

## RULE IMPACT STATEMENT

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

#### **Subchapter 9. General Requirements for Permits and Applications.**

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

#### **Subchapter 13. Non-Coal Mining Permit Applications Requirements for Information on Environmental Resources.**

460:10-13.5. Permitting for non-coal mining within a Sensitive Basin [REVOKED]

460:10-13-5.1. Permitting for non-coal mining within a Sensitive Basin [NEW]

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

#### **Subchapter 17. Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions Excluding Limited Use Permits.**

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

#### **Subchapter 19. Permit Revision, Amendments, Renewals, and Transfers.**

460:10-19-4. Permit revisions and amendments [AMENDED]

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- (a) The proposed amendments will address the statutory requirements of HB 2471, which became effective November 1, 2019. Additional amendments proposed by a citizens group will require the submission of electronic copies of non-coal mining permit applications, including maps, once the applications are complete and ready for public notice. Finally, other amendments are proposed which remove obsolete regulatory restrictions to achieve the “One-In-Two-Out” mandate found in Executive Order 2020-03.

**In Subchapter 9:** A new subsection (c) is proposed in Section 460-9-3 requiring operators to submit an electronic copy of the final version of their written application. This electronic copy will be published by the agency on its internet website.

**In Subchapter 13:** It is proposed that Section 10-13-5 be removed as obsolete and replaced with Section 10-13-5.1, which contains language taken almost verbatim from HB 2471. In response to public comment, the proposed rule attempts to explain how the agency will implement the mine expansion limitations of HB 2471. Subsection (c) of the proposed new section allows multiple expansions where the total added land will not exceed the statutory limit. Subsection (d) explains how the agency will treat applications which seek to add non-contiguous lands. In Section 10-13-6, subsection (a) is being removed as it was made obsolete with the enactment of HB 2471.

**In Subchapter 17:** A new subsection (b) explains that the agency will publish an electronic copy of each application on its website at the time that notice is to be published in the newspaper.

**In Subchapter 19:** An obsolete restrictive phrase has been removed from subsection (d) of Section 10-19-4 and has been replaced with language that allows operators to amend their existing permit to extend the boundaries and add additional lands.

- (b) The class or classes most affected by these proposed amendments would be:
1. Non-coal mining operators, whose operating mines overlies a sensitive sole source groundwater basin or subbasin, who want to amend or revise their original permit boundaries by adding acreage that increases that mine's acreage by more than 100% or by more than four hundred (400) whichever is less, as compared under the permit on November 1, 2019.
  2. A non-coal mining operator who after November 1, 2019, wants to obtain a mining permit on land where the mine would be located overlying a sensitive sole source groundwater basin or subbasin, unless, the mine operation will not result in more than five (5) acre-feet per year of groundwater emanating from a sensitive sole source groundwater basin or subbasin to infiltrate its pit and will not operate for more than five (5) years, with no extensions or renewals.
  3. All non-coal mining operators who are not already submitting their written copies of permit applications in electronic form.
  4. There has been no cost analysis or other information submitted as to the cost impact of this proposed amendment from any private or public entities. The proposed permanent amendments related to HB 2471's legislative moratorium are proposed pursuant to a legislative mandate and any enforcement costs will be absorbed by the Department of Mines.
- (c) Those benefiting from this proposed amendments would be:
1. Oklahoma citizens, concerned landowners, and other persons who believe they are or will be adversely affected by non-coal mining operations that are, or would be, operating at a location overlying a sensitive sole source groundwater basin or subbasin or by mine operations which will have more than five (5) acre-feet per year of groundwater emanating from a sensitive sole source groundwater basin or subbasin to infiltrate its pit. The benefit will be a time period that includes a moratorium on permit issuance and amendment or revision which allows the state water agencies to develop and apply technical resources, analytical tools, and regulatory systems to effectively implement effective statutes to protect a sensitive sole source groundwater basin or subbasin.

2. Interested persons who wish to review copies of pending mining permit applications without submitting records requests or visiting the agency's office to review documents in person.
- (d) There should be no direct economic impact on the affected classes or to any political subdivision pursuant to the promulgation of this proposed amendment. Any economic impacts would most likely be from operational decisions resulting from the possible acreage limitation on the expansion of an existing, as of November 1, 2019, permit during the legislatively mandated moratorium period or the ability to acquire a new mining permit, at a location overlying a sensitive sole source groundwater basin or subbasin. There are no fees, charges, or compliances cost to the affected classes or any political subdivision associated with this proposed amendment.
  - (e) There are likely some negligible compliance costs to ODM as a result of this amendment. Due to the nature of this proposed amendment, the implementation and enforcement costs are those of the type, administration and inspection, currently ongoing and will be absorbed by ODM. There is no net loss or gain in revenue projected by ODM.
  - (f) No other agency is involved with the implementation and enforcement of this proposed amendment.
  - (g) This proposed amendment was legislatively mandated by HB 2471, which means the Oklahoma Small Business Regulatory Flexibility Act does not apply to its implementation. *See* 75 O.S. § 504(B).
  - (h) The amendment does not economically impact any subdivisions or require their cooperation in implementing or enforcing the rule.
  - (i) There are minimal costs associated with the promulgation and implementation of this amendment. There are no less costly, non-regulatory, or less intrusive methods that can be applied for the requirements of this proposed amendment or in achieving its initial purpose.
  - (j) In the interest of providing for the health, safety, and welfare of the state, its resources, and its citizens, the Oklahoma legislature mandated this proposed amendment by declaring, in HB 2471, a moratorium, with exceptions and end provisions, on the issuance of certain mining permits and amendments and revisions to permits that have mines overlying sensitive sole source groundwater basins or subbasins. The mandate was enacted to help safeguard Oklahoma's water sources and protect their existing beneficial uses until the ODM, OWRB, and DEQ established effective interagency consultation and cooperation of activities on all administrative matters relating to the operation of mines at locations that overlie a sensitive sole source groundwater basin or subbasin and ODM promulgated rules and regulations to implement the provisions Section 2 of HB 2471.

- (k) The detrimental effect on the public health, safety and environment should this proposed amendment not be implemented would be that OAC 460: Chapter 10, Non-coal Rules and Regulations, would fail to comply with statutory law.
- (l) This Rule Impact Statement was prepared on November 30, 2020 and December 1, 2020.