in areas requiring continuous bond coverage shall be forfeited and collected by the Department if not replaced by other suitable evidence of financial responsibility at least 30 days before the expiration date of the letter of credit agreement.

(3) The letter must be payable to the Department in part or in full upon demand and receipt from the Department of a notice of forfeiture issued in accordance with Subchapter 29 of this Chapter.

(4) The Department shall not accept a letter of credit in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet by a Certified Public Accountant.

(5) The Department shall not accept a letter of credit from a bank for any person, on all permits held by that person, in excess of three times the company's maximum single obligation, as provided by State Law or in the

absence of State Law, in accordance with (e)(2) of this section.

(6) The bond shall provide that:

(A) The bank will give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations or requirements which could result in suspension or revocation of the bank's charter or license to do business;

(B) In the event the bank becomes unable to fulfill its obligation under the letter of credit for any reason, notice shall be given immediately to the permittee and the Department;

(C) Upon the incapacity of the bank by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without bond coverage in violation of Section 460:10-21-4(b). The Department shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days. During this period, the Department shall conduct weekly inspections to ensure continuing compliance with other permit requirements and the Act. If such a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued.

[Source: Amended at 17 Ok Reg 3170, eff 7-28-00; Amended at 26 Ok Reg 3002, eff 8-27-09]

460:10-25-4. Replacement of bonds

(a) The Department may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds, if the liability which has occurred against the permittee on the permit area is transferred to such replacement bonds.

(b) The Department shall not release existing performance bonds until the permittee has submitted and the Department has approved acceptable replacement performance bonds. A replacement of performance bonds pursuant to this Section shall not constitute a release of bond under Subchapter 27 of this Chapter.

SUBCHAPTER 27. RELEASE OF PERFORMANCE BOND

Section

460:10-27-1. Purpose

460:10-27-2. Procedures for seeking release of performance bond

460:10-27-3. Criteria and schedule for release of performance bond

460:10-27-1. Purpose

This Subchapter sets forth the minimum provisions for release of performance bonds for non-coal surface mining and reclamation operations, except for limited use permits. This

includes the filing, notice, and hearing requirements, and the standards by which applications for release shall be evaluated.

[Source: Amended at 26 Ok Reg 3002, eff 8-27-09]

460:10-27-2. Procedures for seeking release of performance bond

(a) The permittee or any person authorized to act on his behalf, may file an application with the Department for release of all or part of the performance bond liability applicable to a particular permit after all reclamation, restoration and abatement work in a reclamation phase as defined in 45 O.S. (1981), Section 725 has been completed on any part of the permit area or on an area approved pursuant to Section 460:10-27-3(b) (2) for the incremental filing and release of bond liability.

(b) The Department shall inspect and evaluate the reclamation work involved within 30 days after receiving a completed application for bond release, or as soon thereafter as weather conditions permit. The surface owner, or agent, or lessee shall be given notice of such inspection and may participate with the Department in making the bond release inspection.

(c) The Department shall consider, during inspection evaluation,

(1) Whether the permittee has met the criteria for release of the bond under Section 460:10-27-3;

(2) The degree of difficulty in completing any remaining reclamation, restoration or abatement work.

(d) The Department shall notify the permittee of its decision to release or not to release all or part of the performance bond or deposit within sixty (60) days from the receipt of the completed application.

460:10-27-3. Criteria and schedule for release of performance bond

(a) The Department may release portions of the liability under performance bonds applicable to the permit area following completion of reclamation as defined in 45 O.S. (1981), Section 725 and this Chapter.

(b) The maximum liability of performance bonds applicable to an increment or permit area which may be released shall be calculated on the following basis:

(1) Release of an amount not to exceed 80 percent of the penal sum of the bond filed for each acre of land graded.

(2) Release of the remaining portion of the total performance bond on the increment or permit area after standards of 45 O.S. (1981), Section 725 have been attained and final inspection and procedures of this Section have been satisfied.

(c) No bond shall be totally released until conditions of reclamation for the last increment, in the amount necessary to-

(1) Allow someone other than the operator to complete the approved reclamation plan, achieving compliance with 45 O.S. (1981), Section 721 et seq., this Chapter, and the permit;

(2) Allow someone other than the operator to abate any significant environmental harm to air, water or land

resources or danger to public health and safety prior to release of the land under the terms of the permit.

460:10-29-2.	General
460:10-29-3.	Procedures
460:10-29-4.	Criteria for forfeiture
460:10-29-5.	Determination of forfeiture amount [REVOKED]

SUBCHAPTER 28. RELEASE OF PERFORMANCE BOND ON LIMITED USE PERMITS

Section

460:10-28-1.	Purpose
460:10-28-2.	Procedures for seeking release of performance bonds on limited use permits
460:10-28-3.	Criteria and schedule for release of limited use permit performance bond

[Source: Codified 8-27-09]

460:10-28-1. Purpose

This Subchapter sets forth the minimum requirements for the release of performance bond issued on limited use permits.

[Source: Added at 26 Ok Reg 3002, eff 8-27-09]

460:10-28-2. Procedures for seeking release of performance bonds on limited use permits

- The permittee or any person authorized to act on his or her behalf may file an application with the Department of for release of all or part of the performance bond liability.
- The permittee shall send written notification to the surface owner of the application for release of the performance bond within thirty (30) days of its application with the Department.
- The Department shall inspect and evaluate the reclamation work within thirty (30) days after receiving a bond release application, or as soon thereafter as weather conditions allow.
- The Department shall notify the permittee and the surface owner of its decision to release or not to release all or part of the performance bond or deposit within sixty (60) days from receipt of the completed application.

[Source: Added at 26 Ok Reg 3002, eff 8-27-09]

460:10-28-3. Criteria and schedule for release of limited use permit performance bond

The Department may release portions of liability under performance bonds applicable to the permit area following the completion of reclamation as defined in 45 O.S. Section 725 and this Chapter.

[Source: Added at 26 Ok Reg 3002, eff 8-27-09]

SUBCHAPTER 29. PERFORMANCE BOND FORFEITURE

Section

460:10-29-1.	Purpose
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460:10-29-1. Purpose

This Subchapter sets forth the provisions to be applicable whenever the Department initiates a proceeding for the forfeiture of all or any part of a bond, as a result of the permittee's failure to meet the conditions upon the bond.

460:10-29-2. General

- The Department shall forfeit all or part of a bond for any permit where required or authorized by Section 460:10-29-4.
- The Department may withhold forfeiture, if the permittee and surety, if applicable agree to a compliance schedule to comply with the violations of the permit or bond conditions.
- The Department may allow the surety to complete the reclamation plan if the surety can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the alternative postmining land use approved by the Department. No bond shall be released, except for partial releases authorized under Section 460:10-27-2, until successful completion of all reclamation under the terms of the permit, including applicable liability periods of Subchapter 27 of this Chapter.

460:10-29-3. Procedures

- In the event forfeiture of the bond is required by Sections 460:10-29-2 and 460:10-29-4, the Department shall:
 - Send written notification by certified mail, return receipt requested to the permittee, and the surety on the bond, if applicable, of the Department's determination to forfeit all or part of the bond and the reasons for the forfeiture, including a finding of the amount to be forfeited;
 - Advise the permittee and surety, if applicable, of any rights of appeal that may be available from the determination under State Law;
 - Proceed in an action for collection on the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this Section, for the amount forfeited, if an appeal is not filed within a time established by the Department and a stay of collection issued by the hearing authority or such appeal is unsuccessful; and
 - If an appeal is filed, defend the action.
- The written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, shall be a final decision by the Department.
- The Department shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area on which bond coverage applies, and to cover associated administrative expenses.

460:10-29-4. Criteria for forfeiture

- A bond shall be forfeited, if the Department finds that:

- (1) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action.
 - (2) The permittee has failed to conduct the surface mining and reclamation operations in accordance with 45 O.S. (1981), Section 721 et seq., the conditions of this Chapter and the permit within the time required, and the Department has determined that it is necessary, in order to fulfill the requirements of the permit and the reclamation plan, to have someone other than the operator correct or complete reclamation;
 - (3) The permit for the area under the bond has been revoked, unless the operator or surety assumes liability for completion of the reclamation and is, in the opinion of the Department, diligently and satisfactorily performing such work; or
 - (4) The permittee has failed to comply with a compliance schedule approved pursuant to Section 460:10-29-2(b).
- (b) A bond may be forfeited, if the Department finds that:
- (1) The permittee has become insolvent, failed in business, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by any court;
 - (2) A creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials, facilities at the permit area, or on the collateral pledged to the Department; or
 - (3) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with 45 O.S. (1981), Section 721 et seq., this Chapter and the permit.

460:10-29-5. Determination of forfeiture amount [REVOKED]

[Source: Revoked at 21 Ok Reg 2977, eff 7-26-04]

SUBCHAPTER 31. BLASTING AND USE OF EXPLOSIVES

Section

460:10-31-1.	Purpose
460:10-31-2.	Objective
460:10-31-3.	Authority
460:10-31-4.	Responsibility
460:10-31-5.	Use of explosives - general requirements
460:10-31-6.	Use of explosives - blasting plan
460:10-31-7.	Public notice of blasting warning signals and control
460:10-31-8.	Blasting requirements
460:10-31-9.	Seismographic measurements
460:10-31-10.	Records of blasting operations
460:10-31-11.	Certified surface blaster qualifications

460:10-31-1. Purpose

This Subchapter established guidelines for the safe use of explosives in non-coal surface mining operations and records keeping for the blasting activities of such operations.

460:10-31-2. Objective

The objective of this Subchapter is to ensure that the general public and mine employees are protected through the safe utilization of explosives, and to ensure the proper keeping of records necessary to ensure compliance with this subchapter, this Chapter and 45 O.S. (1981), Section 721 et seq.

460:10-31-3. Authority

The Department is authorized, through this Subchapter and Subchapter 35 of this Chapter, to make necessary inspections to monitor compliance with this Subchapter.

460:10-31-4. Responsibility

It is the responsibility of the mine operator to conduct his operation and the use of explosives in a safe manner and to maintain the records required by this Subchapter.

460:10-31-5. Use of explosives - general requirements

- (a) Each operator shall comply with all applicable State and Federal Laws in the use of explosives.
- (b) All blasting operations shall be conducted by experienced, trained and competent persons who understand the hazards involved. Each person responsible for blasting operations shall possess a valid certificate as required by 45 O.S. (1981), Section 902.

460:10-31-6. Use of explosives - blasting plan

Each mining permit application shall contain a Blasting Plan for the proposed permit area and include the following information:

- (1) Types and appropriate amounts of explosives to be used for each type of blasting operation to be conducted;
- (2) Description of procedures and plans for recording and retention of information during blasting; and
- (3) Description of blasting warnings and site access control equipment and procedures.

460:10-31-7. Public notice of blasting warning signals and control

Each operator shall submit a plan that addresses;

- (1) Methods to be used to control access to the blasting area; and
- (2) Types of audible warnings and all clear signals to be used before and after blasting.

460:10-31-8. Blasting requirements

- (a) All blasting shall be conducted between sunrise and sunset.
 - (1) The Department may specify more restrictive time periods, based upon public requests or other relevant information, according to the need to adequately protect the public from adverse noise.
 - (2) Blasting may, however, be conducted between sunset and sun rise if:

- (A) A blast that has been prepared during the afternoon must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard could result that cannot be adequately mitigated;
- (B) A complete written report of blasting at night is filed by the operator with the Department not later than three days after the night blasting. The report shall include the reasons for the delay in blasting, including why the blast could not be held over to the next day, when the blast was actually conducted, the warnings signs given, and a copy of the blast report required by Section 460:10-31-10.
- (b) Warning and all-clear signals of different character from the point of the blast shall be given. Persons within the permit area blasting site shall be notified of the meaning of the signals through the methods specified in Section 460:10-31-7.
- (c) Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the operator has reasonably determined:
- (1) That no unusual circumstances, such as imminent slides or undetonated charges, exist; and
 - (2) That access to and travel in or through the area can be safely resumed.
- (d) Except where lesser distances are approved by the Department, based upon a pre-blasting survey, seismic investigation, or other appropriate investigation, blasting shall not be conducted within:
- (1) 300 feet of any building used as a dwelling, school, church, hospital, or nursing facility; or
 - (2) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas - storage facilities, municipal water-storage facilities, fluid transmission pipelines, gas or oil collection lines, or water and sewerage lines.
 - (3) Any mining operation actively mining on the effective date of these regulations which conducts blasting activities closer than the above distances is exempt from the provisions of (d) (1) and (d) (2) of this Section with regard to the structures or facilities to which these blasting operations take place.
- (e) Flyrock shall not be cast from the permitted area.
- (f) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts to any underground mine, and change in the course, channel, or availability of surface water outside the permit area
- (g) In all blasting operations, except as otherwise authorized in this Section, the maximum peak particle velocity shall not exceed 1 inch per second at the location of any dwelling, public building, school, church, or commercial or institutional building.
- (h) If blasting is conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation shall not apply at the following locations:
- (1) At structures owned by the operator and not leased to another party; and
 - (2) At structures owned by the operator and leased to another party, if a written waiver by the lessee is submitted to the Department prior to blasting.
- (i) An equation for determining the maximum weight of explosives that can be detonated within any 8-millisecond period is in (j) of this Section. If the blasting is conducted in accordance with this equation, the peak particle velocity is deemed the 1-inch-per-second limit.
- (j) The maximum weight of explosives to be detonated within any 8-millisecond period may be determined by the formula $W=(d/60)^2$ square where W = the maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period, and D = the distance, in the feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building. For distances between 300 or 5,000 feet, using ANFO or the equivalent solution of the equation results in the following maximum weights:
- (1) For distance of 300 feet, maximum weight is 25 pounds.
 - (2) For distance of 350 feet, maximum weight is 34 pounds.
 - (3) For distance of 400 feet, maximum weight is 44 pounds.
 - (4) For distance of 500 feet, maximum weight is 69 pounds.
 - (5) For distance of 600 feet, maximum weight is 100 pounds.
 - (6) For distance of 700 feet, maximum weight is 136 pounds.
 - (7) For distance of 800 feet, maximum weight is 178 pounds.
 - (8) For distance of 900 feet, maximum weight is 225 pounds.
 - (9) For distance of 1000 feet, maximum weight is 278 pounds.
 - (10) For distance of 1,100 feet, maximum weight is 336 pounds.
 - (11) For distance of 1,200 feet, maximum weight is 400 pounds.
 - (12) For distance of 1,300 feet, maximum weight is 469 pounds.
 - (13) For distance of 1,400 feet, maximum weight is 544 pounds.
 - (14) For distance of 1,500 feet, maximum weight is 625 pounds.
 - (15) For distance of 1,600 feet, maximum weight is 711 pounds.
 - (16) For distance of 1,700 feet, maximum weight is 803 pounds.
 - (17) For distance of 1,800 feet, maximum weight is 900 pounds.
 - (18) For distance of 1,900 feet, maximum weight is 1,002 pounds.

- (19) For distance of 2,000 feet, maximum weight is 1,111 pounds.
- (20) For distance of 2,500 feet, maximum weight is 1,736 pounds.
- (21) For distance of 3,000 feet, maximum weight is 2,500 pounds.
- (22) For distance of 3,500 feet, maximum weight is 3,403 pounds.
- (23) For distance of 4,000 feet, maximum weight is 4,444 pounds.
- (24) For distance of 4,500 feet, maximum weight is 5,625 pounds.
- (25) For distance of 5,000 feet, maximum weight is 6,944 pounds.

(k) **Airblast limitations.** Airblast may not exceed the maximum limits listed below, unless Departmentally approved, at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area.

(l) **Frequency level.** The lower frequency limit Maximum level, of measuring system, in dB in Hz(+/-3 dB) must be the following:

- (1) 0.1 Hz or lower-flat response must be 134 peak.
- (2) 2 Hz or lower-flat response must be 133 peak.
- (3) 6 Hz or lower-flat response must be 129 peak.
- (4) C-weighted-slow response must be 105 peak dBC.

460:10-31-9. Seismographic measurements

(a) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of 1 inch per second is not exceeded, the equation in Section 460:10-31-8(j) need not be used. If that equation is not used by the operator, a seismograph record shall be obtained for each shot.

(b) The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the Department, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. In no case shall the Department approve the use of a modified equation where the peak particle velocity of 1 inch per second required in Section 460:10-31-8(g) would be exceeded.

(c) The Department may require a seismograph record of any or all blasts and may specify the location at which such measurements are taken.

460:10-31-10. Records of blasting operations

A record of each blast, including seismographic reports if used, shall be retained for at least three years and shall be available for inspection by the Department upon request. The record shall contain the following data:

- (1) Name of the operator conducting the blast;
- (2) Location, date and time of blast;
- (3) Name, signature and license number of blaster-in-charge;
- (4) Direction and distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building within 1/2 mile of the permitted area;

- (5) Weather conditions, including temperature and wind direction;
- (6) Number of holes, burden and spacing;
- (7) Maximum weight of explosives detonated within any 8-millisecond period;
- (8) Maximum number of holes detonated within any 8-millisecond period;
- (9) Type and length of stemming;
- (10) Type of delay detonator and delay periods used;
- (11) Seismographic records, where required.
 - (A) Seismographic reading, including exact location of seismograph and its distance from the blast;
 - (B) Name of the person taking the seismograph reading; and
 - (C) Name of the person and firm analyzing the seismograph record.

460:10-31-11. Certified surface blaster qualifications

- (a) Any person performing blasting activities must have a valid, current blaster's certificate issued by the Oklahoma Mining Commission. Reciprocity shall be granted upon submittal of a recognized blasting certificate from another state.
- (b) A certified surface blaster shall provide evidence of one (1) year's practical experience under the direct supervision of a current certified surface blaster.
- (c) A blaster shall be able to understand and give written and oral orders.
- (d) Blasters shall be competent in handling explosives and performing in a safe manner the type of blasting that will be required.
- (e) The blaster shall be knowledgeable and competent in the use of each type of blasting method used.
- (f) A blaster certification shall be valid for a period of two (2) years. Renewal of certification shall require a current OSBI background check be submitted prior to reissuance. A certification or recertification shall not be granted to any person with a felony conviction.
- (g) A blaster shall be capable of carrying out the duties and not be addicted to narcotics, intoxicants, or similar type of drugs.
- (h) The blaster certification shall be carried by the blaster or a copy shall be on file at the blasting area during the blasting operation.

[Source: Added at 31 Ok Reg 2088, eff 9-12-14]

SUBCHAPTER 33. NON-COAL ENVIRONMENTAL PERFORMANCE STANDARDS [RESERVED]

SUBCHAPTER 35. STATE INSPECTION

Section

460:10-35-1. Purpose

- 460:10-35-2. State inspections
- 460:10-35-3. Citizens' requests for state inspections
- 460:10-35-4. Right of entry
- 460:10-35-5. Review of adequacy and completeness of inspection
- 460:10-35-6. Review of decision not to inspect or enforce
- 460:10-35-7. Availability of records
- 460:10-35-8. Serious injury or fatality report

460:10-35-1. Purpose

This Subchapter sets forth general procedures governing state inspections.

460:10-35-2. State inspections

(a) The Department shall conduct an average of at least one inspection every month of each non-coal surface mining and reclamation operation under its jurisdiction. Additional inspections may be ordered for just cause by the Director of the Department of Mines or his or her other designees.

(b) The inspections required under subsection (a) of this section shall:

- (1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends or holidays;
- (2) Occur without prior notice to the operator being inspected or any agent or employee of such operator, except for necessary on-site meetings; and
- (3) Include the prompt filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of 45 O.S. (1981), Section 721 et seq., this Chapter and the permit.

[Source: Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-35-3. Citizens' requests for state inspections

(a) A citizen may request a state inspection by furnishing to an authorized representative of the Director a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition or practice exists and setting forth a phone number and address where the citizen can be contacted.

(b) Within 30 days of the state inspection or, if there is no state inspection, within 30 days of receipt of the citizen's written statement, the Department may send the citizen the following:

- (1) If an inspection was made, a description of the enforcement action taken; or
- (2) If no state inspection was conducted, an explanation of the reason why.

[Source: Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-35-4. Right of entry

Each authorized representative of the Director conducting a state inspection of a non-coal surface mining operation under Title 45 of the Oklahoma Statutes:

(1) Shall have the right of entry to inspect and investigate any non-coal surface mining and reclamation operation, without advance notice or a search warrant, upon presentation of appropriate credentials, and

(2) May, at reasonable times and without delay, have access to and copy any records required to be maintained by 45 O.S. (1981), Section 721 et seq., and this Chapter, and may inspect any monitoring equipment required by 45 O.S. (1981), Section 721 et seq., or this Chapter.

[Source: Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-35-5. Review of adequacy and completeness of inspection

Any person who is or may be adversely affected by a non-coal surface mining and reclamation operation may notify the Director in writing of any alleged failure on the part of the non-coal inspection division of the Department to make an adequate and complete or periodic inspection as provided in Section 460:10-35-2. The notification shall include sufficient information to create the reasonable belief of non-compliance with Section 460:10-35-2 and to demonstrate that the person is or may be adversely affected. The Director shall within 30 days of receipt of the notification determine compliance or non-compliance with Section 460:10-35-2, and if not, shall immediately order an inspection to remedy the non-compliance. The Director shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the non-compliance.

460:10-35-6. Review of decision not to inspect or enforce

(a) Any person who is or may be adversely affected by non-coal surface mining and reclamation operations may ask the Director to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for state inspection under Section 460:10-35-3. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The Director shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review.

(c) Informal review under this Section shall not affect any right to formal review by the Director.

[Source: Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-35-7. Availability of records

(a) Copies of all records, reports, inspection materials, or information obtained by the Department under 45 O.S. (1981), Section 721 et seq., and this Chapter shall be made immediately available for examination upon request to the public, except that the Department may refuse to make available:

- (1) Investigatory reports compiled for law enforcement purposes; and
 - (2) Information not required to be made available under Section 460:10-17-8 or (c) of this Section.
- (b) Copies of documents and information required to be made available under (a) of this Section shall also be provided for examination at the Department of Mines located at 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.
- (c) In order to protect preparation for hearings and enforcement proceedings, the Department may designate for special handling, investigative and enforcement reports and other such materials.

[Source: Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-35-8. Serious injury or fatality report

- (a) Whenever loss of life or serious injury shall occur in or about a mine, it shall be the duty of the operator of the mine to report the accident involving loss of life or injury without delay to the Department. It is the duty of the Department, if determined necessary, to immediately send a mine inspector to the scene of the accident, and make a report to the Department. Forms for reporting accidents shall be furnished by the Department. Any operator failing to notify the Department of a fatality or an injury in a timely manner shall be assessed by the Department a fine of up to five hundred dollars (\$500.00).
- (b) All mines regulated by MSHA must promptly provide copies to the Department of any accident reports that have been filed with MSHA.

[Source: Added at 29 Ok Reg 1782, eff 8-12-12]

SUBCHAPTER 37. STATE ENFORCEMENT

Section

460:10-37-1.	Purpose
460:10-37-2.	Cessation Orders
460:10-37-3.	Notices of violation
460:10-37-4.	Service of notices of violation and cessation orders
460:10-37-5.	Public hearing
460:10-37-6.	Review of citations
460:10-37-7.	Injunctive relief

460:10-37-1. Purpose

This Subchapter sets forth general rules regarding Departmental enforcement of 45 O.S. (1981), Section 721 et seq., this Chapter and all conditions of permits imposed under 45 O.S (1981), Section 721 et seq. and this Chapter.

460:10-37-2. Cessation Orders

- (a) The Director or his or her authorized representative shall immediately order a cessation of non-coal surface mining and reclamation operations or of the relevant portion thereof, if finding on the basis of any inspection, and condition or practice, or any violation of 45 O.S., Section 721 et seq., this Chapter, other state law, or any condition of a permit imposed

under 45 O.S., Section 721 et seq., or this Chapter which creates an imminent danger to the health and safety of the public. If the cessation ordered under this Section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the Director or his or her authorized representative shall impose affirmative obligations on the operator to whom it issued to abate the condition, practice or violation. The order shall specify the time by which abatement shall be accomplished.

(b) The Director or his or her authorized representative shall immediately order a cessation of non-coal surface mining and reclamation operations, or of the relevant portion thereof, when notice of violation has been issued and an operator fails to abate the violation within the abatement period fixed or subsequently extended by the Director or authorized representative. A cessation order issued under this subsection shall require the operator to whom it is issued to take all steps the Director or his or her authorized representative deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) Any citation(s) issued by the Department to an entity or individual that the Department determines has mined without a permit in violation of 45 O.S. Section 724 or this Chapter shall be assessed by the Department a fine up to Ten Thousand Dollars (\$10,000.00), including individuals, or agents of said entity. Any agent is jointly and severally liable with its principal for such violation and any resulting fines. Any fine assessed by the Department shall be made pursuant to the following :

- (1) Two thousand five hundred dollars (\$2,500.00) for the first Cessation Order issued for mining without a permit.
- (2) Five thousand dollars (\$5,000.00) for the second Cessation Order issued for mining without a permit.
- (3) Ten thousand dollars (\$10,000.00) for the third Cessation Order issued for mining without a permit.
- (4) Any person subsequently issued a citation for mining without a permit shall be subject to Ten thousand dollars (\$10,000.00) for each subsequent occurrence.

(d) A Cessation order issued under (a), (b) or (c) of this Section shall be in writing, signed by the Director or authorized representative, and shall set forth with reasonable specificity:

- (1) The nature of the violation;
- (2) The remedial action or affirmative obligation required, if any including interim steps, if appropriate;
- (3) The time established for abatement, if appropriate, including the time for meeting any interim steps; and
- (4) A reasonable description of the portion of the non-coal surface mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by the Director or his or her authorized representative.

(e) Reclamation operations and other activities intended to protect the public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(f) The Director or authorized representative may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time for previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(g) The Director or authorized representative shall terminate a cessation order, by written notice to the operator to whom the order was issued, when he or she determines that all conditions, practices or violations listed in the order have been abated.

[Source: Amended at 23 Ok Reg 3057, eff 7-27-06; Amended at 26 Ok Reg 3002, eff 8-27-09]

460:10-37-3. Notices of violation

(a) The Director or authorized representative shall issue a notice of violation if, on the basis of an inspection, he or she finds a violation of 45 O.S. (1981), Section 721 et seq., this Chapter or any condition of a permit imposed under 45 O.S. (1981), Section 721 et seq., or this Chapter, which does not create an imminent danger or harm for which a cessation order must be issued under Section 460:10-37-2.

(b) A notice of violation issued under this section shall be in writing, signed by the Director or his or her authorized representative, and shall set forth with reasonable specificity:

- (1) The nature of the violation;
- (2) The remedial action required, which may include interim steps;
- (3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and
- (4) A reasonable description of the portion of the non-coal surface mining and reclamation operation to which it applies.

(c) The Director or his or her authorized representative may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(d) If the operator to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the Director or authorized representative shall issue a cessation order under Section 460:10-37-2(b).

(e) The Director or authorized representative shall terminate a notice of violation by written notice to the operator to whom it was issued, when he or she determines that all violations listed in the notice have been abated.

[Source: Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-37-4. Service of notices of violation and cessation orders

A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

- (1) By tendering a copy at the non-coal surface mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the Director or his or her authorized representative, appears to

be in charge of the surface mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to (1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the operator to whom it is issued or his designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

[Source: Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-37-5. Public hearing

(a) Except as provided in (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless a public hearing has been held within that time. No hearing will be required where the condition, practice or violation in question has been abated or the hearing has been waived.

(b) A notice of violation or cessation order shall not expire as provided in (a) of this section if the public hearing has been waived or if, with the consent of the person to whom the notice or order was issued, the public hearing is held later than 30 days after the notice or order was served. For purposes of this section:

(1) The public hearing will be deemed waived if the person to whom the notice or order is issued:

- (A) Is informed, by written notice served in the manner provided in (b) (2) of this Section, that he will be deemed to have waived a public hearing unless he requests one within 30 days after service notice; and
- (B) Fails to request a public hearing with that time.

(2) The written notice referred to in (b) (1) (i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than 5 days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the public hearing if his request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Department shall give as much advance notice as is practicable of the time, place and subject matter of the public hearing to the operator to whom the notice or order was issued.

(d) The Department shall also post a notice of the hearing at the office of the Department.

(e) A public hearing shall be conducted by an authorized representative of the Department, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the public hearing, the Department shall affirm, modify or vacate the notice or order in writing. The decision shall be sent to:

- (1) The operator to whom the notice or order was issued; and
- (2) Any person who filed a report which led to the notice or order.

(g) The granting of waiver of a public hearing shall not affect the right of any person to judicial review under 45 O.S. (1981), Section 738.

460:10-37-6. Review of citations

(a) An operator issued a notice of violation or cessation order under Sections 460:10-37-2 or 460:10-37-3, may request review of that action by filing an application for review within 30 days after receiving notice of the action, at the following address: Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.

(b) The filing of an application for review under this Section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

[Source: Amended at 23 Ok Reg 3057, eff 7-27-06; Amended at 26 Ok Reg 3002, eff 8-27-09; Amended at 31 Ok Reg 2088, eff 9-12-14]

460:10-37-7. Injunctive relief

(a) The Department may request the Attorney General for the State of Oklahoma to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any order in the district court for the district in which the non-coal surface mining and reclamation operation has been issued has his principal office, whenever that person or his or her agent, in violation of 45 O.S. Section 721 et seq. or this Chapter, does the following:

- (1) Violates or fails or refuses to comply with any order or decision of the Department under 45 O.S., Section 721 et seq. or this Chapter;
- (2) Interferes with, hinders or delays the Department in carrying out the provisions of 45 O.S., Section 721 et seq. or this Chapter;
- (3) Refuses to admit an authorized representative of the Department to a mine;
- (4) Refuses to permit inspection of a mine by an authorized representative of the Department;
- (5) Refuses to furnish any required information or report;
- (6) Refuses to permit access to or copying of any required records; or
- (7) Refuses to permit inspection of monitoring equipment.

(b) The Department may pursue civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court for the district in which any unpermitted mining, as referenced in Section 10-37-2(2) of this Subchapter, is located, in which the entity, individuals or agents of said entity, have their principal offices, or in Oklahoma County, to enforce any Department action against the entity, individual, or agents. The Department shall be entitled to recover penalties or fines assessed for mining without a permit from the entity, individuals or agents conducting said mining in violation of 45 O.S. Section 721 et seq. and this Chapter. The Department shall also be entitled to reasonable attorneys fees incurred in enforcing this section. All monies collected pursuant to this section shall be deposited in the Department of Mines Revolving Fund

[Source: Amended at 23 Ok Reg 3057, eff 7-27-06]