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SURFACE-MINING LAND CONSERVATION AND RECLAMATION ACT

49-601. Surface-mining land conservation and reclamation; citation of act. This act shall be known and may be cited as the surface-mining land conservation and reclamation act.

History: L. 1994, ch. 197, § 1; July 1.

49-602. Same; policy statement. It is the policy of this state to provide for the reclamation and conservation of land affected by surface mining and thereby to preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health, safety and general welfare of the citizens of this state.

History: L. 1994, ch. 197, § 2; July 1.

49-603. Same; definitions. As used in this act:

(a) "Director" means the executive director of the Kansas department of agriculture division of conservation or a designee.

(b) "Affected land" means the area of land from which overburden has been removed or upon which overburden has been deposited, or both, but shall not include crushing areas, stockpile areas or roads.

(c) "Commission" means the state conservation commission.

(d) "Mine" means any underground or surface mine developed and operated for the purpose of extracting rocks, minerals and industrial materials, other than coal, oil and gas. Mine does not include borrow areas created for construction purposes.

(e) "Operator" means any person who engages in surface mining or operation of an underground mine or mines.

(f) "Overburden" means all of the earth and other materials which lie above the natural deposits of material being mined or to be mined.

(g) "Peak" means a projecting point of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(h) "Pit" means a tract of land from which overburden has been or is being removed for the purpose of surface mining.

(i) "Ridge" means a lengthened elevation of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(j) (1) "Surface mining" means the mining of material, except for coal, oil and gas, for sale or for processing or for consumption in the regular operation of a business by removing the overburden lying above natural deposits and mining directly from the natural deposits exposed, or by mining directly from deposits lying exposed in their natural state, or the surface effects of underground mining. Surface mining shall include dredge operations lying outside the high banks of streams and rivers.

(2) Removal of overburden and mining of limited amounts of any materials shall not be considered surface mining when done only for the purpose and to the extent necessary to determine the location, quantity or quality of the natural deposit, if the materials removed during exploratory excavation or mining are not sold, processed for sale or consumed in the regular operation of a business.

(k) "Topsoil" means the natural medium located at the land surface with favorable characteristics for growth of vegetation, which is normally the A or B, or both, soil horizon layers of the four soil horizons.

(l) "Active site" means a site where surface mining is being conducted.

(m) "Inactive site" means a site where surface mining is not being conducted but where overburden has been disturbed in the past for the purpose of conducting surface mining and an operator anticipates conducting further surface mining operations in the future.

(n) "Materials" means natural deposits of gypsum, clay, stone, sandstone, sand, shale, silt, gravel, volcanic ash or any other minerals of commercial value found on or in the earth with the exception of coal, oil and gas and those located within cut and fill portions of road rights-of-way.

(o) "Reclamation" means the reconditioning of the area of land affected by surface mining to a usable condition for agricultural, recreational or other use.

(p) "Stockpile" means the finished products of the mining of gypsum, clay, shale, stone, sandstone, sand, silt, gravel, volcanic ash or other minerals and removal from its natural position and deposited elsewhere for future use in the normal operation as a business.

(q) "Underground mining" means the extraction of rocks, minerals and industrial materials, other than coal, oil and gas, from the earth by developing entries or shafts from the surface to the seam or deposit before recovering the product by underground extraction methods.

(r) "Person" means any individual, firm, partnership, corporation, government or other entity.

(s) "Division" or "Kansas department of agriculture division of conservation" means the agency established by K.S.A. 2013 Supp. 74-5,126, and amendments thereto.

History: L. 1994, ch. 197, § 3; L. 2012, ch. 140, § 132; July 1.

49-604. Same; application of act. K.S.A. 49-602 through 49-624 shall not apply to:

(a) Affected land mined prior to the effective date of this act and shall apply only to those areas of land affected after the effective date of this act;

(b) in any way affect or control the stockpiling, method of stockpiling or mining from stockpiles of gypsum, clay, shale, stone, sandstone, sand, silt, gravel, volcanic ash or other minerals which are consumed in the regular operation of the business;

(c) operations which involve the removal of sand and gravel from within streams and are subject to the provisions of K.S.A. 82a-301 through 82a-305a, and amendments thereto; or

(d) operations of an operator whose affected lands do not exceed an aggregate of 2 acres.

History: L. 1994, ch. 197, § 4; July 1.

49-605. Same; license required; application and fees; duration of license; validity, when. (a) No person shall engage in surface mining or operation of an underground mine or mines, as defined by this act without first obtaining a license from the director.

(b) Licenses shall be issued upon application submitted on a form provided by the director and shall be accompanied by a fee of \$300. Each applicant shall be required to furnish on the form information necessary to identify the applicant. Licenses shall expire one year from the date of issuance and shall be renewed by the director upon application submitted within 30 days prior to the expiration date and accompanied by the renewal fee established by the director under K.S.A. 49-623.

(c) A license to mine is only valid when approved by the commission and acknowledged by a certificate which has been signed by the director and lists the operator and the assigned license number.

History: L. 1994, ch. 197, § 5; July 1.

49-606. Same; denial, suspension or revocation of license; proceedings. (a) The director, with the approval of the commission, may deny issuance or renewal of a license for repeated or willful violation of the provisions of this act or for failure to comply with any provision of a reclamation plan.

(b) The director, with the approval of the commission, may suspend or revoke a license for repeated or willful violation of any of the provisions of this act or for failure to comply with any provision of a reclamation plan. Proceedings for the suspension or revocation of a license pursuant to this section shall be conducted in accordance with the Kansas administrative procedure act by the director or a presiding officer from the office of administrative hearings.

History: L. 1994, ch. 197, § 6; L. 2004, ch. 145, § 16; July 1, 2008.

49-607. Same; registration of mining site, when; application, contents; fees; signing of site; unlawful acts. (a) At least 30 calendar days before commencement of mining or removal of overburden at a surface mining site not previously registered, an operator engaged in surface mining in this state shall register the site with the director. Application for registration shall be made upon a form provided by the director. All site registrations shall expire one year from the date of issuance. Application for renewal of registration shall be on a form provided by the director. The application shall include:

(1) A description of the tract or tracts of land where the site is located and the estimated number of acres at the

site to be affected by surface mining;

(2) if the application is for original registration, a reclamation plan detailing the postmining land use, how the final reclamation will be achieved and illustrating the proposed final topography;

(3) if the application is for renewal and changes have been made in the reclamation plan last filed, an updated reclamation plan;

(4) if the application is for renewal and no changes have been made in the reclamation plan last filed, a statement of that fact;

(5) the description shall include the section, township, range and county in which the land is located and shall otherwise describe the land with sufficient certainty to determine the location and to distinguish the land to be registered from other lands;

(6) a statement explaining the authority of the applicant's legal right to operate a mine on the land; and

(7) proof of compliance with all applicable zoning codes or rules and regulations and all applicable local, state and federal permits, except those contingent upon registration under the provisions of this act.

(b) The application shall be accompanied by the application fee and the registration or renewal fee established by the director under K.S.A. 49-623.

(c) A mine site registered pursuant to this section or K.S.A. 49-616 shall have, at the primary entrance to the mine site, a clearly visible sign which sets forth the name, business address and phone number of the operator. Failure to post and maintain a sign as required by this subsection, within 30 days after notice from the director, invalidates the registration.

(d) A person who falsifies information required to be submitted under this section shall be guilty of a class A nonperson misdemeanor.

History: L. 1994, ch. 197, § 7; July 1.

49-608. Same; bond or security to accompany registration application; registration of site and authority to operate mine. The application for registration shall be accompanied by a bond or security conforming to the requirements of K.S.A. 49-615 and 49-616. After ascertaining that the applicant is licensed under K.S.A. 49-605 and is not in violation of this act with respect to any site previously registered with the director, the director shall register the mine site and shall issue the applicant written authorization to operate a mine.

History: L. 1994, ch. 197, § 8; July 1.

49-609. Same; amendment or cancellation of registration, applications; procedures and requirements.

(a) An operator may at any time apply for amendment or cancellation of registration of any site. The application for amendment or cancellation of registration shall be submitted by the operator on a form provided by the director and shall identify as required under K.S.A. 49-607 the tract or tracts of land to be added to or removed from registration.

(b) If the application is for an increase in the area of a registered site, the application shall be processed in the same manner as an application for original registration.

(c) If the application is to cancel registration of any or all of the unmined part of a site, the director, after ascertaining that no overburden has been disturbed or deposited on the land, shall order release of the bond or the security posted on the land being removed from registration and cancel or amend the operator's written authorization to conduct surface mining on the site.

(d) Land where overburden has been disturbed or deposited shall substantially meet the criteria established by the reclamation plan submitted with the registration application before the land shall be removed from registration or released from bond or security under this section.

History: L. 1994, ch. 197, § 9; July 1.

49-610. Same; transfer of site control responsibility; application. (a) If control of an active site or the right to conduct any future mining at an inactive site is acquired by an operator other than the operator holding authorization to conduct surface mining on the site, the new operator, within 15 days, shall apply for registration of the site in the new operator's name. The application shall be made and processed as provided under K.S.A. 49-607 and 49-608. The former operator's bond or security shall not be released until the new operator's bond or security has been accepted by the director.

(b) The director may establish procedures for transferring the responsibility for reclamation of a mine site to a state agency or political subdivision which intends to use the site for other purposes. The director, with agreement from the receiving agency or subdivision to complete adequate reclamation, may approve the transfer of responsibility, release the bond or security, and terminate or amend the operator's authorization to conduct surface mining on the site.

History: L. 1994, ch. 197, § 10; July 1.

49-611. Same; conduct and activities required after completion of mining operations; release of bond or security. (a) An operator authorized under this act to operate a mine, after completion of mining operations and within the time specified in K.S.A. 49-613, shall:

(1) Grade affected lands except for impoundments and pit floors to slopes no steeper than one foot vertical rise

for each three feet of horizontal distance. Where the original topography of the affected land was steeper than one foot of vertical rise for each three feet of horizontal distance, the affected lands may be graded to blend with the surrounding terrain. The grading of high banks of sand pits and highwalls may be modified or exempted by the director.

(2) Provide for the vegetation of the affected lands, except for impoundments, pit floors, and highwalls, as approved by the director before the release of the bond as provided in K.S.A. 49-616.

(b) Notwithstanding subsection (a), overburden piles where disposition has not occurred or will not occur for a period of 12 months shall be stabilized.

(c) Topsoil that is a part of overburden shall not be buried or destroyed in the process of mining.

(d) The director, with concurrence of the commission, may grant a variance from the requirements of subsections (a) and (b).

(e) A bond or security posted under this act to assure reclamation of affected lands shall not be released until all reclamation work required by this section has been performed in accordance with the provisions of this act, except when a replacement bond or security is posted by a new operator or responsibility is transferred under K.S.A. 49-610.

History: L. 1994, ch. 197, § 11; July 1.

49-612. Same; periodic reports, contents; report after completion of mining operation. (a) An operator shall file with the director a periodic report for each site under registration. The report shall make reference to the most recent registration of the mine site and shall show:

(1) The location and extent of all surface land area on the mine site affected by mining during the period covered by the report.

(2) The extent to which removal of mineral products from all or any part of the affected land has been completed.

(b) A report shall also be filed within 90 days after completion of all surface mining operations at the site regardless of the date of the last preceding report. Forms for the filing of periodic reports required by this section shall be provided by the director.

History: L. 1994, ch. 197, § 12; July 1.

49-613. Same; reclamation of affected lands, when; extensions; inspections; approval; release of bond or security. (a) An operator shall reclaim affected lands within a period not to exceed three years after the filing of the report required under subsection (b) of K.S.A. 49-612 indicating the mining of any part of a site has been completed.

(b) For certain postmining land uses, such as a sanitary land fill, the director, with the approval of the commission, may allow an extended reclamation period.

(c) An operator, upon completion of any reclamation work required by K.S.A. 49-611, shall apply to the director in writing for approval of the work. The director, within a reasonable time as determined by the commission, shall inspect the completed reclamation work. Upon determination by the director that the operator has satisfactorily completed all required reclamation work on the land included in the application, the commission shall release the bond or security on the reclaimed land, shall remove the land from registration, and shall terminate or amend as necessary the operator's authorization to conduct surface mining on the site.

(d) Periodic inspections may be conducted by the director or the director's designee, to ensure that the operator is following the reclamation plan.

History: L. 1994, ch. 197, § 13; July 1.

49-614. Same; extension of time for reclamation of affected lands. The time for completion of reclamation work may be extended upon presentation by the operator of evidence satisfactory to the director that reclamation of affected land cannot be completed within the time specified by K.S.A. 49-613 without unreasonably impeding removal of material products from other parts of an active site or future removal of material products from an inactive site.

History: L. 1994, ch. 197, § 14; July 1.

49-615. Same; bonds or other security; requirements; exceptions. (a) A bond filed with the director by an operator pursuant to this act shall be in a form prescribed by the director, payable to the state of Kansas, and conditioned upon faithful performance by the operator of all requirements of this act and all rules and regulations adopted by the director pursuant to this act. The bond shall be signed by the operator as principal and by a corporate surety licensed to do business in Kansas as surety. In lieu of a bond, the operator may deposit cash, certificates of deposit or government securities with the director on the same conditions as prescribed by this section for filing of bonds.

(b) The amount of the bond or other security required to be filed with each application for registration of a surface mining site, or to increase the area of affected land previously registered as required under K.S.A. 49-609, shall be a minimum of \$250 per acre and shall not exceed a maximum of \$1,500 per acre.

(c) Any political subdivision of the state of Kansas which engages or intends to engage in surface mining shall

meet all requirements of this act except the subdivision shall not be required to post bond or security on registered land.

(d) The director may waive or reduce the amount of the bond or security required under this act to the extent that the director determines that the operator has sufficient bond or security on file with the city or county where the site or affected land is located.

History: L. 1994, ch. 197, § 15; July 1.

49-616. Same; single bond for multiple sites. Any operator who registers with the director two or more surface mining sites may elect, at the time the second or any subsequent site is registered, to post a single bond in lieu of separate bonds on each site. The amount of a single bond on two or more surface mining sites may be increased or decreased from time to time in accordance with K.S.A. 49-609, 49-613 and 49-615. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds shall not be released until the new bond has been accepted by the director.

History: L. 1994, ch. 197, § 16; July 1.

49-617. Same; cancellation of bonds by surety prohibited; substitute bond required, when. No bond filed with the director by an operator pursuant to this act may be canceled by the surety without at least 90 days' notice to the director. If the license to do business in Kansas of any surety of a bond filed with the director is suspended or revoked, the operator, within 90 days after receiving notice thereof from the director, shall substitute for the surety a corporate surety licensed to do business in Kansas. Upon failure of the operator to make substitution of surety as herein provided, the director shall have the right to suspend the operator's authorization to conduct surface mining on the site or sites covered by the bond until substitution has been made. The Kansas commissioner of insurance shall notify the director whenever the license of any surety to do business in Kansas is suspended or revoked.

History: L. 1994, ch. 197, § 17; July 1.

49-618. Same; inspections by director of sites; notice of violations; corrective measures. The director or the director's designee, when accompanied by the operator or operator's designee during regular business hours, may inspect any lands on which any operator is authorized to operate a mine for the purpose of determining whether the operator is or has been complying with the provisions of this act. The director shall give written notice to any operator who violates any of the provisions of this act or any rules and regulations adopted by the director pursuant to this act. If corrective measures approved by the director are not commenced within 90 days, the violation shall be referred to the commission. The operator shall be notified in writing of the referral.

History: L. 1994, ch. 197, § 18; July 1.

49-619. Same; violation hearings, conduct; bond forfeiture proceedings; duties of attorney general. Upon receipt of the referral, the commission shall schedule a hearing on the violation by the operator within 30 days after the date of receipt. The commission, upon written request, shall afford the operator the right to appear before the commission at the hearing. The operator shall have the right to counsel, and may produce witnesses and present statements, documents and other information with respect to the alleged violation. If the commission determines that the operator is in violation of this act or of any rule and regulation adopted by the director pursuant to this act, the commission shall request the attorney general to institute bond forfeiture proceedings.

History: L. 1994, ch. 197, § 19; July 1.

49-620. Same; bond forfeiture proceedings; satisfaction of operator obligation to reclaim affected lands; use of proceeds to reclaim affected lands. The attorney general, upon request of the commission, shall institute proceedings for forfeiture of the bond posted by an operator to guarantee reclamation of a site where the operator is in violation of any of the provisions of this act or any rule and regulation adopted by the director pursuant to this act. Forfeiture of the operator's bond shall fully satisfy all obligations of the operator to reclaim affected land covered by the bond. The director shall have the power to reclaim, as required by K.S.A. 49-611, any surface mined land with respect to which a bond has been forfeited, using the proceeds of the forfeiture to pay for the necessary reclamation work.

History: L. 1994, ch. 197, § 20; July 1.

49-621. Same; civil penalties; amount; procedures. (a) The director, upon finding that the operator has failed to comply with any provision of this act, any provision of a reclamation plan or any condition of a license or site registration with which the operator is required to comply pursuant to this act, may impose upon the operator a civil penalty not exceeding \$1,000 for each day of noncompliance.

(b) All civil penalties assessed pursuant to this section shall be due and payable within 35 days after written notice of the imposition of a civil penalty has been served upon whom the penalty is being imposed, unless a longer period of time is granted by the director or unless the operator appeals the assessment as provided in this section.

(c) No civil penalty shall be imposed under this section except upon the written order of the director or the director's designee to the operator upon whom the penalty is to be imposed, stating the nature of the violation, the

penalty imposed and the right of the operator upon whom the penalty is imposed to appeal to the director for a hearing on the matter. An operator upon whom a civil penalty has been imposed may appeal, within 15 days after service of the order imposing the civil penalty, to the director. If appealed, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. The decision of the director shall be final unless review is sought under subsection (d).

(d) Any action of the director pursuant to this section is subject to review in accordance with the Kansas judicial review act.

History: L. 1994, ch. 197, § 21; L. 2010, ch. 17, § 96; July 1.

49-622. Same; land reclamation fund established; deposits and expenditures. (a) There is hereby created within the state treasury the land reclamation fund.

(b) The director shall remit all moneys collected from fees and civil penalties imposed pursuant to this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the land reclamation fund.

(c) All costs of administering the provisions of this act shall be paid from moneys credited or transferred to the land reclamation fund pursuant to this section. Expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director.

(d) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the land reclamation fund interest earnings based on:

- (1) The average daily balance of moneys in the land reclamation fund for the preceding month; and
- (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

History: L. 1994, ch. 197, § 22; L. 1996, ch. 253, § 8; L. 2001, ch. 5, § 187; July 1.

49-623. Same; rules and regulations; fee amount determination. (a) The director, with the approval of the commission, shall adopt such rules and regulations as necessary to administer and enforce the provisions of this act.

(b) The commission shall determine annually the amount necessary to carry out and enforce the provisions of this act for the next ensuing fiscal year and shall recommend to the director such license renewal, registration application, registration and registration renewal fees as the commission determines necessary for that purpose. The director shall adopt such fees by rule and regulation.

(c) Fees for license renewal, registration and registration renewal shall be based on an operator's acres of affected land or the tonnage of materials extracted by the operator during the preceding license year, or a combination thereof.

(d) Political subdivisions of the state shall be exempt from all fees imposed under this act.

History: L. 1994, ch. 197, § 23; July 1.

49-624. Same; legal services. The commission may request from the attorney general such legal services as necessary to enforce and administer this act. The commission may employ such other attorneys as necessary for such purpose, but all expenses of employing such attorneys shall be paid from the land reclamation fund.

History: L. 1994, ch. 197, § 24; July 1.