# TITLE 460. DEPARTMENT OF MINES

## CHAPTER 1. OKLAHOMA MINING COMMISISON

[**Authority:** 45 O.S., §§ 1 et seq.; 75 O.S., §§ 250 et seq.]
[**Source:** Codified 12-31-91]

## SUBCHAPTER 1. GENERAL PROVISIONS

### 460:1-1-1. Purpose

The rules, regulations and modes of procedure contained in this chapter are adopted to implement 45 O.S. (1981) Sections 1 et seq., as amended, establishing the Oklahoma Mining Commission (Commission) as "the policy-determining agency for the Department of Mines" and setting out powers and duties of the Commission. Chapter 1 is adopted pursuant to the provisions of the APA, 75 O.S. Sections 250 et seq. and Sections 301 et seq.; in compliance with the Oklahoma Open Meeting Act, 25 O.S. Sections 301 et seq. and the Oklahoma Open Records Act, 51 O.S. Sections 24A.1 et seq.

### 460:1-1-2. Statutory citations

All citations to statutes in the rules of this Chapter refer to the most recent codification of the statute.

### 460:1-1-3. Definitions

The following terms shall be construed to have the meaning defined herein, otherwise words and phrases shall be given a fair and reasonable interpretation of meaning in accordance with the ordinary professional community meaning or common, ordinary and everyday accepted meaning attributed to such words and phrases. The following words or terms when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise.

**"APA"** means the Oklahoma Administrative procedures Act (75 O.S. Sections 250 et seq., Sections 301 et seq.).

**"Chairman"** means Chairman of the Oklahoma Mining Commission.

**"Commission"** means the Oklahoma Mining Commission.

**"Department"** means the Oklahoma Department of Mines unless otherwise specified.

**"Director"** means the Director of the Oklahoma Department of Mines.

**"Executive Session"** means any session held by the Commission only for the purpose of discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual, salaried public officer or employee, or for the purpose of confidential communications between the Commission and its attorney as provided in the Oklahoma Open Meetings Act (25 O.S. Section 307).

**"Government"** or **"Governmental"** means the government of this State, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

**"Meeting"** means the conducting of business of the Commission by a majority of its members being personally together.

**"MSHA"** means the Federal Mine Safety and Health Administration.

**"New business"** means any matter not known about or which could not have been reasonably foreseen prior to the time of posting of the agenda for any meeting.

**"OMTI"** means the Oklahoma Miner Training Institute as established by law.

**"Order"** means any lawful order issued by the Commission or any Hearing Examiner of the Commission which is binding upon the party or parties to whom it is directed and which may be enforced when final through the exercise of the Commission's power.

**"OSM"** means the federal Office of Surface Mining.

**"Party"** means any person or agency named, participating, or properly seeking and entitled to participate in any proceeding before the Commission.

**"Regular meeting"** means the meeting at which regular business of the Commission is conducted.

**"Regulations"** means the interpretation of any rule or order of the Commission for regulation of the Oklahoma Mining Industry; a regulating principle.

**"Rules"** means any Commission statement of general applicability and future effect that implements, interprets or prescribes substantive law or policy or prescribes the procedure or practice requirements of the Commission.

**"Special meetings"** means any meeting of the Commission other than regular meetings.

**"State"** means the State of Oklahoma.

## SUBCHAPTER 3. OPERATIONAL PROCEDURES

### 460:1-3-1. Appointment, tenure and status

The organization of the Commission is declared to be that as enumerated in 45 O.S. Section 1, as amended, or as may otherwise be established by law.

(1) The Commission, is comprised of nine (9) members, appointed by the Governor and subject to approval by the Senate, for seven (7) year staggered terms.

(2) The Commission shall constitute a body corporate of the State of Oklahoma with the authority to exercise all powers conferred upon it by, but not limited to 45 O.S. Section 1(A) as amended.

(3) Each member shall be a qualified elector of the State.

(4) The nine member Commission shall consist of persons with varied backgrounds; at least one in engineering or geology; one in labor or worker's safety; one in agriculture or soil conservation; one in transportation; one in economic development or banking; one in public utilities; one in natural resources; and two at large.

### 460:1-3-2. Location [REVOKED]

[**Source:** Amended at 31 Ok Reg 2081, eff 9-12-14; Revoked at 39 Ok Reg 2032, eff 9-11-22]

### 460:1-3-3. Meetings

(a) All meetings shall be conducted in compliance with The Oklahoma Open Meeting Act (25 O.S. Sections 301 et seq. as amended).

(b) Before December 15 of each calendar year the Commission shall schedule, in writing, specific dates, including time and place, for the following year's regular meetings and file same with the Secretary of State. No less than six regular

meetings of the Commission shall be held annually. Five (5) members must be present to constitute a quorum and a majority vote of those present shall be necessary to act upon and decide any motion before the Commission. In the absence of a quorum at any regular or special meeting those members of the Commission in attendance shall recess such meeting to any later date.
(c) Special Meetings may be called by the Chairman as permitted by law.
(d) A minute record shall be made of all proceedings before the Commission. The minute record shall show members present and absent, matters considered, actions taken, and the vote of each member on any motion. The minutes shall also reflect the manner and time of notice required by the Oklahoma Open Meeting Law.
(e) The following shall be the order of business at the Commission meeting:

(1) Minutes of previous meeting
(2) Administrative matters
(3) Financial statements of the Commission
(4) Old Business
(5) New Business
(6) Interested visitors heard
(7) Adjournment
(8) Executive Session, if requested and approved by a majority of the Commission members present.
(9) Open Session to announce any decisions made in Executive Session and adjourn.

**460:1-3-4. Funding**

Funding for the Oklahoma Mining Commission's activities shall be derived from funds appropriated to the Department of Mines for operating expenses. Funds required for any third party studies called for by a majority vote of the Commission members shall come from contributions by the mining and related industries, the general public and foundations, as well as those funds made available by the Department of Mines.

**460:1-3-5. Officers**

The Commission shall annually select from among its members a Chairman, Vice-Chairman and Secretary. The Chairman and members of the Commission shall receive no salary, but will receive expenses necessarily incurred in the performance of their duties in accordance with laws pertaining to state employees. The Vice-Chairman shall, in the absence of the Chairman, fulfill all responsibilities of the Chairman. When circumstances require it, he shall serve as Chairman until a Chairman is elected.

**460:1-3-6. Public inspection of documents [REVOKED]**

[**Source:** Revoked at 39 Ok Reg 2032, eff 9-11-22]

**460:1-3-7. Annual audits**

Annual financial audits of the Department's fiscal year shall be reported to the Commission at a regularly scheduled meeting or special meeting, if necessary, by March of the following fiscal year. The Department Director and staff shall submit a comprehensive report including the Audit Findings and Comments of the outside auditing firm or agency, which shall include at least a report of the appropriations, expenditures and receipts in each of the established funds. An annual audit of the Department's physical properties shall be reported to the

Commission within 60 to 90 days after the end of a fiscal year.

## SUBCHAPTER 5. DUTIES AND POWERS

### 460:1-5-1. Authority

In the exercise of all powers and the performance of all duties provided in this Chapter, the Commission shall comply with the procedures set forth in the APA and the rules and regulations of this Chapter.

### 460:1-5-2. Duties and powers defined

The Commission has the following powers and duties as set forth by this Chapter:

(1) To advise, consult and cooperate with other agencies of this State, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries in furtherance of the Oklahoma mining industry;

(2) To serve as the Department of Mines liaison to the general public by communicating and enhancing the Department's goals and accomplishments;

(3) To approve, renew and finalize agreements or contracts for services and contracts concerning faculty, facilities and personnel for the operation of OMTI. Said agreements or contracts shall be signed by the Chairman of the Commission;

(4) To approve all new rules and regulations pertaining to the Department of Mines;

(5) To prescribe rules and regulations for the Commission and to make such Orders as it may deem necessary or expedient in the performance of its duties;

(6) To accept and administer grants from the federal government and from other sources, public or private, for carrying out any functions of the Commission;

(7) To conduct studies, investigations, research and demonstrations relating to the health and safety of persons employed in mines as it may deem advisable and necessary in the public interest;

(8) To require the Director to review underground mining plan specifications and other relative data and to make recommendations to the Commission as to the approval or denial of such plans;

(9) To advise the Director on all matters affecting mining;

(10) To review and approve all budgets, administrative procedures and operations of the Department and advise the Department concerning its compliance with applicable laws and regulations;

(11) With the assistance and advice of the State Auditor and Inspector, to require adequate and reasonably uniform accounting and auditing procedures which shall be used by the Department;

(12) To issue, revoke, modify or deny certificates of competency for OMTI graduates under such conditions, which includes the graduates' compliance with all other state, federal, and local permitting and licensing requirements, as the Commission may prescribe;

(13) To approve the appointment by the Director of a miner certification advisory council or other such advisory council as may be required to accomplish government functions including, but not limited to:

(A) Administering examinations for certificates of competency relating to underground mining issued by the Oklahoma Mining Commission;
(B) Providing the Commission with results of examinations and making recommendations as to each OMTI graduate's ability to perform his duties;
(C) Assisting the Commission with the issuance of certificates of competency;
(D) Making recommendations as to the type of training required for certification;
(E) Making recommendations on ways to improve the health and safety of miners.

(14) Require an annual review of safety procedures and plans in place throughout the state's mining industry. These procedures and plans are to be on file at the Department's office.

[**Source:** Amended at 18 Ok Reg 3198, eff 7-26-01]

## SUBCHAPTER 7. OKLAHOMA MINERS TRAINING INSTITUTE

### 460:1-7-1. Operational authority

(a) The Oklahoma Mining Training Institute (OMTI) shall operate under the control and advice of the Oklahoma Mining Commission. The Commission shall establish and approve curriculum standards for all courses taught at OMTI. The Commission shall ensure that all courses taught at OMTI will meet current MSHA and OSM standards and that all graduates receiving certificates of competency have complied with all state, federal, and local permitting and licensing requirement.

(b) The Commission shall ensure the following:

(1) All blasting certifications be conducted by OMTI.

(2) All original certifications for state supervisor cards shall be issued only by OMTI.

(c) The Commission may approve recertification training for the Oklahoma State Surface Supervisor's card through outside contractors or private instructors, if the following guidelines are met:

(1) A resume, including experience and education, must be submitted on each instructor utilized to the Commission for review.

(2) Training plans must be submitted that include, at a minimum, an outline of the topics to be addressed and a list of the instruction aids that will be utilized during class. The training outline must address the Surface Safety Standards requirements in Title 45 of the Oklahoma Statutes.

(3) A copy of the resume and training plan of each instructor must be filed, accompanied by a letter of request for Certification of Recognition, with the Oklahoma Department of Mines (ODM) and OMTI for review.

(A) The ODM and OMTI review shall determine whether the program offered is consistent with the OMTI's program and that the program adequately emphasizes the State of Oklahoma State Standards.

(B) After the review, OMTI and ODM shall submit a recommendation to the Commission for approval or disapproval of the program's accreditation.

(C) Once a complete application is filed, the review, the recommendation, the issuance of the Certification of Recognition

shall be completed within a ninety (90) day time-period.
(D) Once training is completed, a notification of recertification for each individual shall be submitted to OMTI for action, on forms developed by OMTI. OMTI shall then issue the recertification for authentication of the training received and the card issued shall identify the contractor or private instructor who provided the training.
(E) The Commission's approval for the recertification training of the Oklahoma State Surface Supervisor's card by any outside contractors or private instructors shall be for a one (1) year approval period only.

(4) All existing and established time frames for recertification, every two years, are not altered by the approval of outside contractors or private pursuant to this Section.

(5) Approval for supervisor recertification shall not be given to any training facilities or training by individuals affiliated with, or employed by, any permitted operation within the State of Oklahoma.

(d) If training is administered by an instructor other than at OMTI, the instructor shall notify OMTI of each employee that has received such training and other information as required by the Director of OMTI. It shall be unlawful for any instructor or student to falsify training records.

[**Source:** Amended at 18 Ok Reg 3198, eff 7-26-01; Amended at 23 Ok Reg 3056, eff 7-27-06; Amended at 31 Ok Reg 2081, eff 9-12-14 [1]; Amended at 31 Ok Reg 2082, eff 9-12-14 [1]; Amended at 35 Ok Reg 1872, eff 9-14-18]

***EDITOR'S NOTE:*** *[1]The agency promulgated two permanent amended versions of this Section (460:1-7-1) with the same effective date (9-12-14). Both versions were published in the 2014 and 2015 OAC Supplements, and again in the 2016 Edition of the OAC. In 2018, the agency reconciled the two versions through permanent rulemaking, effective 9-14-18.*

### 460:1-7-2. Director

The Commission shall approve the appointment by the Regents of Eastern Oklahoma State College of a Director for OMTI. The Director for OMTI shall report all OMTI business directly to the Commission.

### 460:1-7-3. Liaison

The Commission shall appoint and approve a person within the Department of Mines or the Commission or any other qualified designee to serve as a liaison between the Commission and OMTI. The liaison shall represent the interest of the Commission to OMTI, MSHA and OSM in all matters concerning OMTI.

## SUBCHAPTER 9. RULES

### 460:1-9-1. Purpose [REVOKED]

[**Source:** Revoked at 39 Ok Reg 2032, eff 9-11-22]

### 460:1-9-2. Amending the rules

The rules of this Chapter may from time to time be expanded, amended, or repealed by the Commission as authorized by law.

### 460:1-9-3. Petitions for declaratory rulings

Any person may file a request for a declaratory ruling by the Commission as to the application or enforcement of any rule, regulation or statute to a given set

of circumstances.

(1) Such requests shall be in writing, signed by the person seeking the ruling, state the rule, regulation or statute involved and contain a brief and concise statement of facts to which the ruling shall apply. Requests shall be submitted to the Commission at its office. The Commission will consider the request at its next regular or special meeting unless the question has been resolved by prior ruling of the Commission, in which event the petitioner shall be promptly notified of the prior ruling.

(2) The Commission may defer action or hold such requests in its agenda pending any investigation or hearing which the Commission might conduct. The Commission shall issue the requested rulings promptly upon the determination thereof or send an explanation to the petitioner stating why a ruling will not be issued. Unless a ruling states otherwise, rulings contemplated herein shall constitute precedent for the purpose of the Commission's application and enforcement of its rules, regulations and statutes unless revoked or overruled by the Commission or the Courts. Such rulings shall be indexed by statute, section or rule number and shall be available for inspection by members of the public at the Commission office. With respect to indexed rulings, the Commission may delete nonessential or repetitive information and may edit any ruling to protect proprietary or confidential information.

## SUBCHAPTER 11. HEARINGS AND HEARING PROCEDURES

### 460:1-11-1. Conduct of hearings

Hearings may be instituted and conducted where expressly required by law and where deemed necessary to the proper execution and discharge of any of the powers and duties conferred or imposed upon the Commission by law.

### 460:1-11-2. Laws governing hearings

All hearings shall be held in accordance with the governing and applicable provisions of Title 45 of the Oklahoma Statutes, the APA and the rules of this Chapter.

### 460:1-11-3. Complaints

(a) Any person or the Commission on its own motion may file a complaint alleging misconduct or violation of any order of the Commission. All complaints must be in writing signed under oath by the person filing the complaint or the personal representative of such person, and shall be filed with the Commission with a statement of charges incorporated within.

(b) Written notice of the complaint shall be given to the alleged violator along with notice that an investigative committee, comprised of members of the Commission or a person designated by the Commission and appointed by the Chairman, will investigate the allegations and determine if there is probable cause to believe that such misconduct or violation has occurred. The committee may, in its discretion, afford the alleged violator an opportunity to be heard in the course of the investigation.

(c) The written notice of the complaint issued by the Commission may be served either personally or by mailing a copy by registered mail directed to the affected party at his last-known address as shown by the files or records of the Commission. Proof of such service shall be filed in the Office of the Commission. Any notice,

order or other instrument issued by the Commission will be served in this manner.
(d) The investigative committee or the designated person shall deliver a written report to the Commission which shall included a summary of the evidence considered, the conclusions of fact, and a recommendation as to further action to be taken in the matter. The report will serve as the basis for the Commission's determination in the matter. The determination of the Commission shall be delivered to the parties involved with notice contained therein that a formal hearing may be requested pursuant to Section 460:1-11-5 of the Chapter, 45 O.S. (1981) Section 1 et seq., as amended, and the APA (75 O.S., Section 301 et seq.).

**460:1-11-4. Certificates of competency**

(a) If, in a complaint alleging violation of a certificate of competency, the Commission finds that public health, safety, or welfare imperatively requires emergency action, the Commission may order a summary suspension of said certificate pending proceedings for revocation. Said findings must be incorporated in the order. Except for summary suspension, the Commission may issue a disciplinary order revoking the certificate of competency only after a formal hearing. Grounds for denial, revocation, refusal to renew, or summary suspension of a certificate of competency include:

(1) Fraud, deception or misrepresentation in applying for a certificate of competency or in taking the examination;
(2) Noncompliance with statutory requirements or the governing rules and regulations;
(3) Violating any other jurisdiction's mining laws, requirements or rules and regulations;
(4) Mental impairment;
(5) Gross incompetence, including failure to use due diligence and proper restraint in the course of performance;
(6) Dishonest practice;
(7) Nonpayment of fees will result in automatic revocation;
(8) Unauthorized or misuse of seal, including the sealing, dating and signing of any documents.

**460:1-11-5. Formal hearings**

Any formal hearing shall comply with the following:

(1) The Commission shall schedule a hearing before a Hearing Examiner or the Commission as a whole and due and proper notice of such hearing shall be given to all parties. Once a hearing has been scheduled the Chairman of the Commission may for sufficient cause postpone or reschedule a hearing provided that notice, either actual or constructive, of the rescheduled hearing date shall be given to all parties in the case. All such requests shall be in writing and in the case of an emergency said request shall be submitted in writing within three working days after the continuance request is requested.
(2) In the case of a proceeding conducted by the Commission, the Chairman or his designee shall preside. Designated counsel shall advise the Chair as to rulings on questions of law where such rulings are required or requested.
(3) All hearings shall be public except that upon motion of either party witnesses may be excluded from the hearing room when such witness is not testifying. A court reporter shall be present to record the proceedings on

behalf of the Commission. Any party appealing the finding of the Commission or any other interested party desiring a copy of the transcript of the proceedings may purchase same from the reporter.
(4) Hearings shall be held at the main offices of the Oklahoma Department of Mines in Oklahoma City or at such other location as may be designated by the Commission.
(5) All parties to the complaint may present his or her own evidence or may present such through his or her counsel.
(6) The order of procedure shall be as follows:
(A) Recitation of the statement of charges as found in the complaint by the person presiding;
(B) Opening statement by the Applicant;
(C) Opening statement by the Respondent;
(D) Presentation of the Applicant's case followed by cross-examination and questioning by the Hearing Examiner or Chairman of the Commission or his designee presiding over the hearing;
(E) Respondent's presentation followed by cross-examination and questioning by the Hearing Examiner or presiding Chairman;
(F) Closing arguments by the Applicant;
(G) Closing arguments by the Respondent.
(7) If the case be heard by the Commission as a whole, the Commission shall deliberate and render a decision with confirmation of such decision in writing in the form of an Order distributed to all parties by mail. In the case of a hearing conducted by a Hearing Examiner, a recommended Order containing necessary findings of fact and conclusions of law shall be prepared by the Hearing Examiner to be considered by members of the Commission at a future meeting. All parties will be furnished copies of the recommended Order and notified as to the date the recommendation will be considered by the Commission for adoption. At the same time, notice will also be given to the parties that written exceptions or arguments, if any, should be submitted on or before a designated date pursuant to 75 O.S. Section 311. Upon adoption of the Order by the Commission as a whole, the adopted Order shall be distributed to all parties.

## CHAPTER 2. RULE OF PRACTICE AND PROCEDURE FOR THE COAL RECLAMATION ACT OF 1979

[**Authority:** 45 O.S., §§ 1.5 et seq. and 789; 75 O.S., §§ 250 et seq.]
[**Source:** Codified 12-31-91]

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 460:2-1-1. Purpose and construction

The purpose and construction of this Chapter is to achieve the just, timely, and inexpensive determination of all proceedings consistent with adequate consideration of the issues involved.

#### 460:2-1-2. Definitions

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

**"Act"** means the Coal Reclamation Act of 1979, 45 O.S. 1981, Section 742.1 et seq.

**"Attorney"** means the legal counsel for the Department of Mines.

**"Director"** means the Chief Mine Inspector, State of Oklahoma.

**"Director of OHA"** means the Administrative Officer, Department of Mines.

**"DOM"** means the Department of Mines.

**"Hearing Examiner"** means a hearing examiner appointed by the Chief Mine Inspector.

**"OHA"** means the Office of Hearings and Appeals, Department of Mines.

**460:2-1-3. Jurisdiction of the Director**

(a) The jurisdiction of the Director includes the authority to exercise the final decision making power under the act pertaining to:

(1) Applications for review of decisions by DOM regarding determinations concerning permits for surface coal mining operations pursuant to Sections 745.14 and 745.15 of the act;

(2) Petitions for review of proposed assessments of civil penalties issued by DOM pursuant to Section 769 of the act;

(3) Applications for review of notices of violation and orders of cessation or modifications, vacations, or terminations thereof, issued pursuant to Sections 776 or 777 of the act;

(4) Proceedings for suspension or revocation of permits pursuant to Section 779 of the act;

(5) [Reserved];

(6) Applications for temporary relief;

(7) Petitions for awards of costs and expenses under Section 786 of the act;

(8) Appeals from orders or decisions of hearing examiners; and

(9) All other appeals and review procedures under the act which are permitted by the regulations of this Chapter.

(b) In performing his functions under (a) of this section, the Director is authorized to:

(1) Order hearings; and

(2) Issue orders to secure the just and prompt determination of all proceedings.

**460:2-1-4. Eligibility to practice**

(a) A hearing examiner or the Director may determine the eligibility of persons to practice before the OHA in any proceeding under the act.

(b) If a hearing examiner or the Director determines that any person is not qualified to practice before the OHA, the hearing examiner or the Director shall disqualify the person and report the disqualification to the Director of OHA.

(c) Upon receipt of a report under (b) of this section, the Director of the OHA may request the legal counsel for DOM initiate a disciplinary proceeding.

**460:2-1-5. Requests for declaratory rulings**

(a) Any person may request the Director to interpret the applicability of any rule or order of Department by requesting a declaratory ruling. The purpose of a declaratory ruling is to explain, or clarify, a rule or an order of the Director in relation to a particular situation. A request for a declaratory ruling must be in writing, and it must include the following information.

(1) The name, address and telephone number of the person making the request;
(2) The name, address and telephone number of the organization the person represents, if applicable;
(3) The date of the request;
(4) A description of the problem or issue which is in the reason for the request; and
(5) The numbers and headings used to identify the rule or order on which the ruling is sought.

(b) The Director may deny the request if it is repetitive, concerns a matter that in the Director's judgment is inappropriate for a declaratory ruling, or concerns a matter beyond the Director's authority.
(c) The Director may provide others with written notice of the request for a declaratory ruling and give them an opportunity to respond in writing within 15 days.
(d) The Director shall issue a declaratory ruling within a reasonable time after the request is received by Department.
(e) A declaratory ruling or refusal to issue such ruling shall be subject to judicial review in the same manner as provided by Department rules.

[**Source:** Added at 17 Ok Reg 3168, eff 7-28-00]

**460:2-1-6. Parties**

(a) All persons indicated in the act as parties to administrative proceedings under the act shall be considered statutory parties. Such statutory parties include:
(1) In a civil penalty proceeding under 460:2-7-1, as represented by its legal counsel, and any person against whom a proposed assessment is made who files a petition;
(2) In a review proceeding under 460:2-9-1 et seq. or 460:2- 11-1 et seq., DOM, as represented by its legal counsel, and:
(A) If a permittee files an application for review, the permittee; and
(B) If any other person having an interest which is or may be adversely affect files an application for review, the permittee and the person filing such application;
(3) In a proceeding to suspend or revoke a permit under 460:2-13-1 et seq. DOM, as represented by its legal counsel, and the permittee who is ordered to show cause why the permit should not by suspended or revoked.
(4) [RESERVED]

(b) Any other person claiming a right to participate as a party may seek leave to intervene in a proceeding by filing a petition to do so pursuant to 460:2-1-11.
(c) If any person has a right to participate as a full party in a proceeding under the act and fails to exercise that right by participating in each stage of the proceeding, that person may become a participant with the rights of a party by order of the hearing examiner or the Director.

**460:2-1-7. Hearing sites**

Unless the act requires otherwise, hearings shall be held in a location established by the hearing examiner; however, the hearing examiner shall give due regard to the convenience of the parties or their representatives and witnesses.

**460:2-1-8. Filing of documents**

(a) Any initial pleadings in a proceeding to be conducted or being conducted by a hearing officer under the rules of this Chapter shall be filed, by hand or by mail, with the OHA, Department of Mines.
(b) Where a proceeding has been assigned to a hearing examiner, the parties will be notified by the DOM of the name and address of the hearing examiner assigned to the case and thereafter all further documents shall be filed with the hearing examiner, at the address designated in the notice.
(c) Any notice of appeal or documents in a proceeding to be conducted or being conducted by the Director shall be filed, by hand or by mail, with the Director.
(d) Any person filing initial pleadings with the OHA or a notice of appeal with the Director shall furnish an original and one copy. Any person filing other documents with the OHA shall furnish only an original.
(e) Any person who has initiated a proceeding under the rules of this Chapter before the OHA or filed a notice of appeal with the Director shall file proof of service with the same in the form of a return receipt where service is by registered or certified mail, or an acknowledgement by the party served or a verified return where service is made personally. A certificate of service shall accompany all other documents filed by a party in any proceeding.
(f) The effective filing date for documents initiating proceedings shall be the date the document is received by the DOM.
(g) The effective filing date for all other documents shall be the date the document is received by the hearing examiner, or, in a proceeding before the Director, the date the document is received by the Director.

**460:2-1-9. Form of documents**
(a) Any document filed with the OHA in any proceeding brought under the act shall be captioned with:
(1) The names of the parties;
(2) The name of the mine to which the document relates; and
(3) If the review is bring sought under Section 786 of the act, identification by number of any notice or order sought to be reviewed.
(b) After a docket number has been assigned to the proceeding by the OHA, the caption shall contain such docket number.
(c) The caption should include other information appropriate for identification of the proceeding, including the permit number, if known.
(d) Each document shall contain a title that identifies the contents of the document following the caption.
(e) The original of any document filed with the OHA shall be signed by the person submitting the document or by that person's attorney.
(f) The address and telephone number of the person filing the document or that person's attorney shall appear beneath the signature.
(g) All petitions or motions requesting hearings or other affirmative or administrative action of the Department shall be in the following form:

BEFORE THE OKLAHOMA DEPARTMENT
OF MINES

IN RE: (nature of proceeding))No._____
)(Initials of Case#-)year - to be

completed
)by staff if not known
)or previously
)designated)

**460:2-1-10. Service**

(a) Any party initiating a proceeding in the OHA under the Act shall serve copies of the initiating documents to the Director or the Department Legal Counsel, Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106 (telephone 405/427-3859). Any party or other person shall serve any other documents being filed subsequently with the OHA on all other parties and all other persons participating in the proceeding.
(b) Copies of documents by which any proceeding is initiated shall be served on all statutory parties personally or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally or by first class mail.
(c) Service of copies of documents initiating a proceeding is complete at the time of personal service or, if service is made by mail, upon receipt. Service of all subsequent documents is complete at the time of personal service or, if service is by mail, upon mailing.
(d) Whenever an attorney has entered an appearance for a party in a proceeding before a hearing examiner or the Director, service thereafter shall be made upon the attorney.

[**Source:** Amended at 31 Ok Reg 2083, eff 9-12-14]

**460:2-1-11. Intervention**

(a) Any person, other state agencies, or the Office of Surface Mining may petition for leave to intervene at any stage of a proceeding in the OHA under the act.
(b) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why his interest is or may be adversely affected.
(c) The hearing examiner or the Director shall grant intervention where the petitioner:

(1) Has a statutory right to initiate the proceeding in which he wishes to intervene; or
(2) Has an interest which is or may be adversely affected by the outcome of the proceeding.

(d) If neither (c) (1) or (c) (2) of this section apply, the hearing examiner or the Director shall consider the following in determining whether the intervention is appropriate:

(1) The nature of the issues;
(2) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;
(3) The ability of the petitioner to present relevant evidence and argument; and
(4) The effect of intervention on the agency's implementation of its statutory mandate.

(e) Any person, including other state agencies, or OSM granted leave to intervene in a capacity less that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be in the

discretion of the hearing examiner or the Director.

**460:2-1-12. Voluntary dismissal**

Any party who initiated a proceeding before the OHA may seek to withdraw by moving to dismiss at any stage of a proceeding and the hearing examiner or the Director may grant such a motion.

**460:2-1-13. Motions**

(a) Except for oral motions made in proceedings on the record, or where the hearing examiner otherwise directs, each motion shall:

(1) Be in writing; and

(2) Contain a concise statement of supporting grounds.

(b) Unless the hearing examiner or the Director orders otherwise, any party to a proceeding in which a motion is filed under (a) of this section shall have 15 days from service of the motion to file a statement in response.

(c) Failure to make a timely motion or to file a statement in response may be construed as a waiver of objection.

(d) A hearing examiner or the Director shall rule on all motions as expeditiously as possible.

**460:2-1-14. Consolidation of proceedings**

When proceedings involving a common question of law or fact are pending before a hearing examiner or the Director, such proceedings are subject to a consolidation pursuant to a motion by a party or at the initiation of the hearing examiner or Director.

**460:2-1-15. Advancement of proceedings**

(a) Except in expedited review proceedings under 460:2-11-1, or in temporary relief proceedings under 460:2-17-7, at any time after commencement of a proceeding, any party may move to advance the scheduling of a proceeding.

(b) Except as otherwise directed by the hearing examiner or the Director, any party filing a motion under this section shall:

(1) Make the motion in writing;

(2) Describe the exigent circumstances justifying the advancement;

(3) Describe the irreparable harm that would result if the motion is not granted;

(4) Incorporate in the motion affidavits to support any representations of fact.

(c) Service of a motion under this section shall be accomplished by personal delivery or by telephonic or telegraphic communication followed by mail. Service is completed upon mailing.

(d) Unless otherwise directed by the hearing examiner or the Director, all parties to the proceedings in which the motion is filed shall have 10 days from the date of service of the motion to file a statement in response to the motion.

(e) Following the timely receipt by the hearing examiner of statements in response to the motion, the hearing examiner may schedule a hearing regarding the motion. If the motion is granted, the hearing examiner may advance pleading schedules, prehearing conferences, and the hearing, as deemed appropriate; provided, a hearing on the merits shall not be scheduled with less than five working days notice to the parties consent to an earlier hearing.

(f) If the motion is granted, the Director may, if he deems such action to be appropriate, advance the appeal on its calendar and order such other advancement as may be appropriate, including an abbreviated schedule for briefing or oral argument.

### 460:2-1-16. Waiver of right to hearing

Any person entitled to a hearing before a hearing examiner under the act may waive such right in writing. Where parties are directed by any rule in the regulations in this Chapter to file a responsive pleading on or before a specified time, any party who fails to file such responsive pleading by the time specified, may be deemed to have waived his right to a hearing. Unless all parties to a proceeding who are entitled to a hearing waive, or are deemed to have waived such right, a hearing will be held.

### 460:2-1-17. Status of notice of violation and orders of cessation pending review by OHA

Except where temporary relief is granted pursuant to Section 786(c) or Section 787 of the act, notices of violation and orders of cessation issued under the act shall remain in effect during the pendency of review before a hearing examiner or the Director.

[**Source:** Added at 17 Ok Reg 3168, eff 7-28-00]

## SUBCHAPTER 3. EVIDENTIARY HEARINGS

### 460:2-3-1. Presiding officers

A hearing examiner shall preside over any hearing required by the act.

[**Source:** Added at 17 Ok Reg 3168, eff 7-28-00]

### 460:2-3-2. Powers of hearing examiners

(a) Under the regulations in this Chapter, a hearing examiner may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas;

(3) Issue appropriate orders relating to discovery;

(4) Rule on procedural requests or similar matters;

(5) Hold conferences for settlement or simplification of the issues;

(6) Regulate the course of the hearing;

(7) Rule on offers of proof and receive relevant evidence;

(8) Take other actions authorized by the regulations in this Chapter and the act; and

(9) Make or recommend decisions.

(b) A hearing examiner may order a prehearing conference:

(1) To simplify and clarify issues;

(2) To receive stipulations and admissions;

(3) To explore the possibility of agreement disposing of any or all of the issues in dispute; and

(4) For such other purposes as may be appropriate.

(c) Except as otherwise provided in the regulations of this Chapter, the jurisdiction of the hearing examiner shall terminate upon:

(1) The filing of a notice of appeal from an initial decision or other order dispositive of the proceeding;

(2) The issuance of an order of the Director granting a petition for review;
(3) The expiration of the time period within which a petition for review or an appeal to the Director may be filed.

[**Source:** Added at 17 Ok Reg 3168, eff 7-28-00]

### 460:2-3-3. Conduct of hearing examiners

Hearing examiners shall adhere to the "Code of Judicial Conduct."

[**Source:** Added at 17 Ok Reg 3168, eff 7-28-00]

### 460:2-3-4. Notice of hearing

(a) A hearing examiner shall give notice to the parties of the time, place and nature of any hearing.
(b) Except for expedited review proceedings and temporary relief proceedings where time is of the essence, notice given under this section shall be in writing.
(c) In an expedited proceeding when there is only opportunity to give oral notice, the hearing examiner shall enter that fact contemporaneously on the record by a signed and dated memorandum describing the notice given.

[**Source:** Added at 17 Ok Reg 3168, eff 7-28-00]

### 460:2-3-5. Certification of interlocutory ruling

Upon motion or upon the initiative of the hearing examiner, the examiner may certify to the Director a ruling which does not finally dispose of the case if the ruling presents a controlling question of law and an immediate appeal would materially advance the ultimate disposition by the examiner.

[**Source:** Added at 17 Ok Reg 3168, eff 7-28-00; Added at 17 Ok Reg 3168, eff 7-28-00]

### 460:2-3-6. Summary decisions

(a) At any time after a proceeding has begun, a party may move for summary decision of the whole or part of the case.
(b) The moving party under this section shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.
(c) A hearing examiner may grant a motion under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions and affidavits shows that:
(1) There is no disputed issue as to any material fact; and
(2) The moving party is entitled to summary decision as a matter of law.
(d) If a motion for summary decision is not granted for the entire case or for all the relief requested and an evidentiary hearing is necessary, the hearing examiner shall, if practicable and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith at controversy. The examiner shall thereupon, issue an order specifying the facts that appear without substantial controversy and direct such further proceedings as deemed appropriate.

[**Source:** Added at 17 Ok Reg 3168, eff 7-28-00]

### 460:2-3-7. Proposed findings of fact and conclusions of law

The Hearing examiner shall allow the parties to a proceeding the opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at the time designated by the hearing examiner unless a

Summary Decision has been granted disposing of the entire case pursuant to OAC 460:20-3-6.

[**Source:** Added at 17 Ok Reg 3168, eff 7-28-00; Amended at 22 Ok Reg 2783, eff 9-11-05]

**460:2-3-8. Initial orders and decisions**

An initial order or decision disposing of a case shall incorporate:

(1) Findings of fact and conclusions of law and the basis and reasons therefore on all the material issues of fact, law, and discretion presented on the record; and

(2) An order granting or denying relief.

**460:2-3-9. Effect of initial order or decision**

An initial order or decision shall become final if that order or decision is not timely appealed to the Director under 460:2-19-1 or 460:2-19-2.

**460:2-3-10. Certification of record**

Except in expedited review proceedings under 460:2-11-1, within 5 days after an initial decision has been rendered, the hearing examiner shall certify the official record of the proceedings, including all exhibits, and transmit the official record for filing in the Department of Mines.

## SUBCHAPTER 5. DISCOVERY

**460:2-5-1. Discovery methods**

Parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or upon written interrogatories;

(2) Written interrogatories;

(3) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and

(4) Requests for admission.

**460:2-5-2. Time for discovery**

Following the initiation of a proceeding, the parties may initiate discovery at any time so long as it does not interfere with the conduct of the hearing.

**460:2-5-3. Scope of discovery**

(a) Unless otherwise limited by order of the hearing examiner in accordance with the rules in this Chapter, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(b) It is not grounds for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) A party may obtain discovery of documents and tangible things otherwise discoverable under (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the parity seeking discovery has substantial need of the materials in the preparation of his case and

that he is unable without due hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the hearing examiner shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.
(d) Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the hearing examiner may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;

(5) Discovery be conducted with no one present except persons designated by the hearing examiner; or

(6) A trade secret or other confidential research, development or commercial information may not be disclosed or be disclosed only in a designated way.

**460:2-5-4. Sequence and timing of discovery**

Unless the hearing examiner upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

**460:2-5-5. Supplementation of responses**

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty to supplement timely his response with respect to any question directly addressed to:

(A) The identity and location of persons having knowledge of discoverable matters; and

(B) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify and the substance of his testimony.

(2) A party is under a duty to amend timely a prior response if he later obtains information upon the basis of which:

(A) He knows the response was incorrect when made, or;

(B) He knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the hearing examiner or agreement of the parties.

**460:2-5-6. Motion to compel discovery**

(a) If a deponent fails to answer a question propounded, or a party upon whom a request is made pursuant to 460:2-5-11, or a party upon whom answers to interrogatories are served fails to adequately respond or objects to the request, or any party thereof, or fails to permit inspection as requested, the discovering party may move the hearing examiner for an order compelling a response or inspection in accordance with the request.
(b) The motion shall set forth:
(1) The nature of the questions or request;
(2) The response or objection of the party upon whom the request was served; and
(3) Arguments in support of the motion.
(c) For purposes of this section, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.
(d) In ruling on a motion made pursuant to this section, the hearing examiner may make such a protective order as he is authorized to make on a motion pursuant to 460:2-5-3(d).

**460:2-5-7. Failure to comply with orders compelling discovery**

If a party or an officer, director, or other agent of a party fails to obey an order to provide or permit discover, the hearing examiner before whom the action is pending may make such orders in regard to the failure as are just, including but not limited to the following:
(1) An order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters into evidence; or
(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

**460:2-5-8. Depositions upon oral examination or upon written**

(a) Any party desiring to take the testimony of any other party or other persons by deposition upon oral examination or written questions shall, without leave of the hearing examiner, give reasonable notice in writing to every other party, to the person to be examined and to the hearing examiner of:
(1) The proposed time and place of taking the deposition;
(2) The name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him or the particular group or class to which he belongs;
(3) The matter upon which each person will be examined; and
(4) The name or descriptive title and address of the officer before whom the deposition is to be taken.
(b) A deposition may be taken before any officer authorized by the laws of the State of Oklahoma.
(c) The actual taking of the deposition shall proceed as follows:
(1) The deposition shall be on the record;
(2) The officer before whom the deposition is to be taken shall put the witness on oath or affirmation;

(3) Examination and cross-examination shall proceed as at a hearing;
(4) All objections made at the time of the examination shall be noted by the officer upon the deposition;
(5) The officer shall not rule on objections to the evidence, but evidence objected to shall be taken subject to the objections.

(d) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature, unless examination and signature is waived by the deponent. The officer shall certify the deposition, or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign.

(e) Where the deposition is to be taken upon written questions, the party taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be taken. Within 30 days after service, any other party may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, as in the case of a deposition on oral examination.

(f) A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts.

(g) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party at whose instance the deposition is taken.

(h) The deponent may be accompanied, represented, and advised by legal counsel.

**460:2-5-9. Use of depositions**

At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition, or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness;
(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent or a person designating to testify on behalf of a public or private corporation, partnership, or association or governmental agency which is a party may be used by an adverse party for any purpose; or
(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose if the hearing examiner finds that:
(A) The witness is dead;
(B) The witness is at a distance greater than 100 miles from the place of hearing, or is outside the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;
(C) The witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;
(D) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
(E) Such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of

presenting the testimony of witnesses orally at the hearing, to allow the deposition to be used.

**460:2-5-10. Written interrogatories to parties**

(a) Any party may serve upon any other party written interrogatories to be answered in writing by the party serve, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be served on the hearing examiner and upon all parties to the proceedings.

(b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be state in lieu of an answer. The answer and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within 30 days after service of the interrogatories, or within such shorter time as the hearing examiner may allow.

(c) Interrogatories may relate to any matters which can be inquired into under 460:2-5-3. An interrogatory otherwise proper is not necessarily objectionable merely because any answer to the interrogatory involves an opinion or contention that relates to fact or the application of the law to fact, but the hearing examiner may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

**460:2-5-11. Production of documents and things and entry upon**

(a) Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his behalf, to inspect and copy any designated documents, or the inspect and copy, test, or sample any tangible things within the scope of 460:2-5-3 and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property (including the air, water, and soil) or any designated object or operation thereon, within the scope of 460:2-5-3.

(b) The request may be served on any party within leave of the hearing examiner.

(c) The request shall:

(1) Set forth the items to be inspected either by individual item or by category;

(2) Describe each item or category with reasonable particularity; and

(3) Specify a reasonable time, place, and manner of making the inspection and performing the relates acts.

(d) The party upon whom the request is served shall serve on the party submitting the request a written response within 30 days after service of the request.

(e) The response shall state, with respect to each item or category:

(1) That the inspection and related activities will be permitted as requested; or

(2) That objection is make in whole or in part, in which case the reasons for objection shall be stated.

**460:2-5-12. Admissions**

(a) A party may serve upon any other party a written request for the admission, for purpose of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified matter of fact.

(b) Each matter of which an admission is requested is admitted unless, within 30 days after service of the request or such shorter or longer time as the hearing examiner may allow, the party to whom the request is directed serves on the requesting party:

(1) A sworn statement denying specifically the relevant matters of which an admission is requested;

(2) A sworn statement setting forth in detail the reasons why he can neither truthfully admit not deny them; or

(3) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(c) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

(d) The party who has requested that admissions may move to determine that sufficiency of the answers or objections. Unless the hearing examiner determines that an objection is justified, he shall order that an answer be served. If the hearing examiner determines that an answer does not comply with the requirements of this section, he determines that an answer does not comply with the requirements of this section, he may order either that the matter is admitted or that an amended answer be served. The hearing examiner may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

(e) Any matter admitted under this section is conclusively established unless the hearing examiner on motion permits withdrawal or amendment of the admission.

(f) Any admission made by a party under this section is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

## SUBCHAPTER 7. PETITIONS FOR REVIEW OF PROPOSED ASSESSMENTS OF CIVIL PENALTIES

**460:2-7-1. Who may file**

Any person charged with a civil penalty may file a petition for review of a proposed assessment of that penalty with the Department.

**460:2-7-2. Time for filing**

(a) A petition for review of a proposed assessment of a civil penalty must be filed within 30 days of receipt of the proposed assessment, or;

(b) If a timely request for a conference has been mad pursuant to I DOM/RR Section 845.18, a petition for review must be filed with 15 days of service of the notice by the conference officer that the conference is deemed complete.

**460:2-7-3. Contents of petition; payment required**

(a) A petition for review of a proposed assessment of a civil penalty shall include:
(1) A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;
(2) If the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula contained in I DOM/RR Part 845 was misapplied, along, with a proposed civil penalty utilizing the civil penalty formula;
(3) Identification by number of all violations being contested;
(4) The identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the petition; and
(5) A request for a hearing site.
(b) The petition shall be accompanied by:
(1) Full payment of the proposed assessment in the form of a cashier's check, certified check, bank draft, personal check or bank money order made payable to Assessment Office, Department of Mines, to be placed in an escrow account pending final determination of the assessment; and
(2) On the face of the payment an identification by number of the violations for which payment is being tendered.
(c) As required by Section 769C of the act, failure to make timely payment of the proposed assessment in full shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

**460:2-7-4. Answer**

DOM shall have 30 days from receipt of a copy of a petition for review of a proposed assessment of a civil proceeding within which to file an answer to the petition.

**460:2-7-5. Review of waiver determination**

(a) Within 10 days of the filing of a petition for review of a proposed assessment of a civil proceeding, the petitioner may move the hearing examiner to review the granting or denial of a waiver of the civil penalty formula pursuant to I DOM/RR Section 845.16.
(b) The motion shall contain a statement indicating all alleged facts relevant to the granting or denial of the waiver.
(c) Review shall be limited to the written determination of the Director granting or denying the waiver, the motion and the responses to the motion. The standard of review shall be abuse of discretion.
(d) If the hearing examiner finds that the Director abused his discretion in granting or denying the waiver, the hearing examiner shall hold the hearing on the petition for review of the proposed assessment required by Section 769B of the act and make a determination pursuant to 460:2-7-8.

**460:2-7-6. Burden of proof in civil penalty proceedings**

(a) In civil penalty proceedings, DOM shall have the burden of going forward to establish a prima facie case and as to the amount of the penalty.
(b) The ultimate burden of persuasion as to the fact of the violation rests with the applicant.

[**Source:** Amended at 14 Ok Reg 3479, eff 8-11-97]

**460:2-7-7. Summary disposition**

(a) In a civil penalty proceeding where the person against whom the proposed civil penalty is assessed fails to comply on time with any prehearing order of a hearing examiner, the hearing examiner shall issue an order to show cause why:

(1) That-person should not be deemed to have waived his right to a hearing; and

(2) The proceedings should not be dismissed and referred to the assessment officer.

(b) If the order to show cause is not satisfied as required, the hearing examiner shall order the proceedings summarily dismissed and shall refer the case to the assessment officer who shall enter the assessment as the final order of the Department.

(c) Where the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person will be deemed to have waived his right to a hearing and the hearing examiner may assume for purposes of the assessment:

(1) That each violation listed in the notice of violation or order occurred; and

(2) The truth of any facts alleged in such notice or order.

(d) In order to issue an initial decision assessing the appropriate penalty when the person against whom the proposed civil penalty is assessed fails to appear at the hearing, the hearing examiner shall either conduct an ex parte hearing or require DOM to furnish proposed findings of fact and conclusions of law.

(e) Nothing in this section shall be construed to deprive the person against whom the penalty is assessed to have DOM prove the violations charged in open hearing with confrontation and cross- examination of witnesses, except where that person fails to comply with a prehearing order or fails to appear at the scheduled hearing.

**460:2-7-8. Determination by hearing examiner**

(a) The hearing examiner shall incorporate in his decision concerning the civil penalty, findings of fact on each of the four criteria set forth in I DOM/RR Section 845.13 and conclusions of law.

(b) If the hearing examiner finds that:

(1) A violation occurred or that the fact of the violation is uncontested, he shall establish the amount of the penalty, but in doing so, he shall adhere to the point system and conversion table contained in I DOM/RR Section 845.14, except that the hearing examiner may waive the use of such point system where he determines that a waiver would further abatement of the violations of the act. However, the hearing examiner shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the act; or

(2) No violation occurred, he shall issue an order that the proposed assessment be returned to the petitioner.

(c) If the hearing examiner makes a finding that no violation occurred or if the hearing examiner reduces the amount of the civil penalty below that of the proposed assessment and a timely petition for review of his decision is not filed with the Director or the Director refuses to grant such a petition, the Department shall have 30 days from the expiration date for filing a petition with the Director if no petition is filed, or 30 days from the date the Director refuses to grant such a petition, within which to remit the appropriate amount to the person who made the payment, with interest at the rate of 6 percent, or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the hearing examiner increase the amount of the civil penalty above that of the proposed assessment, the hearing examiner shall order payment of the appropriate amount within 30 days of receipt of the decision.

### 460:2-7-9. Appeals

Any party may petition the Director to review the decision of a hearing examiner concerning an assessment of a civil penalty according to the procedures set forth in 460:2-19-1.

## SUBCHAPTER 8. PETITIONS FOR REVIEW OF PROPOSED INDIVIDUAL CIVIL PENALTY ASSESSMENT

### 460:2-8-1. Purpose

This Subchapter governs administrative review of proposed individual civil penalty assessments under Chapter 20, against a director, officer, or agent of a corporation.

[**Source:** Added at 15 Ok Reg 3967, eff 8-28-98]

### 460:2-8-2. Who may file

Any individual served a notice of proposed individual civil penalty assessment may file a petition for review with the Legal Division of the Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106 (telephone 405/427-3859).

[**Source:** Added at 15 Ok Reg 3967, eff 8-28-98; Amended at 31 Ok Reg 2083, eff 9-12-14]

### 460:2-8-3. Time for filing

(a) A petition for review of a notice of proposed individual civil penalty assessment must be filed within 30 days of its service on the individual.
(b) No extension of time will be granted for filing a petition for review of a notice of proposed individual civil penalty assessment. Failure to file a petition for review within the time period provided in paragraph (a) of this section shall be deemed an admission of liability by the individual, whereupon the notice of proposed assessment shall become a final order of the Director and any tardy petition shall be dismissed.

[**Source:** Added at 15 Ok Reg 3967, eff 8-28-98]

### 460:2-8-4. Contents and service of petition

(a) An individual filing a petition for review of notice of proposed individual civil penalty shall provide:

(1) A concise statement of the facts entitling the individual to relief;
(2) A copy of the notice of proposed assessment;
(3) A copy of the notice(s) of violation, order(s) or final decision(s) the corporate permittee is charged with failing or refusing to comply with that have been served on the individual by the Department; and
(4) A statement whether the individual requests or waives the opportunity for an evidentiary hearing.

(b) Copies of the petition shall be served in accordance with Section 2-1-10 of Chapter 2 (a) and (b) of this Chapter.

[**Source:** Added at 15 Ok Reg 3967, eff 8-28-98]

### 460:2-8-5. Answer, motion, or statement of Department

Within 30 days from receipt of a copy of a petition, the Department shall file with the Hearing Officer an answer or motion, or statement that it will not file an answer or motion, in response to the petition.

[**Source:** Added at 15 Ok Reg 3967, eff 8-28-98]

### 460:2-8-6. Amendment of petition

(a) An individual filing a petition may amend it once as a matter of right before receipt by the individual of an answer, motion, or statement of the Department made in accordance with 460:2-8-5 of this subchapter. Thereafter, a motion for leave to amend the petition shall be filed with the Hearing Officer.
(b) The Department shall have 30 days from receipt of a petition amended as a matter of right to file an answer, motion, or statement in accordance with Section 460:2-8-5 of this Subchapter. If the Hearing Officer grants a motion to amend a petition, the time for the Department to file an answer, motion, or statements shall be set forth in the order granting the motion to amend.

[**Source:** Added at 15 Ok Reg 3967, eff 8-28-98]

### 460:2-8-7. Notice of hearing

The Hearing Officer shall give notice of the time and place of the hearing to all interested parties. The Hearing shall be of record and governed by O.S. Title 75, the Administrative Procedures Act.

[**Source:** Added at 15 Ok Reg 3967, eff 8-28-98]

### 460:2-8-8. Elements, burdens of proof

(a) The Department shall have the burden of going forward with evidence to establish a prima facie case that:

(1) A corporate permittee either violated a condition of a permit or failed or refused to comply with an order issued under 45 O. S. 1981, Section 724. et. seq., or an order incorporated in the final decision of the Director, (except an order incorporated in a decision issued under sections 45 O. S. Subsection 769 (b) of the Act or implementing regulations), unless the fact of violation or failure or refusal to comply with an order has been upheld in a final decision in a proceeding under Sections 2-7-1 through 2-7-9, 2-9-2 through 2-9-12, or Sections 2-11-1 through 2-11-8, and Sections 2-19-1 or 2-39-2 of this Chapter, and the individual is one against whom the doctrine of collateral estoppel may be applied to prelude relitigation of fact issues;
(2) The individual, at the time of the violation, failure or refusal, was a director, officer, or agent of the corporation; and
(3) The individual willfully and knowingly authorized, ordered, or carried out the corporate permittee's violation or failure or refusal to comply.

(b) The individual shall have the ultimate burden of persuasion by a preponderance of the evidence as to the elements set forth in (a) (1) of this section and as to whether he was a director or officer of the corporation at the time of the violation or refusal.
(c) The Department shall have the ultimate burden of persuasion by a preponderance of the evidence as to whether the individual was an agent of the corporation, as to (a) (3) of this section, and as to the amount of the individual civil penalty.

[**Source:** Added at 15 Ok Reg 3967, eff 8-28-98]

### 460:2-8-9. Decision by Administrative Hearing Officer

(a) The Hearing Officer shall issue a written decision containing findings of fact and conclusions of law on each of the elements set forth in section 460:20-8-8 of this Subchapter.
(b) If the Hearing Officer concludes that the individual is liable for an individual civil penalty, he shall order that it be paid in accordance with 460:20-63-6, absent the filing of a petition for discretionary review in accordance with Section 460:2-8-10 of this Subchapter.

[**Source:** Added at 15 Ok Reg 3967, eff 8-28-98]

### 460:2-8-10. Petition for discretionary review

(a) Any affected party may petition the Department Director to review an order or decision by the Hearing Officer disposing of an individual civil penalty proceeding under section 460:2-8-9 of the is Subchapter.
(b) A petition under this section shall be filed on or before 30 days from the date of receipt of the order or decision sought to be reviewed, and the time for filing shall not be extended.
(c) A petitioner under this Section shall list the alleged errors of the Hearing Officer and shall attach a copy of the order or decision sought to be reviewed.
(d) Any affected party may file with the Director a response to the petition for review within 10 days of receipt of a copy of such petition.
(e) Not later than 30 days from the filing of a petition for review under this section, the Director shall grant or deny the petition in whole or in part.
(f) If the petition for review is granted the rules in Sections 2-19-4 through 2-19-7 of this Chapter are applicable. If the petition is denied, the decision of the Hearing Officer is final subject to 460:2-1-3.
(g) Payment of a penalty is due in accordance with 460:2-63-6 of this Chapter.

[**Source:** Added at 15 Ok Reg 3967, eff 8-28-98]

## SUBCHAPTER 9. REVIEW OF SECTION 776 AND 777 NOTICES OF VIOLATIONS AND ORDERS OF CESSATION

### 460:2-9-1. Scope

The regulations of this Chapter govern applications for review of:
(1) Notices of violation or the modification, vacation, or termination of a notice of violation under Section 777 of the act; or
(2) Orders of cessation which are not subject to expedited review under 460:2-11-1 or the modification, vacation, or termination of such an order of cessation under Sections 776 or 777 of the act.

### 460:2-9-2. Who may file

A permittee issued a notice or order by the Department pursuant to the provisions of Section 776 or Section 777 of the act or any person having an interest which is or may be adversely affected by a notice or order subject to review under 460:2-9-1 may file an application for review with the Department.

### 460:2-9-3. Time for filing

Any person filing an application for review under this Chapter shall file that application within 30 days of the receipt of a notice or order or within 30 days of receipt of notice of modification, vacation, or termination of such a notice or order. Any person not served with a copy of the document shall file the application for review within 40 days of the date of issuance of the document.

**460:2-9-4. Effect of failure to file**

Failure to file an application for review of a notice of violation or order of cessation shall not preclude challenging the fact of the violation during a civil penalty proceeding. Failure to file an application for review of a notice of violation pursuant to this Subchapter and failure to challenge the fact of the violation during a civil penalty proceeding shall result in the notice of violation becoming a final order of the Department.

[**Source:** Amended at 20 Ok Reg 2813, eff 8-26-03]

**460:2-9-5. Contents of application**

Any person filing an application for review of a notice of violation or order of cessation shall incorporate in that application regarding each claim for relief:

(1) A statement of facts entitling that person to administrative relief;

(2) A request for specific relief;

(3) A copy of any notice or order sought to be reviewed;

(4) A statement as to whether the persons requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

**460:2-9-6. Answer**

(a) Where an application for review of a notice of violation or order of cessation is filed by a permittee, DOM as well as any other person granted leave to intervene pursuant to 460:2-1-11 shall file an answer within 20 days of service of a copy of such application.

(b) Where an application for review is filed by a person other than a permittee, the following shall file an answer within 20 days of service of a copy of such application:

(1) DOM;

(2) The permittee; or

(3) Any other person granted leave to intervene pursuant to 460:2-1-11.

**460:2-9-7. Contents of answer**

An answer to an application for review of a notice of violation or order of cessation shall incorporate:

(1) A statement specifically admitting or denying the alleged facts state by the applicant;

(2) A statement of any other relevant facts;

(3) A statement of whether an evidentiary hearing is requested or waived; and

(4) Any other relevant information.

**460:2-9-8. Notice of hearing**

Pursuant to Section 786A of the act, the applicant for review of a notice or order and other interested persons shall be given written notice of the time and

place of the hearing at least five working days prior thereto.

**460:2-9-9. Amendments to pleadings**
(a) An application for review of a notice of violation or order of cessation may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing examiner upon proper motion.
(b) Upon receipt of an initial or amended application for review or subsequent to granting leave to amend, the hearing examiner shall issue an order setting a time for filing an amended answer if the examiner determines that such an answer is appropriate.

**460:2-9-10. Failure to state a claim**
Upon proper motion or after the issuance of an order to show cause by the hearing examiner, a hearing examiner may dismiss at any time an application for review of a notice or order which fails to state a claim upon which administrative relief may be granted.

**460:2-9-11. Related notices or order**
(a) An applicant for review of a notice or order shall file a copy of any subsequent notice or order which modifies, vacates, or terminates the notice or order sought to be reviewed within 10 days of receipt.
(b) An applicant for review of a notice shall file a copy of an order of cessation for failure to timely abate the violation which is the subject of the notice under review within 10 days of receipt of such order.
(c) If an applicant for review desires to challenge any subsequent notice or order, the applicant must file a separate application for review.
(d) Applications for review of related notice or orders are subject to consolidation.

**460:2-9-12. Burden of proof in review of Section 776 or Section**
(a) In review of Section 776 or Section 777 notices of violation or orders of cessation or the modification, vacation, or termination thereof, including expedited review under 460:2-11-1, DOM shall have the burden of going forward to establish a prima facie case as to the validity of the notice, order, or modification, vacation, or termination thereof.
(b) The ultimate burden of persuasion shall rest with the applicant for review.

## SUBCHAPTER 11. EXPEDITED REVIEW OF SECTION 776 OR 777 ORDERS OF CESSATION

**460:2-11-1. Purpose**
The purpose of this Subchapter is to govern applications filed under Section 786B of the act for expedited review of orders of cessation for which temporary relief has not been granted under Section 786C or Section 787 of the act. If a person is qualified to receive a thirty-day decision under the regulations of this Subchapter, he may waive that right and file an application under 460:2-9-5, and the procedures in 460:2-9-1 et seq. shall apply. If there is a waiver as set forth in 460:2-9-9, the final administrative decision shall be issued within 120 days of the filing of the application.

**460:2-11-2. Who may file**

(a) An application for review of an order of cessation may be filed under this section, whenever temporary relief has not been granted under Section 786C or Section 787 of the act by:

(1) The permittee who have been issued an order of cessation under Section 776 or Section 777 of the act; or

(2) Any person having an interest which is or may be adversely affected by the issuance of an order of cessation under Section 776 or Section 777 of the act.

(b) A permittee or any person having an interest which is or may be adversely affected by a Section 776 or Section 777 order of cessation waives his right to expedited review upon being granted temporary relief pursuant to Section 786C or Section 787 of the act.

**460:2-11-3. Where to file**

An application for expedited review of Section 776 or 777 orders of cessation shall be filed with the OHA, Department of Mines.

**460:2-11-4. Time for filing**

(a) Any person intending to file an application for expedited review under Section 786B of the act shall notify the legal counsel for the Department of Mines within 15 days of the receipt of the order. Any person not served with a copy of the order shall file notice of intention to file an application for review within 20 days of the date of issuance of the order.

(b) Any person filing an application for review under 460:2-11-5 shall file the application within 30 days of receipt of the order. Any person not served with a copy of the order shall file an application for review within 40 days of the date of issuance of the order.

**460:2-11-5. Contents of application**

(a) Any person filing an application for expedited review under Section 787B of the act shall incorporate in that application regarding each claim for relief:

(1) A statement of facts entitling that person to administrative relief;

(2) A request for specific relief;

(3) A statement which delineates each issue to be addressed by the applicant during the expedited proceeding;

(4) A copy of the order sought to be reviewed;

(5) A list identifying each of the applicant's witnesses by name, address, and place of employment, including expert witnesses and the area of expertise to which they will address themselves at the hearing, and a detailed summary of their testimony;

(6) Copies of all exhibits and other documentary evidence that the applicant intends to introduce as evidence at the hearing and descriptions of all physical exhibits and evidence which is not capable of being copied or attached; and

(7) Any other relevant information.

(b) If any applicant fails to comply with all the requirements of 460:2-11-5(a), the hearing examiner may find that the applicant has waived the 30-day decision requirement or the hearing examiner shall order that the application be perfected and the application shall not be considered filed for purposes of the 30-day decision until perfected. Failure to timely comply with the hearing examiner's order shall constitute a waiver of the 30-day decision.

**460:2-11-6. Computation of time for decision**

In computing the 30-day time period for administrative decisions, intermediate Saturdays, Sundays, State and Federal legal holidays, and other nonbusiness days shall be excluded in the computation.

**460:2-11-7. Waiver of the 30-day decision requirement**

(a) Any person qualified to receive 30-day decision may waive that right:

(1) By filing an application pursuant to Subchapter 9 of this Chapter;

(2) By failing to comply with all the requirements of 460:2-11-5(a); or

(3) In accordance with 460:2-11-8(j).

(b) Any person qualified to receive a 30-day decision shall waive that right:

(1) By obtaining temporary relief pursuant to Section 786C or Section 787 of the act;

(2) By failing to perfect an application pursuant to 460:2-11-5(b); or

(3) In accordance with 460:2-11-8(i).

**460:2-11-8. Procedure if 30-day decision requirement is not waived**

If the applicant for expedited review of a Section 776 or 777 order of cessation does not waive the 30-day decision requirement of Section 786B of the act, the following special rules shall apply:

(1) The applicant shall serve all known parties with a copy of the application simultaneously with the filing of the application with the OHA. If service is accomplished by mail, the applicant shall inform all known parties by telephone at the time of mailing that an application is being filed and shall inform the hearing examiner by telephone that such notice has been given. However, no ex parte communication as to the merits of the proceeding may be conducted with the hearing examiner.

(2) Any party desiring to file a response to the application for review shall file a written response with 5 working days of service of the application.

(3) If the applicant has requested a hearing, the hearing examiner shall act immediately upon receipt of the application to notify the parties of the time and place of the hearing at least 5 working days prior to the hearing.

(4) The hearing examiner may require the parties to submit proposed findings of fact and conclusions of law at the hearing which may be orally supplemented on the record at the hearing, or where proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the hearing.

(5) The hearing examiner shall make an initial decision. He shall either rule from the bench on the application, orally stating the reasons for his decision or he shall issue a written decision. If the hearing examiner makes an oral ruling, his approval of the record of the hearing shall constitute his written decision. The decision of the hearing examiner must be issued within 15 days of the filing of the perfected application under 460:2-11-5.

(6) If any party desires to appeal to the Director, such party shall:

(A) If the hearing examiner makes an oral ruling, make an oral statement, within a time period as directed by the hearing examiner, that the decision is being appealed and request that the hearing examiner certify the record to the Director; or

(B) If the hearing examiner issues a written decision after the close of the hearing, file a notice of appeal with the hearing examiner and

with the Director within 2 working days of receipt of the hearing examiner's decision.

(7) If the decision of the hearing examiner is appealed, the Director shall act immediately to issue an expedited briefing schedule, and the Director shall act expeditiously to review the decision of the Director must be issued within 30 days of the date the perfected application is filed with the OHA pursuant to 460:2-11-5.

(8) If all parties waive the opportunity for a hearing and the hearing examiner determines that a hearing is not necessary, but the applicant does not waive the 30-day decision requirement, the hearing examiner shall issue an initial decision within 15 days of receipt of the application. The decision shall contain findings of fact and an order disposing of the disposing of the application. The decision shall be served upon all the parties and the parties shall have 2 working days from receipt of such decision within which to appeal to the Director. The Director shall issue his decision within 30 days of the date the perfected application is filed with the OHA pursuant to 460:2-11-5.

(9) If at any time after the initiation of this expedited procedure, the applicant requests a delay or acts in a manner as to frustrate the expeditious nature of this proceeding or fails to comply with any requirement of 460:2-11-8(a), such action shall constitute a waiver of the 30-day requirement of Section 786B of the act.

(10) If the applicant seeks to offer witnesses, exhibits, or testimony at the hearing in addition to those identified, submitted, described, or summarized in the application for expedited review perfected in accordance with the requirements of 460:2-11-5, upon objection by an opposing party to such offer, the hearing examiner may allow such objecting party additional time in order to prepare for cross- examination of unidentified witnesses or to identify and prepare for cross-examination of unidentified witnesses or to identify and prepare rebuttal evidence or otherwise unidentified witnesses or to identify and prepare rebuttal evidence or otherwise uncover any additional prejudice which may result to such party. The hearing examiner may rule that the running of the 30-day time for decision is stayed for the period of any additional time allowed pursuant to this subsection or may determine that the applicant has waived his right to the 30-day decision.

## SUBCHAPTER 13. PROCEEDINGS FOR SUSPENSION OR REVOCATION OF PERMITS UNDER SECTION 778 OF THE ACT

### 460:2-13-1. Initiation of proceedings

(a) A proceeding on a show cause order issued by the Department pursuant to Section 778 of the act shall be initiated by the Department filing a copy of such an order with the OHA at the same time the order is issued to the permittee.

(b) A show cause order filed with the OHA shall set forth:

(1) A list of the unwarranted or willful violations which contribute to a pattern of violations;

(2) A copy of each notice or order which contains one or more of the violations listed as contributing to a pattern of violations;

(3) The basis for determining the existence of a pattern of violations; and

(4) Recommendations whether the permit should be suspended or revoked, including the length and terms of a suspension.

**460:2-13-2. Answer**

The permittee shall have 30 days from receipt of a show cause order issued pursuant to Section 778 of the Act within which to file an answer with the OHA.

**460:2-13-3. Contents of answer**

The permittee's answer to a show cause order shall contain a statement setting forth:

(1) The reasons in detail why a pattern of violations, as described in I DOM/RR Section 843.13 does not exist or has not existed, including all reasons for contesting:

(A) The fact of any of the violations alleged by DOM as constituting a pattern of violations;

(B) The willfulness of such violations; or

(C) Whether such violations were caused by the unwarranted failure of the permittee.

(2) All mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(3) Any other alleged relevant facts; and

(4) Whether a hearing on the show cause order is desired.

**460:2-13-4. Burden of proof in suspension or revocation**

In proceedings to suspend or revoke a permit under Section 778 of the Act, DOM shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

**460:2-13-5. Determination by the hearing examiner**

(a) Upon a determination by the hearing examiner that a pattern of violations exists or has existed, pursuant to I DOM/RR Section 843.13(a) (2) or (a) (3), the hearing examiner shall order the permit either suspended or revoked. In making such a determination, the hearing examiner need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the minimum suspension period shall be 3 working days unless the hearing examiner finds that the imposition of the minimum suspension period would result in manifest injustice and would not further the purposes of the act. Also, the hearing examiner may impose preconditions to be satisfied prior to the suspension being lifted.

(c) The decision of the hearing examiner shall be issued within 20 days following the date the hearing record is closed by the hearing examiner or within 20 days of receipt of the answer, if no hearing is necessary.

(d) At any stage of a suspension or revocation proceeding being conducted by a hearing examiner, the parties may enter into a settlement, subject to the approval of the hearing examiner.

**460:2-13-6. Summary disposition**

(a) In a proceeding for suspension or revocation of a permit under Section 778 of the Act where the permittee fails to appear at a hearing, the permittee shall be deemed to have waived his right to a hearing and the hearing examiner may assume for purposes of the proceeding that:

(1) Each violation listed in order occurred;
(2) Such violations were caused by the permittee's unwarranted failure or were willfully caused; and
(3) A pattern of violations exists.

(b) In order to issue an initial decision concerning suspension or revocation of the permit when the permittee fails to appear at the hearing, the hearing examiner shall either conduct an ex parte hearing or require DOM to furnish proposed findings of fact and conclusions of law.

**460:2-13-7. Appeals**

Any party in a proceeding for suspension or revocation of a permit under Section 778 of the Act desiring to appeal the decision of the hearing examiner shall have 5 days from receipt of the hearing examiner's decision within which to file a notice of appeal with the Director. The Director shall act immediately to issue an expedited briefing schedule. The decision of the Director shall be issued within 60 days of the date the hearing record is closed by the hearing examiner, or if not hearing is held, within 60 days of the date, the answer is filed.

## SUBCHAPTER 15. [RESERVED]

## SUBCHAPTER 17. APPLICATIONS FOR TEMPORARY RELIEF

**460:2-17-1. Purpose**

The regulations of this Subchapter contain the procedures for seeking temporary relief under Section 786 review proceedings under the act. The special procedures for seeking temporary relief from an order of cessation are set forth in 460:2-17-7.

**460:2-17-2. When to file**

An application for temporary relief may be filed by any party to a proceeding at any time prior to a decision by a hearing examiner.

**460:2-17-3. Where to file**

An application for temporary relief shall be filed with the hearing examiner to whom the case has been assigned. If no assignment has been made, the application shall be filed with the OHA, Department of Mines.

**460:2-17-4. Contents of application**

An application for temporary relief shall include:
(1) A detailed written statement setting forth the reasons why relief should be granted;
(2) A showing that there is a substantial likelihood that the findings and decision of the hearing examiner in the matters to which the application relates will be favorable to the applicant;
(3) A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;
(4) If the application relates to an order of cessation issued pursuant to Section 776 or 777 of the act, a statement of whether the requirement of Section 786C of the act for decision on the application within 5 days is waived; and

(5) A statement of the specific relief requested.

**460:2-17-5. Response to application**

(a) Except as provided in 460:2-17-7(b), all parties to the proceeding to which an application for temporary relief relates shall have 5 days from the date of receipt of the application to file a written response.

(b) Except as provided in 460:2-17-7(b), the hearing examiner may hold a hearing on any issue raised by the application if he deems it appropriate.

**460:2-17-6. Determination on application concerning a notice of violation issued pursuant to Section 777 of the act**

Where an application has been filed requesting temporary relief from a notice of violation issued under Section 777 of the act, the hearing examiner shall expeditiously issue an order or decision granting or denying such relief.

**460:2-17-7. Determination on application concerning an order of cessation issued pursuant to Section 776 or Section 777 of the act**

(a) If the 5-day requirement of Section 786C of the act is waived, the hearing examiner in a proceeding for temporary relief shall expeditiously conduct a hearing and render a decision on the application.

(b) If there is no waiver of the 5-day requirement of Section 786C of the act, the following special rules shall apply:

(1) The 5-day time for decision shall not begin to run until the application is filed pursuant to 460:2-17-3 or a copy of the application is received by the Department legal counsel, whichever occurs at a later date.

(2) The application shall include an affidavit stating that telephone notice has been given to the Department. The telephone notice shall identify the mine, mine operation, the date and number of the order from which relief is requested, the name of the inspector involved, and the name and phone number of the applicant.

(3) Prior to or at the hearing, the applicant shall file with the OHA an affidavit stating the date upon which the copy of the application was delivered to the office of the Department legal counsel or the applicant may make an oral statement at the hearing setting forth that information. For purposes of the affidavit or statement, the applicant may rely upon telephone confirmation by the office of the Department legal counsel that the application was received.

(4) In addition to the service requirements of (1) and (2) of this Subsection, the applicant shall serve any other parties by telephone at the time of mailing that an application is being filed, the contents of the application, and with whom the application was filed.

(5) The Department legal counsel and all other parties may indicate their objection to the application by communicating such objection to the hearing examiner and the applicant by telephone. However, no ex parte communication as to the merits of the proceeding may be conducted with the hearing examiner. The Department legal counsel and all other parties shall simultaneously reduce the objections to writing. The written objections must be immediately filed with the hearing examiner and immediately served upon the applicant.

(6) Upon receipt of communication that there is an objection to the request, the hearing examiner shall immediately order a location, time, and date for

the hearing by communicating such information to the legal counsel, all other parties, and the applicant by telephone. The hearing examiner shall reduce such communications to writing in the form of a memorandum in the file.

(7) If a hearing is held:

(A) The hearing examiner may require the parties to submit proposed findings of fact and conclusions of law at the hearing which may be orally supplemented on the record at the hearing or where written proposed findings of fact and conclusions of law have not been admitted at the hearing, they may be orally presented for the record at the hearing.

(B) The hearing examiner shall either rule from the bench on the application, orally stating the reasons for his decision or he shall within 24 hours of completion of the hearing issue a written decision. If the hearing examiner makes an oral ruling, his approval of the record of the hearing shall constitute his written decision.

(8) The order or decision of the hearing examiner shall be issued within 5 working days of receipt of the application for temporary relief.

(9) If at any time after the initiation of this expedited procedure, the applicant request a delay or acts in a manner as to frustrate the expeditious nature of this proceeding or fails to supply the information required by 460:2-17-4, such action shall constitute a waiver of the 5-day requirement of section 786C of the act.

**460:2-17-8. Appeals**

(a) Any party desiring to appeal a decision of a hearing examiner granting temporary relief may appeal to the Director.

(b) Any party desiring to appeal a decision of a hearing examiner denying temporary relief may appeal tot eh Director, or, in the alternative, if the hearing examiner has rendered a decision pursuant to 460:2-17-7, may seek review pursuant to Section 787 of the act.

(c) The Director shall issue an expeditious briefing schedule and shall issued a decision on the appeal expeditiously.

## SUBCHAPTER 19. APPEALS TO THE DIRECTOR FROM DECISIONS OR ORDERS OF HEARING EXAMINERS

**460:2-19-1. Petition for discretionary review of a proposed civil penalty**

(a) Any party may petition the Director to review an order or decision by a hearing examiner disposing of a civil penalty proceeding under 460:2-7-1.

(b) A petition filed under this section shall be filed on or before 30 days from the date of receipt of the order or decision sought to be reviewed and the time for filing may not be extended.

(c) A petitioner under this section shall list the alleged errors of the hearing examiner and shall attach a copy of the order or decision sought to be reviewed.

(d) Any party may file with the Director a response to the petition for review within 10 days of receipt of a copy of such petition.

(e) Not later than 30 days from the filing of a petition under this section, the Director shall grant or deny the petition in whole or in part.

(f) If the petition is granted, the rules in 460:2-19-4 through 460:2-19-7 are applicable and the Director shall use the point system and conversion table

contained in I DOM/RR Part 845 in recalculating assessments; however, the Director shall have the same authority to waive the civil penalty formula as that granted the hearing examiner in 460:2-7-8(b). If the petition is denied, the decision of the hearing examiner shall be final for the Department.

**460:2-19-2. Notice of appeal**

(a) Any aggrieved party may file a notice of appeal from an order or decision of a hearing examiner disposing of a proceeding under the regulations of this Subchapter, except a civil penalty proceeding under 460:2-7-1.
(b) Except in an expedited review proceeding under 460:2-11-1, or in a suspension or revocation proceeding under 460:2-13-1, a notice of appeal shall be filed with the Director on or before 30 days from the date of receipt of the order or decision sought to be reviewed and the time for filing may not be extended.

**460:2-19-3. Interlocutory appeals**

(a) If a party has sought certification under 460:2-3-5, that party may petition the Director for permission to appeal from an interlocutory ruling by a hearing examiner.
(b) A petition under this section shall be in writing and not exceed 10 pages in length.
(c) If the correctness of the ruling sought to be reviewed involves a controlling issue of law the resolution of which will materially advance final disposition of the case the Director may grant the petition.
(d) Upon granting the petition under this section, the Director may dispense with briefing or issue a briefing schedule.
(e) Unless the Director or the hearing examiner orders otherwise, an interlocutory appeal shall not operate as a stay of further proceedings before the examiner.
(f) In deciding an interlocutory appeal, the Director shall confine himself to the issue presented on appeal.
(g) The Director shall promptly decide appeals under this section.
(h) Upon affirmance, reversal, or modification of the hearing examiner's interlocutory ruling or order, the jurisdiction of the Director shall terminate, and the case shall be remanded promptly to the hearing examiner for further proceedings.

**460:2-19-4. Briefs**

(a) Unless the Director orders otherwise, an appellant's brief is due on or before 30 days from the date of receipt of notice by the appellant that the Director has agreed to exercise discretionary review authority pursuant to 460:2-19-1 or a notice of appeal is filed.
(b) If any appellant fails to file a timely brief, an appeal under the regulations of this Subchapter may be subject to summary dismissal.
(c) An appellant shall state specifically the rulings to which there is an objection, the reasons for such objections, and their relief requested. The failure to specify a ruling as objectionable may be deemed by the Director as a waiver of the objection.
(d) Unless the Board orders otherwise, within 20 days after service of appellant's brief, any other party to the proceeding may file a brief.
(e) If any argument is based upon the evidence of record and there is a failure to include specific record citations, when available, the Director need not consider the arguments.
(f) Further briefing may take place by permission of the Director.

(g) Unless the Director provides otherwise, appellant's brief shall not exceed 50 typed pages and an appellees's brief shall not exceed 25 typed pages.

**460:2-19-5. Remand**

The Director may remand appeal cases if further proceedings are required.

**460:2-19-6. Final decisions**

The Director may adopt, affirm, modify, set aside, or reverse any finding of fact, conclusion of law, or order of the hearing examiner.

**460:2-19-7. Reconsideration**

(a) A party may move for reconsideration of the decision or order of a hearing examiner; however, the motion shall be filed with the Director within 30 days of the date of the decision.
(b) The filing of a petition for reconsideration shall not stay the effect of any decision or order and shall not affect the finality of any decision or order for purposes of judicial review.

## SUBCHAPTER 21. APPEALS TO THE DIRECTOR FROM DECISIONS OF THE DEPARTMENT

**460:2-21-1. Scope**

This Subchapter is applicable to appeals from decisions of the Department concerning appeals which are not required by the act to be determined by formal adjudication.

**460:2-21-2. Who may appeal**

Any person who is or may be adversely affected by a written decision of the Department may appeal to the Director where the decision specifically grants such right of appeal.

**460:2-21-3. Appeals; how taken**

(a) A person appealing under this Subchapter or a person appealing or written decision of the Department shall file a written notice of appeal with the Department and a copy of such notice shall be simultaneously be sent to the Director.
(b) The notice of appeal shall be filed within 20 days from the date of receipt of the decision. If the person appealing has not been served with a copy of the decision, such appeal must be filed within 30 days of the date of the decision.
(c) The notice of appeal shall indicate that an appeal is intended and must identify the decision being appealed. The notice shall include the serial number or other identification of the case and the date of the decision. The notice of appeal may include a statement of reasons for the appeal and any arguments the appellant desires to make.
(d) If the notice of appeal did not include a statement of reasons for the appeal, such a statement shall be filed with the Director within 20 days after the notice of appeal was filed. In any case, the appellant shall be permitted to file with the Director additional statements of reasons and written arguments or briefs within 20-day period after filing the notice of appeal.

**460:2-21-4. Service**

(a) The appellant shall serve personally or by certified mail, return receipt requested, a copy of the notice of appeal of a written decision of the Department and a copy of any statement of reasons, written arguments, or to the documents on each party within 15 days after filing the document. Proof of service shall be filed with the Director within IS days after service.
(b) Failure to serve may subject the appeal to summary dismissal pursuant to 460:2-21-6.

**460:2-21-5. Answer**
(a) Any party served with a notice of appeal of a written decision of the Department who wishes to participate in the proceedings on appeal shall file an answer with the Director within 20 days after service of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal.
(b) If additional reasons, written arguments, or other documents are filed by the appellant, a party shall have 20 days after service thereof within which to answer. The answer shall state the reasons the party opposes or supports the appeal.

**460:2-21-6. Summary dismissal**
An appeal of a written decision of the Department shall be subject to summary dismissal, in the discretion of the Director, for failure to file or serve, upon all persons required to be served, a notice of appeal or statement of reasons for appeal.

**460:2-21-7. Request for hearing**
(a) Any party in an appeal of a written decision of the Department may request the Director to order a hearing before a hearing examiner in order to present evidence on an issue of fact. Such request shall be made in writing and filed with the Director within 20 days after the answer is due. Copies of the request shall be served in accordance with 460:2-21-4.
(b) The allowance of a request for a hearing is within the discretion of the Director, and the Director may, on his own motion, refer any case to a hearing examiner for a hearing on an issue of fact. If a hearing is ordered, the Director shall specify the issues upon which the hearing is to be held.

## SUBCHAPTER 23. PETITIONS FORAWARD OF COSTS AND EXPENSES UNDER SECTION 786E OF THE ACT

**460:2-23-1. Who may file**
Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any administrative proceeding under the acto which result in:
(1) A final order being issued by a hearing examiner; or
(2) A final order being issued by the Director.

**460:2-23-2. Where to file; time for filing**
The petition for an award of costs and expenses including attorneys' fees must be filed with the hearing examiner who issued the final order, or if the final order was issued by the Director, with the Director, within 45 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

**460:2-23-3. Contents of petition**

A petition filed under this Subchapter or an award of costs and expenses including attorney's fees shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition:

(1) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(2) Receipts or other evidence of such costs and expenses; and

(3) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation, and ability of the individual or individuals performing the services.

**460:2-23-4. Answer**

Any person served with a copy of a petition for an award of costs and expenses including attorney's fees shall have 30 days from service of the petition within which to file an answer to such petition.

**460:2-23-5. Who may receive an award**

Appropriate costs and expenses including attorneys' fees may be awarded:

(1) To any person from the permittee, if the person initiates any administrative proceedings reviewing enforcement actions, upon a finding that a violation of the act, regulations, or permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the hearing examiner or the Director determines that the person made a substantial contribution to the full and fair determination of the issues.

(2) To any person other than a permittee or his representative from DOM, if the person initiates or participates in any proceeding under the act upon a finding that the person made a substantial contribution to a full and fair determination of the issues.

(3) To a permittee from DOM when the permittee demonstrates that DOM issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee.

(4) To a permittee from any person where the permittee demonstrates that a person initiated a proceeding under Section 786 of the act or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee.

(5) To DOM where it demonstrates that any person applied for review pursuant to Section 786 of the act or that any party participated in such a proceeding in bad faith and for the purpose of harassing and embarrassing the government.

**460:2-23-6. Awards**

An award under the Subchapter may include:

(1) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the act; and

(2) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award in the OHA.

**460:2-23-7. Appeals**

Any person aggrieved by a decision concerning the award of costs and expenses in an administrative proceeding under the act may appeal such award to the Director under procedures set forth in 460:2-19-2 et seq., unless the Director has made the initial decision concerning such award.

## SUBCHAPTER 25. REQUEST FOR REVIEW OF APPROVAL OR DISAPPROVAL OF APPLICATIONS FOR PERMITS

**460:2-25-1. Scope**

This Subchapter sets for the procedures for obtaining formal review of a decision by the Department to approve or disapprove a permit application, in whole or in part. Permit applications subject to this Subchapter shall include all applications for new permits, including those new permits required under I DOM/RR Sections 788.12(d), 788.13(b), and 788.14(b) (2).

**460:2-25-2. Who may file**

An applicant or any person having an interest which is or may be adversely affected by the decision of the Department to approve or disapprove a permit application, in whole or in part, may file a request for review of that decision.

**460:2-25-3. Where to file; when to file**

(a) A request for review of approval or disapproval of a permit shall be filed with the OHA of the Department of Mines within 30 days of receipt of a copy of the Department's written decision approving or disapproving the permit application, in whole or in part.

(b) Any person not served with a copy of the Department's written decision shall file the request for review within 40 days of the date of issuance of the written decision.

**460:2-25-4. Contents of request**

A request for review of approval or disapproval of a permit shall include:

(1) A clear statement of the facts entitling that person to administrative relief;

(2) An explanation of the alleged errors in the Department's decision;

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

**460:2-25-5. Time for hearing**

(a) The hearing examiner shall hold a hearing within 30 days of the date of the filing of a request for review of approval or disapproval of a permit and shall notify all interested parties of the time and place of the hearing.

(b) The hearing examiner may grant an extension of time for the hearing only if all parties to the hearing agree to such extension.

**460:2-25-6. Status of permit approvals pending review**

The issuance of a permit following Department approval of a permit application shall be stayed during the pendency of any administrative review proceeding resulting from such approval, but only where temporary relief has been requested by a party filing a proper request under 460:2-25-4 and only for the period from the time temporary relief is requested and the decision to grant or deny temporary relief is made under 460:2-25-8. Nothing in the regulations of this Subchapter shall prevent a permittee from filing a request for temporary relief at the time of the issuance of a permit where the permittee has reason to believe that an appeal may be filed with the Department on the issuance of a permit. However, the hearing examiner, pursuant to a request for temporary relief under 460:2-25-8, may, if the requirements of 460:2-25-8(e) are met, dissolve the stay and provide that the Department's approval or any part of it shall be in full force and effect immediately.

**460:2-25-7. Burden of proof**

(a) If a permit applicant is seeking review of the approval or disapproval of a permit, the Department shall have the burden of going forward to establish a prima facie case as to the failure to comply with the applicable requirements of the act or the regulations, and the permit applicant shall have the ultimate burden of persuasion as to entitlement to the permit.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application fails in some manner to comply with the applicable requirements of the act or the regulations.

**460:2-25-8. Request for temporary relief from a decision to approve or disapprove a permit application in whole or in part**

(a) Where review is requested pursuant to 460:2-25-3, any party may file a request for temporary relief at any time prior to the decision by the hearing examiner, so long as the relief sought is not the issuance of a permit where a permit application has been disapproved, in whole or in part.

(b) The request shall be filed with the hearing officer to whom the case has been assigned. If no assignment has been made, the application shall be filed with the OHA of the Department of Mines.

(c) The application shall include:

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A statement of the specific relief requested;

(3) A showing that there is a substantial likelihood that the person seeding relief will prevail on the merits of the final determination of the proceeding; and

(4) A showing that 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 hearing examiner may hold a hearing on any issue raised by the application.

(e) The hearing examiner shall expeditiously issue an order or decision granting or denying such temporary relief. Temporary relief may be granted only if:

(1) All parties to the proceedings have been notified and given an opportunity to be heard on the request for temporary relief;
(2) The person requesting such relief shows that there is a substantial likelihood of prevailing on the merits of the final determination of the proceeding;
(3) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources; and
(4) If such relief is the dissolution of the stay imposed under 460:2-25-6, the party requesting dissolution must establish that the public interest will not be adversely affected by such action.

(f) Appeals of temporary relief decisions shall be as follows:
(1) Any party desiring to appeal the decision of the hearing examiner granting or denying temporary relief may appeal to the Director, or in the alternative, may seek judicial review pursuant to Section 787 of the act.
(2) The Director shall issue a decision on the appeal expeditiously.

**460:2-25-9. Determination by the hearing examiner**

The hearing examiner in a proceeding for review of approval or disapproval of a permit shall issue a written decision within 10 days of the date the hearing record is closed by the hearing examiner.

**460:2-25-10. Appeals**

(a) Any party aggrieved by the decision of the hearing examiner in 460:2-25-9 shall have 2 working days from receipt of the decision within which to file a notice of appeal with the Director. A copy of the notice of appeal must simultaneously be filed with the hearing examiner.
(b) The Director shall act immediately to issue an expedited briefing schedule.
(c) The decision of the Director shall be issued within 30 days of the date the hearing record is closed by the hearing examiner.

## SUBCHAPTER 27. REQUEST FOR REVIEW OF APPROVAL OR DISAPPROVAL OF A PERFORMANCE BOND RELEASE APPLICATION

**460:2-27-1. Scope**

This Subchapter sets forth the procedures for obtaining formal review pursuant to I DOM/RR Section 807.11, of a decision by the Department to approve or disapprove, in whole or in part, an application for release of a performance bond for surface coal mining and reclamation operations.

**460:2-27-2. Who may file**

The permittee or any affected person, as that term is defined in I DOM/RR Section 807.11(c), may file a request for review of a decision by the Department to approve or disapprove, in whole or in part, an application for release of a performance bond.

**460:2-27-3. Where to file; when to file**

(a) A request for review shall be filed with the OHA, Department of Mines, within 30 days of receipt of the Department's written decision approving or disapproving, in whole or in part, an application for release of a performance bond.

(b) Any affected person not served with a copy of the Department's written decision shall file the request for review within 40 days of the date of issuance of the written decision.

**460:2-27-4. Contents of request**

A request for review of approval or disapproval of a performance bond release application shall include:

(1) A clear statement of the facts entitling that person to administrative relief;

(2) An explanation of the alleged errors in the Department's decision;

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

**460:2-27-5. Status of performance bond release pending review**

The Department shall not release a performance bond, in whole or in part, during the pendency of any review proceeding resulting from the approval of such release.

**460:2-27-6. Appeals**

Any party aggrieved by the decision of the hearing examiner in this Chapter may appeal to the Director under 460:2-19-2.

## SUBCHAPTER 29. REQUEST FOR REVIEW OF PERFORMANCE BOND FORFEITURE

**460:2-29-1. Scope**

This Subchapter sets forth the procedures for obtaining formal review under I DOM/RR, Part 808 of a determination by the Department to forfeit all or part of a performance bond, as a result of the permittee's failure to meet the conditions upon the bond.

**460:2-29-2. Who may file; where to file; when to file**

(a) The permittee or surety, if applicable, may file a request for review of a determination of the Department to forfeit all or part of a performance bond.

(b) The request for review shall be filed with the OHA, Department of Mines, within 30 days of receipt of the Department's written determination.

**460:2-29-3. Contents of request**

The request for review of performance bond forfeiture shall include:

(1) A clear statement of the facts entitling that person to administrative relief;

(2) An explanation of the alleged errors in the Department's decision;

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

**460:2-29-4. Status of forfeiture proceedings pending review**

The filing of a request for review of a performance bond forfeiture shall automatically stay the Department from taking collection action after a forfeiture determination.

**460:2-29-5. Burden of proof**

The Department shall have the burden of going forward to establish a prima facie case for forfeiture of a performance bond. The ultimate burden of persuasion that the performance bond should not be forfeited shall rest with the permittee or surety, if applicable.

**460:2-29-6. Appeals**

Any party aggrieved by the final decision of the hearing examiner in this Chapter may appeal to the Director under procedures set forth in 460:2-19-2.

## SUBCHAPTER 31. STATE INSPECTION PROCEDURES

**460:2-31-1. Scope**

This Subchapter sets forth the procedures for obtaining informal review pursuant to I DOM/RR Section 842.14 of the adequacy and completeness of the Department's inspections of surface coal mining and reclamation operations or coal exploration operations.

**460:2-31-2. Who may file**

Any person who is or may be adversely affected by a decision of the authorized representative not to inspect or take appropriate enforcement action with respect to any violation alleged by a person in a request to the Chief Mine Inspection for a state inspection pursuant to I DOM/RR section 842.12 may request of the decision not to inspect or enforce.

**460:2-31-3. Where to file; when to file**

A request for review shall be filed with the OHA, Department of Mines, within 30 days of receipt of the Department's written decision disapproving a request for inspection or the appropriate enforcement action to a violation alleged by a person who files request for a state inspection under I DOM/RR Section 842.12.

**460:2-31-4. Contents of request**

The request for review of the Department's inspection of surface coal mining and reclamation operations or coal exploration operations or a request for review pursuant to 460:2-31-2 shall include:

(1) A clear statement of the facts entitling that person to administrative relief;

(2) An explanation of the alleged errors in the Department's decision and/or why the decision merits review;

(3) A request for specific relief; and

(4) Any other relevant information.

**460:2-31-5. Determination decision**

The Department shall assign the review requested in this Chapter to a hearing examiner who shall review the facts and allegations at issue and base his

decision on any and all information available to him, reporting his decision with a statement in writing of the reasons therefor to the Chief Mine Inspector and to the person requesting review within 30 days of the receipt of that party's request for review. The alleged violator shall be given a copy of the review but the name of the person requesting review shall not be disclosed unless waived by the party requesting review or required under the act.

**460:2-31-6. Appeals**

Informal review under this Subchapter shall affect any right to formal review by the Director to whom the party may address an appeal within 30 days of the hearing examiner's decision under 460:2-19-2.

## SUBCHAPTER 33. REQUEST FOR REVIEW OF DEPARTMENT DETERMINATION OF ISSUES UNDER 460:20 SECTION 761.12(H)

**460:2-33-1. Scope**

This Subchapter sets forth procedures for obtaining formal review pursuant to I DOM/RR, Section 761.12(h) of a determination by the Department that a person holds or does not hold a valid existing right, or that surface coal mining operations did of did not exist on the date of enactment of the Surface Mining Control and Reclamation Act (PL 95-87), on lands where operations are prohibited or limited by Section 783 of the act.

**460:2-33-2. Who may file; where to file; when to file**

(a) A permit applicant or any person with an interest which is or may be adversely affected by a determination of the Department that a person holds or does not hold a valid existing right, or that surface coal mining operations did or did not exist on the date of enactment of PL 95-87, may file a request for review of that determination with the OHA, Department of Mines.

(b) The request for review shall be filed within 30 days of receipt by the applicant of a copy of the Department's written determination, or within 30 days of publication of the determination in the Oklahoma Gazette Register.

**460:2-33-3. Contents of request**

A request for review of Department determination of issues under 1 DOM/RR Section 761.12(h) shall include:

(1) A clear statement of the facts entitling that person to administrative relief;

(2) An explanation of the alleged errors in the Department's decision;

(3) A request for specific relief;

(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(5) Any other relevant information.

**460:2-33-4. Burden of proof**

(a) If a permit applicant is seeking review pursuant to this Subchapter, the Department shall have the burden of going forward to establish a prima facie case. The ultimate burden of persuasion shall rest with the person seeking review of the determination.

(b) If any other person is seeking, review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion

that a person holds or does not hold a valid existing right, or the surface coal mining operations did not exist on the date of enactment of PL 95-87.

**460:2-33-5. Appeals**

Any party aggrieved by the decision of the hearing examiner in this Chapter may appeal to the Director under Section 4.1271.

## SUBCHAPTER 35. REQUEST FOR REVIEW CONCERNING PERMIT MODIFICATION ORDERS, AND APPLICATIONS FOR PERMIT REVISIONS, RENEWALS, AND THE TRANSFER, ASSIGNMENT, OR SALE OF RIGHTS GRANTED UNDER PERMITS

**460:2-35-1. Scope**

This Subchapter sets forth the procedures for obtaining formal review of a final decision by the Department concerning permit modification orders, and applications for permit revisions permit renewals, or the transfer, assignment, or sale of rights granted under permits.

**460:2-35-2. Who may file; where to file**

An applicant, permittee, or any person having an interest which is or may be adversely affected by a final decision of the Department ordering modification of a permit, or approving or disapproving applications for permit revisions, permit renewals, or the transfer, assignment or sale of rights granted under permits, may file a request for review of that decision with the OHA, Department of Mines.

**460:2-35-3. When to file**

(a) A request for review pursuant to this Chapter shall be filed within 30 days of receipt of the copy of the Department's written order or decision.
(b) Any person not served with a copy of the Department's written order or decision shall file the request for review within 40 days of the date of the issuance of the written order or decision.

**460:2-35-4. Contents of request**

A request for review pursuant to this Chapter shall include:
(1) A clear statement of the facts entitling that person to administrative relief;
(2) An explanation of the alleged errors in the Department's decision;
(3) A request for specific relief;
(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and
(5) Any other relevant information.

**460:2-35-5. Time for hearing**

(a) The hearing examiner shall hold a hearing within 30 days of the date of the filing of the request for review of the approval or disapproval of a permit revision or permit renewal and shall notify all interested parties of the time and place of such hearing.
(b) The hearing examiner shall act expeditiously to order a hearing on a request for review of a permit modification order or the approval or disapproval of the transfer, assignment or sale of rights granted under a permit.

(c) The hearing examiner may grant an extension of time for the hearing only if all parties to the hearing agree to such extension.

**460:2-35-6. Status of the Department order or decision pending review**

(a) The terms and effect of a permit modification order shall be stayed during the pendency of any administrative review proceeding resulting from that order.

(b) The issuance of a permit following Department approval of applications for permit revisions or permit renewals, or the approval of an application for the transfer, assignment, or sale of rights granted under permits, shall be stayed during the pendency of any administrative proceeding resulting from such approval. However, the hearing examiner, pursuant to a request for temporary relief under 460:2-35-8, may, if the requirements of 460:2-35-8(e) are met, dissolve the stay and provide that the Department's approval or any part of it shall be in full force and effect immediately.

**460:2-35-7. Burden of proof**

(a) In proceedings involving permit modification orders, the Department shall have the burden of going forward to establish a prima facie case. The ultimate burden of persuasion shall rest with the person seeking review of the order.

(b) In proceedings involving permit renewal decisions, those parties opposing renewal shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the renewal application should be disapproved.

(c) In proceedings involving decisions on applications for permit revisions and on applications for the transfer, assignment, or sale of rights granted under permits:

(1) If the applicant is seeking review, the Department shall have the burden of going forward to establish a prima facie case as to the failure of the applicant to comply with the applicable requirements of the act, and the applicant seeking review shall have the ultimate burden of persuasion as to entitlement to approval of the application.

(2) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the act and the regulations.

**460:2-35-8. Request for temporary relief**

(a) Where review is requested pursuant to 460:2-35-2, any party may file a request for temporary relief at any time prior to a decision by the hearing examiner, so long as the relief sought is not the issuance of a permit where an application has been disapproved, in whole or in part.

(b) The request shall be filed with the hearing examiner to whom the case has been assigned. If no assignment has been made, the application shall be filed with the OHA, Department of Mines.

(c) The application shall include:

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A statement of the specific relief requested;

(3) A showing that there is a substantial likelihood that the person seeding relief will prevail on the merits of the final determination of the proceedings; and

(4) A showing that 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 hearing examiner may hold a hearing on any issue raised by the application.

(e) The hearing examiner shall expeditiously issue an order or decision granting or denying such temporary relief. Temporary relief may be granted only if:

(1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting relief shows that there is substantial likelihood of prevailing on the merits of the final determination of the proceedings;

(3) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources; and

(4) If such relief is the dissolution of the stay imposed under 460:2-35-6(b), the party requesting dissolution must establish that the public interest will not be adversely affected by such action.

(f) Appeals of temporary relief decisions

(1) Any party desiring to appeal the decision of the hearing examiner granting or denying temporary relief may appeal to the Director or, in the alternative, may seek judicial review pursuant to Section 787 of the act.

(2) The Director shall issue an expedited briefing schedule and shall issue a decision on the appeal expeditiously.

**460:2-35-9. Determination by the hearing examiner**

(a) The hearing examiner shall issue a written determination on a request for review of a permit revision or permit renewal decision within 10 days of the date the hearing record is closed by the hearing examiner.

(b) The hearing examiner shall act expeditiously to issue a written decision on a request for review of a permit modification order or a decision on an application for the transfer, assignment, or sale of rights granted under a permit.

**460:2-35-10. Appeals**

(a) Any party aggrieved by the decision of the hearing examiner on a request for review of a permit revision or permit renewal decision shall have 2 working days from receipt of the decision within which to file a notice of appeal with the Director. A copy of the notice of appeal must simultaneously be filed with the hearing examiner.

(1) The Director shall act immediately to issue an expedited briefing schedule.

(2) The decision of the Director shall be issued within 30 days of the dated the hearing record is closed by the hearing examiner.

(b) Any party aggrieved by the decision of the hearing examiner on a request for review of a permit modification order or decision on an application for the transfer, assignment, or sale or rights granted under a permit may appeal to the Director under 460:2-19-2.

## SUBCHAPTER 37. REQUEST FOR REVIEW OF APPROVAL OR DISAPPROVAL OF A COAL EXPLORATION APPLICATION

**460:2-37-1. Scope**

This Subchapter sets forth the procedures for obtaining formal review, pursuant to I DOM/RR, Part 776, of a decision by the Department to approve or disapprove a coal exploration application, in whole or in part.

**460:2-37-2. Who may file**

An applicant or any person having an interest which is or may be adversely affected by a decision of the Department to approve or disapprove a coal exploration application, in whole or in part, may file a request of review of that decision.

**460:2-37-3. Where to file; when to file**

(a) A request for review shall be filed with the OHA, Department of Mines, within 30 days of receipt of the Department's written decision approving or disapproving the coal exploration application.
(b) Any person not served with a copy of the Department's written decision shall file the request for review within 40 days of the date of issuance of the written decision.

**460:2-37-4. Contents of request**

A request for review of the approval or disapproval of a coal exploration application shall include:

(1) A clear statement of the facts entitling that person to administrative relief;
(2) An explanation of the alleged errors in the Department's decision;
(3) A request for specific relief;
(4) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and
(5) Any other relevant information.

**460:2-37-5. Status of approvals pending review**

The approval of a coal exploration application shall be stayed during the pendency of an administrative review proceeding resulting from such approval.

**460:2-37-6. Burden of proof**

(a) If a coal exploration applicant is seeking review, the Department shall have the burden of going forward to establish a prima facie case as to the failure to comply with the applicable requirements of the act and regulations, and the ultimate burden of persuasion as to the entitlement to the approval rests with the applicant.
(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails in some manner to comply with the applicable requirements of the act and regulations.

**460:2-37-7. Appeals**

Any party aggrieved by the decision of the hearing examiner in this Chapter may appeal to the Director under 460:2-19-2.

## SUBCHAPTER 39. RULEMAKING

**460:2-39-1. Petitions requesting promulgation, amendment, or repeal of a rule or regulation**

Any person may petition the Department requesting the promulgation, amendment, or repeal of a Department rule or regulation. All petitions submitted must contain the following information.

(1) All petitions must be submitted in typewritten or legible printed form.

(2) All petitions must clearly identify the party(s) submitting such petition and must include a statement reflecting the interest of the party(s) in submitting such petition.

(3) All petitions must clearly state that the petition is for the promulgation of a new rule, the amendment of an existing rule, or the repeal of an existing rule, or, separately, any combination of the above. In the instance of a requested amendment to any existing rule(s), a complete text of the existing rule language requested for change or deletion and/or such language as may be requested to be added must be specified. In the instance of a requested repeal of any rule(s), the petition must state the complete rule(s) requested for repeal.

(4) All petitions must clearly and separately state the factual basis and reasons, legal grounds, and technical justification for each requested rule promulgation, amendment, or repeal, and shall indicate whether petitioner desires a public hearing. Any and all supporting documents, records, statistics, studies, or information must be submitted with the petition.

(5) All petitions must be duly signed and endorsed by all petitioning parties, or their legal representatives, and such signatures and endorsement must be duly acknowledged by notary.

**460:2-39-2. Referral**

All petitions requesting the promulgation, amendment, or repeal of any Department rule, as provided by this Subchapter, shall be referred to the Department for review an consideration. The Department shall initially determine if the petition is in adequate and proper form. If determined not to be in proper form. If determined not to be in proper and adequate form, the Department shall thereupon return the petition to the petitioning party for correction and resubmission.

**460:2-39-3. Department determination**

Upon receipt of a petition requesting the promulgation, amendment, or repeal of a rule, the Chief Mine Inspector 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 for rulemaking on the same issue shall not provide a reasonable basis. If the Chief Mine Inspector determines that the petition has a reasonable basis, a notice shall be published in the Oklahoma Gazette 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.

**460:2-39-4. Opportunity for argument**

Before making final determination, the requesting party shall be allowed reasonable opportunity for argument, written and/or oral, in support of a petition

before the Department requesting the promulgation, amendment or repeal of a rule. In making its final determination on the petition, the Department may, in its discretion, resort to either of the following nonexclusive actions or proceedings (or any combination thereof):

(1) For good and sufficient cause, summarily grant or deny the petition; or

(2) Refer the request to staff for additional review, consideration, and recommendation prior to a determination thereon by the Department.

**460:2-39-5. Department decision**

Within 90 days from receipt of a petition requesting the promulgation, amendment, or repeal of a rule, the Department shall issue a written decision either granting or denying the petition. The Chief Mine Inspectors decision shall constitute the final decision for the Department.

(1) If the petition is granted, the Chief Mine Inspector shall initiate a rulemaking proceeding.

(2) If the petition is denied, the Chief Mine Inspector shall notify the petitioner in writing, setting forth the reason for denial.

**460:2-39-6. Application of Administrative Procedures Act**

Should any petition for promulgation, amendment, or repeal of a rule be granted by the Department, in whole or in part, the petition as granted shall thereafter be treated as in the case of all rulemaking and the procedures of the Administrative Procedures Act shall thereupon become applicable in the further adoption of such rule promulgation, amendment, or repeal.

## SUBCHAPTER 41. HEARING PROCEDURES FOR LANDS UNSUITABLE PETITIONS

**460:2-41-1. Scope**

This Subchapter sets forth the procedures for a hearing pursuant to I DOM/RR Section 764.17 for petitions to designate lands unsuitable for all or certain types of surface coal mining operations and for terminating designations.

**460:2-41-2. Parties**

A petitioner(s) for the designation of land as unsuitable for surface coal mining shall be considered statutory parties. Any other person claiming a right to participate as a party may seek to intervene in a proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number. Persons with an ownership interest of record in the property and other persons known to the Department to have an interest in the property and other persons known to the Department to have an interest in the property shall be parties. Any interested local, state, or federal agency, including OSM and EPA, shall have the right to intervene as parties.

**460:2-41-3. Hearing site**

The Department shall hold a public hearing in the locality of the area covered by a petition to designate land unsuitable for surface coal mining, unless all parties agree to a different site.

**460:2-41-4. Time for intervention**

Until three days before the Department holds a hearing under I DOM/RR Section 764.17, any person may intervene in the proceedings.

**460:2-41-5. Notice of hearing**

(a) The Department shall give notice of a hearing for a petition to designate land unsuitable for surface coal mining, including the time, date, and location by certified mail postmarked not less than 30 days before the date to:

(1) Local, state, and federal agencies which may have an interest in the decision on the petition;

(2) All petitioners and the intervenors; and

(3) Any person with an ownership or other interest known to the Department in the area covered by the petition.

(b) The general public shall be notified by a local newspaper advertisement for two consecutive weeks; these advertisements shall be published four and five weeks prior to the date scheduled for the public hearing. An additional advertisement shall be published during week prior to the scheduled hearing.

**460:2-41-6. Date of the hearing**

The Department shall hold a public hearing within ten months after receipt of a complete petition to designate land unsuitable for surface coal mining.

**460:2-41-7. Dismissal of proceedings**

If all petitioners and intervenors agree, a hearing for a petition to designate land unsuitable for surface coal mining may be dismissed ant any time. Motions for dismissal shall be in writing unless made orally in the record.

**460:2-41-8. Consolidation of proceedings**

The Department may consolidate in a single hearing the hearings required for each of several petitions to designate lands unsuitable for surface coal mining which are related to areas in the same locale.

**460:2-41-9. Withdrawal of petition**

In the event all petitioners and intervenors stipulate agreement prior to a hearing for a petition to designate land unsuitable for surface coal mining, the petition may be withdrawn from consideration and the hearing not held.

**460:2-41-10. Decision**

The Department shall use the following criteria in reaching its decision in a petition to designate land unsuitable for surface coal mining:

(1) The information contained in the data base and inventory system for lands unsuitable as required in I DOM/RR Section 764.21;

(2) Information provided by other governmental agencies;

(3) The detailed statement prepared under I DOM/RR Section 764.17(e), which includes:

(A) Use of existing and available information on the potential coal resources of the area;

(B) The demand for coal resources;

(C) The impact of such designation on the environment, economy, and the supply of coal.

(4) Any other relevant information submitted during the comment period.

### 460:2-41-11. Time to issue decision

The Department shall issue its final written decision, including a statement of reasons, within 60 days of completion of a public hearing for a petition to designate land unsuitable for surface coal mining, or, if no public hearing is held, then within 12 months after receipt of the complete petition.

### 460:2-41-12. Notice of final decision

The Department shall give notice of its final decision in this Chapter by sending a copy of the final decision by certified mail to all petitioners, every other party to the proceeding, and to the state director of OSM.

### 460:2-41-13. Judicial review

The decision of the Department with respect to a petition to designate land unsuitable for surface coal mining, or the failure of the Department to act within the time limits set forth in I DOM/RR Section 764.19 shall be subject to judicial review by a court of competent jurisdiction in accordance with the act and I DOM/RR Section 787.12.

## SUBCHAPTER 43. COMPUTATION OF TIME

### 460:2-43-1. Computation of Time

Except as otherwise provided in the regulations of this Subchapter, computation of time is based upon the following:

(1) Except as otherwise provided, computation of time is based upon calendar days.

(2) 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.

(3) Intermediate Saturdays, Sundays, or legal holidays are excluded from the computation when the period or prescribed time is seven days or less.

# CHAPTER 3. NON-COAL RULES OF PRACTICE AND PROCEDURES

[**Authority:** 45 O.S., §§ 1.5 et seq., and 721 et seq.; 75 O.S., §§ 250 et seq.]
[**Source:** Codified 12-31-91]

## SUBCHAPTER 1. GENERAL PROVISIONS

### 460:3-1-1. Purpose

The purpose of this Chapter is to ensure public access to the administrative legal process and to ensure due process of law to the citizens of the state of Oklahoma.

### 460:3-1-2. Description of organization [REVOKED]

[**Source:** Amended at 31 Ok Reg 2084, eff 9-12-14; Revoked at 39 Ok Reg 2033, eff 9-11-22]

**460:3-1-3. Method of operation**

(a) The Department of Mines may exercise its official powers at any location in the State of Oklahoma.

(b) When computing time, the following shall apply:

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

(2) 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.

(3) Intermediate Saturdays, Sundays and legal holidays are excluded from the computation when the period or prescribed time is seven (7) days or less.

[**Source:** Amended at 31 Ok Reg 2084, eff 9-12-14; Amended at 39 Ok Reg 2033, eff 9-11-22]

**460:3-1-4. Petition requesting promulgation, amendment or repeal of a rule or organization**

(a) Any interested person may petition the Department requesting the promulgation, amendment, or repeal of a Department rule, provided, in submitting such petition, the following requirements shall apply:

(1) All petitions must be submitted in typewritten or legible printed form.

(2) All petitions must clearly identify the party(s) submitting such petition and must include a statement reflecting the interest of the party(s) in submitting such petition, i.e., a showing that such petition is being submitted by an "interested person."

(3) All petitions must clearly state that the petition is for the promulgation of a new rule, for the amendment of an existing rule or for the repeal of an existing rule, or, separately, any combination of the above. In the instance of a requested amendment to an existing rule(s), a complete text of the existing rule language requested for change or deletion and/or such language as may be requested to be added must be specified. In the instance of a requested repeal of any rule(s), the petition must state the complete rule(s) requested for repeal.

(4) All petitions must clearly and separately state the factual basis and reasons, legal grounds and technical justification for each requested rule promulgation, amendment or repeal and shall indicate whether petitioner desires a public hearing. Any and all supporting documents, records, statistics, studies or information must be submitted with the petition.

(5) All petitions must be duly signed and endorsed by all petitioning parties, or their legal representatives, and such signatures and endorsement must be duly acknowledged by notary.

(b) All petitions requesting the promulgation, amendment or repeal of any Department rule shall be referred to the Department for review and consideration. The Department shall initially determine if the submitted petition is in adequate and proper form. If determined not to be in proper and adequate form, the Department shall thereupon return said petition to the petitioning party for correction and resubmission.

(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 for rulemaking on the same issue shall not provide a reasonable basis. If the Director determines that the petition has a reasonable basis, a notice shall be mailed to all mine operators and other interested persons, and shall be published in the 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) Before making any final determination, the requesting party shall be allowed reasonable opportunity for argument, written and/or oral, in support of the petition before the Department. In making its final determination on the petition, the Department may, in its discretion, resort to either of the following nonexclusive actions or proceedings (or any combination thereof):

(1) For good and sufficient cause, summarily grant or deny the petition; or

(2) Refer the request to staff for additional review, consideration and recommendation prior to a determination thereon by the Department.

(e) Within 90 days from receipt of the petition, the Department shall issue a written decision either granting or denying the petition. 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, setting forth the reasons for denial.

(f) Should any petition be granted by the Department, in whole or in part, the petition as granted shall thereafter be treated as in the case of all rulemaking and the procedures of the Administrative Procedures Act shall thereupon become applicable in the further adoption of such rule promulgation, amendment or repeal.

[**Source:** Amended at 31 Ok Reg 2084, eff 9-12-14]

### 460:3-1-5. Conducting hearings for formal review

(a) The Department may hold hearings for formal review on any matter within the Department's jurisdiction. Hearings for formal review may be instituted and conducted where expressly required by law and where deemed necessary to the proper execution and discharge of any of the powers or duties conferred or imposed upon the Department by law. Hearings may be instituted by application, petition, complaint (herein generally and collectively referred to as "application") or similar request of an aggrieved person or by the Department on its own initiative.
(b) All hearings for formal review held under the authority of 45 O.S., Section 721 et seq., shall be in compliance with 75 O.S., Section 301 et seq., as amended, and with this Chapter.
(c) Hearings for formal review shall be conducted by an authorized Hearing Examiner who shall be designated by the Director. Hearing Examiners are authorized to issue subpoenas, administer oaths, to supervise, direct, preside over and conduct the hearing proceedings; to make and enter interlocutory rulings; to make and enter rulings on any other motions or objections arising during the course of the hearings; and, generally to do all things necessary and incidental to conducting and completing the hearing.
(d) Hearings for formal review may be held at the main offices of the Department in Oklahoma City, or at such other locations as may be designated by law, rule or regulation.

(e) All testimony and evidence given at hearings for formal review shall be electronically recorded in duplicate. Upon receipt of notice of appeal to the District Court pursuant to the Administrative Procedures Act or upon other proper request of a party of record, the Department shall transcribe the testimony verbatim. The cost of transcribing the hearings and furnishing a certified copy of the record to the District Court shall be borne by the appellant, petitioner or requesting party. When a completed hearing record has been transcribed and certified, a copy of the transcript may be obtained, upon written request, from the Department. There will be a transcription fee, as determined by the Department, payable by the requesting party. [75 O.S., Sections 309, 320].

(f) When deemed necessary and proper for the purposes of a hearing for formal review, pre-hearing discovery by a party may be allowed as provided under the Administrative Procedures Act and this Chapter. Depending upon the nature of the hearing, pre-hearing discovery may be made at any time subsequent to the filing (and acceptance for filing) of an application or petition, or otherwise, at any time subsequent to the institution of proceedings on the application. Requests for pre-hearing discovery must be timely made and the Hearing Examiner may impose reasonable and necessary limitations on the period of time within which discovery requests may be presented and entertained.

(1) In any hearing proceeding, the Hearing Examiner may direct, on the Examiner's own motion, or at the request of a party, that the parties appear for a pre-hearing conference. Parties of record shall be notified of such conferences in advance. A pre-hearing conference may be held to facilitate simplification of issues presented, admissions and stipulations, the identification of documents and witnesses proposed to be offered, discovery and production of relevant documents and other information, to consolidate parties and issues, and any other matters as may aid in the conduction of the hearing.

(2) The Hearing Examiner, on the Examiner's own motion or at the request of a party, may, in the name of the Department, issue subpoenas for witnesses and/or the production of books, records, papers or other information or objects. Subpoenas may be personally served by any authorized Department member or by certified mail, return receipt requested. Subpoenas must be served no less than three (3) days prior to the date of the hearing. [75 O.S., Section 315].

(g) The Hearing Examiner shall open the hearing for formal review at the time and place set forth in the notice.

(1) After opening the hearing for formal review, the Hearing Examiner shall determine whether notice of the hearing was properly given as required by law. Should it be determined that the required notice was not given or is materially, substantially or prejudicially defective in form or content, the Hearing Examiner shall adjourn the hearing, set a new hearing date and a new and proper notice thereof shall be given. In addition to the required notice, all parties of record shall be given written notice of the new hearing date.

(2) After opening the hearing for formal review, the Hearing Examiner shall request that all parties enter their appearances for the record and whether they are appearing in support of or in opposition to the application. Parties may appear personally, by authorized representative and/or by legal counsel, provided, attorneys appearing as legal counsel for and on behalf of a party must be duly licensed to practice law in the State of Oklahoma or

must complete the oath [5 O.S. Section 17.1 and Article II, Section 5 of the Rules of the Oklahoma Bar Association] set forth in Appendix A of this Chapter. The applicant or protestant must appear at the hearings, either personally, by representative or by legal counsel. The failure of any party to appear shall be deemed to constitute a default and abandonment of interest by the party failing to appear and shall preclude the party from being heard further unless good cause for such failure to appear is shown five (5) days from the date of the hearing.

(3) After all parties have entered their appearances, the Hearing Examiner shall proceed to entertain presentation of evidence and testimony. The testimony of a witness shall be taken only upon sworn oath or affirmation. Witnesses shall be sworn individually. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses, to object to the introduction of evidence, to impeach witnesses, and to rebut evidence presented. [75 O.S., Section 310]

(4) As provided under the Administrative Procedures Act, the strict and formal rules of evidence and pleading such as are applied and prevail in a court of law need not be observed in Department hearings for formal review. All evidence and testimony offered must be relevant and material to the matter subject of the application and hearing. Evidence and testimony which is clearly irrelevant, immaterial, incompetent or unduly repetitious or cumulative may be excluded or limited. Evidence may be received by stipulation and agreement of all interested parties. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available and, upon request, a party may be given the opportunity to compare the copy with the original. Copies of proposed exhibits shall be supplied to adverse parties and one original copy submitted to the Hearing Examiner. Each exhibit offered shall be tendered for identification. Each exhibit entered into evidence shall become a part of the administrative record. No exhibit shall be accepted after the conclusion of the hearing.

(5) Files and records of the Department which pertain to the subject of the hearing, and books, reports, and other papers or writings which have been prepared and published by any governmental or public agency, may at the discretion of the Hearing Examiner, be officially noticed and received into evidence as exhibits and incorporated by reference. The original or a copy in the possession of the Department shall be made available for inspection and copying by any party. Each such matter shall be appropriately identified and designated by number in the record as an exhibit. Certification of such files and records may be waived when it appears there is not valid reason to doubt the authenticity of the document presented. Official notice may also be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the Department's specialized knowledge. [75 O.S., Section 310]

(6) The Hearing Examiner may, at the Examiner's discretion, continue or adjourn a hearing to another date. Hearing continuances may be granted at the request of any party for good cause or by agreement of all parties or may be ordered on motion of the Hearing Examiner. Continuances or adjournments for further hearing shall be to date, time and place certain announced in open session of the hearing. Where granted or ordered prior to the scheduled hearing date, the party at whose request the continuance was granted or ordered shall notify all other interested parties of record of

the date, time, and place set by the Hearing Examiner for further hearing. At the conclusion of a hearing, the Hearing Examiner may, at the Examiner's discretion for good cause shown and without prejudice to any party, leave the hearing record open to allow presentation and rebuttal of additional material or information necessary to a full, fair and complete submission and disposition of the matter subject of the hearing.
(7) Upon conclusion of a hearing for formal review, the Hearing Examiner may request that all parties file proposed Finding of Facts and Conclusions of Law for review and consideration by the Hearing Examiner. The Hearing Examiner may request all parties to submit legal briefs. [75 O.S. Section 312]
(8) After all parties have had an opportunity to be heard and present evidence, and after expiration of any additional time allowed, the hearing shall be deemed completed and the hearing record shall be deemed closed.
(9) As expeditiously as possible after completion of the hearing for formal review, the Hearing Examiner shall review, consider and evaluate all matters presented and relevant to the hearing issues, and, based thereon, the Hearing Examiner shall prepare a proposed final Order containing necessary Findings of Facts and Conculsions of law Law. The Examiner's proposed Order shall be presented to the Director of the Department for review, consideration and action. All parties of record shall be furnished a copy of the Examiner's proposed Order, at least 15 days in advance of the final Order of the Director, and may file Exceptions thereto. [75 O.S., Section 311]
(10) At such time as the Examiner's proposed Order is to be considered and acted upon by the Director, no new testimony or evidence may be presented or entertained. Upon request, oral arguments and supporting briefs on the Examiner's proposed Findings of Fact, Conclusions of Law, and Order may be presented, but a reasonable time limit for argument shall be fixed. Oral argument shall be recorded and shall become a part of the record. All parties of record shall be furnished a copy of the final Findings of Facts, Conclusions of Law, and Order of the Director of the Department. [75 O.S., Section 312]
(11) As allowed by and subject to compliance with the requirements imposed under the Administrative Procedures Act, any party may request rehearing, reopening or reconsideration of any final Department action, decision or Order. The Department may, on its own motion, order rehearing, reopening or reconsideration of any Department action, decision or order. Appeals from any final Department action, decision or ruling, may be taken as allowed and provided by and subject to the requirements of the Administrative Procedures Act. Subject to the provisions of the Administrative Procedures Act and unless otherwise directed or ordered by the Department, no Department action, decision or Order shall be stayed pending rehearing, reopening, reconsideration or appeal. [75 O.S., Sections 317, 319]

[**Source:** Amended at 21 Ok Reg 2973, eff 7-26-04; Amended at 29 Ok Reg 1778, eff 8-12-12; Amended at 31 Ok Reg 2084, eff 9-12-14]

### 460:3-1-6. Requests for declaratory rulings

(a) Any person may request the Director to interpret the applicability of any rule or order of Department by requesting a declaratory ruling. The purpose of a

declaratory ruling is to explain, or clarify, a rule or an order of the Director in relation to a particular situation. A request for a declaratory ruling must be in writing, and it must include the following information.

(1) The name, address and telephone number of the person making the request;

(2) The name, address and telephone number of the organization the person represents, if applicable;

(3) The date of the request;

(4) A description of the problem or issue which is in the reason for the request; and

(5) The numbers and headings used to identify the rule or order on which the ruling is sought.

(b) The Director may deny the request if it is repetitive, concerns a matter that in the Director's judgment is inappropriate for a declaratory ruling, or concerns a matter beyond the Director's authority.

(c) The Director may provide others with written notice of the request for a declaratory ruling and give them an opportunity to respond in writing within 15 days.

(d) The Director shall issue a declaratory ruling within a reasonable time after the request is received by Department.

(e) A declaratory ruling or refusal to issue such ruling shall be subject to judicial review in the same manner as provided by Department rules.

[**Source:** Added at 17 Ok Reg 3169, eff 7-28-00]

## SUBCHAPTER 3. [RESERVED]

## SUBCHAPTER 5. PROCEEDING FOR SUSPENSION OR REVOCATION OF PERMITS UNDER THE MINING LANDS RECLAMATION ACT

### 460:3-5-1. Scope

This Subchapter sets forth the procedures for obtaining formal administrative review of the Departments Order to Show Cause to suspend or revoke a permit pursuant to 45 O.S. Section 728(D), 732(b), and 736.

[**Source:** Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-2. Initiation of proceedings

(a) The Department shall determine if a permit shall be suspended or revoked for failure to comply with the Act, the permit, or the mining requirements and shall issue a Show Cause Order as to why the subject permit should not be suspended or revoked.

(b) A Show Cause Order shall set forth:

(1) A list of the violations upon which said Show Cause Order is based;

(2) A copy of each notice or order which contains one or more of the violations upon which the said Show Cause Order is based;

(3) A Finding as to whether the permit should be suspended or revoked, including the length and terms of suspension.

(c) The Department shall notify the permittee and other interested parties of said Show Cause Order.

[**Source:** Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-3. Answer

The permitee shall have 20 days from receipt of a Show Cause Order issued pursuant to this Subchapter in which to file an answer with the Department.

[**Source:** Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-4. Content of answer

The permittee's answer to a Show Cause Order shall contain a statement setting forth:

(1) The reasons, in detail, why the Department should not suspend or revoke said permit and all reasons for contesting said order, including the permittee's dispute of all fact of the violations alleged by the Department;
(2) All mitigating factors the permittee believes exist in determining the Department's basis for revocation or suspension, or the terms of suspension;
(3) Any other alleged relevant facts; and
(4) Whether a hearing on the Show Cause Order is desired.

[**Source:** Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-5. Burden of proof in suspension or revocation

In proceeding to suspend or revoke a permit under this Subchapter, the Department shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

[**Source:** Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-6. Determination by the hearing examiner

(a) Upon a determination by the hearing examiner that a permit shall be revoked or suspended, the hearing examiner shall order the permit either suspended or revoked. In making such a determination, the hearing examiner need not find that all the violations listed in the Show Cause Order occurred, but only that sufficient violations occurred to establish the basis for suspension or revocation.
(b) If the permit is suspended, the amount of time for which the permit is suspended shall be determined by the Department as contained within the Show Cause Order. A suspension of indefinite period may be imposed by the hearing examiner as contained within the Show Cause Order, so long as such suspension furthers the purpose of the Act.
(c) The decision of the hearing examiner shall be issued within a reasonable time frame following the date the hearing record is closed by the hearing examiner or within 20 days of receipt of the answer, if no hearing is requested.
(d) At any stage of a suspension or revocation proceeding being conducted by a hearing examiner, the parties may enter into a settlement agreement, subject to the approval of the Director.

[**Source:** Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-7. Summary disposition

(a) In a proceeding for suspension or revocation of a permit under this Subchapter, where the permittee fails to appear at a hearing, the permittee shall be deemed to have waived its rights to a hearing and the hearing examiner may assume for the purpose of the proceeding that:

(1) Each violation listed in the Show Cause Order occurred;

(2) Such violations were caused by the permittee; and
(3) Nothing herein shall authorize a permitee to dispute the fact of the violations and orders contained within the Show Cause Order, so long as said violations or orders have become final.

[**Source:** Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-8. Appeals

Any party to a proceeding for suspension or revocation of a permit under this Subchapter, may appeal the final order of the Director in accordance with judicial review pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. Section 308, et seq.

[**Source:** Added at 21 Ok Reg 2973, eff 7-26-04]

## APPENDIX A. MOTION FOR LIMITED ADMISSION TO PRACTICE THIS ADMINISTRATIVE HEARING [REVOKED]

[**Source:** Revoked at 29 Ok Reg 1778, eff 8-12-12]

## CHAPTER 10. NON-COAL RULES AND REGULATIONS

[**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

### 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 exaction 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 augur 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, 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 exaction 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, grave, 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

### 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., Iv: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 microbiological 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 if 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 INCIDENT TO GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION

**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

**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-coa 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

### 460:10-10-1. Purpose

This Subchapter establishes the procedures though which the Department will implement SB1697, 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 permitee is notified of the decision of the Department concerning an application for approval of a permit for mining, the applicant, permitee, or any person with and 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

### 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

### 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 andfederal 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 [REVOKED]

[**Source:** Added at 31 Ok Reg 2088, eff 9-12-14; Revoked at 37 Ok Reg 561, eff 11-15-19 (emergency)[1]; Revoked at 38 Ok Reg 2405, eff 9-11-21]

***EDITOR'S NOTE:*** *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency action revoking a Section, the last prior permanent text is reinstated. Therefore, on 9-15-20 (after the 9-14-20 expiration of the emergency action), the text of section 460:10-13-5 reverted back to the permanent text that was effective prior to enactment of the emergency action on 11-15-19, and remained as such until revoked by permanent action on 9-11-21.*

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

(a) A **"Subject mine"** means a "mine," as defined in the paragraph 2 of Section 723 of Title 45 of the Oklahoma Statutes, proposed for a location overlying a sensitive sole source groundwaterbasin or subbasin, exclusive of any mine that meets at least one of the following conditions:

(1) As of November 1, 2019, is engaged in the permitted extraction of minerals from natural deposits; or,
(2) Satisfies the criteria of paragraph 1 or 2 of subsection C of Section 1020.2 of Title 82 of the Oklahoma Statutes; or,
(3) Is not permitted to operate for a period of more than five (5) years, with no extensions or renewals; or,
(4) The operation of which will not result in more than five (5) acre-feet per year of groundwater emanating from a sensitive soul source groundwater basin or subbasin to infiltrate its pit, as that term is defined in paragraph 12 of Section 723 of Title 45 of the Oklahoma Statutes.

(b) The Legislature hereby declares and establishes a moratorium on the Department of Mines issuing, in relation to any location overlying a sensitive sole source groundwater basin or subbasin or in which groundwater emanating from any sensitive sole source groundwater basin or subbasin may collect within a pit, as defined in paragraph 12 of Section 723 of Title45 of the Oklahoma Statutes:

(1) Any permit, pursuant to Section 724 of Title 45 of the Oklahoma Statutes, to any subject mine;

(2) Any amendment or revision to any existing mining permit that covers additional land which includes extensions of boundaries shown in the initial permit, pursuant to subsection J of Section 724 of Title 45 of the Oklahoma Statutes, if such amendment or revision would increase the acreage under the permit for that mine location by more than one hundred percent (100%) or four hundred (400) acres, whichever is less, as compared to the acreage under the permit for that mine location.

(3) Notwithstanding the moratorium, nothing precludes the Department of Mines from issuing an amendment or revision to cover additional land, other changes to method or conduct of mining, reclamation operations contemplated by the original permit or other authorization to allow a change in mine ownership or to implement bonding under a permit, nor will any permit amendment or revision issued pursuant to this section be deemed to render the permitted mine a subject mine nor a new mining operation.

(c) Multiple amendments or revisions to cover additional land pursuant to this section may be made for a single mine location; provided, however, that the sum of all added acres must not exceed one hundred percent (100%) or four hundred (400) acres, whichever is less, as compared to the acreage under the permit for that mine location as of the date of November 1, 2019.

(d) Amendments or revisions to cover additional land pursuant to this section need not be located on contiguous property, but must be part of the same mine location. The determination of whether proposed additional land constitutes part of the same mine location will be made by the Department of Mines upon the consideration of all relevant information making it practical and feasible to operate as part of the same mine location. Relevant information may include, but are not limited to one or more of the following:

(1) Proximity of the additional land to the existing mine location;

(2) Whether the additional land is connected to the existing mine location by private roads, railroads, rights-of-way, or by segments of public road which may be safely and lawfully utilized to transport personnel and equipment back and forth between different parts of the mine location;

(3) The ability to safely identify and secure the additional acres with boundary fences, boundary markers, and appropriate signage.

(4) Any other information, circumstances, or factors the Department deems relevant to its determination.

[**Source:** Added at 37 Ok Reg 561, eff 11-15-19 (emergency)[1]; Added at 38 Ok Reg 2405, eff 9-11-21]

***EDITOR'S NOTE:*** *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 9-15-20 (after the 9-14-20 expiration of this emergency action), Section 460:10-13-5.1 was no longer effective, and remained as such until added again by permanent action on 9-11-21. For the official text of the emergency rule that was in effect from 11-15-19 through 9-14-20, see 37 Ok Reg 561.*

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

(a) 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.

(b) 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; Amended at 37 Ok Reg 561, eff 11-15-19 (emergency)[1]; Amended at 38 Ok Reg 2405, eff 9-11-21]

***EDITOR'S NOTE:*** *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last prior permanent text is reinstated. Therefore, on 9-15-20 (after the 9-14-20 expiration of the emergency action), the text of section 460:10-13-6 reverted back to the permanent text that was effective prior to enactment of the emergenc7 action on 11-15-19, and remained as such until amended again by permanent action on 9-11-21.*

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

### 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

### 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**

(a) 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.

(b) At the time the Department authorizes the applicant to publish notice of its permit application, the Department will place on its website the permit application and instructions for public comment.

[**Source:** Amended at 17 Ok Reg 3170, eff 7-28-00; Amended at 38 Ok Reg 2405, eff 9-11-21]

**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 noncompliance 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 course 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

### 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 and amendments

(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 the notices and hearings, applicable to the revision requests as required in these regulations. Any application for a revision which purposes 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 a revision in accordance with the requirements of Subchapter 17 of the 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 an amended permit application, in compliance with 45 O.S. Section 724 J.

[**Source:** Amended at 18 Ok Reg 3199, eff 7-26-01; Amended at 37 Ok Reg 561, eff 11-15-19 (emergency)[1]; Amended at 38 Ok Reg 2405, eff 9-11-21]

***EDITOR'S NOTE:*** *[1]This emergency action expired before being superseded by a permanent action. Upon expiration of an emergency amendatory action, the last prior permanent text is reinstated. Therefore, on 9-15-20 (after the 9-14-20 expiration of the emergency action), the text of section 460:10-19-4 reverted back to the permanent text that was effective prior to enactment of the emergency action on 11-15-19, and remained as such until amended again by permanent action on 9-11-21.*

### 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 existingpermit 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

### 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 he 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

### 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 permit tee 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

### 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 the 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; Amended at 39 Ok Reg 2034, eff 9-11-22]

### 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

### 460:10-27-1. Purpose

This Subchapter sets forth the minium 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.

## SUBCHAPTER 28. RELEASE OF PERFORMANCE BOND ON LIMITED USE PERMITS

**460:10-28-1. Purpose**

This Subchapter sets forth the minium 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**

(a) 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.

(b) 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.

(c) 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.

(d) 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

### 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

(a) The Department shall forfeit all or part of a bond for any permit where required or authorized by Section 460:10-29-4.
(b) 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.
(c) 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

(a) In the event forfeiture of the bond is required by Sections 460:10-29-2 and 460:10-29-4, the Department shall:

(1) 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;
(2) Advise the permittee and surety, if applicable, of any rights of appeal that may be available from the determination under State Law;
(3) 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
(4) If an appeal is filed, defend the action.

(b) 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.
(c) 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) 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

### 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 is100 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 be105 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

### 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

### 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 orshe 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 orher 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 orher 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]

## CHAPTER 12. WATER QUALITY STANDARDS IMPLEMENTATION PLAN

[**Authority:** 27A O.S., §§ 1-1-202(B) and 1-1-202(C)(4); 45 O.S., § 1.5 et seq.]
[**Source:** Codified 9-11-21]

## SUBCHAPTER 1. GENERAL PROVISIONS

**460:12-1-1. Purpose and scope**

Title 27A O.S., §§ 1-1-202 and 1-3-101, establishes the Department of Mines as a State Environmental Agency and requires the agency to develop and promulgate a Water Quality Standards Implementation Plan for its jurisdictional areas of environmental responsibility. The elements of the plan are dictated by 27A O.S .§ 1-1-202. This Chapter 12 and the Subchapter describe the elements of the Plan.

[**Source:** Added at 38 Ok Reg 2408, eff 9-11-21]

**460:12-1-2. Authority**

Oklahoma law, 27A O.S. Supp. Section 1-1-202 (enacted through Senate Bill 549) mandates that each state environmental agency shall promulgate, by July 1, 2001, a Water Quality Standards Implementation Plan (WQSIP) for its jurisdictional areas of environmental responsibility. The Plan must be developed in compliance with the Administrative Procedures Act. After initial promulgation, the Department must review its plan at least every three years thereafter to determine whether revisions are necessary.

[**Source:** Added at 38 Ok Reg 2408, eff 9-11-21]

**460:12-1-3. Definitions**

In addition to the terms defined in Title 27A O.S. § 1-1-201 and O.S. Title 45, Mines and Mining, the following words, terms, or acronyms, when used in this Subchapter, shall have the following meanings unless the context clearly indicates otherwise:

**"40 CFR"** means Title 40 of the Code of Federal Regulations.
**"BMP"** means Best Management Practice.
**"CAM"** means Coal Advisory Memorandum.
**"CCB"** means Coal Combustion By-Product.
**"CHIA"** means Cumulative Hydrologic Impact Assessment.
**"CKD"** means Cement Kiln Dust.
**"CORPS"** means United States Army Corps of Engineers.
**"CWA"** means Federal Clean Water Act.
**"CWAC"** means Cool Water Aquatic Community.
**"DEQ"** means Oklahoma Department of Environmental Quality.
**"EPA"** means United States Environmental Protection Agency.
**"F&W"** means Fish and Wildlife.
**"HLAC"** means Habitat-Limited Aquatic Community.
**"NPS"** means Non-Point Source.
**"OAC"** means Oklahoma Administrative Code.
**"ODM"** means Oklahoma Department of Mines.
**"OPDES"** means Oklahoma Pollutant Discharge Elimination System.
**"OWRB"** means Oklahoma Water Resources Board.
**"PAP"** means Permit Application Package.
**"PBCR"** means Primary Body Contact Recreation.
**"PHC"** means Probable Hydrologic Consequences.
**"PPWS"** means Public and Private Water Supply.
**"SBCR"** means Secondary Body Contact Recreation.
**"SEDCAD"** means Sediment, Erosion, Discharge by Computer Aided Design.

**"TDS"** means Total Dissolved Solids.
**"TMDL"** means Total Maximum Daily Load.
**"TSS"** means Total Suspended Solids.
**"UAA"** means Use Attainability Analysis.
**"USAP"** means Use Support Assessment Protocols.
**"USLE"** means Universal Soil Loss Equation.
**"WQS"** means Water Quality Standards.
**"WQSIP"** means Water Quality Standards Implementation Plan.
**"WWAC"** means Warm Water Aquatic Community.

[**Source:** Added at 38 Ok Reg 2408, eff 9-11-21]

### 460:12-1-4. Oklahoma's Water Quality Standards

(a) **Surface Water.** Pursuant to Section 303 of the CWA, Oklahoma's surface water quality standards are promulgated by the OWRB at OAC 785:45. Surface water quality standards are comprised of three elements:

(1) Beneficial uses are designated to apply to specific water bodies or defined water body segments, as listed in Appendix A to OAC 785:45, and which generally address the goals of the CWA. Certain default beneficial uses are assumed for waters not listed in Appendix A until a UAA may indicate otherwise. The subset of beneficial uses which address water quality (as opposed to quantity) are:

(A) Public and Private Water Supply (PPWS) (OAC 785:45-5-10);
(B) Fish and Wildlife Propagation (F&W) (OAC 785:45-5-12), according to one of four fishery subcategories:
(i) Habitat Limited Aquatic Community (HLAC)
(ii) Warm Water Aquatic Community (WWAC)
(iii) Cool Water Aquatic Community (CWAC)
(iv) Trout Fishery (Put and Take)
(C) Agriculture (Ag) (OAC 785:45-5-13);
(D) Primary Body Contact Recreation (PBCR) (OAC 785:45-5-16);
(E) Secondary Body Contact Recreation (SBCR) (OAC 785:45-5-17);
(F) Aesthetics (OAC 785:45-5-19)
(G) Fish Consumption (OAC 785:45-5-20)

(2) Numerical and narrative criteria found in OAC 785:45-5, apply statewide. Numerical criteria are pollutant-specific and apply to a water body according to its beneficial uses in accordance with OAC 785:45 Appendix G.

(A) Excess sediment impacts may be addressed through the numeric turbidity standards established for F&W.
(B) Heavy metal numerical WQ standards have been set by OWRB for many beneficial uses.

(3) A water quality antidegradation policy applies statewide and is consistent with the goals of the CWA, as found at OAC 785:45-3. Antidegradation policy implementation is found at OAC 785-45-5-25 and OAC 785-46-13. There are three levels of protection:

(A) Attainment or maintenance of existing or designated beneficial uses (Tier 1).
(B) Maintenance of beneficial uses and water quality in higher quality waters and sensitive water supplies of the state, as well as in waters of ecological and/or recreational significance (Tier 2).

(C) Prohibition of any water quality degradation from new point source discharges or increased loading from existing discharges into waters designated as outstanding resource waters (Tier 3).

(b) **Groundwater.** Although not required by any provision of the CWA, the OWRB has promulgated groundwater quality standards for the state at OAC 785:45-7. Groundwater quality standards are also comprised of three elements:

(1) Beneficial uses, designated by the classification listed below in 2b. Such beneficial uses are defined at OAC 785:45-7-3(b) and may include, but are not limited to:

(A) Public and Private Water Supply (including municipal and domestic use)

(B) Agriculture (including irrigation and non-irrigation use)

(C) Industrial and Municipal Process and Cooling Water

(2) Classifications, found at OAC 785:45-7-2(d) and 45-7-3(a) are as follows:

(A) "Special Source Groundwater" is groundwater:

(i) Where exceptional water quality exists;

(ii) Where there is an irreplaceable source of water;

(iii) Where it is necessary to maintain an outstanding groundwater resource; or

(iv) Where the groundwater is ecologically important. This class of groundwater is considered to be very vulnerable to contamination and includes:

(I) All groundwater located beneath the watersheds of surface waters designated as Scenic Rivers in Appendix A to OAC 785:45.

(II) Groundwater located underneath lands located within the boundaries of areas with waters of ecological and/or recreational significance listed in Tables 1 and 2 of Appendix B to OAC 785:45.

(III) Groundwater located underneath lands located within the boundaries of a state-approved wellhead protection area for public water supply.

(B) Class II (General Use Groundwater) consists of groundwaters capable of being used as a drinking water supply either with no treatment or with conventional treatment methods, which have the potential for multiple beneficial uses, and with mean TDS levels <3000 mg/L.

(C) Class III (Limited Use Groundwater) consists of poor quality groundwaters caused by naturally occurring contaminants, which require extensive treatment for use as a drinking water source, having mean TDS levels 2: 3000 mg/L but < 5000mg/L.

(D) Class N (Highly Mineralized Treatable Groundwater) which is very poor quality groundwater due to natural conditions, which require extensive treatment for use as a drinking water source, having a mean TDS 5000 mg/L but < 10,000 mg/L.

(3) Protective measures and corrective actions, composed of:

(A) Numerical criteria for any synthetic substance or substance not naturally occurring greater than concentrations found in background conditions, as well as practically measurable levels of toxics listed pursuant to Section 307(a) of the CWA, which, if exceeded,

constitute groundwater pollution and may require corrective action.
(B) Narrative criteria requiring that protective measures be at all times maintained which are adequate to preserve and protect existing and designated groundwater basin classifications and which are sufficient to minimize the impact of pollutants.
(C) Development of prescriptive measures by each state environmental agency in their WQSIP, and subsequent use of such measures, to prevent, control or abate groundwater pollution caused by any person or entity within their jurisdictional area of environmental responsibility.
(D) Consideration by each state environmental agency of a hydrogeologic basin's vulnerability level, as developed in OWRB Technical Report 99-1, Statewide Groundwater Vulnerability map of Oklahoma, Noel I. Osburn and Ray H. Hardy, for surface activities with the potential to contaminate groundwater.

[**Source:** Added at 38 Ok Reg 2408, eff 9-11-21]

**460:12-1-5. Required elements of the Water Quality Standards Implementation Plan**

(a) The WQSIP must reflect the following:
(1) Program compliance with antidegradation requirements; and
(2) Protection of beneficial uses by providing a general description of the processes, procedures and methodologies utilized to ensure that programs within the agency's jurisdictional areas of environmental responsibility:
(A) Comply with anti-degradation standards;
(B) Lead to maintenance of water quality where beneficial uses are supported;
(C) Remove threats to water quality where beneficial uses are in danger of not being supported; and
(D) Restoration of water quality where beneficial uses are not being supported.

(b) The WQSIP must follow the Use Support Assessment Protocols (USAP)which are the procedures to be utilized in the application of OAC 785:46-15 to make impairment determinations.
(c) The WQSIP must describe the programs affecting water quality with a description of pertinent programs within each jurisdictional area detailing the effect on surface and/or groundwater quality.
(d) The WQSIP must contain technical information, databases, and procedures to be utilized by the Department in compliance with WQSIP.
(e) The WQSIP must provide a description of how the plan is and/or will be integrated into the water quality management activities of the Department by including rules, program area policies and guidance, and/or standardized methods of conducting business.
(f) The WQSIP must describes how the Department is or will be complying with mandated statewide requirements affecting water quality developed by other state environmental agencies, including (but not limited to), total maximum daily load (TMDL) development, point source wastewater discharge permitting, and nonpoint source (NPS) pollution prevention programs.
(g) The WQSIP must indicate public participation by summarizing written comments and testimony received relative to all public meetings held for the purpose of providing public participation related to the WQSIP.

(h) The WQSIP must provide a description of methods and means to evaluate the effectiveness of activities conducted pursuant to WQSIP to achieve water quality standards.
(i) To the extent the required elements or items listed above will not result in a rule as defined by the Administrative Procedures Act, that information will be listed in the WQSIP.

[**Source:** Added at 38 Ok Reg 2408, eff 9-11-21]

### 460:12-1-6. Jurisdictional areas by statute

Title 27A O.S. Supp. 1998, Section 1-3-l0l (G) states the Department's jurisdictional areas are as follows:

(1) Mining regulation;
(2) Mining reclamation of active mines;
(3) Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the agency; and
(4) Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Title 27A Section 1-1-202 for its jurisdictional areas of responsibility.

[**Source:** Added at 38 Ok Reg 2408, eff 9-11-21]

### 460:12-1-7. Agency jurisdictional areas

(a) The extraction of earth minerals occurs in every county of the state. Minerals mined in Oklahoma include coal, limestone, sand & gravel, granite, gypsum, clay & shale, salt, chat, tripoli, bentonite, and volcanic ash.
(b) Prior to commencement of mining operations, a permit must be obtained from ODM. A permit is issued when the mine operator submits an acceptable application and posts the required bond to cover reclamation costs. The mining operator's permit application must contain plans to safeguard environmental resources.
(c) The Department regulates the reclamation of these permitted lands with respect to mining for both coal and non-coal minerals. The Department also regulates the effects of mining as outlined by statutory authority Senate Bill 250 and 341 allowed for the placement of coal combustion by-product (CCB), which includes fly ash and cement kiln dust, in any active or inactive coal and non-coal mining operations.
(d) To assure that water pollution does not occur or that water is handled properly, the Department has extensive plans for all mining and reclamation operations. Requirements for this program are set forth in Title 45 of the Oklahoma Statutes. In all jurisdictional areas, the Department will require compliance with mandated statewide water quality requirements. The Department will not approve permit applications for activities under its jurisdiction until the responsible party has applied for all necessary water quality permits related to mining activities from other agencies.

[**Source:** Added at 38 Ok Reg 2408, eff 9-11-21]

### 460:12-1-8. Regulation elements of Water Quality Standards Implementation Plan by jurisdictional area

(a) **Coal mining and reclamation.** Coal mining and reclamation operations regulatory elements are as follows:

(1) The program must comply with antidegradation and protection of beneficial uses as follows:

(A) Pursuant to Subchapters OAC 460:20-27, 20-31, 20-43, and 20-45, all surface drainage and groundwater seeps from areas disturbed by coal mining and reclamation activities shall be passed through a siltation structure before leaving the permit area. Discharges of water shall also be made in compliance with all applicable State and Federal water quality laws and regulations and with effluent limitations for coal mining promulgated by DEQ under the OPDES permitting process.

(B) Each coal mining permit is issued based upon the review of the information submitted by the applicant in the Permit Application Package. The Permit Application Package contains a comprehensive review of surface and groundwater resources, including extensive baseline data, and overburden analyses for the proposed mining site and adjacent areas. This information is used by the applicant to estimate the probable hydrologic consequences (PHC) of the proposed mining. If the PHC are adverse, the applicant is required to set forth a plan to prevent or minimize disturbance to the hydrologic balance. That plan includes a proposed monitoring scheme to verify its effects.

(C) Additional water quality protection measures shall include: timely construction of drainage control structures and diversions, timely reclamation and re-vegetation, proper disposal of any acid forming and toxic forming materials, mulching, adequate channel lining to prevent erosion, reduce the rate and volume of runoff by reclaiming the land to gentle slopes, pass all surface drainage from the disturbed areas through sedimentation ponds, and monitor surface and groundwater during mining and reclamation activities until final bond release.

(D) All of the beneficial uses itemized in Section 460:12-1-5 of this Chapter could be impacted by surface or groundwater at a mining site. Since ODM does not deal with toxic contaminants at a site, ODM does not have specific water quality discharge standards other than the technology-based water quality standards as established by the DEQ or EPA. Typically, the discharge standards follow the effluent limitations of 40 CFR 434 as seen in Appendix A.

(2) The procedures for Application of Use Support Assessment Protocols (USAP) are:

(A) Each operator conducting coal mining and reclamation activities is responsible for complying with water quality standards as established by the OWRB. If an investigation of a complaint by ODM personnel shows that coal mining and reclamation activities may be having an adverse impact on water quality, ODM shall notify the permittee. ODM and or the permittee may investigate the water body in question to determine whether the water body has been impaired.

(B) As established by ODM Coal Advisory Memorandum (CAM) #16, each coal mine site shall have its own unique surface and groundwater monitoring plan subject to ODM approval. Sample frequency, location, parameters analyzed, and reporting requirements are detailed in this CAM. Laboratory procedures,

methodologies, and requirements have been established by the DEQ and EPA. As previously mentioned, ODM follows DEQ sediment discharge standards as implemented through the OPDES program.

(3) Programs affecting water quality pursuant to the plan are regulated as follows:

(A) The act of mining displaces overburden and soils that were previously undisturbed. Previously protected strata will be exposed to oxygen and water. These elements may come into contact with iron disulfide, oxidize and release acidity. Erosion or sediment flow may further cause an impact to water quality during the removal of vegetation & topsoil or the construction of ponds & drainage diversions. Drainage diversions direct mine runoff into approved sedimentation ponds. Water discharge from the sedimentation pond must be in compliance with the state and federal water quality standards.

(B) ODM Inspection and Enforcement Division administer compliance oversight of all water quality standards. This section is responsible for compliance with all water discharge standards established under the OPDES permit. Sediment control measures affecting water quality, are established by ODM Technical Services Division. All designs and standards are approved on a site-specific basis through the permitting process through the sediment, erosion, and discharge by computer aided design (SEDCAD) program.

(4) The technical information and procedures used for the plan are as follows:

(A) Soil loss and sediment yield due to mining activities as well as vegetation establishment are estimated through the use of the Universal Soil Loss Equation (USLE) or through the computer model SEDCAD. Adequate data should be collected and evaluated in order to derive the needed input information on the soil losses and sediment yield.

(B) The SEDCAD program used in designing sediment ponds predicts the amounts of sediment to be washed into the ponds and the sediment volumes exiting the ponds. The predicted sediment values are based upon worst-case situations simulating active mining and reclamation operations within the watersheds of sediment ponds. The worst-case scenario utilized is a barren and tilled soil exposed to sheet runoff erosion. The SEDCAD results include predicted sediment pond efficiencies, sediment volumes trapped in the ponds, and suspended solids not trapped in the pond but carried downstream during pond discharge.

(C) Geologic and overburden information is identified, collected, and analyzed. Surface and groundwater baseline information is also collected to predict the impact of the proposed operation on the water quality of the mine permit and adjacent areas.

(D) A Cumulative Hydrologic Impact Assessment (CHIA) is subsequently prepared. Following reclamation, the baseline data can be compared with the post-mining data to demonstrate the effectiveness of the reclamation procedures and help evaluate the water quality impacts prior to release of a performance bond.

(5) To integrate the plan rules, regulations may be added or amended. Other methods to integrate the plan may include internal Policies & Procedures or Coal Advisory Memorandums (CAMs). The operator as well as the regulatory agency may utilize these options. Close communication and cooperation between regulatory authorities are always encouraged.

(6) The program must comply with statewide water quality requirements pursuant to OAC 460:20-27-11 (i) and (j) which addresses the minimum requirements of surface and groundwater monitoring plans. Therefore, ODM has to comply with statewide water quality requirements through the monitoring program. Discharges of water from areas disturbed by mining activities shall be made in compliance with all applicable statewide water quality requirements in Section 460:20-43-9. If coal mining activities are found to be contributing to water quality problems in a stream or watershed, ODM shall cooperate with the TMDL standards of other state agencies and/or increase its own enforcement activities.

(7) Public participation requirements are as follows:

(A) Upon submission of an administratively complete application, the applicant of a coal mining permit shall place an advertisement in a local newspaper of general circulation in the locality of the proposed coal mining and reclamation operation. The advertisement shall be published at least one a week for four (4) consecutive weeks with an additional 30-day comment period to follow. Any person having an interest which is or maybe adversely affected, 460:20-15-5 (c), or any public agency or body shall have the right to protest and request a hearing on an application.

(B) An additional public participation avenue follows after an operator requests a reclamation release and ODM conducts a field inspection. The public has a right to protest this action prior to bond release. A formal review is conducted after complaint investigations and promulgation of ODM rules and regulations.

(C) Public participation requirements of the Oklahoma Administrative Procedures Act will be followed in promulgating rules that integrate water quality standards into this program area.

(8) In evaluation, ODM utilizes surface and groundwater monitoring information to evaluate the effectiveness of mining activities in complying with state water quality standards. The final data is compared to data collected before, during, and after mining activities as well as post-reclamation activities to determine the impacts of the operation upon the water quality.

(b) **Non-coal mining and reclamation.** Non-coal mining and reclamation operations regulatory elements are as follows:

(1) The non-coal mining program must comply with Antidegradation and Protection of Beneficial Uses as follows:

(A) Activities in the state with a potential to affect surface water beneficial uses include the mining of: limestone, sand & gravel, granite, gypsum, clay & shale, salt, chat, tripoli, bentonite, and volcanic ash.

(B) According to OAC 460:10-17-14(3), all discharges to State waters shall meet the requirements of the Oklahoma water quality standards. The permittee must comply with the storm water runoff control plan and obtain the appropriate discharge permit as required

by the DEQ. The DEQ has jurisdiction over all point source discharges of pollutants and storm water to waters of the State which originate from mining activities. ODM has no regulations regarding sediment control or turbidity standards for streams. Future plans possibly may expand the regulations of gravel mining in Scenic Rivers to various waters of the state.

(C) Each permit application must contain a list of all licenses and permits needed to conduct the proposed mining operation as required by 45 O.S. 724 (I). This includes a list of specific regulatory agencies to be contacted for their respective permitting and enforcement guidelines. If an operator fails to follow the established DEQ or other regulatory agency permitting requirements, the non-coal permit may be suspended, revoked, or modified by ODM.

(2) The Department has specific regulations governing gravel mining operations located on Oklahoma's Scenic Rivers located at OAC 460:10-13-3 and 460:10-13-4. These regulations establish more stringent operational requirements for permitting as outlined in Title 82 O.S. Section 1452 (since renumbered to Section 896.5) et seq. Some of the operational requirements detailed in Section 460:10-13-4 includes:

(A) Reference other state required permits pertaining to the site.

(B) Comply with all state water quality environmental laws when removing or stockpiling gravel.

(C) Mining in or driving into the wetted portion of the riverbed is prohibited.

(D) Changing the course of the river is prohibited.

(E) Maintain a 100-foot buffer of natural vegetation between the river's edge and any processing plant site other than normal access to the stream. If no plant is located on the property, the operator shall take precautions to preserve stream bank integrity.

(F) Where appropriate, Best Management Practices (BMP) such as sediment traps and fences shall be installed and maintained to minimize sediment and spoil return to a stream.

(3) Requirements have been added by the Department which include promulgated rules (Effective August 1, 2001) to Subchapter 460:10-13 requiring stricter operational guidelines for High Quality Waters and Outstanding Resource Waters. Prior to ODM permit issuance the applicant must submit approved copies of other state, federal, and local government permits or licenses as required in OAC 460:10-13-4. These permits include but are not limited to:

(A) Storm Water Permit Pollution prevention plan NPDES & OPDES.

(B) Floodplain permit.

(C) Stream Water Permit.

(D) Copies of notifications sent to state and federal fish and wildlife agencies.

(E) Army Corps of Engineers notification.

(F) Closure plan.

(G) Prohibitive practices have been established to protect water quality. These practices include:

(i) Operations are prohibited from mining in, or driving in, the wetted portion of the riverbed.
(ii) Operations are prohibited from changing the course of the river.
(iii) 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.

(H) A provision has been added that will require a stream water monitoring plan to be submitted and implemented prior to and during mining operations. This rule allows for the use of any plan filed with other agency jurisdictions as long as the plan satisfies the parameters referenced in Section 460:10-13-3. ODM defaults to OWRB water quality standards when determining the impact of mining activities to a stream. State enforcement procedures with respect to violations and citations issued by the Department are set in Subchapter 460:10-37.

(4) The procedures for application of Use Support Assessment Protocols (USAP) are: Each operator conducting non-coal mining and reclamation activities is responsible for complying with state water quality standards as follows:

(A) If an investigation of a complaint by ODM personnel shows that non-coal mining and reclamation activities may be having an adverse impact on water quality, ODM shall notify DEQ and the operator. ODM, DEQ, or the operator may investigate the water body in question. The DEQ, Corps, or other authorized regulatory agency will determine whether the waterbody has been impaired.

(B) The operator must submit to ODM proof from the jurisdictional agency that the violation has been corrected or is being corrected as required in OAC 460:10-17-9(c).

(C) A new permit or a permit renewal cannot be issued if the applicant or operator has any outstanding violations or issues which would place the site out of compliance with any other respective jurisdictional arena.

(5) The Departments follows DEQ sediment discharge standards as established through the OPDES program. All standards are implemented through the OPDES program. All water quality investigations performed by ODM will follow USAP procedures to determine if applicable beneficial uses are maintained.

(6) Non-coal mining and reclamation programs affecting water quality elements are as follows:

(A) The act of mining displaces overburden and soils that were previously in a stable and consolidated state. Previously protected strata will be exposed to oxygen and water during excavation. This activity can result in erosion and sediment movement. The construction of diversion berms and terraces will assist in erosion control and containment of sediment at most non-coal sites. Generally, sites are required to implement a DEQ Storm Water Run Off Control Plan and include a DEQ approved Pollution Prevention Plan. Vegetation established at the earliest possible time also assists in water runoff, erosion, and sediment control. All these reclamation practices will limit erosion effects.

(B) The Department does have jurisdiction over impoundment or sediment pond closure and reclamation at a non-coal mine site. However, since ODM does not deal with toxic contaminants at a site, ODM does not have specific groundwater protection requirements. An operator must secure construction design and operation approval from the DEQ under the appropriate storm water permit.

(C) Regulations regarding the "dredging" method (usually conducted contiguous to a river or stream in sand & gravel mining) stipulate that the operator excavate only to the water table. At this point, a dredge must be placed to pump sand from the formation below the area water table. This method is utilized in the Arkansas River beds of Tulsa, Wagoner, Bryan, Canadian, and Oklahoma Counties. These locations are required to secure permits and/or authorizations for continued activities. This includes a flood plain permit and approval from the local Army Corps of Engineers Administrator.

(7) The technical information and procedures used with the plan are as follows:

(A) The non-coal rules and regulations found in Chapter OAC 460:10 and 45 O.S. Section 721et seq. require reclamation of each mine site. Permitting reclamation plan guidelines are established in Section OAC 460:10-15-3. The technical review for this plan is the primary tool in evaluating land use issues. The review of procedures for maintaining water quality will be handled by the appropriate agency with the required permits and operational controls.

(B) Areas outside established ODM jurisdictional areas or expertise will be forwarded to the appropriate agency(s) for review assistance or information. This should include any copies of permits or authorizations issued by the agency with jurisdiction.

(8) Integration of the WQSIP may require the Department to revise its general, current, or future policies and regulations. Technology-based controls as well as water quality standards are evaluated by the DEQ for non-coal sites. As always, close communication and cooperation between regulatory authorities are encouraged for permitting and enforcement purposes.

(9) The non-coal program and the mining operators must comply with statewide water quality requirements. As previously referenced in Element 1, the non-coal rules of OAC 460:10 require all discharges to State waters meet the requirements of Oklahoma water quality standards. Compliance with these standards is enforced by the DEQ through the OPDES program. Ultimately all water quality standards are based on OAC 785:45, OWRB rules and regulations.

(10) Public participation requirement are as follows:

(A) All proposed non-coal rules will allow public comments through the participation requirements of the Oklahoma Administrative Procedures Act prior to promulgation.

(B) In addition, 45 O.S. Section 721 et seq., outlines the public participation requirements for permitting of non-coal mining operations. Any person having an interest which is or may be

affected by a decision on an application or any public agency or body shall have the right to protest and request a hearing on an application. The applicant is required to publish a notice of intent four (4) consecutive weeks with an additional two (2) week comment period to follow. If a request for a hearing is received, an informal conference will be held in the vicinity of the mine site. In addition, non-coal rules allow for an appeal of an informal conference to a formal hearing held in the Oklahoma City office. An additional public participation avenue follows after an operator requests a reclamation release and ODM conducts a field inspection. The public has a right to protest this action prior to bond release. A formal review is conducted after complaint investigations and promulgation of ODM rules and regulations pursuant to OAC 460:3-1 and 460:10-17.

(11) In evaluation, the implementation of non-coal mining water quality standards relies upon other regulatory agencies and the permits issued under their respective jurisdiction. Guidelines used by other agencies for mining evaluations are not part of the program approval under Title 45 O.S. Section 721 et seq. Close communication between ODM and other jurisdictional agencies will be pursued.

(c) **Coal combustion by-product standards.** The Coal combustion by-product standards placement regulatory elements are:

(1) The program must comply with antidegradation and protection of beneficial uses are as follows:

(A) A permit for CCB placement and reclamation is issued based upon the review of the information submitted by the applicant. This issuance is reviewed for compliance with the requirements set forth in Chapter OAC 460:30, Coal Combustion By-Standards, for mining operations which include the regulation of CCB placed in active or inactive coal or non-coal mines under 45 O.S. Section 940. Chapter 460:30 was enacted by the Oklahoma Legislature in 2003 and is included in its entirety in Appendix B of this document. The permit application contains a comprehensive review of surface and groundwater resources which includes baseline data. Permeability test results of the in-situ liner material to be used must also be reported. This information is used to estimate the probable hydrologic consequences (PHC) of the proposed placement and reclamation plan.

(B) All excess surface runoff from the active face of CCB placement areas shall be directed into a sedimentation pond. Off permit drainage shall be diverted away from any active placement areas. Water discharge shall be in compliance with all applicable State water quality standards.

(C) All water quality protection measures shall include, but not be limited to: timely construction of drainage control structures and diversions, timely reclamation and revegetation, mulching, adequate channel lining to prevent erosion, reducing the rate and the volume of runoff by reclaiming the land to gentle slopes, pass all surface drainage from the disturbed areas through sedimentation ponds, and monitor surface and groundwater during excavation/placement/reclamation activities until final bond release.

(D) Technology-based or engineering controls are required to protect water quality. The permeability of the sides and bottom of CCB placement cells cannot exceed 10-5 cm/sec. Soils that are to be used as a natural or reconstructed liner for groundwater protection shall be tested for permeability using an ODM approved ASTM test.

(2) The procedures for the Application of Use Support Assessment Protocols (USAP) are as follows:

(A) Each operator conducting CCB placement and reclamation activities is responsible for complying with all state water quality standards. If an investigation of a complaint by ODM personnel discloses that these activities may be having an adverse impact on water quality, ODM shall notify the permittee and the agency with jurisdictional authority over these standards. ODM and/or the operator may investigate the water body in question to determine whether the water body has been impaired.

(B) Water sample frequency, location, parameters analyzed, reporting requirements, and laboratory methods will be evaluated by ODM on a site-specific basis.

(3) Pursuant to the WQSIP, programs affecting water quality are regulated as follows:

(A) Placement of CCB, construction of drainage diversions, and sedimentation pond construction may impact water quality. Drainage diversions will direct mine runoff into approved sedimentation ponds. Water discharge from the sedimentation pond shall be in compliance with the State and Federal water quality standards through the DEQ OPDES permitting process. Since the constituents of CCB, i.e. CKD and fly ash, are not highly mobile in the subsurface, it does not readily leach to groundwater.

(B) Prior to placement, CCB combines with water. This mixture solidifies to a consistency of concrete making the material more immobile. ODM requirements for the liner and cover material further inhibit leaching. See Element 1.

(4) The technical information and procedures used for the WQSIP are:

(A) Geologic and overburden information is identified, collected, and analyzed.

(B) Surface and groundwater baseline information is also collected to predict the impact of the proposed placement operation on the water quality of the permit and adjacent areas.

(C) An impact assessment is subsequently prepared. Following reclamation, the baseline data can be compared with the post mining placement data to demonstrate the effectiveness of the reclamation procedures and help evaluate the water quality impacts prior to release of a performance bond.

(5) Integration of the WQSIP may require the Department to revise its general current or future policies and regulations. This is completed in accordance with the required public participation process adhered to by ODM.

(6) The program must comply with statewide water quality requirements. The CCB placement permit applications address the requirements of a surface and groundwater monitoring plan. ODM will comply with

statewide water quality requirements throughout the monitoring program:

(A) Water discharges from areas disturbed by CCB placement and reclamation activities shall be in compliance with all other applicable state agencies water quality standards.

(B) Groundwater monitoring is required for operators of CCB placement sites.

(C) Well locations are subject to ODM approval.

(7) Public participation requirements are as follows:

(A) Public participation requirements of the Oklahoma Administrative Procedures Act will be followed in promulgating rules that integrate water quality standards into this program area.

(B) Additionally, O.S. Title 45, outlines the public participation requirements for permitting. Any person having an interest which is or may be adversely affected or any public agency or body shall have the right to protest and request a hearing on an application. The applicant is required to publish a notice of intent four (4) consecutive weeks with an additional two (2) week comment period to follow. If a request for a hearing is received, an informal conference will be held in the vicinity of the mine site. In addition, an appeal of the informal conference to a formal hearing may be held in the ODM's Oklahoma City office.

(C) An additional public participation avenue follows after an operator requests a reclamation release and ODM conducts a field inspection. The public has a right to protest this action prior to bond release. A formal review is conducted after complaint investigations and promulgation of Departmental Rules and Regulations.

(8) In evaluation, ODM utilizes surface and groundwater monitoring information to evaluate the effectiveness of CCB placement, to ensure compliance with state water quality standards. The final data is compared to data collected before, during, and after excavation, placement and reclamation activities as well as post reclamation activities to determine the impacts of operations upon the water quality.

[**Source:** Added at 38 Ok Reg 2408, eff 9-11-21]

## APPENDIX A. EFFLUENT LIMITATIONS DISCHARGE STANDARDS

Figure 1

| Pollutant | Daily Maximum (mg/L) | Maximum 30-Day Average (mg/L) |
|---|---|---|
| Iron, total | 7.0 | 3.5 |
| Manganese, total | 4.0 | 2.0 |
| pH | 6.0-9.0 range at all times | 6.0 – 9.0 range at all times |
| Settable Solids | 0.5 not to be exceeded | 0.5 not to be exceeded |
| Total Suspended Solids | 70.0 | 35.0 |

[**Source:** Added at 38 Ok Reg 2408, eff 9-11-21]

# CHAPTER 15. UNDERGROUND COAL AND ASPHALT

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

## SUBCHAPTER 1. GENERAL STANDARDS

### 460:15-1-1. Purpose

The rules in this chapter have been adopted to the health, safety and welfare of the underground coal and asphalt miners in the State of Oklahoma.

### 460:15-1-2. Definitions

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

**"Apprentice miner"** means a person who is actively employed and who works underground and under the guidance and supervision of a certified miner.

**"Accident"** means any mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of any person.

**"Coal"** means lignite, subbituminous, cannel, bitumunous, semi-bituminous, semianthracite, anthracite and asphaltic minerals or other hydrocarbons recovered by mining.

**"Drift"** means a horizontal or approximately horizontal opening through the strata.

**"Department"** means the Oklahoma Department of Mines, or such department, bureau or commission as may lawfully succeed to the powers and duties of such department.

**"Face equipment"** means mining machinery operated in/by the last open crosscut.

**"Mine"** includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or division thereof, and connected by one general system of mine haulage over which coal may

be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated there with which contribute directly or indirectly to the mining, preparation or handling of coal, or construction thereof.

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

**"Permissible"** means any equipment, device or explosion that has been approved as permissible by the United States Bureau of Mines.

**"Shaft"** means a vertical opening through the strata.

**"Slope"** means a plane or incline.

**"Working face"** means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed.

### 460:15-1-3. Permitting and reclamation plans

(a) It shall be unlawful for any person to engage in any mining operation without first obtaining from the Oklahoma Department of Mines a permit for such separate mining operation.

(b) Each application for a permit shall be accompanied by a plan of reclamation that meets the requirements of the Mining Lands Reclamation Act or have the plan submitted and awaiting approval from the Oklahoma Department of Mines. If the plan has been submitted prior to the application, a letter stating the date the reclamation plan was submitted must be attached to the permit application.

(c) Each application shall contain preliminary plans for ventilation, roof control, certification and apprentices, escapeway, first aid, mine rescue, electrical, hoisting and man-trips, fire protection, mining near abandoned workings, combustible materials and rock dusting, communication, blasting and explosives, books and records, accident prevention, and use and storage of toxic and noxious materials, and other requirements in accordance with Title 45 O.S. and 30 C.F.R.

(d) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant. A copy of said documentation shall be submitted upon request by the Department.

[**Source:** Amended at 31 Ok Reg 2092, eff 9-12-14]

### 460:15-1-4. Mine map

(a) The owner, agent, lessee, or operator of every coal mine in the State of Oklahoma shall make or cause to be made by an Oklahoma registered engineer or a registered surveyor, an accurate map of each mine. The mine shall be drawn to a scale of one (1) inch to two hundred (200) feet, and shall show in prominent lettering the name of the state, county, township, range, and section and by proper emblem the true north. The map shall carry the seal of the engineer or surveyor and be signed.

(b) The map shall show accurately by azimuths or bearings and distances, the location of the mine openings with respect to an established legal subdivision corner. A tie to the state coordinate system shall be provided. All mine traverses shall be advanced by closed loop methods of traversing, or other equally accurate methods of traversing.

(1) The map shall accurately show the property lines and surface boundary of the coal. The tracks and sidetracks of any and all railroads.

(2) The location and depth of holes drilled for coal, oil, gas, or water that penetrates the workable coal seam, and the location and elevation of any body of water.
(3) Such map shall also show all shafts, slopes, tunnels, or other openings to the surface as to the workings of any adjacent or contiguous mine, all excavations, entries, airways, manways, rooms, crosscuts or other workings. The location of the ventilating fan or fans and the direction of the air currents and the location of overcasts or undercasts.
(4) The map must show the location and description of at least two (2) permanent base line points coordinated with the underground and surface mine traverses. Distance and bearing between base line points shall be shown.
(5) Such map shall show the outcrops of the seam or seams, dip of the coal bed, known faults, and wants or wash outs.
(6) Elevations shall be referred to from two (2) permanent surface bench marks, which is referenced to mean sea level as a datum.
(7) Contour lines on ten (10) feet intervals but not to exceed two hundred (200) feet shall be shown on the floor of one (1) entry in each working section, main, or cross-main.

(c) An extension of the last preceding survey of every mine shall be made once in every six (6) months. The result of the survey shall be accurately entered upon the original map.

(1) The operator or superintendent of every coal mine shall furnish the mine inspector and the Department of Mines a true map or print of a true map every six (6) months. A true copy shall also be maintained at the mine site.
(2) Copies of all maps, or prints thereof, shall be maintained by the Department of Mines as official records.
(3) The Department of Mines or assistant mine inspector may order a survey at any time.

(d) When a mine is worked out, abandoned, or indefinitely closed, the owner, agent, lessee, or operator shall notify the Department of Mines and have a final survey made of the mine.

(1) The final survey shall show the entire mine and the exact location of the face of every slope, plane, entry, air course, man-way, or room. Such survey shall be submitted to the Department of Mines before the mine is sealed.
(2) If a mine is abandoned or idle for sixty (60) days or more, it must be inspected by the assistant mine inspector and approved by the Oklahoma Department of Mines before the extraction of any coal.
(3) The shaft, slope, or drift opening into a mine must be sealed with incombustible materials after it has been abandoned according to an approved plan.
(4) No seal shall be broken, or an abandoned mine entered without written notification to the Department of Mines stating the date and approximate time. The assistant mine inspector shall be present when either the seal is to be broken or an abandoned mine entered.

**460:15-1-5. Mine superintendent**

(a) **Employment.** In order to secure efficient management and to promote health and safety of the persons employed therein, the operator of each and every coal mine shall employ a duly qualified and certified superintendent who shall have charge of the entire operation and shall see that the provisions of the Oklahoma

Mining Laws are properly executed. A certified superintendent shall be on each shift the mine is in operation. During the absence of the superintendent, not to exceed thirty (30) calendar days, a relief person possessing at least a Mine Foreman certification may be appointed to act as superintendent.

(b) **Superintendent duties.** The duties of a mine superintendent are as follows:

(1) Keep a sufficient quantity of quality materials and supplies readily accessible for the preservation of the mine and safety of the employees.

(2) Read, examine and countersign all reports.

(3) Cooperate with the mine foreman and others, in the fulfillment of their duties.

(4) Post all mine rules and regulations and maintain an adequate supply of record books.

(5) Notify the Department at least ten (10) days prior to any change that was originally submitted and approved in the mine application.

(c) **Superintendent responsibilities.** The responsibilities of a mine superintendent are as follows:

(1) Plans and coordinates activities of personnel engaged in mining.

(2) Plans and coordinates development of the mine.

(3) Obtains necessary data to determine methods of mining, location of support facilities, surface and underground, roof and rib control, ventilation and preliminary plans.

(4) Tour mine regularly to detect and resolve safety, personnel and production problems.

(5) Makes or causes to be made on a day-to-day basis temporary notations, supplements, and revisions to the mine map showing the working face of each working place, pillars mined, ventilation controls, change in ventilation and exculpates and other pertinent data.

[**Source:** Amended at 31 Ok Reg 2092, eff 9-12-14]

**460:15-1-6. Mine foreman**

(a) In order to secure the efficient management and the proper ventilation of the mines of this state and promote the health and safety of the persons employed therein, the operator shall employee a duly qualified overseer for each and every coal mine, to be called mine foremen, who shall have charge of the underground operations of the mine and shall see that the provisions of this Chapter relating thereto are complied with. The mine foreman shall be under the direction of the mine superintendent. No person shall act in the capacity of mine foreman unless possessing a certificate of competency as such from the Oklahoma Mining Commission.

(b) When the mine workings become so extensive that the mine foreman is unable to personally carry out the requirements of this title pertaining to his duties, the operator of the mine shall employ a sufficient number of duly qualified and certified persons to act as assistant mine foremen, who shall be under the direction of the mine foreman in carrying out the provisions of this Chapter. The assistant mine foreman shall be under the direction of the mine superintendent. No person shall act in the capacity of assistant mine foreman unless possessing a certificate of competency from the State Mining Commission as a mine foreman or fire-boss.

(c) In the case of temporary absence of the mine foreman, he may deputize his work for the time being to his assistant, or assistants, who shall perform all the duties of the mine foreman. The assistant mine foreman shall have a certificate of competency from the State Mining Commission as mine foreman. The assistant

mine foreman may be temporarily relieved by a fire-boss.
(d) The mine foreman shall devote the whole of his time to his duties while the mine is in operation and either he or his assistants, or fire-boss shall visit each working place and traveling way at least once daily. Mine foreman, or his assistants, are not required by this section to visit working places unoccupied or temporarily idle.
(e) The mine foreman shall give prompt attention to the removal of all dangers observed by or reported to him by his assistants, the fire-boss, or any other person; and in case it is impractical to remove the danger at once, he shall notify every person whose safety is menaced thereby, the area shall be dangered off to all employees other than those engaged in making the condition safe.

**460:15-1-7. Fire-boss**
(a) The operator shall, at each entrance to the mine, or to the main intake airways near to the mine entrance, provide a permanent station for the fire-boss to record his inspection. He will post a danger signal if it is unsafe and it shall be unlawful for any person of persons except the mine officials in cases of necessity, and such other persons as may be designated by them to pass beyond said danger station, until the mine has been examined by the fire -boss as aforesaid and the same, or certain parts thereof, reported by him to be safe; and in all mines where operations are temporarily or indefinitely suspended, the superintendent and mine foreman shall see that a danger signal is places at the mine entrance, or entrances, which shall be a sufficient warning to person not to enter the mine and if ordinary circulation of air through the mine be stopped, each entrance to said mine shall be securely fenced off and a danger signal shall be displayed upon said fence, and any workman or other person (except those persons hereinbefore provided for) passing beyond any danger signal into the mine before it has been examined and reported to be safe as aforesaid, also any person or persons passing beyond any danger signal placed at the entrance to a working place, or any other place, in the mine, without permission of the mine foreman, his assistant or his fire-boss, shall be deemed guilty of a misdemeanor, and it shall be the duty of the fire-boss, mine foreman or superintendent to forthwith prosecute such persons of person before the proper legal authority, or to notify the district inspector, who shall enter proceedings against such person or persons.
(b) A miner may be allowed to check for gas in his working place with an approved methane detection device, other than a flame safety lamp, provided he has received the initial training and annual retraining on gases, gas detecting devices, and legal gas checks. Records showing the above training shall be retained at the mine office.
(c) Any fire-boss who neglects to comply with the provisions of this Chapter relating to his duties, or who shall make a false report of the condition of any place in the portion of the mine allotted to him for examination, shall be deemed guilty of a misdemeanor, and shall be suspended by the mine foreman, and his name shall be given to the inspector for prosecution and if he is found guilty he shall return his certificate to the State Mining Commission to be canceled.

**460:15-1-8. Record books of fire-boss**
The record book of the fire-boss shall at all times be accessible to the inspector and to the employees during working hours. A suitable record book approved by the Department of Mines shall be kept at each mine, and immediately after each of the examinations of each mine made by the fire-boss or fire-bosses, a record of same shall be entered in said book, signed and dated by the fire-boss or

fire-bosses making such examinations, which shall clearly state the nature and location of any danger which he or they may have discovered. The superintendent and mine foreman shall each day carefully countersign all reports made by the fire-boss or fire-bosses. A fire-boss may send his report over the mine telephone system to a certified person on the surface who shall fill out the record book and sign that he received the report of the aforementioned examinations, and this shall satisfy the requirements of this section.

**460:15-1-9. Oklahoma Miner Training Institute**

(a) The Department of Mines shall maintain a school for the purpose of educating, training and re-training of miners or people who wish to become miners. The school shall be called the Oklahoma Miner Training Institute (OMTI) and shall be stationed near Krebs, Oklahoma, or a location that will benefit the needs of miners and operators.

(b) Instructors shall be MSHA approved and shall be practical miners and well versed in their field of instruction. They shall have attended an instructors training course or be approved to teach based upon past practical experience and classroom monitoring.

(c) Each mine shall submit as part of their application, a training plan. The plan shall be comprehensive as to where miners shall receive their training and re-training, who will conduct the training, the course subject and number of hours. A precise record of all training shall be maintained in the mine office.

(d) No person shall be allowed to work in any coal mine without having received a minimum of forty (40) hours of classroom instruction which addresses all the aspects of underground coal mining. At least eight (8) hours of the forty (40) hours shall be administered at the mine site. Students receiving mine training shall accompany a certified mine official or a state mine inspector who is certified and qualified to inspect underground mines.

(e) Experienced miners who have not worked underground in the past twelve (12) months shall have a minimum of eight (8) hours retraining as set out in the requirements of ONTI.

(f) Each miner shall have an eight (8) hours refresher course every twelve (12) months. The refresher course shall address:

(1) Health and safety standards
(2) Transportation and Communication
(3) Barricading
(4) Roof and rib control
(5) Ventilation and maps
(6) First aid
(7) Electrical hazards
(8) Prevention of accidents
(9) Self rescuers and devices
(10) Explosives
(11) Mine gases
(12) Toxic or noxious materials or any other subjects that could be related to health and safety.

(g) Regularly employed miners shall receive their salary as though they had worked. If their required training is held at a place other than their regular place of work, they shall be compensated for mileage, and if out overnight, employees shall be compensated for meals and lodging.

(h) If training is administered by an instructor other than those at OMTI, the instructor shall notify OMTI of each employee that has received such training and other information as required by the Director of OMTI. It shall be unlawful for any instructor or student to falsify training records.
(i) The operator shall maintain certificates and training records of all miners at the mine site.

**460:15-1-10. Certificates of Competency**
(a) No person shall act as a mine superintendent, mine foreman, fire-boss, shot-firer, hoisting engineer or miner without first having obtained a certificate of competency from the Oklahoma Mining Commission. No person shall employ such mine superintendent, mine foreman, fire-boss, hoisting engineer or miner who does not hold such certificate. Any person who violates the provisions of this subsection, upon conviction, shall be fined not more than one thousand five hundred ($1,500.00) or be imprisoned in the county jail for a term not more than six (6) months, or both.
(b) The examination for a certificate of competency as a mine superintendent, mine foreman, fire-boss, shot-firer, or hoisting engineer shall be administered by only employees or advisors of the Department of Mines who also hold equal or higher certificates of competency. The examination shall be sufficient to determine that such applicant fully understands the requirements of coal mining laws of this state.
(c) Each applicant for mine superintendent, mine foreman, fire-boss, hoisting engineer or shot-firer shall hold a first-aid certificate issued within one (1) year prior to the date of the examination of the Department by an organization recognized by the Oklahoma Mining Commission.
(d) The Department shall hold monthly examinations for certification of competency as underground miners. Applications for such certificates may be granted a temporary permit by the Commission until an examination is held by the Department in the region in which the applicant resides. Applicants must successfully answer a written or oral examination pertaining to such requirements and qualifications of underground miners as are determined necessary by the Commission.
(e) Certificates of competency shall be granted by the Oklahoma Mining Commission to persons who have given the Department satisfactory evidence of their ability to perform the duties and skills as are required by the Council. Previous experience and record of service of the applicant shall have equal weight with the examination.
(f) The minimum experience necessary for certificates of competency are as follows:

(1) Shot-firer-1 year's practical underground experience, including working in blasting operations for at least twelve (12) months under immediate supervision of an experienced blaster.
(2) Hoisting engineer 1 year's practical hoisting experience.
(3) Fire-boss 2 year's practical underground experience.
(4) Mine foreman-3 year's practical underground experience.
(5) Superinentendent-5 year's practical underground experience.
(6) Practical miner-1 year's practical experience as a miner or the equivalent experience as defined by the Commission.

(g) A student who has completed an accredited two-year or four-year mining program shall be credited one (1) year of experience toward a fire-boss, mine foreman or superintendent certification.

(h) Certification required by 45 O.S., Section 2 shall be issued under the signature and seal of the Oklahoma Mining Commission. Such certification shall bear the date of issuance, full name and age of the recipient and shall designate the position for which the recipient is certified by the Commission. Applications for certificates of competency shall be accompanied with the following fees:

(1) Superintendent-$20.00
(2) Mine Foreman-15.00
(3) Fire-boss-10.00
(4) Shot-firer-10.00
(5) Hoisting engineer-10.00
(6) Practical miner-5.00

(i) The Secretary of the Oklahoma Mining Commission shall make a record of the names and addresses of all persons to whom certificates are issued. Certificate of competency when issued as provided for in this Chapter, shall entitle the holders thereof to accept and discharge the duties for which said certificate declare them qualified. The Director shall advise the Oklahoma Mining Commission as far in advance as possible the date and place of an examination to be held by the Department and shall, as soon as examination is completed, furnish the Commission with a list of names of all persons who took the examination and persons successfully completing said examinations shall be duly notified.

(j) The Secretary of the Commission may, upon the recommendation of at least two other members of the Commission, issue a temporary permit to an applicant for a certificate for mine foreman, fire-boss, shot-firer or hoisting engineer. Said temporary permit shall be valid only until next meeting of the Commission or not to exceed thirty-one (31) days.

(k) Apprentices may be regularly employed in an underground coal mine up to fourteen (14) months to become qualified to obtain a certificate of competency as a miner. Non-certified miners or apprentice shall never be out of the sight or sound of a certified miner. The sight and sound provisions of this subsection may be met by the Department's determination, acknowledgement and approval that the tracking and communication system in use satisfies the sight and sound requirements needed for this Chapter, such as a two-way communication system and a plan for above ground personnel to determine the current or immediately pre-accident location of all underground personnel. Non-certified miners or apprentices shall not be used in the face area on a production shift for thirty (30) working days. A one-on-one ratio of a certified to non-certified shall not be exceeded in the working face area on a production shift. A ratio of one certified miner to five non-certified miners shall not be exceeded near the working face, or on a non-production shift.

(l) For the purpose of certification, two hundred (200) working days shall be considered one (1) year's experience.

(m) A petitioner may take a mine foreman's examination after having worked for one (1) year as a fire-boss and a superintendent's examination after having worked as a mine foreman for one (1) year.

(n) Shot-firer certification shall be obtained by all persons utilizing explosives in underground mining. A current OSBI criminal background check must be submitted as a portion of the certification application. A shot-firer 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 recertification. A certification or recertification shall not be granted to any person with a felony conviction.

[**Source:** Amended at 28 Ok Reg 2369, eff 9-11-11; Amended at 35 Ok Reg 51, eff 7-28-17 (emergency); Amended at 35 Ok Reg 1873, eff 9-14-18]

**460:15-1-11. Testing material and scores**

(a) Certification test is comprised of data collected from Oklahoma Statutes Title 45, Oklahoma Mining Statutes and Rules and Regulations, Code of Federal regulations, CFR 30, Coal Mining Reference Book, published by the Kentucky Mining Institute 1973, Oklahoma State Department of Vocational Technical Education - 1975.

(b) Seventy-five (75) percent shall be the minimum score needed to satisfy the Certification Advisory Council as having satisfactorily passed a given test.

**460:15-1-12. First aid**

(a) Every mine operator shall have a well stocked first aid station on the surface near the mine portals or shaft, and at each working section and at the bottom of each regularly traveled slope or shaft if more than 1,000 feet from the portals or shaft.

(b) First aid equipment shall include the following:

(1) One stretcher
(2) One broken back board or a splint stretcher
(3) Twenty-four triangular bandages
(4) Eight 4-inch bandage compresses
(5) Eight 2-inch bandage compresses
(6) Twelve 1-inch adhesive compresses
(7) One foille
(8) Two cloth blankets
(9) One rubber or comparable blanket
(10) Two tourniquets
(11) One 1-ounce bottle of aromatic spirits or ammonia or one (i) dozen ammonia ampules
(12) Two inflatable plastic arm and leg splints.

(c) All first aid materials shall be stored in a sanitary and moisture proof container.

**460:15-1-13. Medical service**

(a) Every operator shall have an agreement with a physician and medical services (either a hospital or a clinic) to attend the injured and with an ambulance or other transportation mode for the transfer of the injured.

(b) Emergency communications, either a telephone or radio communication system shall be installed and maintained in a working condition at each mine.

**460:15-1-14. Mine rescue teams**

(a) **Teams.** Every mine shall have or have access to two (2) mine rescue teams.

(1) Each team shall consist of five (5) members and one alternate.
(2) Each rescue team shall be fully qualified, trained and equipped.
(3) Each member of the team must be an underground miner with a minimum of one year experience in the past five (5) years. Miners who are employed on the surface, but work regularly underground shall be considered qualified.
(4) Each member of a rescue team shall have a physical examination by a licensed medical doctor within sixty (60) days prior to training. Each member must be physically fit to perform strenuous work under abnormal conditions. Additional physical examinations must be taken annually. The examination physician must fill out form MSHA 5000-3.

(b) **Physical requirements.**

(1) Corrective eyeglasses may be worn provided a secure seal may be obtained with a face piece.

(2) If any physical or health problem exists which could cause harm to the rescue team member or the team while doing rescue work, the physician shall notify the team member and the mine operator in writing of his findings.

(c) **Alternative teams.**

(1) The operator of an underground mine may contract with another operator to do their rescue work providing the mine is small - the total underground employment of the operator's mine and surrounding mines within two (2) hours ground travel time is less than thirty-six (36).

(2) The operator shall submit the following information to the Oklahoma Department of Mines and for the alternate rescue team:

(A) The number of miners employed underground on each shift.

(B) The distance from the two nearest miner rescue stations.

(C) The total underground employment of all mines within two hours ground travel time.

(D) The operators mine fire, ground and roof control history.

(E) The operator's established escape and evacuation plan.

(F) The name and availability of the nearest airport.

(G) A map or plan showing nearest town, all highways, and the routes to the mine.

(H) Transportation from the airport to the mine.

(d) **Equipment and maintenance.** Each mine rescue station shall be equipped with the following:

(1) Twelve (12) self-contained breathing apparatuses with a minimum of two (2) hour capacity.

(2) Adequate supply of oxygen or compressed liquid air that will sustain each team for a minimum of six (6) hours while doing rescue work.

(3) Twelve (12) cap lamps and a charging rack.

(4) Two (2) gas detectors appropriate to the kinds of gases at the mine.

(5) A portable approved communication system at least 1000 feet in length.

(6) Two (2) flame safety lamps or oxygen detectors.

(7) Adequate spare parts for repairs and a method of checking each unit.

(e) **Equipment check.** All rescue equipment must be checked, at least monthly but not to exceed thirty (30) days by a qualified person.

### 460:15-1-15. Self rescue device

Every operator shall supply every miner and every visitor a self rescue device and a self contained breathing apparatus which are approved by MSHA. Every miner or visitor must be instructed in the use of such.

[**Source:** Amended at 39 Ok Reg 2035, eff 9-11-22]

### 460:15-1-16. Accidents and injuries

(a) All personal loss time accidents and accidents which could result in loss time (three (3) days loss from regularly assigned duties) shall be reported to the Department of Mines.

(b) All serious accidents, accidents resulting in fatalities, mine fires and explosions, mine inundation, and major roof falls, shall be reported immediately to the Department of Mines.

(c) Accidents resulting in a fatality shall have the area preserved by posting "keep out" placards at all entrances until the accident has been investigated by the Oklahoma Department of Mines.
(d) Non-loss time accidents shall be reported within ten (10) days from the date the accident occurred.
(e) Failure to report accidents may warrant revoking a mining permit by the Oklahoma Mining Commission.

**460:15-1-17. Alcohol or hallucination drugs**

It shall be unlawful for anyone working in or around any mine to use or be under the influence of alcohol or any chemical compound that is considered hallucinogenic.

**460:15-1-18. Identification process**

Every operator shall have a check-in and check-out system that will positively identify each and every person when underground.

**460:15-1-19. Safety devices**

(a) Only approved miners cap lamps, flame safety lamps and methane detectors shall be used. The operator shall provide an adequate number of cap lamps and methane detectors for miners and certified personnel.
(b) It shall be unlawful for any person to carry an open light, match, flame making devices, or any smoking material into any coal mine.
(c) Each person that works in or around a mine shall wear the following protective clothing and devices:

(1) Suitable protective clothing and face shield or goggles when welding, cutting or working with molten metals or when any hazard to the eyes exist from flying objects.
(2) Suitable clothing when handling toxic or corrosive materials.
(3) A suitable hard hat and protective footwear.
(4) Snug fitting clothing shall be worn when around moving equipment or machinery.

[**Source:** Amended at 39 Ok Reg 2035, eff 9-11-22]

**460:15-1-20. Inspection**

(a) The mine inspector may enter any mine at any time to inspect a portion or the entire mine for the purpose of making it safe and to comply with the mining laws of the state.
(b) Underground mines shall be examined at least monthly and more often if the inspector deems it necessary.
(c) The mine inspector may require additional information, or enforce more stringent requirements if it is deemed necessary to protect the health and safety of the employees.

**460:15-1-21. Enforcement**

(a) The mine inspector shall notify the mine operator, superintendent or foreman of any violation, orally or in writing and fix an abatement time for corrections thereof.
(b) Provided, further, that if during an inspection, the mine inspector finds a dangerous condition existing that could cause loss of life or serious personal injury, he shall have all the employees, except those needed to correct the condition,

removed from the mine or portion of the mine.
(c) Every person who willfully obstructs the mine inspector in the execution of his duties, shall be guilty of a misdemeanor and upon conviction shall be punished as provided by law.

**460:15-1-22. Sinking of shafts or slopes**
(a) No entry, slope, crosscut or panel shall be driven more than twenty (20) feet wide when roof bolts are the primary roof supports unless a greater distance is approved by the Advisory Council.

(1) The Advisory Council shall approve all mining plans and shall advise the Mining Commission of their decision.
(2) Diesel powered equipment shall be maintained according to manufacturers recommendations but shall be serviced at a minimum of each shift or eight hours, whichever is shorter.
(3) No diesel powered equipment shall be taken into any mine, slope or shaft that does not have a working and properly serviced scrubber and has been Bureau of Mines approved for use in gassy mines.
(4) Any time the scrubber does not remove the fumes or odors from the fuel, the diesel powered equipment must be removed from service.

(b) Booster fans shall not be used underground. When sinking shafts or slopes for the purpose of reaching or mining coal or asphalt, the laws, rules and regulations governing underground coal mining shall apply unless waived by the Advisory Council.
(c) Bathing and toilet facilities shall be provided and maintained in a sanitary condition at all mines unless a waiver is granted by the Oklahoma Mining Commission.
(d) Coal dust, float coal dust, loose coal and other combustible materials shall not be permitted to accumulate in any mine.

(1) All crosscuts must be kept rock-dusted. All areas where coal has been extracted shall be rock-dusted to within forty (40) feet of the face.
(2) Rock-dust shall be applied to the floor, ribs and roof and shall be no less than sixty-five (65) percent of incombustible materials. Where methane is present the incombustible content shall be increased one (1) percent for each 0.1 percent of methane gas.
(3) The percentage of incombustible material in the returns shall be no less than eighty (80) percent. Where methane is present the incombustible content shall be increased 0.4 percent for each 0.1 percent of methane gas.
(4) Incombustible material requirements may not be applied if natural moisture can be squeezed from the accumulated dust.

(e) Water shall not be allowed to accumulate in any travelways or escapeway.

**460:15-1-23. Travelways requirements**
(a) **Exits.** There shall be a minimum of two exits to the surface from every mine. Each escapeway shall be properly marked and kept free of debris.
(b) **Belts.** Belts may be used for man-trips provided that there is a minimum of eighteen (18) inches above the edge of the belt to the roof or roof supports and twenty-four (24) inches to the nearest obstruction along the side of the belt. Each belt must be equipped with a safety pull cord that will stop the belt. The loading and unloading points must be properly marked and illuminated and enough room to allow the employees adequate overhead and side clearance. Employees riding any belt shall maintain a minimum separation of five (5) feet. The loading and

unloading shall be supervised by a qualified person designated by the superintendent. Belt man-trips shall not exceed three hundred fifty (350 feet per minute if the overhead clearance is greater than twenty four (24) inches.

(c) **Shafts.** Shafts used for ingress and egress of mine personnel must be maintained in a safe and available condition.

(1) Shafts less than seventy five (75) feet in vertical depth shall be equipped with safe and convenient stairs of which the angle of inclination shall not exceed forty-five (45) degrees. Landings shall not exceed twenty (20) feet in vertical rise and shall be constructed so that employees may pass comfortably from ladder to ladder and fully protected on all four sides to prevent employees from falling from ladders or landings.

(2) Shafts with a vertical depth greater than seventy-five (75) feet must be equipped with a mechanical hoist and cage for the purpose of lowering and raising employees. All hoists shall be equipped with brakes sufficient to stop and hold the fully loaded cage. The hoists must have sufficient power to raise an unbalanced loaded cage.

(d) **Hoists.**

(1) All hoists shall be equipped with an accurate and reliable indicator showing the position of the cage at all times. The indicator must be in clear view of the hoisting engineer.

(A) The hoisting drum shall have flanges extending at least four (4) inches above the rope when all the rope is on the drum.

(B) Man-trip cages shall have bonnets extending over the space on which the employees stand and shall have steel or sheet iron on the sides extending not less than four (4) feet above the floor of the cage.

(C) Each cage shall have overhead bars or chains so arranged that any person may have an easy and secure hand hold.

(D) Cages shall be provided with approved safety devices capable of bringing the cage to a stop within a reasonable distance.

(E) Safety devices on cages, such as ropes, fasteners, platforms, elevators, head sheaves and flanges, shall be inspected daily and recorded by a qualified person appointed by the superintendent.

(F) The shaft top and bottom shall be properly illuminated.

(G) There shall be two (2) approved methods of signaling from the shaft top and bottom and a continuous method of communication in the shaft.

(2) The superintendent shall designate the number of persons that shall be lowered or hoisted on a cage at any one time and the number so designated shall be posted in a conspicuous place at the top and bottom of the shaft.

(A) The hoisting rope shall be firmly clamped to the drum and shall have at least three (3) turns left on the drum when the cage is resting on the shaft bottom.

(B) Hoisting ropes and attachments of ropes to cages shall have a safety factor of five (5) to one (1) as calculated by the American Standards Association formula.

(C) Ropes shall be replaced as soon as there is evidence of undue weakness.

(D) Hoists shall be operated only by qualified and certified personnel.

(E) It shall be unlawful for any person to carry on a conversation with a hoisting engineer with a hoist is in operation.
(F) A second hoisting engineer shall be available near the controls when a man-trip is being operated unless the hoist is equipped with overspeed, overwind, and automatic stop controls.

(3) Any person operating a hoist must be certified by the Oklahoma Mining Commission as being qualified. The hoistman shall:

(A) Keep a careful watch over his engine and all machinery.
(B) Be familiar with the signal code.
(C) Shall not operate the man-trip at a speed greater than the superintendent authorizes but not greater than six hundred (600) feet per minute.

(4) The hoist shall be operated one (1) full cycle, if not operated within eight (8) hours, before any person shall be lowered or hoisted from the mine.

(5) The hoistman shall be on duty continuously when any person is in the mine.

(6) Man-trip shall not be operated while coupled with cars containing coal, supplies, or any materials. Man-trip cars shall be sufficient in number to avoid overcrowding and shall have adequate safety devices as approved by the mine inspector.

**460:15-1-24. Openings to surface**

(a) **Explosives.** It shall be unlawful for the Operator, Superintendent, Mine Foreman or any other person to allow any person to work in any mine in this state unless there are at least two openings to the surface connected with at least two travelable passageways, to be designated as escapeway, from each working section to the surface connected with at least two travel able passageways, to be designated as escapeway, from each working section to the surface whether the mine openings are shafts, slopes, or drifts. They shall be kept in safe condition for travel and reasonably free of standing water and other obstructions. One of the designated escapeway may be the haulage road. Provided, that the second escapeway shall not be longer that approximately the length of the distance traveled by the coal or rock from the working face to the surface. Provided further than in the opening or development of new shaft, slope, or drift, the necessary time to complete a connection between the aforesaid two openings, the number of men that shall be permitted to work while such connection is being made, and rules and regulations pertaining to the method of ventilation and safety measures shall be mutually agreed upon before the Mine Operator and Assistant Mine Inspector, subject to confirmation by the Department of Mines.

(b) In all shaft mines, the openings to the surface provided for in (a) of this section shall be separated from each other at all points by a distance not less than one. hundred fifty (150) feet, and at all mines worked by slope or drift openings, the distance separating the openings shall be adequate to prevent recirculation, but not less than forty (40) feet.

**460:15-1-25. Ventilation**

(a) Main fans shall be:

(1) Installed on the surface;
(2) Installed in fireproof housings and connected to the mine opening with fireproof air ducts; and

(3) Equipped with a pressure-recording gauge and an automatic signal device designed to give alarm should the fan slow or stop. The signal from this device should be placed so that it will be seen or heard by a responsible person who is always on duty and can hear or will observe such alarm when men are underground and who shall take appropriate action immediately.

(b) To protect main fans from forces coming out of the mine should an explosion occur:

(1) Main fans should be offset not less than fifteen (15) feet from the nearest side of the mine opening, and explosion doors or a weak wall having a cross sectional area equal to or greater than the connection entry should be provided in direct line with possible explosion forces; or

(2) Main fans may be installed in line with diversion entry, slope, or shaft (fan entry) driven from the mine air courses to the surface.

(3) The surface opening of the fan entry should be no less than fifteen (15) feet nor more than one hundred (100) feet from the surface opening of the connected mine air course (pressure relief entry). The pressure relief entry opening should be provided with a weak wall or explosion doors in direct line with forces of an explosion originating underground and such weak wall or explosion doors should have a cross-sectional area of the pressure relief entry not be less than that of the fan entry. The underground intersection of the fan entry and pressure relief entry should be no less than fifteen (15) feet nor more than one hundred (100) feet from the surface opening of the pressure relief entry. The pillar of coal between the pressure relief entry and the fan entry should, regardless of coal bed height, contain not less than two thousand five hundred (2,500) square feet.

(c) Main fans may be driven either by electric motors or internal combustion engines.

(1) When electric motors are used, they should be provided with a separate power circuit independent of any other mine circuit.

(2) When an internal combustion engine is used, the engine should be installed in a fireproof housing, located so as to be protected from possible fuel supply fire or explosions. The engine and exhaust should be located out of direct line with the airstream produced by the fan and be vented to the atmosphere in such a manner that the exhaust gases cannot contaminate the mine intake airstream or any enclosure.

(d) In mines ventilated by multiple force or multiple exhaust main fans, each main fan installation should be equipped with fireproof doors, so positioned that in the event of the failure of a main fan, the doors at the fan will automatically close and prevent air reversal through the fan.

(e) In mines ventilated by a combination of force and exhaust fans, fireproof automatic closing doors will automatically close to prevent air reversal that would affect the safety of the miners.

(f) The area surrounding all main fans should be kept free of flammable material for at least one hundred (100) feet in all directions.

(g) The minimum quantity of air reaching the last open crosscut in any pair or set of rooms shall be nine thousand (9,000) cubic feet per minute, and the minimum quantity of air reaching the intake end of a pillar line shall be nine thousand (9,000) cubic feet per minute. The minimum quantity of air in any coal mine reaching any face where coal is being mined shall be three thousand (3,000) cubic feet per minute. The Department of Mines or the mine inspector may require in any coal mine a greater quantity and velocity of air when he or she determines it necessary

to protect the health and safety of the miners. The quantity of air shall be measured in the last open crosscut in each pair or set of developing entries. The ventilation shall be conducted through all accessible entries, rooms and all working places, in such manner and with such velocity as to dilute and render harmless inflammable, noxious and poisonous gases.

(h) In the event of interruption of the ventilation current, employees shall be immediately withdrawn to the assembly points as designated by the operator, and the power to the faces disconnected. If the ventilation current cannot be restored in fifteen (15) minutes, all employees shall not return to work until the ventilation current has been restored and the area examined and reported safe.

(i) All ventilating fans shall be operated continuously unless:

(1) Repair or maintenance is needed.

(2) Mine is to be permanently closed and is in the process of being sealed.

(3) If the ventilating fan has been temporarily stopped for more than fifteen (15) minutes and the employees are withdrawn from the mine. No person shall be allowed underground except for the purpose of inspection until the mine has been reported free of accumulations of explosive gases and other dangers.

(j) The fan shall be inspected at least daily and recorded in an approved book.

(k) All main stoppings, overcasts, or undercasts between main intakes and returns shall be substantially built of non-combustible material. Stoppings between intake and return air courses shall be maintained not more than three (3) crosscuts from the face. A suitable man door shall be provided as per the ventilation plan, but not more than six hundred (600) feet apart. Man doors shall have a minimum opening of nine hundred (900) square inches. All mines liberating any dangerous, explosive or noxious gases shall be kept free of standing gas in all working places and roadways. No accumulation of explosive gas shall be allowed to exist in any open, worked out, orabandoned parts of the mine. It shall be removed as soon as possible after its discovery, and no miners or other persons who are not employed in the removal of the dangerous accumulation shall be allowed to remain in any mine or part of mine during the time that a dangerous accumulation of explosive gas is being removed from any part of this mine. All worked out places or abandoned areas shall be either properly ventilated or examined, sealed, or maintained as a bleeder system.

(l) In all mines it shall be the duty of the operator to employ one or more persons holding certificates of competency from the Oklahoma Mining Commission as mine foremanor fire-boss to examine the mine and who shall examine every working place, all places adjacent to live working, every roadway and traveling way, all seals, every road to abandoned workings, and over all falls in the mine, for inflammable, noxious and poisonous gases and other dangerous or unsafe conditions such as falls of roof, dangerous tracks, timbering, or water. Such examination shall begin within three (3) hours prior to the appointed time for each shift to enter the mine and shall be made with an approved methane detection device and flame-safety lamp. The fire-boss shall examine for all dangers in all portions of the mine under his charge and after each examination he shall leave at each place examined the date, time and initials of his examinations. He shall place a danger signal at every place, where inflammable, noxious and poisonous gas has been discovered, or where immediate danger is found to exist from any other cause. The fire-boss shall report to the mine foreman all places where dangerous accumulations of gas have been found, and the nature and location of any other existing danger, and shall record the results of his inspection in a book kept for that

purpose. No person shall enter any portion of a mine falling within the above classification until the fire-bosses have completed their examination and have reported that the mine is in a safe condition for the employees to enter.
(m) Combustible material shall not be stockpiled or stored within 300 feet of any surface mine opening.

[**Source:** Amended at 31 Ok Reg 2092, eff 9-12-14]

### 460:15-1-26. Permanent roof support

(a) Roof bolts, timbers, cribs, steel arches, trusses, linings and concrete abutments may be used for permanent roof support.

(1) Roof bolts shall be installed according to an approved plan and may be either:

(A) Expansion type anchor;
(B) Resin bolts; or
(C) Other methods approved by the Department of Mines.

(2) Bolts shall be a minimum of forty-eight (48) inches in length and installed on not more than five (5) foot centers unless a shorter bolt and greater spacing is approved by the Oklahoma Mining Commission.

(A) All bolts shall be used with a metal bearing plate a minimum of thirty-six (36) square inches.
(B) Wooden header boards or timbers used in long life openings of a mine must be pressure treated to avoid rot and decay for the action life of the mine. (Long life shall mean three (3) years or longer).

(3) Resin bolts, also called "glue bolts," shall be installed according to manufacturers recommendations. The glue which consists of resin and a catalyst must be completely surround the bolt and fill the drilled hole.
(4) All roof bolts shall be installed as soon as possible after the roof is exposed but before the top is allowed to sag.
(5) Timber used to support the roof must be solid, free from defects, and square on both ends. The diameter of the post must be one (1) inch for each fifteen (15) inches of length with a minimum of four (4) inches. When timbers are used to support the roof a cap block not less than two (2) inches in thickness is placed between the roof and the timber. The cap block must be not less than four (4) inches wide and twelve (12) inches long. No more than two (2) wedges shall be used between the timber and the cap board to ensure a tight fit. Footers may be used to prevent the timber from sinking into soft floors. If footers are used they shall be limited to no more than two (2) per timber.
(6) Crossbars used to support the roof must have a cross- sectional area not less than twenty-four (24) square inches and a minimum thickness of three (3) inches. Crossbars must be solid, free from defects, and straight.
(7) Cribs used to support the roof must be of wood having flat parallel sides. In no case should the crib be less than thirty (30) inches square.
(8) Other approved roof control materials and methods may be used on approval by the Department.

(b) Temporary supports will be used before and during the installation of permanent supports according to an approved plan and to hang line curtains to the face. Temporary supports shall be used with a cap board and installed on not more than five (5) foot centers. Longwall mining will use chock or shield supports or other approved methods.

(c) Adequate roof support materials shall be stored inside the mine readily accessible to employees and will conform to manufacturers recommendations. Resins not used before the expiration date shall be removed from the mine.
(d) Each operator shall adopt a roof control plan suitable to the roof conditions and the mining plan and will address haulageways, travelways, escapeway and working places. Roof bolts shall be anchored a minimum of twelve (12) inches in the stronger overlying strata. Test holes will be drilled to determine the length of the bolt needed to achieve minimum anchorage.

**460:15-1-27. Electricity requirements**
(a) A certified mine electrician shall be employed at every mine where electrical equipment is used.

(1) A mine electrician is a person that has been certified by MSHA as being qualified to perform work on low and medium voltage circuits.
(2) Persons qualified to perform work on energized high-voltage lines and apparatuses shall meet the requirements of 30 C.F.R. Part 75. Section 75.705.

**460:15-1-28. Electrical boxes, equipment and machinery**
(a) All junction or distribution boxes, handheld or moveable equipment and all face machinery used inby the last open crosscut shall be permissible and shall have affixed to it the permissible plate issued by the Bureau of Mines. The operator shall maintain the equipment in a permissible condition.

(1) The operator shall have on record at the mine site a weekly inspection record of low and medium voltage equipment. All high voltage equipment and switch gear shall be inspected and recorded in an approved record book monthly.
(2) All power circuits and electrical equipment shall be de-energized before working on circuits or equipment except when necessary for trouble shooting or testing.

(b) All electric conductors shall be of adequate size to carry its intended load without damaging the installation as set forth by the National Electrical Code.
(c) Electrical connections or splices in insulated wire shall be efficient, suitable and have at least the same degree of protection as the remainder of the wire.
(d) Cables shall enter metal frames of motors, boxes and electrical compartments only through proper fittings. Wires passing through metal frames shall have substantial insulated bushings.
(e) All power cables, except trailing cables on mobile equipment, shall be supported on insulated hangers and shall not contact combustible materials, roof, or ribs.
(f) Communication wires and cables shall be insulated and supported on insulated hangers and separated so that they cannot be energized inadvertently.
(g) Automatic circuit breakers or fuses or the correct type and capacity shall be installed to protect electrical equipment from short circuits and overloads.
(h) Main power circuits disconnecting switches shall be installed underground within five hundred (500) feet of the bottom of the shafts and boreholes through which main power circuits enter the underground area of the mine, and within five hundred (500) feet where the main power enters the underground mine.
(i) All underground power cables and communication wires shall be equipped with lightning arresters.

(j) Circuit breakers and disconnecting devices shall be properly marked for identification.
(k) All underground branch circuits shall be equipped with an approved ground monitor.
(l) The following shall apply to trailing cables:

(1) Trailing cables shall be flame resistant.

(2) Distribution centers supplying current to more than one (1) trailing cable shall be protected against connecting the wrong cable by chaining and marking.

(3) Only one (1) temporary splice may be made in any trailing cable-such trailing cable may only be used for the next twenty-four (24) hour period. No temporary splice shall be made in a trailing cable within twenty-five (25) feet of the face machine, except cable reel equipment. All splices shall be mechanically strong and well insulated.

(4) Permanent splices shall be mechanically strong, insulated and sealed to exclude moisture, vulcanized or treated to provide flame resistant qualities and good bonding to the outer jacket.

(5) Trailing cables shall be clamped to machines in a manner to protect strain on the electrical connections.

(6) Trailing cables shall be adequately protected to prevent damage by mobile equipment.

(7) Trailing cables shall be adequately grounded.

**460:15-1-29. Fire protection requirements**

(a) **Required firefighting equipment.** Each coal mine shall be provided with suitable fire fighting equipment and shall consist of the following:

(1) Waterlines with a nozzle pressure of fifty (50) psi and enough hose to reach any working face of a section.

(2) Portable fire extinguisher containing not less than ten (10) pounds of multipurpose dry chemicals strategically placed and marked. A five (5) pound fire extinguisher shall be provided on each mobile unit.

(b) **Welding, cutting, soldering.**

(1) All welding, cutting or soldering shall be done by a qualified person and under the supervision of a certified person who shall test for gas before, during and after the operations and shall look for fire for five (5) minutes after the job is completed.

(2) No welding, cutting, or soldering will be done in an area that has one (1) percent or more methane. Suitable fire fighting materials consisting of one hundred (100) pounds of rock dust or a ten (10) pound fire extinguisher shall be provided each location before starting any welding, cutting or soldering.

(c) **Use of compressed gases.**

(1) Gas cylinders shall be located no less than ten (10) feet from the worksite and shall be secured in an upright position unless the roof height precludes. Gas cylinders shall at all times be secured to prevent falling.

(2) Cylinders, hose lines, gauges and other accessories shall be maintained in a safe operating condition. A fire extinguisher shall be located near the gas cylinders.

(3) All fire suppression devices and equipment shall be maintained in excellent condition and shall be inspected at least weekly by a qualified person.

**460:15-1-30. Noxious or toxic chemicals**

(a) Noxious or toxic chemicals shall not be stored underground.

(b) An approved respirator and protective clothing shall be used when handling any of the following chemicals:

(1) Carbon Tetrachloride
(2) Phenol
(3) 4-Nitrobiphenyl
(4) Alpha-naphthylamine
(5) 4, 4-Methylene Bis (2 chloroaniline)
(6) Methyl-chloromethyl ether
(7) 3, 3-Dichlorobenzidine
(8) Bis (chloromethyl) ether
(9) Beta-napthylamine
(10) Benzidine
(11) 4-Aminodiphenyl
(12) Ethyleneimine
(13) Beta-propiolactone
(14) 2-Acetylaminoflourene
(15) 4-Dimethylaminobenzene, and
(16) N-Nitrosodimethylamine

**460:15-1-31. Permissible explosives**

(a) Black powder or dynamite is prohibited from being used or stored at any underground coal mine.

(1) Magazines shall be fire and bullet proof, lined with a non-parking material, secured with two (2) locks that can only be opened with a key and kept free of any inflammable material for a minimum distance of twenty-five (25) feet.
(2) Magazines shall not be closer than two hundred (200) feet from any mine opening.
(3) Signs shall be placed at each magazine prohibiting smoking and open lights and designating the area as explosives. Signs shall be so placed that a bullet fired at any of the signs will not hit the magazines.
(4) Explosives and detonators shall be stored in separate magazines.
(5) Explosives and detonators transported into the mine shall be in substantially constructed container and lined with a nonconductive material. Explosives and detonators shall be in separate containers or separated by a minimum of four (4) inches of hardwood or the equivalent.
(6) Underground storage boxes shall be of substantial construction-lined with a nonconductive material and places in a crosscut or idle room neck at least twenty-five (25) feet from roadways, power wires, and in a well rock-dusted area.
(7) Not more than a forty-eight (48) hour supply of explosives shall be stored underground.
(8) Only enough explosives and detonators will be taken to the face to shoot one area.
(9) Only permissible explosives shall be used in an underground coal mine.
(10) No more than one and one-half (1 1/2) pounds of permissible explosives can be charged in a continuous train.

(11) No portion of the shot hole shall be drilled on the solid, and all portions of shot holes shall have a burden in all directions of at least eighteen (18) inches.
(12) Stemming shall be of incombustible material and tamped with a nonconductive tamping bar.

(b) **Blasting.**

(1) It shall be the duty of the mine operator to employ adequate personnel who are certified as mine superintendent, mine foreman, fire-boss, or shot-firer to charge, tamp and fire all shots.
(2) When blasting for the sinking of shafts, slopes or for construction of overcast, undercast, roof brushing, or boom holes, a plan shall be submitted to the Department of Mines for approval.
(3) When the coal is to be undercut and shot, the roof, floor and ribs shall be rock-dusted to the face.
(4) Before firing the shot the shot-firer shall make a check of gas, clear the area of all personnel, and announce three times, with a pause between each announcement, "fire-in the-hole". The charge may be fired if the area is clear.
(5) The shot-firer will inspect the shot area as soon as possible after the detonation for roof conditions, gas, fire, mis-fires, undetonated explosives, and other unsafe conditions which shall be reported immediately.
(6) Only electric detonators shall be used.
(7) A permissible blasting unit and at least one hundred (100) feet of well insulated blasting cable shall be used. The shot-firer shall take cover in a cross cut at least forty (40) feet outby the face and out of the line of air.
(8) The cable shall be short circuited at the power end until ready to attach to the blasting unit.
(9) The mine inspector shall approve all blasting plans and will make an inspection at least monthly with the shot-firer.

# CHAPTER 20. THE PERMANENT REGULATIONS GOVERNING THE COAL RECLAMATION ACT OF 1979

[**Authority:** 45 O.S., §§ 1.5 et seq., 742.1 et seq., and 789; 75 O.S., §§ 250 et seq.]
[**Source:** Codified 12-31-91]

## SUBCHAPTER 1. GENERAL PROVISIONS

### 460:20-1-1. Scope

This Chapter, consisting of Subchapters 1 through 5 and 7 through 65, adopted from Chapter II of 30 CFR [Public Law 95-87, 91 Stat. 445 (30 U.S.C. Section 1201 et seq.)], establishs the procedure through which the Director of the Department of Mines of the State of Oklahoma will implement the Coal Reclamation Act of 1979, SB 299 of 1979 (45 O.S. Supp. 1980, Section 742.1 et seq.).

### 460:20-1-2. Objective

The objective of this Chapter is to fulfill the purposes of 45 O.S. Supp. 1980, Section 742.1 et seq. in a manner which is consistent with the language of the Act, its legislative history, other applicable laws, and judicial interpretations.

**460:20-1-3. Authority**

The Director is authorized to administer the requirements of the Act, except authority which may be retained by other state agencies to enforce State Laws or regulations which are not inconsistent with the Act and this Chapter, including the authority to enforce more stringent land use and environmental controls and regulations.

**460:20-1-4. Responsibility**

The Department is responsible for the regulation of surface coal mining and reclamation operations under an approved State program.

**460:20-1-5. Definitions**

As used throughout this Chapter, the following terms have these specified meanings except where otherwise indicated:

**"Act"** means the Coal Reclamation Act of 1979.

**"Coal"** means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

**"Department"** means the Department of Mines.

**"Director"** means the Director of the State of Oklahoma or such officer, bureau, or commission as may lawfully succeed to the powers and duties of such Director or such employee, agent, deputy, or representative of the Director as shall be designated by the Director to perform any actions required by this Act.

**"Federal lands"** means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

**"Federal lands program"** means a program established by the Secretary pursuant to Section 523 of the Federal Act to regulate surface coal mining and reclamation operations on Federal lands.

**"Fund"** means the Abandoned Mine Reclamation Fund established pursuant to Section 401 of the Federal Act.

**"Indian lands"** means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

**"Indian tribe"** means any Indian tribe, band, group, or community having a governing body recognized by the Secretary.

**"Office"** means the Office of Surface Mining Reclamation and Enforcement established under Title II of Public Law 95-87.

**"Person"** means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicly owned corporation of Federal, State, or local government.

**"Person having an interest which is or may be adversely affected or person with a valid legal interest"** shall include any person:

(A) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department; or

(B) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department.

**"Public office"** means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

**"Regulatory authority"** means the department or agency in each State which has primary responsibility at the State level for administering the Act in the initial program, or the State regulatory authority where the State is administering the Act or permanent program where the Secretary is administering the Act, or the Secretary when administering a Federal program or Federal lands program or when enforcing a State program pursuant to Section 521 (b) of the P.L. 95-87 or SB 299.

**"Regulatory program"** means any approved State of Federal program

**"Secretary"** means the Secretary of the Interior or the Secretary's representative.

**"State regulatory authority"** means the Oklahoma Department of Mines which has primary responsibility at the State level for administering the initial or permanent State regulatory program.

**"Surface coal mining operations"** means:

(A) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 760 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountain top removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3 percent of the tonnage on minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 745.11 of the Act; and Provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles, and

(B) The areas upon which the activities described in Subsection (a) of this definition occur or where such activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks. tailings, holes or depressions, repair areas, areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

**"Surface coal mining and reclamation operations"** means surface coal mining operations and all activities necessary or incidental to the reclamation of

such operations. This term includes the term surface coal mining operations.

**"Ton"** means 2,000 pounds avoirdupois (0.90718 metric ton).

**460:20-1-6. Applicability**

(a) Except as provided in Subsection (b) of this Section, this Chapter applies to all coal exploration and surface coal mining and reclamation operations, except:

(1) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(2) The extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation. A person who intends to remove more than 250 tons is not exempted;

(3) The extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction in accordance with Subchapter 6 of this Chapter;

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the mineral tonnage removed for commercial use or sale;

(5) Coal exploration on Federal lands outside a permit area.

(b) The Department may on its own initiative and shall, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under this Section. The regulatory authority shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the regulatory authority shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal.

(c) **Department termination.**

(1) The Department may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when:

(A) The Department determines in writing that under the initial program, all requirements imposed under this Chapter have been successfully completed; or

(B) The Department determines in writing that under the permanent program, all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the Department has made a final decision in accordance with the State or Federal program counterpart to Subchapter 37 of this chapter to release the performance bond fully.

(2) Following a termination under Paragraph (c) (1) of this section, the Department shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to in Paragraph (c) (1) of this section was based upon fraud, collusion, or misrepresentation of a material fact.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-1-7. Petition to initiate rulemaking

(a) Any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the Act. The petition shall be submitted to the Office of the Director, 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 requires issuance, amendment, or repeal of a regulation under the Act 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 the facts, technical justification or law previously considered in a petition or rulemaking of the same issue shall not be provide a reasonable basis. If the Director determines that the petition has a reasonable basis, a notice shall be published in the office State register of public notices seeking comments from the public on the proposed change. The Director may hold a public hearing, may conduct an investigation, or take other action to determine whether the petition should be granted.
(d) Within 90 days from receipt of the petition, the Director shall issue a written decision either granting or denying the petition. 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 Director shall notify the petitioner in writing, setting forth the reasons for denial.

[**Source:** Amended at 31 Ok Reg 2095, eff 9-12-14; Amended at 36 Ok Reg 1935, eff 9-14-19]

### 460:20-1-8. Notice of citizen suits

(a) A person who intends to initiate a civil action on his or her own behalf under 45 O.S. Supp. 1980 Section 774 shall give notice of intent to do so in accordance with this Section.
(b) Notice shall be given by certified mail to the State Attorney General and to the Director.
(c) Notice shall be given by certified mail to the alleged violator if the complaint alleges a violation of the Act or any regulation, order, or permit issued under the Act.
(d) Service of notice under this Section is complete upon mailing to the last known address of the person being notified.
(e) A person giving notice regarding an alleged violation shall state, to the extent known–

(1) Sufficient information to identify the provision of the Act, regulation, order, or permit allegedly violated;
(2) The act or omission alleged to constitute a violation
(3) The name, address, and telephone numbers of the person or persons responsible for the alleged violation;
(4) The date, time, and location of the alleged violation;
(5) The name, address, and telephone number of the person giving notice; and
(6) The name, address, and telephone number of legal counsel if any, of the person giving notice.

(f) A person giving notice of an alleged failure by the Department of Mines to perform a mandatory act or duty under the Act shall state, to the extent known–

(1) The provisions of the Act containing the mandatory act or duty allegedly not performed;

(2) Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;

(3) The name, address, and telephone number of the person giving notice; and

(4) The name, address, and telephone number of legal counsel if any, of the person giving notice.

**460:20-1-9. Availability of records**

(a) Records required by the Act to be made available locally to the public shall be retained at the offices of the Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.

(b) Other records or documents in the possession of the Office of Surface Mining may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act.

[**Source:** Amended at 31 Ok Reg 2095, eff 9-12-14; Amended at 36 Ok Reg 1935, eff 9-14-19]

**460:20-1-10. Computation of time**

(a) Except as otherwise provided, computation of time under this Chapter is based on calender days.

(b) In computing any period of prescribed time, the day in 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 Saturdays, Sundays, and legal holidays are excluded from the computation when the period if prescribed time is 7 days or less.

## SUBCHAPTER 3. PERMANENT REGULATORY PROGRAM

**460:20-3-1. Scope**

This Subchapter 3 provides general introductory material for the permanent regulatory program required by the Act.

**460:20-3-2. Objective**

The regulations in this Subchapter give

(1) A general overview of the regulatory program to be implemented by the Oklahoma Department of Mines;

(2) The applicability of that program to coal exploration and surface coal mining and reclamation operations; and

(3) The definitions that apply to the regulation of coal exploration and surface coal mining and reclamation operations.

**460:20-3-3. Authority**

The Director is required by the Act to promulgate regulations which establish the permanent regulatory program created by the Act.

**460:20-3-4. Responsibility**

The Oklahoma Department of Mines shall assume primary responsibility for regulation of coal exploration and surface coal mining and reclamation operations during the permanent regulatory program upon submission to and approval by the Secretary of a State program meeting all applicable requirements of the Act and this Chapter. After approval of the State program, the State regulatory authority has responsibility for review of and decisions on permits and bonding for surface coal mining and reclamation operations, approval of coal exploration which substantially disturbs the natural land surface and removes more than 250 tons of coal from the earth in any one location, inspection of coal exploration and surface coal mining and reclamation operations for compliance with the Act, this Chapter, the State program, permits and exploration approvals, and for enforcement of the State program.

**460:20-3-5. Definitions**

As used in this Subchapter, the following terms have these specified meanings, except where otherwise indicated:

**"Acid drainage"** means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

**"Acid-forming materials"** means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

**"Adjacent area"** means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

**"Administratively complete application"** means an application for permit approval or approval for coal exploration where required, which the Department determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

**"Affected area"** means any land or water surface which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, calm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(A) was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(B) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and

(C) there is substantial (more than incidental) public use.

**"Agricultural use"** means the 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 the cropping, cultivation, and harvesting of plants.

**"Alluvial valley floors"** means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

**"Applicant"** means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from the Department to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

**"Application"** means the documents and other information filed with the Department under this Chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

**"Applicant/Violator System (AVS)"** means an automated information system of applicant, permittee, operator, violation and related data OSM maintains to assist in implementing the Act.

**"Approximate original contour"** means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the Department has determined that they comply with Sections 460:20-43-14, 460:20-43-15, and 460:20-43-51 or 460:20-45-14, 460:20-45-15, and 460:20-45-51.

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

**"Auger"** mining means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

**"Best technology currently available"** means equipment, devices, systems, methods, or techniques which will:

(A) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and

(B) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the

Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Subchapters 43 and 45 of this Chapter. Within the constraints of the permanent program, the Department shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this Chapter.

**"Coal exploration"** means the field gathering of

(A) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(B) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this Chapter.

**"Coal mine waste"** means coal processing waste and underground development
waste.

**"Coal preparation"** means chemical or physical processing and the cleaning,
concentrating, or other processing or preparation of coal.

**"Coal preparation plant"** means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

**"Coal processing waste"** means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

**"Combustible material"** means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

**"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.

**"Complete and accurate application"** means an application for permit approval or approval for coal exploration where required, which the Department determines to contain all information required under the Act and this Chapter.

**"Control or controller"** means when used in Subchapter 17, Subchapter 21, and Subchapter 23 of this Chapter, refers to:

(A) A permittee of a surface coal mining operation;

(B) An operator of a surface coal mining operation; or

(C) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

**"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.

**"Cumulative impact area"** means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface- and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(A) the proposed operation,

(B) all existing operations,

(C) any operation for which a permit application has been submitted to the Department and

(D) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

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

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

**"Downslope"** means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

**"Drinking, domestic or residential water supply"** means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial, or industrial enterprises are not included except to the extent the water is used for direct human consumption, human sanitation, or domestic use.

**"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.

**"Excess spoil"** means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with Sections 460:20-43-38(d) and 460:20-45-38(d) of this Chapter in non-steep slope areas shall not be considered excess spoil.

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

**"Federal program"** means a program established by the Secretary pursuant to Section 504 of the Federal Act to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State in accordance with P.L. 95-87 and this Chapter.

(A) Complete Federal program means a program established by the Secretary pursuant to Section 504 of the Federal Act before June 3,

1980 or upon the complete withdrawal of the Oklahoma program after June 3, 1980 by which the Director of OSM regulates all coal exploration and surface coal mining and reclamation operations.

(B) Partial Federal program means a program established by the Secretary pursuant to Sections 102, 201 and 504 of the Federal Act upon the partial withdrawal of the Oklahoma program by which the Director of OSM may regulate appropriate portions of coal exploration and surface coal mining and reclamation operations.

**"Fugitive dust"** means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal 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.

**"Gravity discharge"** means, with respect to underground mining activities, mine drainage that flows freely in an open channel down gradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

**"Ground cover"** means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally on site, expressed as a percentage of the total area of measurement.

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

**"Half-shrub"** means a perennial plant with a woody base whose annually produced stems die back each year.

**"Higher or better uses"** means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

**"Highwall"** means the face of exposed over burden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

**"Historically used for cropland"** means:

(A) Lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations;

(B) Lands that the Department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

(C) Lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

**"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 coal 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.

**"Impounding structure"** means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

**"Impoundments"** means all water, sediment, slurry, or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

**"In situ processes"** means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

**"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.

**"Irreparable damage to the environment"** means any damage to the environment, in violation of the Act, the regulatory program, or this Chapter, that cannot be corrected by actions of the applicant.

**"Knowing or knowingly"** means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

**"Land use"** means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department.

(A) Cropland. Land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(B) Pastureland or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(C) Grazingland. Land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.
(D) Forestry. Land used or managed for the long-term production of wood, wood fiber, or wood-derived products.
(E) Residential. Land used for single-and multiple-family housing, mobile home parks, or other residential lodgings.
(F) Industrial/Commercial. Land used for:
(i) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.
(ii) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.
(G) Recreation. Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.
(H) Fish and wildlife habitat. Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.
(I) Developed water resources. Land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.
(J) Undeveloped land or no current use or land management. Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

**"Lands eligible for remining"** means those lands that would otherwise be eligible for expenditures under 45 O.S., Section 740.0, namely lands:
(A) Which were mined for coal or affected by such mining or other coal mining processes; and
(B) Which were abandoned or left in inadequate reclamation status prior to August 3, 1977; and
(C) For which there is no continuing reclamation responsibility under state of other federal laws; or
(D) Which were mined for coal or affected by such mining or other coal mining processes; and
(E) Which were left or abandoned in an inadequate reclamation status between August 4, 1977, and January 19, 1981; and
(F) For which any funds for reclamation or abatement available pursuant to a bond or other form of financial guarantee or from any other sources are not sufficient to provide for adequate reclamation or abatement; or
(G) Which were mined for coal or affected by such mining or other coal mining processes; and
(H) Which were which were left or abandoned in an inadequate reclamation status between August 4, 1977, and November 5, 1990; and

(I) For which the surety of the mining operator became insolvent during such period and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement.

**"Material damage"** means any functional impairment of surface lands, features, structures or facilities. The material damage threshold includes:

(A) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(B) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition; or

(C) Any situation in which an imminent danger to a person would be created.

**"Moist bulk density"** means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105° C.

**"MSHA"** means the Mine Safety and Health Administration.

**"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.

**"Non-Commercial building"** means any building other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in section 460:20-7-3 of this Chapter. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

**"Noxious plants"** meansspecies that have been included on official State lists of noxious plants for the State in which the surface coal mining and reclamation operation occurs. **"Occupied residential dwelling and structures"** means for purposes of 460:20-31-13 and 460:20-45-47, any building or other structure that, at the time the subsidence occurs, issued either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes:

(A) Any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling.

(B) Examples of such structures include, but are not limited to:

(i) garages;
(ii) storage sheds or barns;
(iii) greenhouses and other related buildings;
(iv) utilities and cables;
(v) fences and other enclosures;
(vi) retaining walls;
(vii) paved or improved patios;
(viii) walks and driveways;
(ix) septic sewage treatment facilities; and
(x) lot drainage and lawn and garden irrigation systems.

(C) Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

**"Operator"** means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

**"Other treatment facilities"** means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifier or precipitators, that have a point source discharge and are utilized:

(A) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area, or

(B) To comply with all applicable State and Federal water quality laws and regulations.

**"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 or unconsolidated, that overlies a coal deposit, excluding topsoil.

**"Own, owner, or ownership"** means as used in Subchapter 17, Subchapter 21, and Subchapter 23 of this chapter (except when used in the context of ownership of real property), being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

**"Perennial stream"** means a stream or part of a stream that flows continuously during all of the calendar year as a 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 the Act, this Chapter, the State program, and the requirements of the permit and reclamation plan.

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

**"Permanent impoundment"** means an impoundment which is approved by the Department for retention as part of the postmining land use.

**"Permit"** means a permit to conduct surface coal mining and reclamation operations issued by the Department pursuant to a State program or by the Secretary pursuant to a Federal program. For purposes of the Federal lands program, permit means a permit issued by the Department under a cooperative agreement or by OSM where there is no cooperative agreement.

**"Permit area"** means the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond which shall include the area of land upon which the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas.

**"Permittee"** means a person holding or required by the Act or this Chapter to hold a permit to conduct surface coal mining and reclamation operations issued by the State Department of Mines pursuant to the Oklahoma program, or where a cooperative agreement pursuant to 45 O.S. Section 784.

**"Precipitation event"** means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in this Chapter, precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

**"Previously mined area"** means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of OAC 460, Chapter 20.

**"Prime farmland"** means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4, No. 21) and which have historically been used for cropland as that phrase is defined above.

**"Principal shareholder"** means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock

**"Property to be mined"** means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

**"Rangeland"** means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

**"Reasonably available spoil"** means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

**"Recharge capacity"** means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

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

**"Recurrence interval"** means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 6-hour precipitation event would be that 6-hour precipitation event expected to occur on the average once in 10 years. **"Reference area"** means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the Department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

**"Refuse pile"** means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

**"Remining"** means conducting surface coal mining and reclamation operations which affect previously mined areas.

**"Renewable resource lands"** means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazinglands.

**"Replacement of water supply"** means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(A) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply

owner.

(B) If the affected water supply was not needed for the land use in existence at the time of the loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasiblely be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

**"Road"** means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

**"Safety factor"** means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

**"Sedimentation pond"** means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

**"Significant, imminent environmental harm to land, air or water resources"** means:

(A) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(B) An environmental harm is imminent, if a condition, practice, or violation exists which:

(i) Is causing such harm; or,

(ii) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 777 of the Act.

(C) An environmental harm is significant if that harm is appreciable and not immediately reparable.

**"Siltation structure"** means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

**"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.

**"Soil Horizons"** means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are:

(A) A horizon. The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(B) E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly

differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of theses properties.

(C) B horizon. The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(D) C horizon. The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

**"Soil survey"** means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in Section 460:20-33-1(c)(1)of this Chapter.

**"Spoil"** means overburden that has been removed during surface coal 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.

**"State program"** means a program established by a State and approved by the Secretary pursuant to Section 503 of the Federal Act to regulate surface coal mining and reclamation operations on non-Indian and non-Federal lands within that State, according to the requirements of the Act and in this Chapter. If a cooperative agreement has been entered into, a State program may apply to Federal lands, in accordance with the terms of the cooperative agreement.

**"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.

**"Substantially disturb"** means, for the purpose of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

**"Successor in interest"** means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

**"Surface mining activities"** means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

**"Suspended solids"** or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

**"Temporary diversion"** means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation

operations and not approved by the Department to remain after reclamation as part of the approved postmining land use.

**"Temporary impoundment"** means an impoundment used during surface coal mining and reclamation operations, but not approved by the Department to remain as part of the approved postmining land use.

**"Topsoil"** means the A and E soil horizon layers of the four master soil horizons.

**"Toxic-forming materials"** means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological 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 coal exploration or surface coal 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.

**"Transfer, assignment, or sale of permit rights"** means a change of a permittee.

**"Unanticipated event or condition"** means, as used in 460:20-15-6, an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and which was not contemplated by the applicable permit.

**"Underground development waste"** means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

**"Underground mining activities"** means a combination of:

(A) Surface operations incident to underground extraction of coal or in situ processing, 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 ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(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.

**"Undeveloped rangeland"** means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

**"Upland areas"** means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

**"Valley fill"** means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

**"Violation"** when used in the context of the permit application information or permit eligibility requirements of Sections 45 O.S. 745.8 and 45 O.S. 745.9 of the Act and related regulations means:

(A) A failure to comply with an applicable provision of a Federal or State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(B) A noncompliance for which OSM has provided one or more of the following types of notice or a State regulatory authority has provided equivalent notice under corresponding provisions of a State regulatory program:

(i) A notice of violation under Section 460:20-59-4 of this chapter.

(ii) A cessation order under Section 460:20-59-3 of this chapter.

(iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under Subchapter 61 or Subchapter 63 of this chapter.

(iv) A bill or demand letter pertaining to delinquent reclamation fees owed under Subchapter 15 of this chapter.

(v) A notice of bond forfeiture under Section 460:20-37-16 of this chapter when:

(I) One or more violations upon which the forfeiture was based have not been abated or corrected;

(II) The amount forfeited and collected is insufficient for full reclamation under Section 460:20-37-16(d)(1) of this chapter, the regulatory authority orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order; or

(III) The site is covered by an alternative bonding system approved under Section 460:20-37(e)(4) of this chapter, that system requires reimbursement of any reclamation costs incurred by the system above those covered by any site-specific bond, and the person has not complied with the reimbursement requirement and paid any associated penalties.

**"Violation, failure or refusal,"** for purposes of Subchapters 61 and 63 of this chapter, means:

(A) A failure to comply with a condition of a permit that the Department Of Mines has issued; or

(B) A failure or refusal to comply with any order issued under section 776 of the Act, or any order incorporated in a final decision issued by the Department under the Act, except an order incorporated in a decision issued under Section 769 of the Act.

**"Violation notice",** means any written notification from a government entity of a violation of law, whether by letter, memorandum; legal or administrative pleading, or other written communication.

**"Water table"** means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

**"Willful or willfully"** means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

(A) Intentionally, voluntarily, or consciously; and

(B) With intentional disregard or plain indifference to legal requirements.

**"Willful violation"** means an act or omission which violates the Act, this chapter, the applicable program, or any permit condition committed by a person who intends the result which actually occurs.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 14 Ok Reg 3480, eff 8-11-97; Amended at 16 Ok Reg 3526, eff 9-13-99; Amended at 18 Ok Reg 3202, eff 7-26-01; Amended at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-3-6. Applicability

(a) Any person who conducts surface coal mining and reclamation operations on non-Indian or non-Federal lands on or after 8 months from the date of approval of the Oklahoma program or implementation of a Federal program shall have a permit issued pursuant to the applicable State or Federal program. However under conditions specified in Section 460:20-15-3 of this Chapter, a person may continue operations under a previously issued permit after 8 months from the date of approval of the State program or implementation of a Federal program.

(b) These requirements shall be effective and shall apply to each surface coal mining and reclamation operations which is required to obtain a permit under the Act, on the earliest date upon which the Act requires a permit to be obtained except as provided in Subsection (c) below.

(c) **Mine site structures.**

(1) Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of these regulation, except that–

(A) An existing structure which meets the performance standards of this Chapter but does not meet the design requirements of the interim program may be exempted from meeting those design requirements by the Department of Mines. The Department of Mines may grant this exemption on non-Indian and non-Federal lands only as part of the permit application process after obtaining the information required by Sections 460:20-27-5 or 460:20-31-5 and after making the findings required in Section 460:20-15-6.

(B) If the performance standard of the initial regulatory program is at least as stringent as the comparable performance standard of this Chapter, an existing structure which meets the performance standards of the initial regulatory program may be exempted by the Department from meeting the design requirements of this Chapter. The Department may grant this exemption on non-Indian lands only as a part of the permit application process after obtaining the information required by Sections 460:20-27-5 or 460:20-31-5 and after making the findings required in Section 460:20-15-6.

(C) An existing structure which meets a performance standard of the initial regulatory program which is less stringent than the comparable performance standards of this Chapter or which does not meet a performance standard of this Chapter for which there was no equivalent performance standard in the initial regulatory

program shall be modified or reconstructed to meet the performance and design standards of this Chapter pursuant to a compliance plan approved by the Department on non-Indian and non-Federal lands only as a part of the permit application as required in Sections 460:20-27-5 or 460:20-31-5 and according to the findings required by Section 460:20-15-6.

(D) An existing structure which does not meet the performance standards of the initial regulatory program and which the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the design standards of this Chapter prior to issuance of the permit.

(2) The exemptions provided in Subparagraphs (1) (A) and (1) (B) shall not apply to:

(A) The requirements for existing and new waste piles used either temporarily or permanently as dams or embankments; and

(B) The requirements to restore the approximate original contour of the land.

(d) **Non-federal and non-Indian lands.**

(1) Any operator conducting coal exploration on non-Federal and non-Indian lands on or after the date on which the Oklahoma program is approved shall either file a notice of intention to explore or obtain approval of the Department of Mines, as required by Subchapter 13 of this Chapter.

(2) Two months after approval of the Oklahoma program coal exploration performance standards in Subchapter 41 shall apply to coal explorations on non-Federal non-Indian lands which substantially disturbs the natural land surface.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

## SUBCHAPTER 4. PERMANENT REGULATORY PROGRAM EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO THE EXTRACTION OF OTHER MINERALS

### 460:20-4-1. Scope

This Subchapter implements the exemption concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

[**Source:** Added at 11 Ok Reg 4225, eff 7-25-94]

### 460:20-4-2. Definitions

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

**"Cumulative measurement period"** means the period of time over which both cumulative production and cumulative revenue are measured.

(A) For purposes of determining the beginning of the cumulative measurement period, subject to Department approval, the operator must select and consistently use one of the following:

(i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal

or other minerals commenced at the mining area, or August 3, 1977, or

(ii) For mining areas where extraction of coal, or other minerals commenced on, or after August 3, 1977, the date of extraction of coal, or other minerals commenced at that mining area, whichever is earlier.

(B) For annual reporting purposes pursuant to Section 460:20-4-11 of this subchapter, the end of the period for which cumulative production and revenue is calculated is either

(i) For mining areas where coal or other minerals were extracted prior to April 1, 1994, March 31, 1995, and every March 31 thereafter; or

(ii) For mining areas where extraction of coal or other minerals commenced on or after April 1, 1994, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

**"Cumulative production"** means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by Section 460:20-4-9.

**"Cumulative revenue"** means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

**"Mining area"** means an individual excavation site or pit from which coal, other minerals and overburden are removed.

**"Other minerals"** means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

[**Source:** Added at 11 Ok Reg 4225, eff 7-25-94]

**460:20-4-3. Information collection**

The collections of information contained in Sections 460:20-4-4 through 460:20-4-6, 460:20-4-8 and 460:20-4-11 of this subchapter will be used to determine the initial and continuing applicability of the incidental mining exemption to a particular mining operation. Response is required to obtain and maintain the incidental mining exemption.

[**Source:** Added at 11 Ok Reg 4225, eff 7-25-94]

**460:20-4-4. Application requirements and procedures**

(a) **Application filing.**

(1) Any person who plans to commence or continue coal extraction after April 1, 1994, in reliance on the incidental mining exemption shall file a complete application for exemption with the Department for each mining area.

(2) Following incorporation of an exemption application approval process into a Department a person may not commence coal extraction based upon the exemption until the Department approves such application, except as provided in paragraph (e) (3) of this section.

(b) **Existing operations.** Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to April 1, 1994, may continue mining operations for 60 days after such effective date. Coal extraction may not continue after such 60-day period unless that person files an

administratively complete application for exemption with the Department. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the regulatory authority makes an administrative decision on such application.
(c) **Additional information.** The Department shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.
(d) **Public comment period.** Following publication of the newspaper notice required by Section 460:20-4-5(7), the Department shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.
(e) **Exemption determination.**

(1) No later than 90 days after filing of an administratively complete application, the Department shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this Subchapter, and shall notify the applicant and persons submitting comments on the application of the determinations and the basis for the determination.
(2) The determination of exemption shall be based upon information contained in the application and any other information available to the Department at that time.
(3) If the Department fails to provide an applicant with the determination as specified in paragraph (e) (1) of this section, an applicant who has not begun may commence coal extraction pending a determination on the application unless the Department issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

(f) **Administrative review.**

(1) Any adversely affected person may request administrative review of a determination under subsection (e) of this section within 30 days of the notification of such determination in accordance with procedures established under Oklahoma's Rules of Practice and Procedure for the Coal Reclamation Act of 1979.
(2) A petition for administrative review filed under Oklahoma's Rules of Practice and Procedures for the Coal Reclamation Act of 1979 shall not suspend the effect of a determination under subsection (e) of this section.

[**Source:** Added at 11 Ok Reg 4225, eff 7-25-94]

### 460:20-4-5. Contents of application for exemption

An application for exemption shall include at a minimum:
(1) The name and address of the applicant;
(2) A list of the minerals sought to be extracted;
(3) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operations;
(4) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;
(5) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;
(6) The basis for all annual production, revenue, and fair market value estimates;

(7) A description, including county, township, range, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;
(8) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;
(9) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the Department. (The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its location that is sufficient for interested persons to identify the operation.);
(10) Representative stratigraphic cross-section (s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;
(11) A map of 1:6,000 or larger scale which clearly identifies the mining area;
(12) A general description of mining and mineral processing activities for the mining area;
(13) A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted form the mining area, or a description of potential markets for such minerals;
(14) If the other minerals are to be commercially used by the applicant, a description specifying the use;
(15) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted.
(A) Any relevant documents the operator has received from the Department documenting its exemption from the requirements of these Regulations;
(B) The cumulative production of the coal and other minerals form the mining area; and
(C) Estimated tonnages of stockpiled coal and other minerals; and
(16) Any other information pertinent to the qualification of the operation as exempt.

[**Source:** Added at 11 Ok Reg 4225, eff 7-25-94; Amended at 14 Ok Reg 3496, eff 8-11-97]

**460:20-4-6. Public availability of information**

(a) Except as provided in Subsection (b) of this section, all information submitted to the Department under this Subchapter shall be made immediately available for public inspection and copying at the central office of the Department until at least three years after expiration of the period during which the subject mining area is active.
(b) The Department may keep information submitted under this Subchapter confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this Subchapter.

(c) Information requested to be held as confidential under Subsection (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

[**Source:** Added at 11 Ok Reg 4225, eff 7-25-94]

### 460:20-4-7. Requirements for exemption

(a) Activities are exempt from the requirements of these Regulations if all of the following are satisfied:

(1) The cumulative production of coal extracted from the mining area determined annually as described in this paragraph does not exceed 16 2/3 percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.

(2) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

(3) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50 percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other mineral shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(b) Persons seeking or that have obtained an exemption from the requirements of these Regulations shall comply with the following:

(1) Each other mineral upon which an exemption under this Subchapter is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

(2) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

[**Source:** Added at 11 Ok Reg 4225, eff 7-25-94]

### 460:20-4-8. Conditions for exemption and right of inspection and entry

A person conducting activities covered by this subchapter shall:

(1) Maintain on-site or at other locations available to authorized representatives of the Department and the Secretary information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages and a copy of the exemption application and exemption approved by the Department.

(2) Notify the Department upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

(3) Conduct operations in accordance with the approved application or when authorized to extract coal under Section 460:20-4-4 (b) or Section 460:20-4-4 (e) (3) prior to submittal or approval of an exemption application, in accordance with the standards of this Subchapter.

(4) Authorized representatives of the Department and the Secretary shall have the right to conduct inspections of operations claiming exemption under this Subchapter.
(5) Each authorized representative of the Department and the Secretary conducting an inspection under this Subchapter;
(A) Shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;
(B) may, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and
(C) Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.
(6) No search warrant shall be required with respect to any activity under paragraphs (4) and (5) of this section, except that a search warrant may be required for entry into a building.

[**Source:** Added at 11 Ok Reg 4225, eff 7-25-94]

**460:20-4-9. Stockpiling of minerals**

(a) **Coal.** Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use;
(1) Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or
(2) For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

(b) **Other minerals.**
(1) The Department shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this Subchapter if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicated the lack of commercial use or market for the minerals.
(2) The Department may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this Subchapter if:
(A) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and
(B) Except as provided in paragraph (b) (3) of this section, the stockpiled other minerals do no exceed a 12-month supply of the mineral required for future sales as approved by the Department on the basis of the exemption application.
(3) The Department may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in paragraph (b) (2) of this section if the operator can demonstrate to the Department's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(4) The Department may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by paragraphs (b) (2) and (3) of this section based on additional information available to the regulatory authority.

[**Source:** Added at 11 Ok Reg 4225, eff 7-25-94]

**460:20-4-10. Revocation and enforcement**

(a) **Department responsibility.** The Department shall conduct annual compliance review of the mining area, utilizing the annual report submitted pursuant to Section 460:20-4-11, an on-site inspection and any other information available to the regulatory authority.

(b) **Possible revocation.** If the Department has reason to believe that a specific mining area was not exempt under the provisions of this Subchapter at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, it shall notify the operator that the exemption may be revoked and the reason (s) therefor. The exemption will be revoked unless the operator demonstrates to the Department within 30 days that the mining area in question should continue to be exempt.

(c) **Department revocation.**

(1) If the Department finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the Department shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the Department shall Immediately notify the operator and intervenors.

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under Oklahoma's Rules of Practice and Procedure of the Coal Reclamation Act of 1979. (3) A petition for administrative review filed under Oklahoma's Rules of Practice and Procedure of the Coal Reclamation of 1979. shall not suspend the effect of decision whether to revoke an exemption.

(d) **Direct enforcement.**

(1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the regulatory program which occurred prior to the revocation of the exemption.

(2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of the regulatory program which occur during the period of such activities.

(3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of the applicable regulatory program with regard to conditions, areas and activities existing at the time of revocation or denial.

[**Source:** Added at 11 Ok Reg 4225, eff 7-25-94]

**460:20-4-11. Reporting requirements**

(a) **Report filing.**

(1) Following approval by the Department of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a

written report annually with the Department containing the information specified in Subsection (b) of this section.
(2) The report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the definition of "cumulative measurement period" in Section 460:20-4-2 of this Subchapter.
(3) The information in the report shall cover
(A) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period, and
(B) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

(b) **Reports Specification.** For each period and mining area covered by the report, the report shall specify;
(1) The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;
(2) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;
(3) The number of tons of coal stockpiled;
(4) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;
(5) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and
(6) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

[**Source:** Added at 11 Ok Reg 4225, eff 7-25-94]

## SUBCHAPTER 5. FINANCIAL INTERESTS OF STATE EMPLOYEES

### 460:20-5-1. Purpose

This Subchapter 5 sets forth the minimum policies and procedures that the state must establish and use to implement 45 O.S. Section 767 in order to be eligible for reimbursement of costs of enforcing and administering the initial regulatory program under Section 502 of P.L. 95-87 or for grants for developing, administering and enforcing a State regulatory program under Section 705 of P.L. 95-87 or to assume primary regulatory program authority under Section 503 of P.L. 95-87. Compliance with policies and procedures in this Subchapter will satisfy the requirements of the Act. Section 767 prohibits certain employees of the Department of Mines, members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests from having any direct or indirect financial interest in any underground or surface coal mining operation. The regulations in this Subchapter are applicable to employees of the Department of Mines as defined in Section 460:20-5-5.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 18 Ok Reg 3202, eff 7-26-01]

### 460:20-5-2. Objectives

The objectives of this Subchapter are to ensure that the State adopts a standard program for implementing the provision in 45 O.S. Section 767; to establish methods which will ensure that each employee of the Department of

Mines, members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests who performs any function or duty under the Act does not have a direct or indirect financial interest in any underground or surface coal mining operation; and to establish the methods by which the monitoring, enforcing, and reporting responsibilities of the Director will be accomplished.

[**Source:** Amended at 18 Ok Reg 3202, eff 7-26-01]

### 460:20-5-3. Authority

The Director of the Department of Mines is authorized by the Act to:

(1) Establish the methods by which he or she and State officials will monitor and enforce the provisions contained in 45 O.S. Section 767;

(2) Establish appropriate provisions for employees of the Department of Mines who perform any function or duty under the Act to file a statement and supplements thereto in order to identify any financial interest which may be effected.

(3) Report annually to the Governor the actions taken and not taken during the preceding calender year under 45 O.S. Section 767.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99; Amended at 18 Ok Reg 3202, eff 7-26-01]

### 460:20-5-4. Responsibility

(a) The Finance Officer of The State Department Of Mines shall:

(1) Provide advice, assistance, and guidance to all State employees required to file statements pursuant to Section 460:20-5-7;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) Resolve prohibited financial-interest situations by ordering or initiating remedial action or by reporting the violations to the Director who is responsible for initiating action to impose the penalties of the Act;

(4) Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;

(5) Submit to the Director such statistics and information as he or she may request to enable preparation of the required annual report to the Governor, and the Director of OSM;

(6) Submit to the Director the initial listing and the subsequent annual listings of positions as required by Section 460:20-5-7(b), (c), and (d); the Director will forward the required information to the Director of OSM.

(7) Furnish a blank statement 45 days in advance of the filing date established by Section 460:20-5-8(a) to each employee and members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests required to file a statement; and

(8) Inform annually each State employee required to file a statement with the head of the Department, Director or such other official designated by State law or regulation, of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(b) The Oklahoma Governor's Office, Director of Appointments shall:

(1) Provide advice, assistance, and guidance to members of advisory boards, the Oklahoma Mining Commission and commissions representing multiple interests required to file statements pursuant to Section 460:20-5-7;
(2) Promptly review the statements to determine if financial interests which constitute a direct or indirect financial interest in underground or surface coal mining operations have been identified correctly;
(3) Resolve prohibited financial-interest situations by ordering or initiating remedial action which may include:
(A) Divestiture of prohibited financial interests, or
(B) Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.
(4) Certify on each statement that the review has been made, that the prohibited interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;
(5) If after 90 days a member of an advisory board, the Oklahoma Mining Commission, or commissions representing multiple interests is notified to take remedial action and then fails to take such action, the Governor's Office, Director of Appointments shall report such noncompliance with the Act and this Chapter to the Director of OSM. The report shall contain a copy of the original statement and any other pertinent information, including a statement of actions being taken at the time the report is made.

(c) Department of Mines employees, members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests performing any duties or functions under the Act shall:
(1) Have no direct or indirect financial interest in coal mining operations;
(2) File a fully completed statement of employment and financial interest 120 days after this Chapter becomes effective or upon entrance of duty, and annually thereafter on specified filing dates; and
(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial actions.

[**Source:** Amended at 18 Ok Reg 3202, eff 7-26-01]

**460:20-5-5. Definitions**

**"Act"** means the Coal Reclamation Act of 1979, Senate Pill 299, (45 O.S. 1981, Section 742.1 et seq.)

**"Coal Mining Operation"** means the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

**"Direct financial interest"** means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests includ employment, pensions, creditor, real property, and other financeial relationships.

**"Employee"** means any person employed by the Department of Mines who performs any function or duty under the Act, and advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision making functions for the Department of Mines under the authority of State law or regulations. However, members of advisory boards or commissions

established in accordance with State law or regulations to represent multiple interests are not considered to be employees.

**"Federal act"** means the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, (30 U.S.C. Sec. 1201 et seq.)

**"Indirect financial interest"** means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child, and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.

**"Office"** means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

**"Performing any function or duty under this Act"** means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

**"Prohibited financial interest"** means any direct or indirect financial interest in any coal mining operation.

**"Secretary"** means the Secretary of the Interior.

**460:20-5-6. Penalties**

(a) Criminal penalties are imposed by 45 O.S. 1981, Sec. 767, which prohibits each employee of the Department of Mines who performs any function or duty under this Act from having a direct or indirect financial interest in any underground or surface coal mining operation. The Act provides that whoever knowingly violates the provisions of Section 767 shall, upon conviction, be punished by a fine of not more than $5,000, or by imprisonment of not more than one year, or by both.

(b) Regulatory penalties are imposed by this Subchapter. The provisions in Section 767 make compliance with the financial-interest requirements a condition of employment for employees of the Department of Mines who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required statement will be considered in violation of the intended employment provisions of Section 767 and will be subject to removal from his or her position.

**460:20-5-7. Who shall file**

(a) Any employee and members of the Oklahoma Mining Commission, advisory boards, and commissions representing multiple interests who performs any function or duty under the Act is required to file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Director not to involve performance of any function or duty under the Act or who is no longer employed by the Department of Mines at the time a filing is due, is not required to file a statement.

(b) The Director shall prepare a list of those positions within the Department of Mines that do not involve performance of any functions or duties under the Act. The Department of Mines may be organized to include more activities than are covered by the Act. For example, if a State has identified its Department of Mines as the State Regulatory Authority there may be only one or two offices within that Department which have employees who perform any functions or duties under the Act. In those cases, the Director shall list the title of boards, offices, bureaus, or divisions within the Department of Mines which do not perform any functions or duties under the Act for only those boards, offices, bureaus or divisions that do

have some employees performing functions and duties under the Act. Only those employees who are employed in a listed organizational unit or who occupy a listed position will be exempted from the filing requirements of Section 767.
(c) The Director shall prepare and submit to the Director of OSM, an initial listing of positions that do not involve performance of any functions or duties under the Act within 60 days of the effective date of the State program approval.
(d) The Director shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the Director of OSM and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that a revision is not required shall be submitted to the Director by no later than September 30 of each year. The Director may revise the listing by addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of the law or the regulations of this Subchapter. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.
(e) The Secretary or the Director of OSM may modify the listing at any time one or both of them determines that the listing submitted by the Department indicates that coverage is not sufficient to carry out the purpose of the law or the regulations of this Subchapter.

[**Source:** Amended at 18 Ok Reg 3202, eff 7-26-01]

### 460:20-5-8. When to file

(a) Employees and members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests performing functions or duties under the Act shall file:

(1) Within 120 days of the effective date of the approval of the state program; and

(2) Annually on February 1 of each year, or at such other date as may be agreed to by the Director of OSM, provided that such alternative date will allow sufficient time to obtain information needed by the Director for his or her annual report to the Governor and to the Director of OSM.

(b) New employees, members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests hired, appointed or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.
(c) New employees, and new appointments to advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee entering duty on December 2, 1986 would file a statement on that date. Because December 2 is within two months of February 1 the employee would not be required to file his or her next annual statement until February 2, 1988.

[**Source:** Amended at 18 Ok Reg 3202, eff 7-26-01]

### 460:20-5-9. Where to file

(a) The Director shall file his or her statement with the Director of OSM.
(b) Members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests as provided in Section 460:20-5-7, shall file their statement with the Governor's Office, Office of Appointments, or such other official as may be designated by State Law or regulation.

(c) All other employees shall file his or her statement with the Department of Mines' Director pursuant to the requirements of 45 O.S. Section 767 and this Subchapter.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99; Amended at 18 Ok Reg 3202, eff 7-26-01]

**460:20-5-10. What to report**

(a) Each employee, advisory board member or commissioner shall report all information required on the statement of employment and financial interests of the employee, advisory board member or commissioner, his or her spouse, minor children, or other relatives who are full-time residents of the employee's, advisory board member's or commissioner's home. The report shall be on OSM Form 705-1 as provided by the Office of Surface Mining. The statement shall consist of three major parts:

(1) A listing of all financial interests, including employment, security, real property, creditor, and other financial interests held during the course of the preceding year;

(2) A certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee, advisory board member or commissioner as part of the certificate; and

(3) A certification by the reviewer that the form was reviewed, that the prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(b) **Listing of all financial interests.** The statement will set forth the following information regarding any financial interest:

(1) **Employment.** Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, advisory board member or commissioner, his or her spouse, or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the Department.

(2) **Securities.** Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities, or other arrangements including trusts. An employee, advisory board member or commissioner is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) **Real property.** Ownership, lease, royalty or other interests or rights in lands or minerals. Employees, advisory board members or commissioners are not required to report lands developed and occupied for a personal residence.

(4) **Creditors.** Debts owed to business entities and nonprofit organizations. Employees, advisory board members or commissioners are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short-term debts for current and ordinary household and living expenses.

(c) **Statement certification, and, if applicable, a listing of exceptions.**

(1) The statement will provide for a signed certification by the employee, advisory board member or Commissioner that to the best of his or her knowledge:

(A) None of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions by the employee, advisory board member or commissioner as part ofthe certificate, and

(B) The information shown on the statement is true, correct, and complete.

(2) An employee, advisory board member or commissioner is expected to:

(A) Have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment, and the outside employment of the spouse and other covered relatives, and

(B) Be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee certification portion of the form must provide enough information for the Director of the Department or the Governor's Office, Director of Appointment, for Commission members, to determine the existence of a direct and indirect financial interest. Accordingly, the exceptions should:

(A) List the financial interests;

(B) Show the number of shares, estimated value, or annual income of the financial interests; and

(C) Include any other information which the employee, advisory board member or commissioner believes should be considered in determining whether or not the interest represents a prohibited interest.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in Section 460:20-5-6(a).

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99; Amended at 18 Ok Reg 3202, eff 7-26-01]

### 460:20-5-11. Gifts and gratuities

(a) Except as provided in Subsection (b) of this Section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a coal company which:

(1) Conducts or is seeking to conduct, operations or activities that are regulated by the Department; or

(2) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions in Subsection (a) of this Section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

(1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and

(2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.

(c) Employees found guilty of violating the provisions of this Section will be subject to administrative remedies in accordance with existing or adopted State regulations or policies.

**460:20-5-12. Resolving prohibited interests**

(a) Actions to be taken by the Director;

(1) Remedial action to effect resolution. If any employee has a prohibited financial interest, the Director shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action may include:

(A) Reassignment of the employee to a position which performs no function or duty under the Act, or

(B) Divestiture of the prohibited financial interest, or

(C) Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

(3) Reports of noncompliance. If 90 days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and this Chapter, the Director shall report the facts of the situation to the Director of OSM who shall determine whether action to impose the penalties prescribed by the Act should be initiated. The report to the Director of OSM shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director of OSM's determination, including a statement of actions being taken at the time the report is made.

(b) Actions to be taken by the Director of OSM:

(1) Remedial action to effect resolution. Violations of the regulations in this subchapter by the Director will be cause for remedial action by the Governor of the State or other appropriate State official based on recommendations from the Director of OSM on behalf of the Secretary. The Governor or other appropriate State official shall promptly advise the Director that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action should be consistent with the procedures prescribed for other State employees by Section 460:20-5-12(a)(2).

(3) Reports of noncompliance.

(A) If 90 days after the Director is notified to take remedial action the Governor or other appropriate State official notifies the Director of OSM that the Director is not in compliance with the Act and this Chapter, the Director of OSM shall report the facts of the situation to the Secretary who shall determine whether the action to impose the penalties prescribed by the Act, or to impose the eligibility restrictions prescribed by Section 460:20-5-1, should be initiated.

(B) Within 30 days of receipt of a noncompliance report from the Director under Section 460:20-5-12(a)(3), the Director of OSM shall notify the Director and the employee involved of additional

action to be taken. Actions which the Director of OSM may take include but are not limited to the granting of additional time for resolution or the initiation of action to impose the penalties prescribed by the Act.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-5-13. Appeals procedures [REVOKED]

[**Source:** Amended at 18 Ok Reg 3202, eff 7-26-01; Revoked at 24 Ok Reg 2922, eff 9-17-07]

### 460:20-5-14. Appeals board [REVOKED]

[**Source:** Revoked at 24 Ok Reg 2922, eff 9-17-07]

## SUBCHAPTER 6. EXEMPTION FOR COAL EXTRACTION INCIDENT TO GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION

### 460:20-6-1. Purpose

(a) This Subchapter establishes the procedures for determining those surface coal mining and reclamation operations which are exempt from the Act and this Chapter because the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction.
(b) This Subchapter exempts the extraction of coal which is incidental to government-financed construction from the requirements of the Act and this Chapter, If that extraction meets specified criteria which ensure that the construction is government-financed and that the extraction of coal is incidental to it.

[**Source:** Added at 12 Ok Reg 115, eff 9-29-94 through 7-14-95 (emergency); Added at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-6-2. Responsibility

(a) The Department of Mines is responsible for enforcing the requirements of this Subchapter.
(b) Any person conducting coal extraction as an incidental part of government-financed construction is responsible for possessing, on the site of the extraction operation, the documentation required by 460:20-6-5.

[**Source:** Added at 12 Ok Reg 115, eff 9-29-94 through 7-14-95 (emergency); Added at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-6-3. Definitions

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

**"Extraction of coal as an incidental part"** means the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of this Subchapter, only that coal 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 coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this Chapter.

**"Government financing agency"** means a Federal, State, county, municipal, or local unit of government, or a department, bureau, agency or office of

the unit which, directly or through another unit of government, finances construction.

**"Government-financed 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.

[**Source:** Added at 12 Ok Reg 115, eff 9-29-94 through 7-14-95 (emergency); Added at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-6-4. Applicability

(a) Coal extraction which is an incidental part of government-financed construction is exempt from the Act and this Chapter.
(b) Any person who conducts or intends to conduct coal extraction which does not satisfy Subsection (a) of this Section shall not proceed until a permit has been obtained from the Department of Mines under the State program.

[**Source:** Added at 12 Ok Reg 115, eff 9-29-94 through 7-14-95 (emergency); Added at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-6-5. Information to be maintained on site

Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, document 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 governing financing.

[**Source:** Added at 12 Ok Reg 115, eff 9-29-94 through 7-14-95 (emergency); Added at 12 Ok Reg 3592, eff 10-12-95]

## SUBCHAPTER 7. AREAS DESIGNATED BY ACT OF CONGRESS AS UNSUITABLE FOR MINING

### 460:20-7-1. Scope

This Subchapter establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be permitted in light of the prohibitions and limitations in 45 O.S. Supp. 1980, Section 783 for those types of operations on certain Federal, public, and private lands.

### 460:20-7-2. Authority

The Department is authorized by Act to prohibit or limit surface coal mining operations on or near private, Federal, and other public lands, except for those operations which existed on August 3, 1977 or were subject to valid existing rights at the time the land came under the protection of 45 O.S. Section 783 and Section 460:20-7-4.

[**Source:** Amended at 19 Ok Reg 2841, eff 8-27-02]

### 460:20-7-3. Definitions

For the purposes of this Subchapter**:**

**"Cemetery"** means any area of land where human bodies are interred. Community or institutional building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"**Community or institutional building**" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health, or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.

**"Occupied dwelling"** means any building that is currently being used on a regular or temporary basis for human habitation**.**

**"Publicly-owned park"** means a public park that is owned by a Federal, State or local governmental entity.

**"Public building"** means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

**"Public park"** means an area or portion of an area dedicated or designated by any Federal, State, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

**"Public road"** means a road**:**

(A) Which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(B) Which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;

(C) For which there is substantial (more than incidental) public use; and

(D) Which meets road construction standards forother public roads of the same classification in the local jurisdiction.

**"Significant forest cover"** means an existing plant community consisting predominantly of trees and other woody vegetation.

**"Significant recreational, timber, economic, or other values incompatible with surface coal mining operations"** means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on off-site areas which could be affected by mining. Those values to beevaluated for their importance include:

(A) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(B) Timber management and silviculture;

(C) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(D) Scenic, historic, archaeologic, esthetic, fish, wildlife, plants or cultural interests.

**"Surface operations and impacts incident to an underground coal mine"** means all activities involved in or related to underground coal mining which are either conducted on thesurface of the land, produce changes in the land surface

or disturb the surface, air, or water resources of the area, including all activities listed in 45 O.S. Section 742.2(49) and the definition of surface coal mining operations appearing in Section 460:20-1-5.

**"Valid existing rights"** means: a set of circumstances under which a person may, subject to the Department's approval, conduct surface coal mining operations on lands where 45 O.S. Section 783 and Section 460:20-7-4 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of 45 O.S. Section 783 and Section 460:20-7-4. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Act and this Chapter.

(A) Property rights demonstration. Except as provided in paragraph (C) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operationsintended. This right must exist at the time that the land came under the protection of 45 O.S. Section 783 and Section 460:20-7-4. Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides **otherwise. If no** applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

(B) Except as provided in paragraph (C) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:

(i) Good faith/all permits standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783. At a minimum, an application must have been submitted for any permit required under this chapter.

(ii) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of Section 460:20-7-4 and 45 O.S. Section 783 when the regulatory authority

approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as:

(I) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783 depend upon use of that land for surface coal mining operations.

(II) The extent to which plans used to obtain financing for the operation before the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783 rely upon use of that land for surface coal mining operations.

(III) The extent to which investments in the operation before the land came under the protection of Section 20-7-4 and 45 O.S. Section 783 rely upon use of that land for surface coal mining operations.

(IV) Whether the land lies within the area identified on the life-of-mine map submitted under Sections 460:20-25-10(3) and 460:20-29-10(3) ofthis Chapter before the land came under the protection of Section 460:20-7-4 of this Chapter.

(C) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by Section.460:20-7-4 or 45 O.S. Section 783 must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in Section 460:20-1-5 of this chapter:

(i) The road existed when the land upon which it is located came under the protection of Section 460:20-7-4 and 45 O.S. Section 783, and the person has a legal right to use the road for surface coal mining operations.

(ii) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

(iii) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783.

(iv) Valid existing rights exist under Paragraphs (A) and (B) of this definition.

(D) "Valid existing rights" does not mean mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights which alone

do not constitute valid existing rights include, but are not limited to coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a State or Federal permit.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99; Amended at 19 Ok Reg 2841, eff 8-27-02]

**460:20-7-4. Areas where mining is prohibited or limited**

No surface coal mining operations shall be conducted on the following lands unless those operations either have valid existing rights, as determined under Section 460:20-7-5, or qualify for the exception for existing operations under Section 460:20-7-4.1:

(1) On any lands within the boundaries of: the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1276(a), or study rivers or study river corridors as established in any guidelines pursuant to that Act, and National Recreation Areas designated by Act of Congress;

(2) On any Federal lands within the boundaries of any national forest; Provided, however, that surface coal mining operations may be permitted on such lands, if the Secretary finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations, and surface operations and impacts are incident to an underground coal mine;

(3) On any lands where the operation would adversely affect any publicly owned park or any place in the National Register of Historic Places, unless jointly approved by the Department and the Federal, State, or local agency with jurisdiction over the park or place;

(4) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except:

(A) Where mine access roads or haulage road join such right-of-way line, or

(B) Where the Department or the appropriate public road authority allows the public road to be relocated, closed, or the area to be affected within 100 feet of such road, after:

(i) Providing public notice and opportunity for a public hearing in accordance with Section 460:20-7-5(d); and

(ii) Making a written finding that the interests of the affected public and landowners will be protected;

(5) Within 300 feet, measured horizontally, of any occupied dwelling, except when:

(A) The owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet; or

(B) The part of the mining operation which is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling;

(6) Within 300 feet, measured horizontally, of any public building, school, church, community or institutional building, or public park; or

(7) Within 100 feet, measured horizontally, of a cemetery; cemeteries may be relocated if authorized by applicable laws or regulations.

[**Source:** Amended at 19 Ok Reg 2841, eff 8-27-02]

**460:20-7-4.1. Exception for existing operations**

The prohibitions and limitations of Section 460:20-7-4 do not apply to surface coal mining operations for which a valid permit, issued under this chapter, exists when the land comes under the protection of Section 460:20-7-4. This exception applies only to lands within the permit area as it exists when the land comes under the protection of Section 460:20-7-4.

[**Source:** Added at 19 Ok Reg 2841, eff 8-27-02]

**460:20-7-5. Procedures**

(a) Upon receipt of an administratively complete application for a permit for a surface coal mining operation and reclamation operation permit, or an administratively complete application for revision of the boundaries of a surface coal mining operation permit, the Department shall review the application to determine whether surface coal mining operations are limited or prohibited under Section 460:20-7-4 on lands which would be disturbed by the proposed operations.

(b) **Rights determination.**

(1) The Department shall reject any portion of the application that would locate surface coal mining operations on land protected under Section 460:20-7-4, unless:

(A) The site qualifies for the exception for existing operations under Section 20-7-4.1;

(B) A person has valid existing rights for the land, as determined under Section 460:20-7-5(h);

(C) The applicant obtains a waiver or exception from the prohibitions of Section 460:20-7-4 in accordance with 460:20-7-5(c) through 460:20-7-5(e); or

(D) For lands protected by Section 460:20-7-4(3), both the Department and the agency with jurisdiction over the publicly owned park or place in the National register of Historic Places jointly approve the proposed operation in accordance with Subsection (f) of this section.

(2) If the Department is unable to determine whether the proposed operation is located within the boundaries of any of the lands in Section 460:20-7-4(1) or closer than the limits provided in Sections 460:20-7-4(6) and (7), the Department shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State, or local government agency for a determination of clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days in which to respond. The Department, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional 30 days. If no response is received within the 30-day period or within the extended period granted, the Department may make the necessary determination based on the information it has available.

(c) Where the proposed operation would include Federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under Section 460:20-7-4(2), the applicant shall request that

OSM obtain the Secretarial findings required by Section 460:20-7-4(2). Before acting on the application, the Director of OSM shall ensure that the secretary's determination has been received and the findings required by Section 522(e)(2) of the Federal Act [30 U.S.C. 1272 (e)(2)] have been made.

(1) The applicant may submit a request to the Department for a determination before preparing and submitting an application for a permit or boundary revision. The applicant must explain how the proposed operation would not damage the values listed in the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in Section 460:20-7-3. The applicant must include a map andsufficient information about the nature of the proposed operation for the Secretary to make adequately documented findings. OSM may request the applicant provide any addition information that it determines is needed to make the required findings.

(2) When a proposed surface coal mining operation or proposed boundary revision for an existing surface coal mining operation includes Federal lands within a national forest, the Department may not issue the permit or approve the boundary revision beforethe Secretary makes the findings required by Section 460:20-7-4(2).

(d) Where the proposed mining operation is to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (or where the applicant proposes to relocate or close any public road, the Department shall:

(1) Require the applicant to obtain the necessary approvals of the authority with jurisdiction over the public road;

(2) If a public hearing is requested, provide notice in a newspaper of general circulation in the affected locale of a public hearing at least 2 weeks before the hearing.

(3) Provide public comment period and opportunity for a public hearing, at which any member of the public may participate, in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(4) Make a written finding based upon information received from the public hearing within 30 days after completion the hearing, as to whether the interests of the public and affected landowners will be protected. If no hearing was held, the authority must make this finding within 30 days after the end of the public comment period.

(5) Section 460:20-7-5(d) does not apply to:

(A) Lands for which a person has valid existing rights, as determined under Section 460:20-7-5(h).

(B) Lands within the scope of the exception for existing operations in Section 460:20-7-4.1.

(C) Access or haul roads that join a public road, as described in Section 460:20-7-4(4)(A).

(e) Where the surface coal mining operations would be conducted within 300 feet, measured horizontally, from any occupied dwelling. the permit applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to the operations within a closer distance of the dwelling as specified in the waiver. The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicate waiver. The waiver must clearly state that the owner and signator had the legal right to deny mining and knowingly waived that right.

(1) If the permit applicant obtained a valid waiver before August 3, 1977, from the owner of an occupied dwelling to conduct operations within 300 feet of the dwelling, the permit applicant need not submit a new waiver.
(2) If the permit applicant obtains a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if surface coal mining operations have entered the 300-foot zone before the date of purchase.
(3) Section 460:20-7-5(e) does not apply to:
(A) Lands for which a person has valid existing rights, as determined under Section 460:20-7-5(h).
(B) Lands within the scope of the exception for existing operations in Section 460:20-7-4.1.
(C) Access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in Section 460:20-7-4(5)(B).

(f) **Adverse affects.**
(1) Where the Department determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included on the National Register of Historic Places, the Department shall transmit to the Federal, State, or local agency with jurisdiction over the park or place, a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose timely objection will constitute approval. The Department, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days or the extended period granted shall constitute an approval of the proposed permit.
(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.
(3) Paragraphs (1) and (2) of 460:20-7-5(f) do not apply to:
(A) Lands for which a person has valid existing rights, as determined under Section 460:20-7-5(h).
(B) Lands within the scope of the exception for existing operations in Section 460:20-7-4.1.

(g) If the Department determines that the proposed surface coal mining operation is not prohibited under 45 O.S Section 783 and this Subchapter 7, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to Subchapter 9, or 11 of this Chapter.

(h) An applicant must request a valid existing rights determination from OSM for Federal lands protected under 460:20-7-4(1) and (2). An applicant must request a valid existing rights determination from the Department for non-Federal lands protected under 460:20-7-4(1) and for those features protected under 460:20-7-4(3) through (7). The Department must use the Federal definition of valid existing rights at 30 CFR Section 761.5 when making a determination for non-federal lands protected under 460:20-7-4(1) and the definition of valid existing rights at Section 460:20-7-3 when making a determination for those features protected under

460:20-7-4(3) through 460:20-7-4 (7).

(1) An Applicant must request a valid existing rights determination from the appropriate agency under Subsection (h) of this Section if he or she intends to conduct surface coal mining operations on the basis of valid existing rights under Section 460:20-7-4 or wishes to confirm the right to do so. The applicant may submit this request before preparing and submitting an application for a permit or boundary revision for the land. If OSM is the appropriate agency, the applicant must request the determination in accordance with the requirements of the Federal regulations at 30 CFR 761.16. If the Department is the appropriate agency, the applicant must request the determination in accordance with the requirements of Subsection (h) of this Section.

(A) The applicant must provide a property rights demonstration under Paragraph (A) of the definition of valid existing rights in Section 460:20-7-3 if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in Paragraph (B) of the definition of valid existing rights in Section 460:20-7-3. The demonstration must include the following items:

(i) A legal description of the land to which the request pertains.

(ii) Complete documentation of the character and extent of the applicant's current interests in the surface and mineral estate of the land to which the request pertains.

(iii) A complete chain of title for the surface and mineral estate of the land to which the request pertains.

(iv) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.

(v) A description of type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with State property law.

(vi) Complete documentation of the nature and ownership, as of the date that the land came under the protection of 460:20-7-4 and 45 O.S. Section 783, of all property rights for the surface and mineral estates of the land to which the request pertains.

(vii) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.

(viii) If the coal interests have been severed from other property interest, documentation that the owners of other property interests in the land to which the request pertains have been notified and provided reasonable opportunity to comment on the validity of the property right claims.

(ix) Any comments received in response to the notification provided under Paragraph (h)(1)(A)(viii) of this Section.

(B) If the request relies upon the good faith /all permits standard in Paragraph (B)(i) of the definition of valid existing rights in Section

460:20-7-3, the applicant must submit the information required underParagraph (h)(1)(A) of this Section. The applicant must also submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains:

(i) Approval and issuance dates and identification numbers for any permits, licences and authorizations that the applicant obtained or that a predecessor in interest obtained before the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783.

(ii) Application dates and identification numbers for any permits, licences and authorizations that the applicant submitted or that a predecessor in interest submitted before the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783.

(iii) An explanation of any other good faith effort that the applicant made or that a predecessor in interest made to obtain the necessary permits, licences and authorizations as of the date the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783.

(C) If the request relies upon the needed for and adjacent standard in Paragraph (B)(ii) of the definition of valid existing rights in Section 460:20-7-3, the applicant must submit the information required under Paragraph (h)(A)(1) of this Section. In addition, the applicant must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783.

(D) If the request relies upon one of the standards for roads in Paragraphs (C)(i) through (C)(iii) of the definition of valid existing rights in Section 460:20-7-3, the applicant must submit satisfactory documentation that:

(i) The road existed when the land upon which it is located came under the protection of Section 460:20-7-4 and 45 O.S. Section 783, and the applicant has a legal right to use the road for surface coal mining operations;

(ii) A properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783, and, under the document creating the right-or-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right-of-way or easement to conduct surface coal mining operations; or

(iii) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783.

(2) The Department must conduct an initial review to determine whether the request includes all applicable components of the submission requirements of Subsection (h)(1) of this Section. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

(A) If the request does not include all applicable components of the submission requirements of Subsection (h)(1) of this Section, the Department must notify the applicant and establish a reasonable time for submission of the missing information.

(B) When the request includes all applicable components of the submission requirements of Subsection (h)(1) of this Section, the Department must implement the notice and comment requirements of Subsection (h) (3) of this Section.

(C) If the information that the Department requests under Paragraph (h)(2)(A) of this Section is not provided within the time specified or as subsequently extended, the Department shall issue a determination that the applicant has not demonstrated valid existing rights, as provided in Paragraph (h)(6)(C) of this Section.

(3) When the completeness requirements of Subsection (h)(2) of this Section are satisfied, the Department must publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. Alternatively, the Department may require the applicant to publish this notice and provide the Department with a copy of the published notice. Each notice must include:

(A) The location of the land to which the request pertains.

(B) A description of the type of surface coal mining operations planned.

(C) A reference to and brief description of the applicable standard(s) under the definition of valid existing rights in Section 460:20-7-3.

(i) If the request relies upon the good faith/all permits standard or the needed for and adjacent standard in Paragraph (B) of the definition of valid existing rights in Section 460:20-7-3, the notice must also include a description of the property rights that are claimed and the basis for the claim.

(ii) If the request relies upon the standard in Paragraph (C)(1) of the definition of valid existing rights in Section 460:20-7-3, the notice must also include a description C)(i) of the basis for the claim that the road existed when the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783. In addition the notice must include a description of the basis for the claim that the applicant has a legal right to use that road for surface coal mining operations. If the request relies upon the standard in Paragraph(C)(ii) of the definition of valid existing rights in Section 460:20-7-3, the notice must also include a description of the basis for the claim that a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of Section 460:20-7-4 and 45 O.S. Section 783. In addition the

notice must include a description of the basis for the claim that, under the document creating the right-of-way or easement, and under any subsequent conveyance, the applicant has a legal right to use or construct a road across the right-of-way or easement to conduct surface coal mining operations.

(D) If the request relies upon one or more of the standards in Paragraphs (B), (C)(i), and (C)(ii) of the definition of valid existing rights in Section 460:20-7-3, a statement that the Department will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by Paragraph (h)(5) of this Section, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differencesconcerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim.

(E) A description of the procedures that the Department will follow in processing the request.

(F) The closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice.

(G) A statement that interested persons may obtain a 30-day extension of the comment period upon request.

(H) The name and address of the Department's office where a copy of the request is available for public inspection and to which commentsandrequests for extension of the comment period should be sent.

(4) The Department must promptly provide a copy of the notice required under Paragraph (h)(3) of this Section to:

(A) All reasonably locatable owners of surface and mineral estates in the land included in the request.

(B) The owner of the feature causing the land to come under the protection of Section 460:20-7-4, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of Section 460:20-7-4. For example, both the landowner and the State Historic Preservation Officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-Federal lands within the authorized boundaries of a unit of the National Park System.

(5) The letter transmitting the notice required under Paragraph (h)(4) of this Section must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the Department may grant additional time for good cause upon request. The Department need not necessarily consider comments received after the closing date of the comment period.

(6) The Department must review the materials submitted under Paragraph (h)(1) of this Section, comments received under Paragraphs (h)(3) through (h)(5) of this Section, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and

adequate to support a decision on the merits of the request. If not, the Department must notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the Department deems necessary to remedy the inadequacy.

(A) Once the record is complete and adequate, the Department must determine whether the applicant has demonstrated valid existing rights. The decision document must explain how the applicant has or has not satisfied all applicable elements of the definition of valid existing rights in Section 460:20-7-3. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

(B) This paragraph applies only when the applicant's request relies upon one or more of the standards in Paragraphs (B), (C)(i), and (C)(ii) of the definition of valid existing rights in Section 460:20-7-3.

(i) The Department must issue a determination that the applicant has not demonstrated valid existing rights if the property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The Department will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under Paragraph (h)(3) or (h)(5) of this Section.

(ii) If the record indicates disagreement as to the accuracy of the applicant's property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the Department must evaluate the merits of the information in the record and determine whether the applicant has demonstrated that the requisite property rights exist under Paragraph (A), (C)(i), or (C)(ii) of the definition of valid existing rights in Section 460:20-7-3, as appropriate. The Department must then proceed with the decision process under Paragraph (h)(6)(A) of this Section.

(C) The Department must issue a determination that the applicant has not demonstrated valid existing rights if the applicant does not submit information that the Department requests under Paragraph (h)(2)(A) or (h)(6) of this Section within the time specified or as subsequently extended. The Department will make this determination without prejudice, meaning that the applicant may refile a revised request at any time.

(D) After making a determination, the Department must:

(i) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of Section 460:20-7-4, and, when applicable, to the agency with primary

jurisdiction over the feature with respect to the values that caused the land to come under the protection of Section 460:20-7-4.

(ii) Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. Alternatively, the Department may require that the applicant publish this notice and provide a copy of the published notice to the Department.

(7) The Department shall make a copy of the request subject to notice and comment under Subsection (h)(3) of this Section available to the public in the same manner as the Department makes permit applications available to the public under Section 460:20-15-5(d) of this Chapter. In addition, the Department shall make records associated with that request, and any subsequent determination under Subsection (h)(6) of this Section, available to the public in accordance with the requirements and procedures of Section 460:20-57-7 of this Chapter.

(i) A determination by the Department that a person holds or does not hold valid existing rights or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under Sections 460:20-19-2 and 460:20-19-3 of this Chapter.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 19 Ok Reg 2841, eff 8-27-02]

## SUBCHAPTER 9. CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

### 460:20-9-1. Scope

This Subchapter establishes the minimum criteria to be used in determining whether lands should be designated as unsuitable for all or certain types of surface coal mining operations.

### 460:20-9-2. Responsibility

The Department or OSM shall use the criteria in this Subchapter for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

### 460:20-9-3. Definitions

For purposes of this Subchapter:

**"Fragile lands"** means areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and aesthetic features, and areas of recreational value due to high environmental quality and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under 45 O.S. Supp. 1980, Section 783 and Subchapter 7 of the Chapter.

**"Historic lands"** means areas containing historic lands include scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to Native

Americans or religious groups, and properties for which historic designation is pending. Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes. severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology. Renewable resource lands means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

**"Substantial legal and financial commitments in a surface coal mining operation"** means significant investments that have been made on the basis of a long-term coal contract in power plants. railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. Costs of acquiring the coal in place, or the right to mine it alone without other significant investments, as described, above, are not sufficient to constitute substantial legal and financial commitments.

**460:20-9-4. Criteria for designating lands as unsuitable**

(a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the Department determines that reclamation is not technologically and economically feasible under the Act, and this Chapter.

(b) Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will:

(1) Be incompatible with existing State or local land use plans or programs;

(2) Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems;

(3) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(4) Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

**460:20-9-5. Additional criteria**

(a) The Department may establish additional or more stringent criteria for determining whether lands within the State should be designated as unsuitable for coal mining operations. Such criteria shall be approved pursuant to 30 CFR Subchapter C.

(b) Additional criteria will be determined to be more stringent on the basis of whether they provide for greater protection of the public health, safety, and welfare or the environment, such that areas beyond those specified in the criteria of this Subchapter would be designated as unsuitable for surface coal mining operations.

**460:20-9-6. Land exempt from designation as unsuitable for surface coal mining operations**

The requirement of this Subchapter do not apply to:

(1) bands on which surface coal mining operations were being conducted on the date of enactment of the Federal Act;

(2) Lands covered by a permit issued under the Act; or

(3) bands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

**460:20-9-7. Exploration on land designated as unsuitable for surface coal mining operations**

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to Sections 781 and 782 of the Act and this Chapter does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, and this Chapter and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the Department under Subchapter 13 of this Chapter to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

## SUBCHAPTER 11. STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE MINING OPERATIONS

**460:20-11-1. Scope**

This subchapter establishes minimum procedures and standards to be included in the Oklahoma State program for designating non-Federal and non-Indian lands in the state as unsuitable for all or certain types of surface coal mining operations and for terminating designations.

**460:20-11-2. General process requirements**

The Department shall establish a process enabling objective decisions to be made on which, if any, land area of the State are unsuitable for all or certain types of surface coal mining operations. These decisions shall be based on competent, scientifically sound data and other relevant information. This process shall include the requirements listed in this Subchapter.

**460:20-11-3. Petitions**

(a) **Right to petition.** Any person having an interest which is or may be adversely affected has the right to petition the Department to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

(b) **Designation.** The Department shall determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for designation shall include;

(A) The petitioner's name, address, telephone number, and notarized signature;

(B) Identification of the petitioned area, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area;

(C) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of Subsection (a) of this Section;

(D) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner's interests; and

(E) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations pursuant to Section 781(B) and (C) of the Act, assuming that contemporary mining practices would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area.

(2) The Department may request that the petitioner provide other supplementary information which is readily available.

(c) **Termination.** The Department shall determine what information must be provided by the petitioner to terminate designations of lands as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for termination shall include:

(A) The petitioner's name, address, telephone number, and notarized signature;

(B) Identification of the petitioned area, including its location and size and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area to which the termination petition applies;

(C) An identification of the petitioner's interest which is or may be adversely affected by the designation that the area is unsuitable for surface coal mining operations including a statement demonstrating how the petitioner satisfies the requirements of Subsection (a) of this Section;

(D) Allegations of facts covering all lands for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:

(i) Nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in Section 460:20-9-4(b);

(ii) Reclamation now being technologically and economically feasible if the designation was based on the

criteria found in Section 460:20-9-4(a) of this Chapter; or
(iii) Resources or conditions not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in Section 460:20-9-4(b) of this Chapter;

(2) The Department may request that the petitioner provide other supplementary information which is readily available.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-11-4. Initial processing, recording, and notification**

(a) **Initial processing.**

(1) Within 30 days of receipt of a petition, the Department shall notify the petitioner by certified mail whether or the petition is complete under Section 460:20-11-3(b) or (c). Complete, for a designation or termination petition, means that the information required under Section 460:20-11-3(b) or (c) has been provided.

(2) The Department shall determine whether any identified coal resources exits in the area covered by the petition, without requiring any showing from the petitioner. If the Department finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

(3) If the Department determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of Section 460:20-11-3(a), it shall return the petition to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the Department shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations If the new petition does not contain such material, the Department may choose not to consider the petition and may return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceeding where the facts were considered.

(5) The Department shall notify the person who submits a petition of any application for a permit received which includes any area covered by the petition.

(6) The Department may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such determination, the Department may issue a decision on a complete and accurate permit application and shall inform the petitioner why this Chapter cannot consider the part of the petition pertaining to the proposed permit area.

(b) **Notification.**

(1) Promptly after a petition is received, the Department shall notify the general public of the receipt of the petition by newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in

any official State registry of public notices. The Department shall make copies of the petition available to the public and shall provide copies of the petition to other interested government agencies, interveners, persons with ownership interests of record in the property. Proper notice shall comply with the requirements of applicable State law.

(2) The Department may provide for a hearing or a period of written comments on the completeness of petitions. If a hearing or comment period on the completeness is provided, the Department shall inform interested governmental agencies interveners, persons with an ownership interest of record in the property, and other persons, known to the Department to have an interest in the property of the opportunity to request to participate in such a hearing or to provide written comments. Proper notice to persons with an ownership interest of record in the property shall comply with the requirements of applicable State law. Notice of such hearing shall be made by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State registry of public notices. The Department shall notify the petitioner of such a hearing by certified mail. On the basis of the Departmental review as well as consideration of all comments, the Department shall determine whether the petition is complete.

(3) Promptly after the determination that a petition is complete, the Department shall request submissions from the general public of relevant information by a newspaper advertisement placed once a week for 2 consecutive weeks in the locale of the area covered by the petition, in the newspaper providing the largest circulation in the region of the petitioned area, and in any official State register of public notices.

(c) **Interveners.** Until three days before the Departments holds a hearing under Section 460:20-11-5, any person may intervene in the proceedings by filing allegations of facts describing how the designation determination directly affects the intervener, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervener's name, address, and telephone number.

(d) **Recordkeeping.** Beginning immediately after a complete petition is filed, the Department shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the Department. The Department shall make the record available for public inspection free of charge and for copying at reasonable costs during all normal hours at a central location of the county or multi-county area in which the land petitioned is located, and at the main office of the Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.

[**Source:** Amended at 31 Ok Reg 2095, eff 9-12-14; Amended at 36 Ok Reg 1935, eff 9-14-19]

### 460:20-11-5. Hearing requirements

(a) Within 10 months after receipt of a complete petition, the Department shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The Department may subpoena witnesses as necessary. The hearing may be conducted with cross-examination of expert witnesses only. A record of the hearing shall be made and preserved according to State law. No person shall bear the burden of proof or persuasion. All relevant parts of the data base and inventory system and all public comments

received during the public comment period shall be included in the record and considered by the Department in its decision on the petition.

(1) The Department shall give notice of the date, time, and location of the hearing to:

(A) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(B) The petitioner and the intervenors; and

(C) Any person known by the Department to have a property interest in the petitioned area. Proper notice to persons with an ownership interest of record shall comply with the requirements of applicable State law.

(2) Notice of the hearing shall be sent by certified mail to petitioners and intervenors, and by regular mail to government agencies and property owners involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

(c) The Department shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the public hearing. The consecutive weekly advertisement must begin between 4 and 5 weeks before the scheduled date of the public hearing.

(d) The Department may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations, the Department shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

(f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

**460:20-11-6. Decision**

(a) In reaching its decision, the Department shall use:

(1) The information contained in the data base and inventory system;

(2) Information provided by other governmental agencies;

(3) The detailed statement when it is prepared under Section 460:20-11-5(e); and

(4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the Department including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The Department shall simultaneously send the decision by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the proceeding.

(c) The decision of the Department with respect to a petition, or the failure of the Department to act within the time limits set forth in this Section, shall be subject to judicial review by a court of competent jurisdiction in accordance with the Section 787 of the Act and Section 460:20-19-3 of this Chapter. All relevant portions of the data base, inventory system, and public comments received during the public comment period set by the Department shall be considered and included in the record of the administrative proceeding.

**460:20-11-7. Database and inventory system requirements**

(a) The Department shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The Department shall include in the system information relevant to the criteria in Section 460:20-9-4 of this Chapter, including, but not limited to, information received from the U.S. Fish and Wildlife Service, the State Historic Preservation Officer, and the agency administering Section 127 of the Clean Air Act, as amended (42 U.S.C. 7470 et seq.).

(c) The Department shall add to the data base and inventory system information–

(1) On potential coal resources of Oklahoma, demand for those resources, the environment, the economy, and the supply of coal, sufficient to enable the Department to prepare the statements required by Section 460:20-11-5(e); and

(2) That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

**460:20-11-8. Public information**

The Department shall:

(1) Make the information in the data base and inventory system developed under Section 460:20-11-7 available to the public for inspection free of charge and for copying at reasonable cost, except that specific information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the Department determines that the disclosure of such information would create a risk of destruction or harm to such properties.

(2) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

**460:20-11-9. Department responsibility for implementation**

(a) The Department shall not issue permits which are inconsistent with designations made pursuant to Subchapters 7, 9, or 11 of this Chapter.

(b) The Department shall maintain a map or other unified and cumulative record of areas designated unsuitable for all or certain types of surface coal mining operation.

(c) The Department shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

## SUBCHAPTER 13. GENERAL REQUIREMENTS FOR COAL EXPLORATION OPERATIONS

**460:20-13-1. Scope**

This Subchapter establishes the minimum requirements for coal exploration procedures. This Subchapter applies to the Department and to any person who conducts or seeks to conduct coal exploration outside of the permit area.

**460:20-13-2. Objectives**

The objectives of this Subchapter are to ensure that coal exploration operations are conducted in a manner to protect the environment and otherwise meet the requirements of the Act, this Chapter, and the regulatory program.

**460:20-13-3. Responsibilities**

(a) It is the responsibility of any person conducting or seeking to conduct coal exploration operations under the State program to comply with the requirements of this Subchapter.

(b) It is the responsibility of the Department to receive notices of intention to explore and applications for approval of exploration, approve or disapprove the applications, and to issue, condition, suspend, or revoke approvals under the State program.

**460:20-13-4. Notice requirements for exploration removing 250 tons of coal or less**

(a) Any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed shall before conducting the exploration, file with the Department a written notice of intention to explore. Exploration which will take place on lands designated as unsuitable for surface coal mining operations under this Chapter, shall be subject to the permitting requirements under Section 460:20-13-5 of this Subchapter. Exploration conducted under a notice of intent shall be subject in the requirements prescribed under Section 460:20-13-6.

(b) The notice shall include–

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the person's representative who will be present at, and responsible for, conducting the exploration activities;

(3) A narrative describing the proposed exploration area or a map at a scale of 1:24,000, or greater, showing the proposed area of exploration and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines;

(4) A statement of the period of intended exploration; and

(5) A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of Subchapter 41 of this Chapter.

**460:20-13-5. Permit requirements for exploration removing more than 250 tons of coal**

(a) **Exploration permit.** Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under Subchapters 7, 9, and 11 of this Chapter shall, before conducting the exploration, submit an application and obtain written approval of the Department in an exploration permit. Such exploration shall be subject to the requirements prescribed under Sections 460:20-13-6 and 460:20-13-7.

(b) **Application information.** Each application for an exploration permit shall contain, at a minimum, the following information:

(1) The name, address, and telephone number of the applicant;
(2) The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities;
(3) A narrative describing the proposed exploration area;
(4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation;
(5) An estimated timetable for conducting and completing each phase of the exploration and reclamation;
(6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount;
(7) A statement of why extraction of more than 250 tons of coal is necessary for exploration;
(8) A description of :

(A) Cultural or historical resources listed on the National Register of Historic Places;
(B) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places;
(C) Known archeological resources located within the proposed exploration area;
(D) Any other information which the Department may require regarding known or unknown historic or archeological resources;

(9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) identified within the proposed exploration area;
(10) A description of the measures to be used to comply with the applicable requirements of Subchapter 41 of this Chapter;
(11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;
(12) A map or maps at a scale of 1:200, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
(13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation;
(14) For any lands listed in Section 460:20-7-4 of this Chapter, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of Section 460:20-7-4 of this Chapter, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the

protection of Section 460:20-7-4 of this Chapter.

(c) **Public notice and opportunity to comment.** Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within such time as the Department may designate, the applicant shall provide public notice of the filing of an administratively complete application with the Department in a newspaper of general circulation in the county of the proposed exploration area;

(2) The public notice shall state the name and address of the person seeking approval, the filing date of the application, the address of the Department where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration;

(3) Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within reasonable time limits;

(d) **Decisions on applications for exploration.**

(1) The Department shall act upon an administratively complete application for a coal exploration permit and any written comments within a reasonable period of time. The approval of a coal exploration permit may be based only on a complete and accurate application;

(2) The Department shall approve a complete and accurate application for a coal exploration permit filed in accordance with this Subchapter if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will:

(A) Be conducted in accordance with this Subchapter, Subchapter 41 of this Chapter, and the applicable provisions of the regulatory program;

(B) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(C) Not adversely affect any cultural or historical resources listened on the National Register of Historic Places, pursuant to the National Historic Preservation Act, as amended (16 U.S.C. Sec. 470 et seq., 1976, Supp. V), unless the proposed exploration has been approved by both the Department and the agency with jurisdiction over such matters;

(D) With respect to exploration activities on any lands protected under Section 460:20-7-4 of this Chapter, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the Department must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of Section 460:20-7-4 of this Chapter, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Section 460:20-7-4 of this Chapter, to comment on whether the finding is appropriate.

(3) Terms and approval issued by the Department shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this Subchapter, Subchapter 41 of this Chapter, and the

regulatory program;

(e) **Notice and hearing.**

(1) The Department shall notify the applicant, the appropriate local government officials, and other commentors on the application, in writing, of its decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. The Department shall place a notice of decision in a local newspaper of general circulation in the locality of the exploration operation;

(2) Any person having an interest which is or may be adversely affected by a decision of the Department pursuant to Paragraph (e)(1) of this Section shall have the opportunity for administrative and judicial review as set forth in Subchapter 19 of this Chapter.

[**Source:** Amended at 19 Ok Reg 2841, eff 8-27-02]

**460:20-13-6. Coal exploration compliance duties**

(a) All coal exploration and reclamation which substantially disturbs the natural land surface or which removes more than 250 tons of coal shall be conducted in accordance with the coal exploration requirements of the Act, this Subchapter, Subchapter 41, and the regulatory program and any conditions on approval for exploration and reclamation imposed by the Department;

(b) Any person who conducts any coal exploration operations in violation of 45 O.S. 1981, Section 745.11, the provisions of this Subchapter, Subchapter 41, the regulatory program or any exploration permit term or condition imposed by the Department shall be subject to the enforcement provisions of 45 O.S. 1981, Section 769, and the inspection and enforcement provisions of this Chapter and the regulatory program.

**460:20-13-7. Requirements for commercial use or sale**

(a) Except as provided under Sections 460:20-13-7(b) and 460:20-1-6(a) (5), any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit shall first obtain a permit to conduct surface coal mining operations for those operations from the Department under Subchapters 15 through 33 of this Chapter.

(b) With the prior written approval of the Department no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the Department. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(1) The name of the testing firm and the locations at which the coal will be tested.

(2) If the coal will be sold directly to, or commercially used directly by the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

(A) the specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;
(B) the amount of coal necessary for the test and why a lesser amount is not sufficient;
(C) a description of the specific tests that will be conducted.

(3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

(4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

**460:20-13-8. Public availability of information**

(a) Except as provided in Subsection(b) of this Section all information submitted to the Department under this Subchapter shall be made available for public inspection and copying at the offices of the Department.

(b)

(1) The Department shall not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the Department determines that the information is confidential.

(2) The Department shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(c) Information requested to be held as confidential under this Section shall not be made publicly available until notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

**460:20-13-9. Bonding requirements**

Any coal exploration activities which either removes more that 250 tons of coal or which substantially disturbs the land surface shall file a minimum bond of $10,000 with the Department.

## SUBCHAPTER 15. REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

**460:20-15-1. Scope and purpose**

This Suchapter provides minimum requirements for permits and permit processing and covers obtaining and reviewing permits; coordinating with other laws; public participation; permit decision and notification; permit conditions; and permit term and right of renewal.

**460:20-15-2. Definitions [REVOKED]**

[**Source:** Revoked at 27 Ok Reg 2558, eff 7-25-10]

**460:20-15-3. Requirements to obtain permits**

On or after 8 months from the date on which a regulatory program is approved by the Secretary, no person shall engage in or carry out on non-Federal or non-Indian lands within the State any surface coal mining and reclamation operations unless that person has first obtained a valid permit issued by the Department under an approved regulatory program. A person conducting surface coal mining operations under a permit issued by the Department in accordance with the requirements of Section 502 of the Federal Act, may conduct these operations if all of the following conditions are present:

(1) Timely and complete application for a permit under the permanent regulatory program has been made to the Department in accordance with the provisions of the Act, the permitting regulations, and the regulatory program;

(2) The Department has not yet rendered an initial decision with respect to such application; and

(3) The operations are conducted in compliance with all terms and conditions of the interim permit, the requirements of the Federal Act, Parts 710, 715, 716, 717 of the initial regulatory program and the State statutes and regulations. No new initial program permits may be issued after the effective date of a State program unless the application was received prior to such date.

**460:20-15-4. Regulatory coordination with requirements under other laws**

Each regulatory program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Bald Eagle protection Act, as amended (16 U.S.C. 668a) , along with all state, federal, and local permitting and licencing requirements; for federal programs only, the Archeological and Historic Preservation act of 1974 (16 U.S.C. 469 et seq.); and the Archaeological resources Protection Act of 1979 (16 U.S.C.470a et seq.) where Federal and Indian lands covered by that Act are involved.

[**Source:** Amended at 18 Ok Reg 3202, eff 7-26-01]

**460:20-15-5. Public participation in permit processing**

(a) **Filing and public notice.**

(1) Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under Section 460:20-17-3, or renewal of a permit under Section460:20-17-4, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for 4 consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the Department. The advertisement shall contain, at a minimum, the following:

(A) The name and business address of the applicant.

(B) A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and 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. If a map is used, it shall indicate the north direction.

(C) The location where a copy of the application is available for public inspection.

(D) The name and address of the Department where written comments, objections, or requests for informal conferences on the application may be submitted under Subsections (b) and (c) of this Section.

(E) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular Suchapter of the road in accordance with Section 460:20-7-5(d) of this Chapter, a concise statement describing the public road, the particular Suchapter to be relocated or closed, and the approximate timing and duration of the relocation or closing.

(F) If the application includes a request for an experimental practice under Section 460:20-33-3, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

(2) The applicant shall make an application for a permit, significant revision under Section 460:20-17-3, or renewal of a permit under Section 460:20-17-4 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the mining is proposed to occur, or an accessible public office approved by the Department. This copy of the application need not include confidential information exempt from disclosure under Subsection (d) of this Section. The application required by this Subsection shall be filed by the first date of newspaper advertisement of the application. The applicant shall file any changes to the application with the public office at the same time the change is submitted to the Department.

(3) Upon receipt of an administratively complete application for a permit, a significant revision to a permit under Section 460:20-17-3, or a renewal of a permit under Section 460:20-17-4, the Department shall issue written notification indicating the applicant's intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification shall be sent to–

(A) Local governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

(B) All Federal or State governmental agencies with authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are Suchapter of the permit coordinating process developed in accordance with Section 503(a) (6) or 504(h) of the Federal Act, or Section 460:20-15-4 of this Chapter; or those agencies with an interest in the proposed operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of

Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, and the historic preservation officer.

(b) **Comments and objections on permit applications.**

(1) Within a reasonable time established by the Department, written comments or objections on an application for a permit, significant revision to a permit under Section 460:20-17-3, or renewal of a permit under Section 460:20-17-4 may be submitted to the Department by public entities notified under (a) (3) of this Section with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

(2) Written objections to an application for a permit, significant revision to a permit under Section 460:20-17-3, or renewal of a permit under Section 460:20-17-4 may be submitted to the Department by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any Federal, State, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by Subsection (a) of this Section.

(3) The Department shall, upon receipt of such written comments or objections–

(A) Transmit a copy of the comments or objections to the applicants; and

(B) File a copy for public inspection at the same public office where the application is filed.

(c) **Informal conferences.**

(1) Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a head of a Federal, State, or local government agency, may request in writing that the Department hold an informal conference on the application for a permit, significant revision to a permit under Section 460:20-17-3, or renewal of a permit under Section 460:20-17-4. The request shall–

(A) Briefly summarize the issues to be raised by the requestor at the conference:

(B) State whether the requestor desires to have the conference conducted in the locality of the proposed operation; and

(C) Be filed with the Department no later than 30 days after the last publication of the newspaper advertisement required under Subsection (a) of this Section.

(D) 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 record shall be made of the conference, unless waived by all the parties. 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 pursuant to these Regulations.

(2) Except as provided in (c) (3) of this Section, if an informal conference is requested in accordance with (c) (1) of this Section, the Department shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:

(A) If requested under (c) (1) (B) of this Section, it shall be held in the locality of the proposed surface coal mining and reclamation operation.
(B) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the Department in a newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least 2 weeks before the scheduled conference.
(C) If requested in writing by a conference requestor at a reasonable time before the conference, the Department may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(3) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.
(4) Informal conferences held in accordance with this Section may be used by the Department as the public hearing required under Section 460:20-7-5(d) of this Chapter on proposed relocation or closing of public roads.

(d) **Public availability of permit applications.**

(1) **General availability.** Except as provided in (d) (2) or (d) (3) of this Section, all applications for permits; revisions; renewals; and transfers, assignments or sales of permit rights on file with the Department shall be available, at reasonable times, for public inspection and copying.
(2) **Limited availability.** Except as provided in (d) (3) (A) of this Section, information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. Information subject to this Paragraph shall be made available to the public when such information is required to be on public file pursuant to State law.
(3) **Confidentiality.** The Department shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to–

(A) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;
(B) Information required under Section 508 of the Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;
(C) Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

## 460:20-15-6. Review of permit applications [REVOKED]

[**Source:** Amended at 18 Ok Reg 3202, eff 7-26-01; Revoked at 27 Ok Reg 2558, eff 7-25-10]

**460:20-15-6.1. Review of permit applications**

(a) The Department will review an application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the Department, either granting, requiring modification of, or denying the application. If an informal conference is held under 460:20-15-5(c), the decision will be made within 60 days of the close of the conference.

(b) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all the requirements of the regulatory program.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

**460:20-15-6.2. General provisions for review of permit application information and entry of information into AVS**

(a) Based on an administratively complete application, the Department shall undertake the reviews required under Sections 460:20-15-6.3 through 460:20-15-6.5 of this Subchapter.

(b) The Department will enter into AVS:

(1) The information required under Sections 460:20-23-2.2 through 20-23-2.4 of this Chapter.

(2) The information required under Section 460:20-15-6.8 of this Subchapter pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired.

(c) The Department must update the information referred to in paragraph (b) of this Section in AVS upon our verification of any additional information submitted or discovered during the permit application review.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

**460:20-15-6.3. Review of applicant, operator, and ownership and control information**

(a) The Department will rely upon the information that the applicant is required to submit under Section 460:20-15-6.5, information from AVS, and any other available information, to review the applicant's and its operator's organizational structure and ownership or control relationships.

(b) The Department must conduct the review required under paragraph (a) of this Section before making a permit eligibility determination under 460:20-15-6.6 of this Subchapter.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

**460:20-15-6.4. Review of permit history**

(a) The Department will rely upon the permit history information the applicant submits under Section 460:20-15-6.6, information from AVS, and any other available information to review the applicant's and its operator's permit histories. The Department must conduct this review before making a permit eligibility determination under 460:20-15-6.6 of this Subchapter.

(b) The Department will also determine if the applicant or its operator have previous mining experience.

(c) If the applicant or its operator does not have any previous mining experience, the Department may conduct an additional review under Section 460:20-17-2.1(f)

of this Chapter. The purpose of this review is to determine if someone else with mining experience controls the mining operation.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-6.5. Review of compliance history

(a) The Department will rely upon the violation information supplied by the applicant under Section 460:20-15-6.8 of this Subchapter, a report from AVS, and any other available information to review histories of compliance with the Act or the applicable Department regulations, and any other applicable air or water quality laws, for:

(1) The applicant;
(2) Its operator;
(3) Operations owned or controlled by the Applicant; and
(4) Operations owner or controlled by the Applicant's operator.

(b) The Department must conduct the review required under paragraph (a) of this section before making a permit eligibility determination under Section 460:20-15-6.6 of this Subchapter.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-6.6. Permit eligibility determination

Based on the reviews required under Sections 460:20-15-6.3 through 460:20-15-6.5, of this Subchapter, the Department will determine whether the applicant is eligible for a permit under Section 745.9 of the Act.

(1) Except as provided in Sections 460:20-15-6.7 and 460:20-15-6.8 of this Subchapter, the Applicant is not eligible for a permit if the Department finds that any surface coal mining operation in which:

(A) The Applicant directly owns or controls has an unabated or uncorrected violation; or

(B) The Applicant indirectly controls has an unabated or uncorrected violation, and the Applicant's control was established, or the violation was cited after November 2, 1988.

(C) The Applicant's Operator indirectly controls has an unabated or uncorrected violation, and the Applicant's control was established, or the violation was cited after November 2, 1988.

(2) The Department will not issue the Applicant a permit if the Applicant or its Operator is permanently ineligible to receive a permit Section 460:20-15-6.5 of this Subchapter.

(3) After the Department approves a permit under Section 460:20-15-6.9 of this Subchapter, the Department will not issue the permit until Applicant complies with the information update and certification requirement of Section 460:20-23-2.1 of this Chapter. After the Applicant completes that requirement, the Department will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect Applicant's permit eligibility under paragraphs (a) and (b) of this section. The Department will request this report no more than five business days before permit issuance under Section 460:20-15-8, of this Subchapter.

(4) If the Applicant is ineligible for a permit under this section, the Department will notify the Applicant in writing of its decision. The notice will tell the Applicant why it is ineligible and include notice of its right to administrative review under Subchapter 460:20-19, of this Chapter and

OAC 460:2, the Department's Rules Of Practice And Procedure For The Coal Reclamation Act Of 1979.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-6.7. Unanticipated events or conditions at remining sites

(a) The applicant is eligible for a permit under OAC 460:20-15-6.6 if an unabated violation:

(1) Occurred after October 24, 1992; and

(2) Resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the applicant.

(b) For permits issued under OAC 460:20-33-12, an event or condition is presumed to be unanticipated for the purpose of this section if it:

(1) Arose after permit issuance;

(2) Was related to prior mining; and

(3) Was not identified in the permit application.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10; Amended at 31 Ok Reg 2101, eff 9-12-14]

### 460:20-15-6.8. Eligibility for provisionally issued permits

(a) This section applies to the Applicant which owns or controls a surface coal mining and reclamation operation with:

(1) A notice of violation issued under OAC 460:20-59-4 of this Chapter for which the abatement period has not yet expired; or

(2) A violation that is unabated or uncorrected beyond the abatement or correction period.

(b) The Department will find the Applicant eligible for a provisionally issued permit under this section if Applicant demonstrates that one or more of the following circumstances exists with respect to all violations listed in paragraph (a) of this Section:

(1) For violations meeting the criteria of paragraph (a)(1) of this Section, Applicant certifies that the violation is being abated to the satisfaction of the Department, and the Department possesses no evidence to the contrary.

(2) As applicable, the Applicant, its Operator, and operations that the Applicant or its Operator own or control are in compliance with the terms of any abatement plan (or, for delinquent fees or penalties, a payment schedule) approved by the regulatory agency with jurisdiction over the violation.

(3) The Applicant is pursuing a good faith:

(A) Challenge to all pertinent ownership or control listings or findings under Sections 460:20-15-10.2 through 460:20-15-14.1 of this Subchapter; or

(B) Administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

(4) The violation is the subject of a good faith administrative or judicial appeal contesting the validity of the violation, unless there is an initial judicial decision affirming the violation and that decision remains in force.

(c) The Department will consider a provisionally issued permit to be improvidently issued, and must immediately initiate procedures under Sections 460:20-15-9.2 and 460:20-15-10.1 of this Subchapter, to suspend or rescind that permit, if:

(1) Violations included in paragraph (b)(1) of this Section are not abated within the specified abatement period;
(2) The Applicant, its Operator, or operations that the Applicant or its Operator owns or controls does not comply with the terms of an abatement plan or payment schedule mentioned in paragraph (b)(2) of this Section;
(3) In the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in paragraph (b)(3) or (4) of this Section affirms the validity of the violation or the ownership or control listing or finding; or
(4) The initial judicial review decision referenced in paragraph (b)(3)(B) or (4) of this Section affirms the validity of the violation or the ownership or control listing or finding.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

**460:20-15-6.9. Written findings for permit application approval**

No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

(1) The application is complete and accurate and the Applicant has complied with all requirements of the Act and this Chapter.
(2) The Applicant has demonstrated that reclamation as required by the Act and this Chapter can be accomplished under the reclamation plan contained in the permit application.
(3) The proposed permit area is:
(A) Not within an area under study or administrative proceedings under a petition, filed pursuant to Subchapter 11 of this Chapter, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, it has made substantial legal and financial commitments in relation to the operation covered by the permit application; or
(B) Not within an area designated as unsuitable for mining pursuant to Subchapters 9, and 11 of this Chapter or subject to the prohibitions or limitations of Sections 460:20-7-4 and 460:20-7-5 of this Chapter.
(4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Department the documentation required under Section 460:20-23-4(b) of this Chapter.
(5) The Department has made an assessment of the probably cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.
(6) The Applicant has demonstrated that any existing structure will comply with Section 460:20-3-6(d) and the applicable performance standards of the initial regulatory program or of this Chapter.
(7) The Applicant has paid all required reclamation fees from previous and existing operations.

(8) The Applicant has satisfied the applicable requirements of Subchapter 33 of this Chapter.
(9) The Applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of Sections 460:20-43-43(d) or 460:20-45-43(d) of this Chapter.
(10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
(11) The Department has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Department has determined that no additional protection measures are necessary.
(12) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of Sections 460:20-43-41 or 460:20-45-41 of this Chapter, the site of the operation is a previously mined area as defined in Section 460:20-3-5 of this Chapter. (13) For permits to be issued under Section 460:20-33-12 of this Chapter, the permit application must contain:

(A) Lands eligible for remining;
(B) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and
(C) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-6.10. Performance bond submittal

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 provisions of Subchapter 37 of this Chapter.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-7. Permit conditions

Each permit issued by the Department shall be subject to the following conditions:

(1) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to Subchapter 37 of this Chapter.
(2) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the Department otherwise directs in the permit.

(3) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Act, and the requirements of the regulatory program.
(4) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Department of Mines to:
(A) Have the right of entry provided for in Sections 460:20-57-3 and 460:20-57-4 of this Chapter; and
(B) Be accompanied by private persons for the purpose of conducting an inspection in accordance with Subchapter 57 of this Chapter, when the inspection is in response to an alleged violation reported to the Department by the private person.
(5) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance 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 noncompliance and the results of the 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.
(6) As applicable, the permittee shall comply with Section 460:20-3-6(d) and the initial regulatory program or the performance standards of this Chapter for compliance, modification, or abandonment of existing structures.
(7) The operator shall pay all required reclamation fees for coal produced under the permit for sale, transfer, or use.
(8) Within thirty days after a cessation order is issued under Section 460:20-59-3 of this Chapter, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect the permittee shall either submit to the Department the following information, current to the date the cessation order was issued, or notify the Department in writing that there has been no change since the immediately preceding submittal of such information:
(A) Any new information needed to correct or update the information previously submitted to the Department by the permittee under Section 460:20-23-2(c) of this Chapter; or
(B) If not previously submitted, the information required from a permit applicant by Section 460:20-23-2(c) of this Chapter.

[**Source:** Amended at 13 Ok Reg 3495, eff 8-26-96; Amended at 15 Ok Reg 3969, eff 8-28-98]

### 460:20-15-8. Permit issuance and right of renewal

(a) **Decision.** If the application is approved, the permit shall be issued upon submittal of a performance bond in accordance with these rules and regulations. If the application is disapproved, specific reasons therefore shall be set forth in the notification required by Subsection (b) of this Section.
(b) **Notification.** The Department shall issue written notification of the decision to the following persons and entities:

(1) The applicant, each person who files comments or objections to the permit application, and each party to an informal conference.
(2) The local government officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land.
(3) The local OSM office.

(c) **Permit term.** Each permit shall be issued for a fixed term of 5 years or less.

(d) **Right of renewal.** Permit application approval shall apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with Subsection (a) of this Section shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with Section 460:20-17-4.

(e) **Initiation of operations.**

(1) A permit shall terminate if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.
(2) The Department may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if:
(A) Litigation precludes the commencement or threatens substantial economic loss to the permittee; or
(B) There are conditions beyond the control and without the fault or negligence of the permittee.
(3) With respect to coal to be mined for use in a synthetic- fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic-fuel or generating facility is initiated.
(4) Extensions of time granted by the Department under this Paragraph shall be specifically set forth in the permit, and notice of the extension shall be made public by the Department.

### 460:20-15-9. Improvidently issued permits: General procedures [REVOKED]

[**Source:** Revoked at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-9.1. Initial review and finding requirements for improvidently issued permits

(a) If the Department has reason to believe that it improvidently issued a permit to the permittee, the Department must review the circumstances under which the permit was issued. The Department will make a preliminary finding that the permit was improvidently issued if, under the permit eligibility criteria of the applicable regulations implementing Section 745.9 of the Act in effect at the time of permit issuance, the permit should not have been issued because permittee or its operator owned or controlled a surface coal mining and reclamation operation with an unabated or uncorrected violation.

(b) The Department will make a finding under paragraph (a) of this Section only if the permittee or its operator:

(1) Continue to own or control the operation with the unabated or uncorrected violation;
(2) The violation remains unabated or uncorrected; and

(3) The violation would cause permittee to be ineligible under the permit eligibility criteria in the current regulations.

(c) When the Department makes a preliminary finding under paragraph (a) of this Section, it must serve permittee with a written notice of the preliminary finding, which must be based on evidence sufficient to establish a prima facie case that the permit was improvidently issued.

(d) Within 30 days of receiving a notice under paragraph (c) of this Section, the permittee may challenge the preliminary finding by providing the Department with evidence as to why the permit was not improvidently issued under the criteria in paragraphs (a) and (b) of this Section.

(e) The provisions of Sections 460:20-15-10.2 through 460:20-15-14.1 of this Chapter, apply when a challenge under paragraph (d) of this Section concerns a preliminary finding under paragraphs (a) and (b)(1) of this Section that permittee or its operator currently own or control, or owned or controlled, a surface coal mining operation.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-9.2. Notice requirements for improvidently issued permits

(a) The Department must serve the permittee with a written notice of proposed suspension or rescission, together with a statement of the reasons for the proposed suspension of rescission, if:

(1) After considering any evidence submitted under OAC 460:20-15-9.1(d), the Department finds that a permit was improvidently issued under the criteria in paragraphs (a) and (b) of 460:20-15-9.1 of the Section; or

(2) The permit was provisionally issued under 460:20-15-6.8(b) of this Subchapter part and one or more of the conditions in 460:20-15-6.8(c)(1) through (c)(4) exists;

(b) If the Department proposes to suspend the permit, it will provide 60 days notice;

(c) If the Department proposes to rescind the permit, it will provide 120 days notice;

(d) If the Permittee wishes to appeal the notice, it must do so in accordance with the OAC 460:2, the Department's Rules of Practice And Procedure For The Coal Reclamation Act Of 1979;

(e) After the Department serves the Permittee with a notice of proposed suspension or rescission under this Section, it will take action under Section 460:20-15-10.1 of this Subchapter;

(f) The regulations for service in Section 460:20-59-6 of this Chapter will govern service;

(g) The times specified in paragraphs (b) and (c) of this section will apply unless the Permittee obtains temporary relief under Chapter 2, Rules Of Practice And Procedures For The Coal Reclamation Act Of 1979.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-10. Improvidently issued permits: Rescission procedures [REVOKED]

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95; Revoked at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-10.1. Suspension or rescission requirements for improvidently issued permits

(a) Except as provided in paragraph (b) of this Section, the Department must suspend or rescind the permit upon expiration of the time specified in Section 460:20-15-9.2(b) or (c) in this Subchapter unless permittee submits evidence and the Department finds that:

(1) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

(2) The permittee or its operator no longer owns or controls the relevant operation;

(3) The Department's finding for suspension or rescission was in error;

(4) The violation is the subject of a good faith administrative or judicial appeal (unless there is an initial judicial decision affirming the violation, and that decision remains in force);

(5) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or

(6) The permittee is pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding (unless there is an initial judicial decision affirming the listing or finding, and that decision remains in force).

(b) If the permittee has requested administrative review of a notice of proposed suspension or rescission under Section 460:20-15-9.2(e) of this Subchapter, the Department will not suspend or rescind the permit unless and until the Department's Decision that the permit was improvidently issued is affirmed.

(c) When the Department suspends or rescinds the permit under this section, it must:

(1) Issue the permittee a written notice requiring it to cease all surface coal mining operations under the permit and

(2) Post the notice at the Department field office closest to the permit area.

(d) If the Department suspends or rescinds the permit under this section, the Applicant or Operator may request administrative review of the notice under the procedures of 460:2, the Rules of Practice and Procedure for the Coal Reclamation Act.

(e) Any Applicant or Operator who requested an administrative review under paragraph (d) of this section, and who is still adversely affected or aggrieved by the decision of the hearing authority, may request judicial review under Section 460:20-19-3 and 75 O.S., Section 318 et seq.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10; Amended at 31 Ok Reg 2101, eff 9-12-14; Amended at 36 Ok Reg 1935, eff 9-14-19]

**460:20-15-10.2. Who may challenge ownership or control listings and findings**

A listing or finding of ownership or control may be challenged using the provisions under Sections 460:20-15-13.1 and 460:20-15-14.1, of this Subchapter if the challenger is:

(1) Listed in a permit application orAVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof;

(2) Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under Sections 460:20-15-9.1 or 460:20-17-2.1; of this Chapter or

(3) An Applicant or Permittee affected by an ownership or control listing or finding.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

**460:20-15-11. Verification of ownership or control application information**

(a) **Prior review.** In accordance with Section 460:20-15-6 (c) (1) of this Subchapter, prior to the issuance of a permit, the Department shall review the information in the application provided pursuant to Section 460:20-23-2 of this Chapter to determine that such information, including the identification of the operator and all owners and controllers of the operator, is complete and accurate. In making such determination, the Department shall compare the information provided in the application with information from other reasonable available sources, including:

(1) Manual data sources within Oklahoma including:

(A) The Department's inspection and enforcement records; and

(B) The state incorporating records or tax records, to the extent they contain information concerning ownership or control links; and

(2) Automated data sources, including:

(A) The Department's own computer systems; and

(B) The Applicant Violator System (AVS)

(b) **Application inquiry.** If it appears from the information provided in the application pursuant to Section 460:20-23-3(c) through (d) of this Chapter that none of the persons identified in the application has had any previous mining experience, the Department shall inquire of the applicant and investigate whether any person other than those identified in the application will own or control the operation (as either an operator or other owner or controller).

(c) **Review results.** If, as a result of the review conducted under paragraphs (a) and (b) of this section, the Department identifies any potential omission, inaccuracy, or inconsistency in the ownership or control information provided in the application, it shall, prior to making a final determination with regard to the application, contact the applicant and require that the matter be resolved through submission of:

(1) An amendment to the application or

(2) A satisfactory explanation which includes credible information sufficient to demonstrate that no actual omission, inaccuracy, or inconsistency exists.

(3) The Department shall also take action in accordance with the provisions of Subchapter 59 of this Chapter where appropriate.

(d) **Review completion.** Upon completion of the review conducted under this section, the Department shall promptly enter into or update all ownership or control information onAVS.

[**Source:** Added at 15 Ok Reg 3969, eff 8-28-98]

**460:20-15-12. Review of ownership or control and violation information**

(a) **Review after verification.** Following the verification ownership or control information pursuant to Section 460:20-15-11(b) of this Subchapter, the Department shall review all reasonably available information concerning violation notices and ownership or control links involving the applicant to determine whether the application can be approved under 460:20-15-6(b) of this Subchapter. Such information shall include:

(1) With respect to ownership or control links involving the applicant, all information obtained under Section 460:20-15-11 of this Subchapter and 460:20-23-3 of this Chapter; and

(2) With respect to violation notices, all information obtained under Section 460:20-23-3 of this Chapter, information obtained from the Office of

Surface Mining, including information shown in the AVS, and information from the Departments's own records concerning violation notices.

(b) **Review disclosures.** If reviews conducted under paragraph (a) of this Section discloses any ownership or control links between the applicant and any person cited in a violation notice, the Department shall:

(1) Notify the applicant and shall refer the applicant to the authority with jurisdiction over said violation; and

(2) Not approve the application unless and until it determines, in accordance with the provisions of Sections 460:20-15-13 and 460:20-15-14 of this Chapter, the following:

(A) That all ownership or control links between the applicant and any person cited in a violation notice are erroneous or have been rebutted, or

(B) That the violation has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of Section 460:20-15-6 (b) (1) of this Section.

(C) Following the Department's decision on the application (including unconditional issuance, conditional issuance, or denial of the permit) or following the applicant's withdrawal of the application, the Department shall promptly enter all relevant information related to such decision or withdrawal into AVS.

[**Source:** Added at 15 Ok Reg 3969, eff 8-28-98]

### 460:20-15-13. Procedures for challenging ownership or control links shown in AVS [REVOKED]

[**Source:** Added at 15 Ok Reg 3969, eff 8-28-98; Amended at 17 Ok Reg 3172, eff 7-28-00; Revoked at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-13.1. How to challenge an owner and controller listing or finding

This Section applies to any person challenging an ownership or control listing or finding.

(1) To challenge an ownership or control listing or finding, a person must submit a written explanation of the basis for the challenge, along with any evidence or explanatory materials it wishes to provide under 460:20-15-14.1(b) of this Subchapter as follows:

(A) If the challenge concerns a federal block in the AVS, the permittee submits the written explanation to OSM;

(B) If the challenge concerns a state block in the AVS not generated by the Department, then the permittee submits the written explanation to the state regulatory authority generating the block;

(C) If the challenge concerns a block in the AVS generated by the Department, the Permittee submits the written explanation to the Department.

(2) The provisions of this Section and the Sections of 460:20-15-14.1 and 460:20-15-14.2 of this Subchapter apply only to challenges to ownership or control listings or findings. The Permittee may not use these provisions to challenge its liability or responsibility under any other provision of the Act or its implementing regulations.

(3) When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit must consult the regulatory authority with

jurisdiction over the violation and theAVS Office to obtain additional information.
(4) The Department, if responsible for deciding a challenge under paragraph (a) of this section, may request an investigation by theAVS Office.
(5) At any time, the permittee or a person listed inAVS as an owner or controller of a surface coal mining operation by OSM, may request an informal explanation from the OSMAVS Office as to the reason it is shown in OSMAVS in an ownership or control capacity. Within 14 days of the request, the OSMAVS Office will provide a response describing why the person challenging is listed in OSMAVS.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-14. Standards for challenging ownership or control links and the status of violations. [REVOKED]

[**Source:** Added at 15 Ok Reg 3969, eff 8-28-98; Amended at 17 Ok Reg 3172, eff 7-28-00; Revoked at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-14.1. Burden of proof for ownership or control challenges

This Section applies to any person who challenges an ownership or control listing or finding.

(1) When challenging a listing of ownership or control, or a finding of ownership or control made under Section 460:20-17-2.1(f) of this Chapter, the person challenging must prove by a preponderance of the evidence that either:

(A) It does not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

(B) It did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.

(2) In meeting the burden of proof, reliable, credible, and substantial evidence and any explanatory materials must be submitted to the Department. The materials presented in connection with the challenge will become part of the permit file, an investigation file, or other public file. If requested, the Department will hold as confidential any information submitted under this paragraph which is not required to be made available to the public under Section 460:20-57-7 of this Chapter.

(3) Materials submitted in response to the requirements of paragraph (2) of this Section include, but are not limited to:

(A) Notarized affidavits containing specific facts concerning the duties that the person challenging performed for the relevant operation, the beginning and ending dates of ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation.

(B) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records

(C) Certified copies of documents filed with or issued by any State, Municipal,or Federal governmental agency.

(D) An opinion of counsel, when supported by:

(i) Evidentiary materials;

(ii) A statement by counsel that he or she is qualified to render the opinion; and
(iii) A statement that counsel has personally and diligently investigated the facts of the matter.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-15-14.2. Written agency decision on challenges to ownership or control listings or findings

(a) Within 60 days of receipt of a challenge under 460:20-15-13.1(a) of this Subchapter, the Department will review and investigate the evidence and explanatory materials submitted and any other reasonably available information bearing on the challenge and issue a written decision. The decision must state whether the challenger owns or controls the relevant surface coal mining operation, or owned or controlled the operation, during the relevant time period.
(b) The Department will promptly provide the challenger with a copy of its decision by either:
(1) Certified mail, return receipt requested; or
(2) Any means consistent with the rules governing service of a summons and complaint under Oklahoma law.
(c) Service of the decision is complete upon delivery and is not incomplete if delivery is refused.
(d) The Department will post all decisions made under this section on AVS.
(e) Any person who receives a written decision under this section, and who wishes to appeal that decision, must exhaust administrative remedies under Chapter 2, the Rules Of Practice And Procedure For The Coal Reclamation Act Of 1979.
(f) Following the written decision or any decision by a reviewing administrative or judicial tribunal, the Department must review the information in AVS to determine if it is consistent with the decision. If it is not, the Department must promptly revise the information in AVS to reflect the decision.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

## SUBCHAPTER 16. PROTECTION OF EMPLOYEES [REVOKED]

### 460:20-16-1. Scope [REVOKED]

[**Source:** Added at 14 Ok Reg 3480, eff 8-11-97; Revoked at 15 Ok Reg 3969, eff 8-28-98]

### 460:20-16-2. Protected activity [REVOKED]

[**Source:** Added at 14 Ok Reg 3480, eff 8-11-97; Revoked at 15 Ok Reg 3969, eff 8-28-98]

### 460:20-16-3. Procedures for filing an application for review of discrimination [REVOKED]

[**Source:** Added at 14 Ok Reg 3480, eff 8-11-97; Revoked at 15 Ok Reg 3969, eff 8-28-98]

### 460:20-16-4. Investigation and conference procedures [REVOKED]

[**Source:** Added at 14 Ok Reg 3480, eff 8-11-97; Revoked at 15 Ok Reg 3969, eff 8-28-98]

### 460:20-16-5. Request for hearing [REVOKED]

[**Source:** Added at 14 Ok Reg 3480, eff 8-11-97; Revoked at 15 Ok Reg 3969, eff 8-28-98]

### 460:20-16-6. Formal adjudicatory proceedings [REVOKED]

[**Source:** Added at 14 Ok Reg 3480, eff 8-11-97; Revoked at 15 Ok Reg 3969, eff 8-28-98]

## SUBCHAPTER 17. REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

### 460:20-17-1. Scope and purpose [REVOKED]

[**Source:** Revoked at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-17-1.1. Scope and purpose

This section provides the requirements for the revision; renewal; transfer, assignment, or sale of permit rights; entering and updating information inAVS following the issuance of a permit; post-permit issuance requirements for regulatory authorities and permittees; and other actions based on ownership, control, and violation information.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-17-2. Department review of permits

(a) The Department shall review each permit issued and outstanding under an approved regulatory program during the term of the permit. This review shall occur not later than the middle of each permit term and as required by Sections 460:20-33-3, 460:20-33-4, 460:20-33-6, and 460:20-33-8.
(b) After this review, or at any time, the Department may by order require reasonable revision or modification of the permit provisions in accordance with Section 460:20-17-3 to ensure compliance with the Federal and the State Acts and this Chapter.
(c) Copies of the decision of the Department shall be sent to the permittee.
(d) Any order of the Department requiring revision or modification of permits shall be based upon written findings and shall be subject to the provision for administrative and judicial review of Subchapter 19 of this Chapter and to the Oklahoma Administrative Procedures Act.
(e) Permits may be suspended or revoked in accordance with Subchapters 57, 59, 61, and 63 of this Chapter.

### 460:20-17-2.1. Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information

(a) For the purposes of future permit eligibility determinations and enforcement actions, the Department must enter intoAVS the following:

(1) Permit records within 30 days after the permit is issued or subsequent changes are made.
(2) Unabated or uncorrected violations within 30 days after the abatement or correction period for a violation expires
(3) Changes to information initially required to be provided by an applicant under460: 20-23-2.2 of this Chapter within 30 days after receiving notice of a change.
(4) Changes in violation status within 30 days after abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

(b) If, at any time, the Department discovers that any person owns or controls an operation with an unabated or uncorrected violation, the Department will determine whether enforcement action is appropriate under Subchapters 59 and 61 of this Chapter. The Department must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.
(c) The Department must serve a preliminary finding of permanent permit ineligibility under Section 745.9 of the Act on an Applicant or Operator, if the criteria in paragraphs (c)(1) and (c) (2) are met. In making a finding under this paragraph, the Department will only consider control relationships and violations which would make, or would have made, an applicant or operator ineligible for a permit under OAC 460:20-15-6.6 of this Chapter The Department must make a preliminary finding of permanent permit ineligibility if it finds that:

(1) An Applicant or Operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under section 745.9 of the Act; and

(2) The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate the Applicant's or Operator's intent not to comply with the Act, its implementing regulations, this Chapter, or the Applicant's or Operator's permit.

(d) The Applicant or Operator may request a hearing on a preliminary finding of permanent permit ineligibility under Chapter 2, Rules Of Practice And Procedure For The Coal Reclamation Act Of 1979.
(e) Entry into the applicant violator system (AVS).

(1) If no hearing is requested, and the time for seeking a hearing has expired, the Department will enter the finding into AVS.

(2) If a hearing is requested, the Department will enter the finding into AVS only if that finding is upheld on administrative appeal.

(f) At any time, the Department may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If the Department identifies such a person, it must issue a written preliminary finding to the person and the Applicant or Permittee describing the nature and extent of ownership or control. The written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.
(g) After the Department issues a written preliminary finding under paragraph (f) of this section, the Department will allow the person subject to the preliminary finding, 30 days in which to submit any information tending to demonstrate the lack of ownership or control. If, after reviewing any information submitted, the Department is persuaded that the Applicant or Operator is not an owner or controller, the Department will serve the Applicant or Operator a written notice to that effect. If, after reviewing any information submitted, the Department still finds that the person subject to the preliminary finding is an owner or controller, or if no information is submitted not within the 30-day period, the Department will issue a written finding and enter its finding into AVS.
(h) If the Applicant or Operator is identified as an owner or controller under paragraph (g) of this Section, a challenge to the finding, using the provisions of 460:20-15-20.2, 460:20-15-13.1, and 460:20-15-14.1 of this Chapter may be made.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

**460:20-17-2.2. Post-permit issuance information requirements for permittees**
(a) Within 30 days after the issuance of a cessation order under Section 460:20-59-3, the Permittee must provide or update all the information required under 460:20-

23-2.2 of this Chapter.
(b) No information is required under paragraph (a) of this section if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.
(c) Within 60 days of any addition, departure, or change in position of any person identified in OAC 460:20-23-2.2 of this Chapter, the Permittee must provide:
(1) The information required under OAC 460:20-23-2.2; and
(2) The date of any departure, addition or change.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

**460:20-17-3. Permit revisions**
(a) **General.** During the term of a permit, the permittee may submit an application to the Department for a revision of the permit. Any revision application to the approved mining or reclamation plan will be subject to review and approval by the Department. During the revision review, the revision will be classified as either:
(1) Major or Significant; or
(2) Minor.
(b) **Application requirements and procedures.** A permittee is required to submit any permit revision applications to the Chief of Technical Services for review. The Technical Service review shall determine:
(1) Whether the permittee has provided all technical and public notice requirement information the Department deems necessary to adequately evaluate and find that the revision meets the requirements of the statutes and of this Chapter; and
(2) Whether the revision application contains any deficiencies. The Department is required to send written notification to the permittee of any deficiencies along with a response date deadline for answering the deficiencies noted. Any deadline extension requests shall be in writing and are subject to the approval of the Chief of Technical Services. Failure of the permittee to file written responses within the required time frames, will result in the denial of the revision application.
(c) **Significant revisions.** A significant revision to the mining or reclamation plan will be subject to the permit application information requirements and procedures of this Subchapter, including notice, public participation, and notice of decision requirements of Sections 460:20-15-5, 460:20-15-8(b)(1) and (3), and 460:20-23-9 prior to approval by the Department and implementation by the permittee.
(d) **Departmental consideration.** The Department will consider any proposed revision to be significant if its implementation could reasonably be expected, in the opinion of the Director, to result in any adverse impact to persons, property, or the environment outside the permit area. Revisions with impacts confined to the permit area will be evaluated on a case by case basis to determine if significant. While consideration will be given to the size, location, type and extent of impact in classifying a revision, the following will typically be considered significant:
(1) Incidental boundary changes;
(2) Hydrology plan changes which could have adverse impacts outside the permit acres, such as:
(A) The addition or relocation of permanent impoundments;
(B) The addition, deletion, or relocation of stream diversions; and
(C) The addition or deletion of acid mine drainage treatment facilities;
(3) The addition of a coal wash plant;

(4) The addition of or changes to a non coal waste storage plan;
(5) Construction or relocation of county roads;
(6) Addition of blasting plans;
(7) Postmining land use changes to residential, industrial or commercial (except for changes involving oil and gas wells and private roads), recreation, or developed water resources as discussed 460:20-27-14(a)(2).
(8) Changes impacting historical or cultural areas, high value wildlife habitat, and parks and public places;
(9) Permanent changes which could have a limiting or adverse effect on the long term future of the land; and
(10) Other changes deemed significant by the Director which affect the landowner and or the public.

(e) **Minor revisions.** The following revisions are typically considered minor revisions:

(1) Changes to pond designs;
(2) Addition or deletion of dewatering pipes on ponds;
(3) Addition, deletion or changes to office facilities, explosive storage areas, temporary haul roads, and coal pads;
(4) Changes to surface and groundwater monitoring plans;
(5) Vegetation changes;
(6) Change of operator without a change of permittee; and
(7) Conversion to incremental bonding or change to bond increments, pursuant to the requirements of Subchapter 37 of this Chapter.

(f) **Criteria for approval.** No application for a permit revision shall be approved unless the application demonstrates and the Department finds that reclamation as required by the Act and the regulatory program can be accomplished, applicable requirements under Section 460:20-15-6 (c) which are pertinent to the revision are met, and the Application for a revision complies with all requirements of the Act and the regulatory program.

(g) **Requests to change permit boundary.** Any extensions to the area covered by the permit, except incidental boundary revision, shall be made by application for a new permit.

(h) **Application decisions.** The Department will make a decision of approval or denial of a revision application within six months of receipt of the application unless the application, or some aspect of the application, is under technical, administrative or judicial review.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 17 Ok Reg 3172, eff 7-28-00]

**460:20-17-4. Permit renewals**

(a) **General.** A valid permit, issued pursuant to an approved regulatory program, shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(b) **Application requirements and procedures.**

(1) An application for renewal of a permit shall be filed with the Department at least 120 days before expiration of the existing permit term.
(2) An application for renewal of a permit shall be in the form required by the
Department and shall include at a minimum:

(A) The name and address of the permittee, the term of the renewal requested, and the permit number or other identifier;

(B) Evidence that a liability insurance policy or adequate self-insurance under Section 460:20-37-17of this Chapter will be provided by the applicant for the proposed period of renewal;
(C) A current bond calculation (less than 60 days old) detailing the costs to reclaim the permit by a third party under the approved worst case scenario and evidence that the performance bond in effect for the operation will continue in full force and effect for any renewals requested, as well as any additional bond required by the Department pursuant to Subchapter 37 of this Chapter;
(D) A copy of the proposed newspaper notice and proof of publication of same, as required by Section 460:20-23-9 of this Chapter; and
(E) Additional revised or updated information required by the Department.

(3) Applications for renewal shall be subject to the requirements of public notification and public participation contained in Sections 460:20-15-5 and 460:20-15-8 (b) of this Chapter.

(4) If an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and subject to the requirements of Section 460:20-17-3.

(c) **Approval process.**

(1) **Criteria for approval.** The Department shall approve a complete and accurate application for permit renewal, unless it finds, in writing that:
(A) The terms and conditions of the existing permit are not being satisfactorily met;
(B) The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards of the Act and the regulatory program;
(C) The requested renewal substantially jeopardizes the operator's continuingability to comply with the Act and the regulatory program on existing permit areas;
(D) The operator has not provided evidence of having liability insurance or self-insurance as required in Section 460:20-37-17 of this Chapter;
(E) The operator has not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the Department might require pursuant to Sub-chapter 37 of this Chapter; or
(F) Additional revised or updated information required by the Department has not been provided by the applicant.

(2) **Burden of proof.** In the determination of whether to approve or deny a renewal of a permit, the burden of proof shall be on the opponents of renewal.

(d) **Renewal term.** Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 460:20-15-8 of this Chapter.

(e) **Notice of decision.** The Department shall send copies of its decision to the applicant, to each person who filed comments or objections on the renewal, to each party to any informal conference held on the permit renewal, and to OSM.

(f) **Administrative and judicial review.** Any person having an interest which is or may be adversely affected by the decision of the Department shall have the right to

administrative and judicial review set forth in Subchapter 19 of this Chapter.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 31 Ok Reg 2095, eff 9-12-14]

**460:20-17-5. Transfer, assignment, or sale of permit rights**

(a) **General.** No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the Department. At its discretion, the Department may allow a prospective successor in interest to engage in surface coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under paragraph (b) of this section, provided that the prospective successor in interest can demonstrate to the satisfaction of the Department that sufficient bond coverage will remain in place.

(b) **Application requirements.** An applicant for approval of the transfer, assignment, or sale of permit rights shall:

(1) Provide the Department with an application for approval of the proposed transfer, assignment, or sale including:

(A) The name and address of the existing permittee and permit number or other identifier;

(B) A brief description of the proposed action requiring approval; and

(C) The legal, financial, compliance, and related information required by Subchapter 23 of this Chapter for the applicant for approval of the transfer, assignment, or sale ofpermit rights.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

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

(c) **Public participation.** Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Department within a time specified by the Department.

(d) **Criteria for approval.** The Department may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor:

(1) Is eligible to receive a permit in accordance with Section 460:20-15-6.6 and 460:20-15-6.8 of this Chapter.

(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee.

(3) Meets any other requirements specified by the Department.

(e) **Notification.**

(1) The Department shall notify the permittee, the successor commenters, and OSM of its findings.

(2) The successor shall immediately provide notice to the Department of the consummation of the transfer, assignment, or sale of permit rights.

(f) **Continued operation under existing permit.** The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing

permit, unless the applicant has obtained a new or revised permit.

[**Source:** Amended at 27 Ok Reg 2558, eff 7-25-10; Amended at 31 Ok Reg 2101, eff 9-12-14; Amended at 36 Ok Reg 1935, eff 9-14-19]

## SUBCHAPTER 19. ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS

### 460:20-19-1. Scope and purpose

This Subchapter provides requirements for administrative and judicial review of decisions on permits.

### 460:20-19-2. 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 exploration required under Subchapter 13 of this Chapter, a permit for surface coal mining and reclamation operations, a permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights, 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 Department shall start the administrative hearing within 30 days of such request. The hearing shall be on the record and adjudicatory in nature. No person who presided at an informal conference under Section 460:20-15-5(c) 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 proceeding, 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 proceeding;

(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; and

(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 Section 745.1 of the Act.

(3) The hearing shall be conducted under the following conditions:

(A) The hearing authority may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

(B) A verbatim record of each public hearing required by this Section shall be made, and a transcript made available on the motion of any party or by order of the hearing authority.

(C) Ex parte contacts between representatives of the parties appearing before the hearing authority and the hearing authority shall be prohibited.

(4) Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal of the decision.

(5) The burden of proof at such hearings shall be on the party seeking to reverse the decision of the Department.

**460:20-19-3. 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) or (c) of this Section if–

(1) The applicant or person is aggrieved by the decision of the hearing authority in the administrative hearing conducted pursuant to Section 460:20-19-2 of this Chapter; or

(2) Either the Department or the hearing authority for administrative review under Section 460:20-19-2 of this Chapter fails to act within applicable time limits specified in the Act, this Chapter, or the regulatory program.

(b) **Judicial review under State programs.** 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 State program the availability of such review shall not be construed to limit the operation of the rights established in Section 774 of the Act.

## SUBCHAPTER 21. GENERAL CONTENT REQUIREMENTS FOR PERMIT APPLICATIONS

**460:20-21-1. Scope**

This Subchapter provides minimum requirements concerning the general content for permit applications under a State program.

**460:20-21-2. Format and contents**

(a) An application shall:

(1) Contain current information, as required by this Subchapter;

(2) Be clear and concise; and

(3) Be filed in the format required by the Department.

(b) If used in the application, referenced materials shall either be provided to the Department by the applicant or be readily available to the Department. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

(c) Applications for permits; revisions; renewals; or transfers, sales, or assignments of permit rights 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.

**460:20-21-3. Reporting of technical data**

(a) All technical data submitted in the application shall be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the

collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.
(b) Technical analyses shall be planned by or under the direction of a professional qualified in the subject to be analyzed.

**460:20-21-4. Maps and plans: General requirements**
(a) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the adjacent area shall clearly show the lands and waters within those areas and be in a scale determined by the Department, but in no event smaller than 1:24,000.
(b) All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the life of operations. At a minimum, distinctions shall be clearly shown among those portions of the life of operations in which surface coal mining operations occurred:

(1) Prior to August 3, 1977;
(2) After August 3, 1977, and prior to either:
(A) May 3, 1978; or
(B) In the case of an applicant or operator which obtained a small operator's exemption in accordance with Subchapter 35 of this Chapter, January 1, 1979;
(3) After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the applicable regulatory program; or
(4) After the estimated date of issuance of a permit by the Department under the approved regulatory program.

[**Source:** Amended at 14 Ok Reg 3496, eff 8-11-97]

**460:20-21-5. Completeness**
An application for a permit to conduct surface coal mining and reclamation operations shall be complete and shall include at a minimum:

(1) For surface mining activities, the information required under Subchapters 23, 25, and 27 of this Chapter, and, as applicable to the operation, Subchapter 33 of this Chapter; and
(2) For underground mining activities, the information required under Subchapters 23, 29, and 31 of this Chapter, and, as applicable to the operation, Subchapter 33 of this Chapter.

**460:20-21-6. Permit fees**
An application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the Department. The fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering, and enforcing the permit.

## SUBCHAPTER 23. PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

## 460:20-23-1. Scope and purpose

This Subchapter establishes the minimum requirements for the permit applications for surface coal mining and reclamation operations under a State or Federal program. This Subchapter covers minimum legal, financial, and compliance requirements and general information that must be contained in permit applications. This Subchapter applies to any person who submits an application to a Department for a permit to conduct surface coal mining and reclamation operations.

## 460:20-23-2. Identification of interests [REVOKED]

[**Source:** Revoked at 27 Ok Reg 2558, eff 7-25-10]

## 460:20-23-2.1. Certifying and updating existing permit application information

(a) If the Applicant has previously applied for a permit and the required information is already inAVS, then the applicant may update the information as follows:

(1) If all or part of the information already inAVS is accurate and complete, then the Applicant may certify that the relevant information inAVS is accurate, complete, and up to date by so swearing or affirming to the Department under oath and in writing.

(2) If part of the information inAVS is missing or incorrect, the Applicant must submit to the Department the necessary information or corrections and swear or affirm, under oath and in writing, that the information submitted is accurate and complete.

(3) If the applicant can neither certify that the data inAVS is accurate and complete nor make needed corrections, the applicant must include in its permit application the information required under this part.

(b) The applicant must swear or affirm, under oath and in writing, that all information provided provide in an application is accurate and complete.

(c) The Department may establish a central file to house applicant's identity information, rather than place duplicate information in each permit application files. The Department will make the information available to the public upon request.

(d) After we approve an application, but before we issue a permit, you must update, correct, or indicate that no change has occurred in the information previously submitted under this section and 460:20-23-2.2 through 460:20-23-3.1 of this Subchapter.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

## 460:20-23-2.2. Providing applicant and operator information

(a) The Applicant, must provide in the permit application:

(1) A statement indicating whether it and its operator are corporations, limited liability companies, partnerships, associations, sole proprietorships, or other business entities;

(2) Taxpayer identification numbers for applicant and its operator.

(b) The Applicant must provide the name, address, and telephone number for:

(1) The Applicant.

(2) Its resident agent who will accept service of process.

(3) Any Operator, if different from the Applicant.

(4) Each business entity in the Applicant's and Operator's organizational structure, up to and including the ultimate parent entity of the applicant and its operator; for every such business entity; Applicant must also provide the required information for every President, Chief Executive Officer, and Director (or persons in similar positions), and every person who owns, of record, 10 percent or more of the entity.

(c) The Applicant and its Operator must provide the information required by paragraph (d) of this section for every:

(1) Officer.
(2) Partner.
(3) Limited liability company manager.
(4) Member.
(5) Director.
(6) Person performing a function similar to a director.
(7) Person who owns, of record, 10 percent or more of the Applicant or Operator.

(d) The Applicant must provide the following information for each person listed in paragraph (c) of this section:

(1) The person's name, address, and telephone number.
(2) The person's position title and relationship to applicant, including percentage of ownership and location in the organizational structure.
(3) The date the person began functioning in that position.

(e) The Department need not make a finding as provided for under Section 460:20-17-2.1of this subchapter before entering intoAVS the information required to be disclosed under this section; however, the mere listing inAVS of a person identified in paragraph (b) or (c) of this section does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-23-2.3. Providing permit history information

(a) The Applicant must provide a list of all names under which it or its partners or principal shareholders, and its operator's partners or principal shareholders operate or previously operated a surface coal mining operation in the United States within the five-year period preceding the date of submission of the application.

(b) For the Applicant and its Operator, the Applicant must provide a list of any pending permit applications for surface coal mining operations filed in the United States. The list must identify each application by its application number and jurisdiction, or by other identifying information when necessary.

(c) For any surface coal mining operations the Applicant or its Operator owned or controlled within the five-year period preceding the date of submission of the application, and for any surface coal mining operation Applicant or its Operator own or control on that date, Applicant must provide the following:

(1) Permittee's and Operator's name and address;
(2) Permittee's and Operator's taxpayer identification numbers;
(3) Federal or State permit number and corresponding MSHA number;
(4) Regulatory authority with jurisdiction over the permit; and
(5) Permittee's and Operator's relationship to the operation, including percentage of ownership and location in the organizational structure.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-23-2.4. Providing property interest information

The applicant must provide in the permit application all of the following information for the property to be mined:

(1) The name and address of:

(A) Each legal or equitable owner(s) of record of the surface and mineral.

(B) The holder(s) of record of any leasehold interest.

(C) Any purchaser(s) of record under a real estate contract.

(2) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(3) A statement of all interests, options, or pending bids the applicant holds or has made for lands contiguous to the proposed permit area. If applicant requests in writing, the Department will hold as confidential, under Section 460:20-15(d)(3)(B) of this Chapter, any information required to be submitted under this paragraph which is not on public file under State law.

(4) The Mine Safety and Health Administration (MSHA) numbers for all structures that require MSHA approval.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-23-3. Violation information [REVOKED]

[**Source:** Revoked at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-23-3.1. Providing violation information

(a) The Applicant must state in its permit application, whether the Applicant or its Operator, or any subsidiary, affiliate, or entity which the Applicant or the Applicant's Operator owns or controls or which is under common control with the applicant or its you operator, has:

(1) Had a Federal or State permit for surface coal mining operations suspended or revoked during the five-year period preceding the date of submission of the application; or

(2) Forfeited a performance bond or similar security deposited in lieu of bond in connection with surface coal mining and reclamation operations during the five-year period preceding the date of submission of the application.

(b) For each suspension, revocation, or forfeiture identified under paragraph (a), Applicant must provide a brief explanation of the facts involved, including the information:

(1) Permit number;

(2) Date of suspension, revocation, or forfeiture, and, when applicable, the amount of bond or similar security forfeited;

(3) Regulatory authority which suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

(4) Current status of the permit, bond, or similar security involved;

(5) Date, location, type, and current status of any administrative or judicial proceedings concerning the suspension, revocation, or forfeiture.

(c) A list of all violation notices the applicant or its operator received for any surface coal mining and reclamation operation during the three-year period preceding the date of submission of the application. In addition, the Applicant must submit a list of all unabated or uncorrected violation notices incurred in connection with any surface coal mining and reclamation operation that the applicant or its operator owns or controls on that date. For each violation notice reported, the applicant must include the following information, when applicable:

(1) The permit number and associated MSHA number;
(2) The issue date, identification number, and current status of the violation notice;
(3) The name of the person to whom the violation notice was issued;
(4) The name of the regulatory authority or agency which issued the violation notice;
(5) A brief description of the violation alleged in the notice;
(6) The date, location, type, and current status of any administrative or judicial proceedings concerning the violation notice;
(7) If the abatement period for a violation in a notice of violation issued under Section 460:20-59-4 of this chapter, or any State regulatory program equivalent, has not expired, certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation;
(8) For all violations not covered by paragraph(c)(7) of this section, the actions taken to abate or correct the violation.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-23-4. Right-of-entry information

(a) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and begin surface coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.
(b) Where the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit–
(1) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;
(2) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or
(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable State Law, the applicant has the legal authority to extract the coal by those methods.
(c) Nothing in this Section shall be construed to provide the Department with the authority to adjudicate property rights disputes.

### 460:20-23-5. Status of unsuitability claims

(a) An application shall contain available information as to whether the proposed permit area is within an area designated as unsuitable for surface coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under Subchapter 9 and 11 of this Chapter.
(b) An application in which the applicant claims the exemption described in Section 460:20-9-6(c) of this Chapter shall contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface coal mining and reclamation operation.
(c) An application in which the applicant proposes to conduct surface coal mining activities within 300 feet of an occupied dwelling or within 100 feet of a public road shall contain the necessary information and meet the requirements of Section 460:20-7-5 of this Chapter.

**460:20-23-6. Permit term**

Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

**460:20-23-7. Insurance**

An application shall contain either a certificate of liability insurance or evidence of self-insurance in compliance with Section 460:20-37-17 of this Chapter

**460:20-23-8. Identification of location of public offices of filing of application**

Each complete application for a permit, significant revision of a permit, or renewal of a permit shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection in accordance with Section 460:20-15-5(a) (2). This may be the courthouse of the county in which the surface mining activities will occur or any other office designated by the Department.

**460:20-23-9. Proof of publication**

A copy of the newspaper advertisement of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the Department shall be filed with the Department and shall be made a part of the application not later that 4 weeks after the last date of publication as required by Section 460:20-15-5(a) (1) of this Chapter.

**460:20-23-10. Facilities or structures used in common**

The plans of a facility or structure that is to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other applications. In accordance with Subchapter 37 of this Chapter, each Permittee shall bond the facility or structure unless the Permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement shall demonstrate to the satisfaction of the regulatory authority that all responsibilities under this Chapter for the facility or structure will be met.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

## SUBCHAPTER 25. SURFACE MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

**460:20-25-1. Scope**

This Subchapter establishes the minimum requirements for the environmental resources contents of applications for surface mining activities.

**460:20-25-2. Objectives**

The objectives of this Subchapter are to ensure that each application provides to the Department a complete and accurate description of the environmental resources that may be impacted or affected by proposed surface mining activities.

**460:20-25-3. Responsibilities**

(a) It is the responsibility of the applicant to provide, except where specifically exempted in this Subchapter, all information required by this Subchapter in the application.

(b) It is the responsibility of State and Federal government agencies to provide information for applications as specifically required by this Subchapter.

**460:20-25-4. General requirements**

Each permit application shall include a description of the existing, premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed surface mining activities.

**460:20-25-5. General environmental resources information**

Each application shall describe and identify:

(1) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the sub-areas for which it is anticipated that individual permits for mining will be sought; and

(2)

(A) The nature of cultural, historic and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archeological, historical, and cultural preservation agencies.

(B) The Department may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through

(i) Collection of additional information,

(ii) Conduct of field investigations, or

(iii) Other appropriate analyses.

**460:20-25-6. Climatological information**

(a) When requested by the Department, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(1) The average seasonal precipitation;

(2) The average direction and velocity of prevailing winds; and

(3) Seasonal temperature ranges.

(b) The Department may request such additional data as deemed necessary to ensure compliance with the requirements of this Chapter.

**460:20-25-7. Vegetation information**

(a) The permit application shall, if required by the Department, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.
(b) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under Section 460:20-27-9.

**460:20-25-8. Soil resources information**
(a) The applicant shall provide adequate soil survey information of the permit area consisting of the following:
(1) A map delineating different soils;
(2) Soil identification;
(3) Soil description; and
(4) Present and potential productivity of existing soils.
(b) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials, and tests required under Section 460:20-43-7.

**460:20-25-9. Land-use information**
(a) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:
(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described.
(2) A narrative of land capability and productivity, which analyzes the land-use description under Subsection (a) of this Section in conjunction with other environmental resources information required under this Subchapter. The narrative shall provide analyses of:
(A) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and
(B) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, State agricultural universities, or appropriate State natural resource or agricultural agencies.
(b) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:
(1) The type of mining method used;
(2) The coal seams or other mineral strata mined;
(3) The extent of coal or other minerals removed;
(4) The approximate dates of past mining; and
(5) The uses of the land preceding mining.
(c) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed permit and adjacent areas.

**460:20-25-10. Maps: general requirements**

The permit application shall include maps showing:

(1) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(2) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(3) The boundaries of all areas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought;

(4) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(5) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to major electric transmission lines, pipelines, and agricultural drainage tile fields;

(6) The location and boundaries of any proposed reference areas for determining the success of revegetation;

(7) The location of water supply intakes for current users of surface water flowing into, out of, and within a hydrologic area defined by the Department, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(8) Each public road located in or within 100 feet of the proposed permit area;

(9) The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas;

(10) Each cemetery that is located in or within 100 feet of the proposed permit area.

(11) Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5 (a) of the Wild and Scenic Rivers Act; and

(12) Other relevant information required by the Department.

**460:20-25-11. Cross sections, maps, and plans**

(a) The application shall include cross sections, maps, and plans showing:

(1) Elevations and locations of test borings and core samplings;

(2) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application;

(3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the over burden, and the stratum immediately below the lowest coal seam to be mined;

(4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface

within the proposed permit and adjacent areas;
(6) Location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas;
(7) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;
(8) Location and extent of existing or previously surface- mined areas within the proposed permit area;
(9) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;
(10) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area;
(b) Cross sections, maps, and plans included in a permit application as required by this Section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, a qualified registered, professional land surveyor, with assistance from expects in related fields such as landscape architecture, and shall be updated as required by the Department.

[**Source:** Amended at 21 Ok Reg 2979, eff 7-26-04]

## SUBCHAPTER 27. SURFACE MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLANS

### 460:20-27-1. Scope

This Subchapter provides the minimum requirements for the Secretary's approval of regulatory program provisions for the mining operations and reclamation plan portions of applications for permits for surface mining activities, except to the extent that different requirements for those plans are established under Subchapter 33 of this Chapter.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-27-2. Objectives

The objectives of this Subchapter are to insure that the Department is provided with comprehensive and reliable information on proposed surface mining activities, and to ensure that those activities are allowed to be conducted only in compliance with the Act, this Chapter, and the regulatory program.

### 460:20-27-3. Responsibilities

(a) It is the responsibility of the applicant to provide to the Department all of the information required by this Subchapter, except where specifically exempted in this Subchapter.
(b) It is the responsibility of State and Federal governmental agencies to provide information to the Department where specifically required in this Subchapter.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-27-4. Operation plan: general requirements

Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed permit

area, including, at a minimum, the following:

(1) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(2) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in Section 460:20-43-51.

(A) Dams, embankments, and other impoundments;

(B) Overburden and topsoil handling and storage areas and structures;

(C) Coal removal, handling, storage, cleaning, and transportation areas and structures;

(D) Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

(E) Mine facilities; and

(F) Water and air pollution control facilities.

**460:20-27-5. Operation plan: existing structures**

(a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include-

(1) Location;

(2) Plans of the structure which describe its current condition;

(3) Approximate dates on which construction of the existing structure was begun and completed; and

(4) A showing, including relevant monitoring data or other evidence, of whether the structure meets the performance standards (Permanent Program Standards) of this Chapter or if the structure does not meet the performance standards of this Chapter, a showing of whether the structure meets the performance standards of the interim program.

(b) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include–

(1) Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of this Chapter;

(2) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of this Chapter are met; and

(4) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

**460:20-27-6. Operation plan: blasting**

(a) **Blasting plan.** Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant will comply with the requirements of Sections 460:20-43-18 through 460:20-43-23 of this Chapter. This plan shall include, at a minimum, information setting forth the limitations the operator will

meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(b) **Monitoring system.** Each application shall contain a description of any system to be used to monitor compliance with the standards of Section 460:20-43-22 including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring.

(c) **Blasting near underground mines.** Blasting operations within 500 feet of active underground mines require approval of the State and Federal regulatory authorities concerned with the health and safety of underground miners.

(d) **Electronic blasting detonation.**

(1) **Definitions.** As used in this Subsection only:

(A) **"Blasting site"** means the area within fifty (50) feet, or any alternative distance provided in the blasting plan of the approved permit on file, of any holes loaded with explosives, blasting agents or detonators.

(B) **"Blasting area"** means the area where flying rock may be considered dangerous, which shall be determined by the certified blaster.

(C) **"Loaded hole"** means one that contains explosives or blasting agents with a primer where the hole has been stemmed and has a short length of connecting wire sticking out but does not have a firing device connected.

(D) **"Charged hole"** means one that contains explosives or blasting agents with a primer where the hole has been tamped with a short length of connecting device sticking out and it does have a firing device connected.

(2) For blasting operations using electronic blasting detonators, loaded holes shall be charged as near to blasting time as practical and in compliance with the known physical limitations and properties of the specific blasting materials and equipment specified by the manufacturer. Unless authorized by the Department, loaded holes shall be detonated within sixty (60) days from the date of loading. The date the holes are loaded shall be documented to determine compliance. This information shall become part of the Blasting Report Log.

(3) During the loading of holes, only the work activities associated with the explosives operation will be permitted in the blasting site.

(4) During charging and firing, only the work activities associated with the explosives operation will be permitted in the blasting area.

(5) Loaded holes shall be marked and barricaded for identification and safety purposes.

(6) Holes with easy accessibility to the public shall not be allowed to remain loaded as outlined in paragraph (d) (2) of this Subsection.

[**Source:** Amended at 35 Ok Reg 52, eff 7-28-17 (emergency); Amended at 35 Ok Reg 1874, eff 9-14-18]

### 460:20-27-7. Operation plan: maps and plans

Each application shall contain maps and plans as follows:

(1) The maps and plans shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Sections 460:20-25-10 through 460:20-25-11 of this Chapter.

(2) The following shall be shown for the proposed permit area:

(A) Buildings, utility corridors, and facilities to be used;

(B) The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

(C) Each area of land for which a performance bond or other equivalent guarantee will be posted under Subchapter 37 of this Chapter;

(D) Each coal storage, cleaning, and loading area;

(E) Each topsoil, spoil, coal waste, and noncoal waste storage area;

(F) Each water diyersion, collection, conveyance, treatment, storage, and discharge facility to be used;

(G) Each air pollution collection and control facility;

(H) Each source of waste and each waste disposal facility relating to coal processing or pollution control;

(I) Each facility to be used to protect and enhance fish and wildlife and related environmental values;

(J) Each explosives storage and handling facility; and

(K) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 460:20-27-14, and fill area for the disposal of excess spoil in accordance with Section 460:20-27-19.

(3) Except as provided in Sections 460:20-27-14(a)(2), 460:20-27-14(a)(3), 460:20-27-19(a), 460:20-43-24(b), 460:20-43-26(c), 460:20-43-27(c) and 460:20-43-29(c) of this Chapter, cross sections, maps, and plans required under (2) (D), (E), (F), (J), and (K) of this Section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a professional geologist, or a qualified registered professional land surveyor with assistance from experts in related fields such as landscape architecture.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

**460:20-27-8. Air pollution control plan**

(a) For all surface mining activities with projected production rates exceeding 1,000,000 tons of coal per year and located west of the 100th meridian west longitude, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under (a) (2) of this Section to comply with Federal and State air quality standards; and

(2) A plan for fugitive dust control practices as required under Section 460:20-43-34 of this Chapter.

(b) For all other surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the Department, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under (b) (2) of this Section to comply with applicable Federal and State air quality standards; and

(2) A plan for fugitive dust control practices, as required under Section 460:20-43-34 of this Chapter.

**460:20-27-9. Fish and wildlife plan**

(a) **Resource information.** Each application shall include fish and wildlife resource information for the permit area and adjacent area.

(1) The scope and level of detail for such information shall be determined by the Department in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under (b) of this Section.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(A) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar State statutes;

(B) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(C) Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

(b) **Protection and enhancement plan.** Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall:

(1) Be consistent with the requirements of Section 460:20-43-35 of this Chapter;

(2) Apply, at a minimum, to species and habitats identified under Subsection (a) of this section; and

(3) Include–

(A) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(B) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(c) **Fish and Wildlife Service review.** Upon request, the Department shall provide the resource information required under Subsection (a) of this Section and the protection and enhancement plan required under Subsection (b) of this Section to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt

of the request from the Service.

[**Source:** Amended at 13 Ok Reg 3495, eff 8-26-96]

**460:20-27-10. Reclamation plan: general requirements**

(a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with the performance standards of this Chapter, and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under Sections 460:20-27-10 through 460:20-27-20 of this Chapter.

(b) Each plan shall contain the following information for the proposed permit area:

(1) A detailed timetable for the completion of each major step in the reclamation plan;

(2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Subchapter 37 of this Chapter, with supporting calculations for the estimates;

(3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show anticipated final surface configuration of the proposed permit area, in accordance with Sections 460:20-43-38 through 460:20-43-42 of this Chapter;

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of Section 460:20-43-7 of this Chapter. A demonstration of the suitability of topsoil substitutes or supplements under Section 460:20-43-7(b) of this Chapter shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The Department may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements.

(5) A plan for revegetation as required in Sections 460:20-43-43 through 460:20:43-46 of this Chapter, including, but not limited to, descriptions of the–

(A) Schedule of revegetation;

(B) Species and amounts per acre of seeds and seedlings to be used;

(C) Methods to be used in planting and seeding;

(D) Mulching techniques;

(E) Irrigation, if appropriate, and pest and disease control measures, if any; and

(F) Measures proposed to be used to determine the success of revegetation as required in Section 460:20-43-46 of this Chapter.

(G) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation.

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in Section 460:20-43-17 of this Chapter;

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with Sections 460:20-43-33 and 460:20-43-38 of this Chapter and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with Sections 460:20-43-4 through 460:20-43-6 of this Chapter; and
(9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

**460:20-27-11. Hydrologic information**

(a) **Sampling and analysis methodology.** All water-quality analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 15th edition of "Standard Methods for the Examination of Water and Wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this Section shall be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater" is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 15th Street, NW., Washington, DC 20036. This document is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C.; at the Office of the OSM Administrative Record, U.S. Department of the Interior, Room 5315, 1100 L Street, NW, Washington, D.C.; at the OSM Eastern Field Operations U.S. Department of the Interior, Building 10, Parkway Center, Pittsburgh, Pa.; and at the OSM Western Field Operations, U.S. Department of the Interior, Brooks Tower, 1020 15th Street, Denver, Colo. This incorporation by reference was approved by the Director of the Federal Register on October 26, 1983. This document is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the Federal Register.

(b) **Baseline information.** The application shall include the following baseline hydrologic information, and any additional information required by the Department.

(1) **Ground-water information.** The location and ownership for the permit and adjacent areas of existing wells, springs, and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Groundwater quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each waterbearing stratum above and potentially impacted stratum below the coal seam.

(2) **Surface-water information.** The name, location, ownership, and description of all surface-water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese.

Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water-quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

(3) **Supplemental information.** If the determination of the probable hydrologic consequences (PHC) required by (f) of this Section indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under (b) (1) and (b) (2) of this Section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water-quality or quantity characteristics.

(c) **Baseline cumulative impact area information.**

(1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface- and ground-water systems as required by Subsection (g) of this Section shall be provided to the Department if available from appropriate Federal or State agencies.

(2) If the information is not available from such agencies, then the applicant may gather and submit this information to the Department as part of the permit application.

(3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the Department.

(d) **Modeling.** The use of modeling techniques, interpolation, or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the Department for each site even when such techniques are used.

(e) **Alternative water-source information.** If the PHC determination required by Subsection (f) of this Section indicates that the proposed mining operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application shall contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

(f) **Probable hydrologic consequences determination.**

(1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic, and other information collected for the permit application and may include data statistically representative of the site;

(3) The PHC determination shall include findings on:

(A) Whether adverse impacts may occur to the hydrologic balance;

(B) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies;

(C) Whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural industrial, or other legitimate purpose; and

(D) What impact the proposed operation will have on:

(i) Sediment yield from the disturbed area

(ii) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(iii) Flooding or streamflow alteration;

(iv) Ground- and surface-water availability; and

(v) Other characteristics as required by the Department.

(4) An application for a permit revision shall be reviewed by the Department to determine whether a new or updated PHC determination shall be required.

(g) **Cumulative hydrologic impact assessment.**

(1) The Department shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface- and ground-water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Department may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

(2) An application for a permit revision shall be reviewed by the Department to determine whether a new or updated CHIA shall be required.

(h) **Hydrologic reclamation plan.** The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Subchapter 43 of this Chapter, including Sections 460:20-43-8 through 460:20-43-10, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbances to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to meet applicable Federal and State water quality laws and regulations; and to protect the rights of present water users. The plan shall include the measures to be taken to: Avoid acid or toxic drainage; prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water-treatment facilities when needed; control drainage; restore approximate premining recharge capacity; and protect or replace rights of present water users. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under Subsection (f) of this Section and shall include preventive and remedial measures.

(i) **Ground-water monitoring plan.**

(1) The application shall include a ground-water monitoring plan based upon the PHC determination required under Subsection (f) of this Section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in Subsection (h) of this Section. It shall identify the quantity and quality parameters to be monitored, sampling

frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, and water levels shall be monitored and data submitted to the Department at least every 3 months for each monitoring location. The Department may require additional monitoring.

(2) If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Department.

(j) **Surface-water monitoring plan.**

(1) The application shall include a surface-water monitoring plan based upon the PHC determination required under Subsection (f) of this Section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmined land uses and to the objectives for protection of the hydrologic balance as set forth in (h) of this Section, as well as the effluent limitations found at 40 CFR Part 434.

(2) The plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(A) At all monitoring locations in the surface-water bodies such as streams, lakes, and impoundments that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(B) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123 and 434 and as required by the National Pollutant Discharge Elimination System permitting authority.

(3) The monitoring reports shall be submitted to the Department every 3 months. The Department may require additional monitoring.

**460:20-27-12. Geologic information**

(a) **General.** Each application shall include geologic information in sufficient detail to assist in determining:

(1) The probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary;

(2) All potentially acid- or toxic-forming strata down to and including the stratum immediately below the lowest coal seam to be mined; and

(3) Whether reclamation as required by this Chapter can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(b) Geologic information shall include, at a minimum, the following:

(1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The description shall include the areal and structural geology of the permit and adjacent areas and other parameters which influence the required reclamation, and the occurrence, availability, movement, quantity, and quality of potentially impacted surface and ground waters. It shall be based on:

(A) The cross sections, maps, and plans required by Section 460:20-25-11 of this Chapter;

(B) The information obtained under (b) (2) and (c) of this Section; and

(C) Geologic literature and practices.

(2) Analyses of samples collected from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops from the permit area, down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest seam to be mined which may be adversely impacted by mining. The analyses shall result in the following:

(A) Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

(B) Chemical analyses identifying those strata that may contain acid- or toxic-forming or alkalinity-producing materials and to determine their content, except that the Department may find that the analysis for alkalinity- producing materials is unnecessary; and

(C) Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Department may find that the analysis of pyritic sulfur content is unnecessary.

(c) If determined to be necessary to protect the hydrologic balance or to meet the performance standards of this Chapter, the Department may require the collection, analysis, and description of geologic information in addition to that required by Subsection (b) of this Section.

(d) An applicant may request the Department to waive in whole or in part the requirements of (b) (2) of this Section. The waiver may be granted only if the Department finds in writing that the collection and analysis of such data are unnecessary because other equivalent information is available to the Department in a satisfactory form.

**460:20-27-13. Reclamation plan: postmining land uses**

(a) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(2) Where range or grazing is the proposed postmining use, the detailed management plans to be implemented;

(3) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under Section 460:20-43-51 of this Chapter; and

(4) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable State and local land use plans and programs.

(b) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

**460:20-27-14. Reclamation plan: siltation structures, impoundments, banks, dams, and embankments**

(a) **General.** Each application shall include a general plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall:

(A) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, with assistance from experts in related fields such as landscape architecture;

(B) Contain a description map, and cross section of the structure and its location;

(C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(E) Contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the Department. The Department shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Impoundments meeting the class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VT-TR60, Oct 1985). "Earth Dams and Reservoirs," Technical Release No. 60 (R-60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. P87-157509/AS. Copies can be inspected at the Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106. Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), shall:

(A) Be prepared by, or under the direction of, and certified, registered, professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;
(B) Include any geotechnical investigation, design, and construction requirements for the structure;
(C) Describe the operation and maintenance requirements for such structure; and
(D) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does meet size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams, in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs" Technical Release No. 60 (TR-60) shall:

(A) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer,
(B) Include any design and construction requirements for the structure, including any required geotechnical information;
(C) Describe the operation and maintenance requirements for each structure; and
(D) Describe the timetable and plans to remove each structure, if appropriate.

(b) **Siltation structure.** Siltation structure, whether temporary or permanent, shall be designed in compliance with the requirements of Section 460:20-43-12 of this Chapter. Any impoundment or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall be designed to comply with the requirements of Section 460:20-43-14 of this Chapter. Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216.

(c) **Sedimentation ponds: permanent and temporary impoundments.**

(1) Permanent and temporary impoundments shall be designed to comply with the requirements of Section 460:20-43-14 of this Chapter. Each plan shall comply with the requirements of the Mine Health Safety Administration, 30 CFR 77.216.

(2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 20 CFR 77.216-1 and 77.216-2.The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the Department as part of the permit application in accordance with Subsection (a) of this section.

(3) For an impoundment not meeting the size or other criteria of 30 CFR 77.216 (a) or the Class B or C criteria for dams in TR-60, (210-VI-TR-60, Oct. 1985), "Earth Dams and Reservoirs" or located where failure would not be expected to cause loss of life or serious property damage, the Department may establish through State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with minimum static safety factor of 1.3 specified in Section 460:20-43-14 (a)(3)(B) of this Chapter.

(d) **Coal processing waste banks.** Coal processing waste banks shall be designed to comply with the requirements of Sections 460:20-43-29 through 460:20-43-31 of this Chapter.
(e) **Coal processing waste dams and embankments.** Coal processing waste dams and embankments shall be designed to comply with the requirements of Sections 460:20-43-29 through 460:20-43-31 of this Chapter. Each plan shall comply with the requirements of the Mine Health Safety Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground-water flow observed or anticipated during wet periods in an area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) **Stability analysis.** If the structure meets Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a), each plan under subsection (b), (c), and (e) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

[**Source:** Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 16 Ok Reg 3526, eff 9-13-99; Amended at 36 Ok Reg 1935, eff 9-14-19]

### 460:20-27-15. Reclamation plan: surface mining near underground mining

For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with Section 460:20-43-28 of this Chapter.

### 460:20-27-16. Diversions

Each application shall contain descriptions, including maps and cross sections, of stream-channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with Section 460:20-43-10 of this Chapter.

### 460:20-27-17. Protection of public parks and historic places

(a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used

(1) To prevent adverse impacts, or

(2) If valid existing rights exist or joint agency approval is to be obtained under Section 460:20-7-5(f) of this Chapter, to minimize adverse impacts.

(b) The Department may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

**460:20-27-18. Relocation or use of public roads**

Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under Section 460:20-7-5(d) of this Chapter, the applicant seeks to have the Department approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

**460:20-27-19. Disposal of excess spoil**

(a) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil-disposal structures according to Sections 460:20-43-24 through 460:20-43-27 of this Chapter. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.

(b) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(1) The character of bedrock and any adverse geologic conditions in the disposal area,

(2) A survey identifying all springs, seepage, and ground- water flow observed or anticipated during wet periods in the area of the disposal site;

(3) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(4) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(5) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(c) If, under Section 460:20-43-24(d) of this Chapter, rock-toe buttresses or key-way cuts are required, the application shall include the following:

(1) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(2) Engineering specifications utilized to design the rock- toe buttress or key-way cuts which shall be determined in accordance with (b) (5) of this Section.

### 460:20-27-20. Road systems

(a) **Plans and drawings.** Each applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road as defined in Section 460:20-3-5 of this Chapter to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall–

(1) Include a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures;

(2) Contain the drawings and specifications for each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the Department in accordance with Section 460:20-43-52(d)(1) of this Chapter.

(3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the Department in accordance with Section 460:20-43-53(c)(2) of this Chapter.

(4) Contain a description of measures to be taken to obtain approval for the Department for alteration or relocation of a natural stream channel under Section 460:20-43-53(d)(5) of this Chapter.

(5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the Department can maximize the protection of the stream in accordance with Section 460:20-43-53(d)(6) of this Chapter; and

(6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for the removal and reclamation.

(b) **Standard design plans.** The Department may establish engineering design standards for primary roads through the State program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in Section 460:20-43-53(b) of this Chapter.

[**Source:** Amended at 11 Ok Reg 4231, eff 7-25-94; Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-27-21. Support facilities

Each applicant for a surface coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with Section 460:20-43-55 of this Chapter for each facility.

## SUBCHAPTER 29. UNDERGROUND MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

### 460:20-29-1. Scope

This Subchapter establishes the minimum requirements for the Secretary's approval of regulatory program provisions for the environmental resources contents of applications for permits for underground mining activities.

**460:20-29-2. Objectives**

The objectives of this Subchapter are to ensure that each application provides to the Department a complete and accurate description of the environmental resources that may be impacted or affected by proposed underground mining activities.

**460:20-29-3. Responsibilities**

(a) It is the responsibility of the applicant to provide, except where specifically exempted in this Subchapter, all information required by this Subchapter in the application.

(b) It is the responsibility of State and Federal Government agencies to provide information for applications as specifically required by this Subchapter.

**460:20-29-4. General requirements**

Each permit application shall include a description of the existing, premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed underground mining activities.

**460:20-29-5. General environmental resources information**

Each application shall describe and identify:

(1) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought; and

(2) The nature of cultural historic and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas.

(A) The description shall be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and local archeological, historical, and cultural preservation groups.

(B) The Department may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through the

(i) Collection of additional information,

(ii) Conduct of field investigations, or

(iii) Other appropriate analyses.

**460:20-29-6. Climatological information**

(a) When requested by the Department, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(1) The average seasonal precipitation;

(2) The average direction and velocity of prevailing winds; and

(3) Seasonal temperature ranges.

(b) The Department may request such additional data as deemed necessary to ensure compliance with the requirements of this Chapter.

**460:20-29-7. Vegetation information**

(a) The permit application shall, if required by the Department, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(b) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under Section 460:20-31-14 of this Chapter.

**460:20-29-8. Soil resources information**

(a) The applicant shall provide adequate soil survey information on those portions of the permit area determined to be prime farmland to be affected by surface operations or facilities consisting of the following:

(1) A map delineating different soils;

(2) Soil identification;

(3) Soil description; and

(4) Present and potential productivity of existing soils.

(b) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analysis, trials and tests required under Section 460:20-45-7 of this Chapter.

**460:20-29-9. Land-use information**

(a) The application shall contain a statement of the condition, capability, and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described.

(2) A narrative of land capability and productivity which analyzes the land-use description under Subsection (a) of this Section in conjunction with other environmental resources information required under this Subchapter. The narrative shall provide analyses of:

(A) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

(B) The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, State agricultural universities, or appropriate State natural resources or agricultural agencies.

(b) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(1) The type of mining method used;
(2) The coal seams or other mineral strata mined;
(3) The extent of coal or other minerals removed;
(4) The approximate dates of past mining; and
(5) The uses of the land preceding mining.

(c) The application shall contain a description of the existing land uses and land-use classifications under local law, if any, of the proposed permit and adjacent areas.

**460:20-29-10. Maps: general requirements**

The permit application shall include maps showing:

(1) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(2) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin underground mining activities;

(3) The boundaries of all areas proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought;

(4) The location of all buildings in and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings (including GPS coordinates for each building);

(5) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(6) The location and boundaries of any proposed reference areas for determining the success of revegetation;

(7) The locations of water-supply intakes for current users of surface waters flowing into, out of, and within a hydrologic area defined by the Department, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(8) Each public road located in or within 100 feet of the proposed permit area;

(9) The boundaries of any public park and locations of any cultural and historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit or adjacent areas;

(10) Each cemetery that is located in or within 100 feet of the proposed permit area.

(11) Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act; and

(12) Other relevant information required by the Department.

[**Source:** Amended at 31 Ok Reg 2101, eff 9-12-14; Amended at 36 Ok Reg 1935, eff 9-14-19]

**460:20-29-11. Cross sections, maps, and plans**

(a) The application shall include cross sections, maps, and plans showing:

(1) Elevations and locations of test borings and core samplings;

(2) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application;
(3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the over burden, and the stratum immediately below the lowest coal seam to be mined;
(4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;
(5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface and the depth to the mined coal if available within the proposed permit and adjacent areas;
(6) Location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas;
(7) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;
(8) Location and extent of existing or previously surface mined areas within the proposed permit area;
(9) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;
(10) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area.

(b) Cross sections, maps, and plans included in a permit application as required by this Section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer; a professional geologist; or a qualified registered, professional land surveyor, with assistance from experts in related fields such as landscape architecture, and shall be updated as required by the Department.

[**Source:** Amended at 21 Ok Reg 2979, eff 7-26-04; Amended at 31 Ok Reg 2101, eff 9-12-14; Amended at 36 Ok Reg 1935, eff 9-14-19]

## SUBCHAPTER 31. UNDERGROUND MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR RECLAMATION

### 460:20-31-1. Scope

This Subchapter provides the minimum requirements for the Secretary's approval of regulatory program provisions for the mining operations and reclamation plans portions of applications for permits for underground mining activities, except to the extent that different requirements for those plans are established under Subchapter 33 of this Chapter.

### 460:20-31-2. Objectives

The objectives of this Subchapter to ensure that the Department is provided with comprehensive and reliable information on proposed underground mining activities, and to ensure that those activities are allowed to be conducted only in compliance with the Act, this Chapter, and the regulatory program.

### 460:20-31-3. Responsibilities

(a) It is the responsibility of the applicant to provide to the Department all of the information required by this Subchapter, except where specifically exempted in this Subchapter.
(b) It is the responsibility of State and Federal governmental agencies to provide information to the Department where specifically required in this Subchapter.

**460:20-31-4. Operation plan: general requirements**

Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, the following:

(1) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(2) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities unless retention of such facility is necessary for postmining land use as specified in Section 460:20-45-51 of this Chapter.

(A) Dams, embankments, and other impoundments;

(B) Overburden and topsoil handling and storage areas and structures;

(C) Coal removal, handling, storage, cleaning, and transportation areas and structures;

(D) Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

(E) Mine facilities; and

(F) Water pollution control facilities.

**460:20-31-5. Operation plan: existing structures**

(a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(1) Location;

(2) Plans of the structure which describe its current condition;

(3) Approximate dates on which construction of the existing structure was begun and completed; and

(4) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of these rules and regulations (Permanent Program Standards) or, if the structure does not meet the interim program performance standards of this Chapter, a showing whether the structure meets the performance standards (Interim Program Standards)

(b) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(1) Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of this Chapter;

(2) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of these Regulations are met; and
(4) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

**460:20-31-6. Reclamation plan: general requirements**

(a) Each application shall contain a plan for the reclamation of the lands within the proposed permit area, showing how the applicant will comply with these Regulations, and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under Sections 460:20-31-6 through 460:20-31-19 of this Chapter.

(b) Each plan shall contain the following information for the proposed permit area:

(1) A detailed timetable for the completion of each major step in the reclamation plan;
(2) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under Subchapter 37 of this Chapter, with supporting calculations for the estimates;
(3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with Sections 460:20-45-38 through 460:20-45-42 of this Chapter;
(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of Section 460:20-45-7 of this Chapter. A demonstration of the suitability of topsoil substitutes or supplements under Section 460:20-45-7(b) of this Chapter shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The Department may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements;
(5) A plan for revegetation as required in Sections 460:20-45-43 through 460:20-45-46 of this Chapter, including, but not limited to, descriptions of the:

(A) Schedule of revegetation;
(B) Species and amounts per acre of seeds and seedlings to be used;
(C) Methods to be used in planting and seeding;
(D) Mulching techniques;
(E) Irrigation, if appropriate, and pest and disease control measures, if any;
(F) Measures proposed to be used to determine the success of revegetation as required in Section 460:20-45-46 of this Chapter; and
(G) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in Section 460:20-45-17 of this Chapter;
(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire

hazard are disposed of in accordance with Sections 460:20-45-33 and 460:20-45-38 of this Chapter and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with Sections 460:20-45-4 through 460:20-45-6 of this Chapter; and

(9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-31-7. Hydrologic information**

(a) **Sampling and analysis.** All water-quality analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 15th edition of "Standard Methods for the Examination of Water and Wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water-quality sampling performed to meet the requirements of this Section shall be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater" is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20036. This document is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C.; at the Office of the OSM Administrative Record, U.S. Department of the Interior, Room 5315, 1100 L Street, NW., Washington, D.C.; at the OSM Eastern Field Operations U.S. Department of the Interior, Building 10, Parkway Center, Pittsburgh, Pa.; and at the OSM Western Field Operations, U.S. Department of the Interior, Brooks Tower, 1020 15th Street, Denver, Colo. This incorporation by reference was approved by the Director of the Federal Register on October 26, 1983. This document is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the Federal Register.

(b) **Baseline information.** The application shall include the following baseline hydrologic information, and any additional information required by the Department.

(1) **Ground-water information.** The location and ownership for the permit and adjacent areas of existing wells, springs, and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water-quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Ground-water quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

(2) **Surface-water information.** The name, location, ownership, and description of all surface-water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface-water body in

the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water-quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water-quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

(3) **Supplemental information.** If the determination of the probable hydrologic consequences (PHC) required by Subsection (e) of this Section indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under Subsections (b)(1) and (b)(2) of this Section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water-quality or quantity characteristics.

(c) **Baseline cumulative impact area information.**

(1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface- and ground-water systems as required by Subsection (f) of this Section shall be provided to the Department if available from appropriate Federal or State agencies.

(2) If this information is not available from such agencies, then the applicant may gather and submit this information to the Department as part of the permit application.

(3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the Department.

(d) **Modeling.** The use of modeling techniques, interpolation, or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the Department for each site even when such techniques are used.

(e) **Probable hydrologic consequences determination.**

(1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic, and other information collected for the permit application and may include data statistically representative of the site.

(3) The PHC determination shall include findings on:

(A) Whether adverse impacts may occur to the hydrologic balance:

(B) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies; and

(C) What impact the proposed operation will have on:

(i) Sediment yield from the disturbed area:

(ii) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;
(iii) Flooding or streamflow alteration;
(iv) Ground-water and surface-water availability; and
(v) Other characteristics as required by the Department.

(D) Whether the underground mining activities conducted after October 24, 1992 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.

(4) An application for a permit revision shall be reviewed by the Department to determine whether a new or updated PHC determination shall be required.

(f) **Cumulative hydrologic impact assessment.**

(1) The Department shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface- and ground-water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Department may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

(2) An application for a permit revision shall be reviewed by the Department to determine whether a new or updated CHIA shall be required.

(g) **Hydrologic reclamation plan.** The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Subchapter 45 of this Chapter, including Sections 460:20-45-8 through 460:20-45-10, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; and to meet applicable Federal and State water-quality laws and regulations. The plan shall include the measures to be taken to: avoid acid or toxic drainage; prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water-treatment facilities when needed; control drainage; and restore approximate premining recharge capacity. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under Subsection (e) of this Section and shall include preventive and remedial measures.

(h) **Ground-water monitoring plan.**

(1) The application shall include a ground-water monitoring plan based upon the PHC determination required under Subsection (e) of this Section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in Subsection (g) of this Section. It shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25°C,

pH, total iron, total manganese, and water levels shall be monitored and data submitted to the Department at least every 3 months for each monitoring location. The Department may require additional monitoring.

(2) If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the Department.

(i) **Surface-water monitoring plan.**

(1) The application shall include a surface-water monitoring plan based upon the PHC determination required under Subsection (e) of this Section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in Subsection (g) of this Section, as well as the effluent limitations found at 40 CFR Part 434.

(2) The plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(A) At all monitoring locations in streams, lakes, and impoundments that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(B) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123, and 434 and as required by the National Pollutant Discharge Elimination System permitting authority.

(3) The monitoring reports shall be submitted to the Department every 3 months. The Department may require additional monitoring.

[**Source:** Amended at 14 Ok Reg 3480, eff 8-11-97]

**460:20-31-8. Reclamation plan: Postmining land uses**

(a) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land-use policies and plans. This description shall explain:

(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under Section 460:20-45-51 of this Chapter; and

(3) The consideration given to making all of the proposed underground mining activities consistent with surface owner plans and applicable State and local land-use plans and programs.

(b) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

**460:20-31-9. Reclamation plan: siltation structures, impoundments, banks, dams, and embankments**

(a) **General.** Each application shall include a general plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall:

(A) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, with assistance from experts in related fields such as landscape architecture;

(B) Contain a description, map, and cross section of the structure and its location;

(C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(E) Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the Department. The Department shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Impoundments meeting the class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VT-TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies can be inspected at the Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106. Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a) shall:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(B) Include any geotechnical investigation, design, and construction requirements for the structure;

(C) Describe the operation and maintenance requirements for each structure; and

(D) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. (1985), "Earth Dams and Reservoirs" Technical Release No. 60 (TR-60) shall:

(A) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer;

(B) Include any design and construction requirements for the structure, including any required geotechnical information;

(C) Describe the operation and maintenance requirements for each structure; and

(D) Describe the timetable and plans to remove each structure, if appropriate.

(b) **Siltation structures.**

(1) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of Section 460:20-45-12 of this Chapter. Any impoundment or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of Section 460:20-45-24 of this Chapter.

(2) Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(c) **Permanent and temporary impoundments.** Permanent and temporary impoundments shall be designed to comply with the requirements of Section 460:20-45-14 of this Chapter. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(1) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 30 CFR 77.216- 1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the Department as part of the permit application in accordance with Subsection (a) of this section.

(2) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in TR-60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs," or located where failure would not be expected to cause loss of life or serious property damage, the Department may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in 460:20-45-14(a)(3)(B) of this Chapter.

(d) **Coal processing waste banks.** Coal processing waste banks shall be designed to comply with the requirements of Sections 460:20-45-29 through 460:20-45-31 of this Chapter.

(e) **Coal processing waste dams and embankments.** Coal processing waste banks shall be designed to comply with the requirements of Sections 460:20-45-29 through 460:20-45-31 of this Chapter. Each plan shall comply with the

requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location and depth of the borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground-water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material

(f) **Stability analysis.** If the structure meets Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a) then each plan under Subsections (b), (c), and (e) of this Section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

[**Source:** Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 16 Ok Reg 3526, eff 9-13-99; Amended at 31 Ok Reg 2101, eff 9-12-14; Amended at 36 Ok Reg 1935, eff 9-14-19]

### 460:20-31-10. Protection of public parks and historic places

(a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used.

(1) To prevent adverse impacts, or

(2) If valid existing rights exist or joint agency approval is to be obtained under Section 460:20-7-5(f) of this Chapter, to minimize impacts.

(b) The Department may require the applicant to protect historic and archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

### 460:20-31-11. Relocation or use of public roads

Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under Section 460:20-7-5(d) of this Chapter, the applicant seeks to have the Department approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or
(2) Relocating a public road.

**460:20-31-12. Underground development waste**

Each plan shall contain descriptions, including appropriate maps and cross-Section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to Sections 460:20-45-24 through 460:20-45-27 of this Chapter. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to Section 460:20-27-19 of this Chapter.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-31-13. Subsidence control plan**

(a) **Presubsidence survey.** Each application must include:
(1) A map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the Department, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.
(2) A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.
(3) A survey of the condition of all non-commercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by the subsidence, except for areas where there is no planned subsidence. Also, each application must include a survey of the quantity and quality of all drinking, domestic, and residential water, supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect the denial of access will have as described in 460:20-45-47(c)
(4) of this Chapter. The applicant must pay for any technical assessment or engineering evaluation to determine the premining condition or value of such non-commercial buildings or occupied residential dwellings or structures related thereto and the quantity and quality of the drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and Department.

(b) **Subsidence control plan.** If the survey conducted under paragraph (a) of this section shows that no structures, or drinking, domestic, or residential water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, and no contamination, or interruption of such water supplies would occur as a result of

mine subsidence, and if the Department agrees with this conclusion, no further information need be provided under this section. If the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the Department determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, that application shall include a subsidence control plan that contains the following information:

(1) A description of the method of coal removal, such as longwall mining, room-and-pillar removal, hydraulic mining, or other extraction methods, including the size, sequence, and timing for the development of underground workings.

(2) A map of underground workings which describes the location and extent of areas in which planned-subsidence mining methods will be used and which includes all areas where the measures described in (4), (5) and (b)(7) of this Section will be taken to prevent or minimize subsidence and subsidence related damage; and where appropriate, to correct subsidence-related material damage.

(3) A description of the physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence- related damage.

(4) A description of monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with 460:20-45-47(c) of this Chapter.

(5) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, including, but not limited to:

(A) Backstowing or backfilling of voids;

(B) Leaving support pillars of coal;

(C) Leaving areas in which no coal is removed, including by leaving coal in place; and

(D) Taking measures on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface.

(6) A description of the anticipated effects of planned subsidence, if any.

(7) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to non-commercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs minimizing damage exceed the anticipated costs repair.

(8) A description of the measures to be taken in accordance with 460:20-45-8 and 460:20-45-47(c) of this Chapter to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures; and

(9) Other information specified by the Department as necessary to demonstrate that the operation will be conducted in accordance with the performance standards of Section 460:20-45-47 of this Chapter for

subsidence control.

[**Source:** Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 14 Ok Reg 3480, eff 8-11-97; Amended at 21 Ok Reg 2979, eff 7-26-04; Amended at 23 Ok Reg 3059, eff 7-27-06]

### 460:20-31-14. Fish and wildlife information

(a) **Resource information.** Each application shall include fish and wildlife resource information for the permit area and adjacent area.

(1) The scope and level of detail for such information shall be determined by the Department in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under Subsection (b) of this Section.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(A) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar State statutes;

(B) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian area, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(C) Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

(b) **Protection and enhancement plan.** Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall:

(1) Be consistent with the requirements of Section 460:20-45-35 of this Chapter;

(2) Apply, at a minimum, to species and habitats identified under Subsection (a) of this section; and

(3) Include–

(A) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(B) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the placement of perches and next boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(c) **Fish and Wildlife Service Review.** Upon request, the Department shall provide the resource information required under Subsection (a) of this section and the protection and enhancement plan required under Subsection (b) of this section to the U.S. Department of the Interior, fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

**460:20-31-15. Geologic information**

(a) **General.** Each application shall include geologic information in sufficient detail to assist in-

(1) Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary;

(2) Determining all potentially acid- or toxic-forming strata down to and including the stratum immediately below the coal seam to be mined;

(3) Determining whether reclamation as required by these Regulations can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(4) Preparing the subsidence control plan under Section 460:20-31-13 of this Chapter.

(b) Geologic information shall include, at a minimum, the following:

(1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This description shall include the areal and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and it shall also show how the areal and structural geology may affect the occurrence, availability, movement, quantity, and quality of potentially impacted surface and ground water. It shall be based on:

(A) The cross sections, maps, and plans required by Section 460:20-29-11 of this Chapter;

(B) The information obtained under (b) (2), (b) (3), and (c) of this Section; and

(C) Geologic literature and practices.

(2) For any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, samples shall be collected and analyzed from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock out crops down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The analyses shall result in the following:

(A) Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

(B) Chemical analyses identifying those strata that may contain acid- or toxic-forming, or alkalinity-producing materials and to determine their content, except that the Department may find that the analysis for alkalinity-producing material is unnecessary; and

(C) Chemical analysis of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Department may find that the analysis of pyritic sulfur content is unnecessary.

(3) For lands within the permit and adjacent areas where the strata above the coal seam to be mined will not be removed, samples shall be collected and analyzed from test borings or drill cores to provide the following data:

(A) Logs of drill holes showing the lithologic characteristics, including physical properties and thickness of each stratum that may be impacted, and location of ground water where occurring;

(B) Chemical analyses for acid- or toxic-forming or alkalinity-producing materials and their content in the strata immediately above and below the coal seam to be mined;

(C) Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the Department may find that the analysis of pyrite sulfur content is unnecessary; and

(D) For standard room-and-pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.

(c) If determined to be necessary to protect the hydrologic balance, to minimize or prevent subsidence, or to meet the performance standards of this Chapter, the Department may require the collection, analysis, and description of geologic information in addition to that required by Subsection (b) of this Section.

(d) An applicant may request the Department to waive in whole or in part the requirements of (b) (2) and (b) (3) of this Section. The waiver may be granted only if the Department finds in writing that the collection and analysis of such data are unnecessary because other information having equal value or effect is available to the Department in a satisfactory form.

**460:20-31-16. Operation plan: maps and plans**

Each application shall contain maps and plans as follows:

(1) The maps, plans, and cross sections shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Sections 460:20-29-10 through 460:20-29-11 of this Chapter.

(2) The following shall be shown for the proposed permit area:

(A) Buildings, utility corridors, and facilities to be used;

(B) The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

(C) Each area of land for which a performance bond or other equivalent guarantee will be posted under Subchapter 37 of this Chapter;

(D) Each coal storage, cleaning, and loading area;

(E) Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;

(F) Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

(G) Each source of waste and each waste disposal facility relating to coal processing or pollution control;
(H) Each facility to be used to protect and enhance fish and wildlife related environmental values;
(I) Each explosives storage and handling facility;
(J) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing water dam and embankment, in accordance with Section 460:20-31-9 of this Chapter and disposal areas for underground development waste and excess spoil, in accordance with Section 460:20-31-12 of this Chapter;
(K) Each profile, at cross sections specified by the Department, of the anticipated final surface configuration to be achieved for the affected areas;
(L) Location of each water and subsidence monitoring point; and
(M) Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(3) Except as provided in Sections 460:20-31-9(a)(2), 460:20-31-9(a)(3), 460:20-31-12, 460:20-45-24(b), 460:20-45-26(c), 460:20-45-27(c) and 460:20-45-29(c) of this Chapter, cross sections, maps, and plans required under (2)(D), (E), (F), (J), and (K) of this Section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, or a qualified, registered, professional land surveyor, with assistance from experts in related fields such as landscape architecture.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 16 Ok Reg 3526, eff 9-13-99]

**460:20-31-17. Transportation facilities**

(a) **Plans and drawings.** Each applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road as defined in Section 460:20-3-5 of this Chapter to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall:

(1) Include a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures;
(2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the Department in accordance with Section 460:20-45-52 (d)(1) of this Chapter.
(3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the Department in accordance with Section 460:20-45-53(c)(2) of this Chapter.
(4) Contain a description of measures to be taken to obtain approval of the Department for alteration or relocation of a natural stream channel under Section 460:20-45-53(d)(5) of this Chapter.
(5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the Department can maximize the protection of the stream in accordance with Section 460:20-

45-53(d)(6) of this Chapter; and

(6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(b) **Standard design plans.** The Department may establish engineering design standards for primary roads through the State program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in Section 460:20-45-53(b) of this Chapter.

[**Source:** Amended at 11 Ok Reg 4231, eff 7-25-94; Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-31-18. Return of coal processing waste to abandoned underground workings**

(a) Each plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the Department and the Mine Safety and Health Administration under Section 460:20-45-29(f) of this Chapter.

(b) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(c) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(d) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(e) The requirements of Subsections (a), (b), (c), and (d) of this Section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the Department from requirements specifying hydrologic monitoring.

**460:20-31-19. Air pollution control plan**

For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the Department, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under (2) of this Section to comply with applicable Federal and State air quality standards; and

(2) A plan for fugitive dust control practices, as required under Section 460:20-45-34 of this Chapter.

**460:20-31-20. Diversions**

Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with Section 460:20-45-10 of this Chapter.

**460:20-31-21. Support facilities**

Each applicant for an underground coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with Section 460:20-45-55 of this chapter for each facility.

**460:20-31-22. Interpretive rules related to general performance standards**

The following interpretation of rules promulgated in Subchapter 31 of this Chapter have been adopted be the Department.

(1) Interpretation of Section 460:20-31-8: Reclamation plan: Postmining land uses.

(A) The requirements of Section 460:20-31-8 (a)(2) of this Chapter, for approval of an alternative postmining land use, ma be met by requesting approval through the permit revision procedures of Section 460:20-17-3 of this Chapter rather than requesting such approval in the original permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land use capability as required be Section 460:20-45-51 (a) of this Chapter. An application for a permit revision of this type,

(i) must be submitted in accordance with the filing deadlines of Section 460:20-17-3 of this Chapter;
(ii) shall constitute a significant alteration from the mining operation contemplated by the original permit; and
(iii) shall be subject to the requirements of Subchapters 15 and 19 of this Chapter.

## SUBCHAPTER 33. REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

**460:20-33-1. Scope**

This Subchapter establishes cross sections, maps, and plans in addition to the general permit requirements contained in Subchapters 13 through 31 of this Chapter. All of the provisions of Subchapters 13 through 33 of this Chapter apply to these operations, unless otherwise specifically provided in this Subchapter.

**460:20-33-2. Objective**

The objective of this Subchapter is to ensure that permits are issued for certain categories of surface coal mining and reclamation operations only after the Department receives information that shows that these operations will be conducted according to the applicable requirements of the Act, this Chapter, and applicable regulatory programs.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-33-3. Experimental practices mining**

(a) Experimental practices provide a variance from environmental protection performance standards of the Act, Subchapters 39 through 55 of this Chapter, and the regulatory program for experimental or research purposes, or to allow an alternative postmining land use, and may be undertaken if they are approved by the

Department and the Director of OSM and if they are incorporated in a permit or permit revision issued in accordance with the requirements of Subchapters 13 through 31 of this Chapter.

(b) An application for an experimental practice shall contain descriptions, maps, plans, and data which show:

(1) The nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted;

(2) How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreation facilities) on an experimental basis;

(3) That the experimental practice:

(A) Is potentially more, or at least as, environmentally protective during and after mining operations as would otherwise be required by standards promulgated under Subchapter 39 through 55 this Chapter; and

(B) Will not reduce the protection afforded public health and safety below that provided by the requirements of Subchapters 39 through 55 of this Chapter; and

(4) That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program shall ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the Department and the Director of OSM to:

(A) Evaluate the effectiveness of the experimental practice; and

(B) Identify, at the earliest possible time, potential risk to the environment and public health and safety which may be caused by the experimental practice during and after mining.

(c) Applications for experimental practices shall comply with the public notice requirements of 460:20-15-5 of this Chapter.

(d) No application for an experimental practice under this Section shall be approved until the Department first finds in writing and the Director of OSM then concurs that:

(1) The experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis;

(2) The experimental practice is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under Subchapters 39 through 55 of this Chapter;

(3) The mining operations approved for a particular land use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and

(4) The experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under Subchapters 39 through 55 of this Chapter.

(e) Experimental practices granting variances from the special environmental protection performance standards of the Act applicable to prime farmland shall be approved only after consultation with the U.S. Department of Agriculture, Soil

Conservation Service.
(f) Each person undertaking an experimental practice shall conduct the periodic monitoring, recording, and reporting program set forth in the application, and shall satisfy such additional requirements as the Department or the Director of OSM may impose to ensure protection of the public health and safety and the environment.
(g) Each experimental practice shall be reviewed by the Department at a frequency set forth in the approved permit, but no less frequently than every 2 1/2 years. After review, the Department may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the Department shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of Subchapter 19 of this Chapter.
(h) Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of 420:20-15-5 of this Chapter and approved by the Department. Any revisions which propose significant alterations in the experimental practice shall, at a minimum, be subject to notice, hearing, and public participation requirements of 460:20-15-5 of this Chapter and concurrence by the Director of OSM. Revisions that do not propose significant alterations in the experimental practice shall not require concurrence by the Director of OSM.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-33-4. Mountaintop removal mining**

(a) This Section applies to any person who conducts or intends to conduct surface mining activities by mountaintop removal mining.
(b) Mountaintop removal mining means surface mining activities where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in Section 460:20-51-3(a) (6) of this Chapter, by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of this Section.
(c) The Department may issue a permit for mountaintop removal mining, without regard to the requirements of Sections 460:20-43-38, 460:20-43-39, 460:20-43-40, and 460:20-43-42 of this Chapter to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

(1) The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if:

(A) After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the Department to constitute an equal or better economic or public use of the affected land compared with the premining use;
(B) The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of Subsections (a) through (c) of Section 460:20-43-51 of this Chapter;
(C) The applicant has presented specific plans for the proposed postmining land use and made appropriate assurance that such use will be:

(i) Compatible with adjacent land uses;

(ii) Obtainable according to data regarding expected need and market;
(iii) Assured of investment in necessary public facilities;
(iv) Supported by commitments from public agencies where appropriate;
(v) Practicable with respect to private financial capability for completion of the proposed use;
(vi) Planned pursuant to schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and
(vii) Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(D) The proposed use would be compatible with adjacent land uses and existing State and local land use plans and programs; and
(E) The Department has provided, in writing, an opportunity of not more than 60 days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and any State or Federal agency which the Department, in its discretion, determines to have an interest in the proposed use.

(2) The applicant demonstrates that in place of restoration of the land to be affected to the approximate original contour under Sections 460:20-43-38, 460:20-43-39, 460:20-43-40, and 460:20-43-42 of this Chapter, the operation will be conducted in compliance with the requirements of Subchapter 51 of this Chapter.
(3) The requirements of Subchapter 51 of this Chapter are made a specific condition of the permit.
(4) All other requirements of the Act, this Chapter, and the regulatory program are met by the proposed operations.
(5) The permit is clearly identified as being for mountaintop removal mining.

(d) **Variance.**

(1) Any permits incorporating a variance issued under this Section shall be reviewed by the Department to evaluate the progress and development of mining activities to establish that the operator is proceeding in accordance with the terms of the variance:

(A) Within the sixth month preceding the third year from the date of its issuance;
(B) Before each permit renewal; and
(C) Not later than the middle of each permit term.

(2) Any review required under (d) (1) of this Section need not be held if the permittee has demonstrated and the Department finds, in writing, within three months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of the Act, this Chapter, and the regulatory program.
(3) The terms and conditions of a permit for mountaintop removal mining may be modified at any time by the Department, if it determines that more stringent measures are necessary to insure that the operation involved is

conducted in compliance with the requirements of the Act, this Chapter, and the regulatory program.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-33-5. Steep slope mining**

(a) This Section applies to any persons who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except:

(1) Where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(2) Where a person obtains a permit under the provisions of Section 460:20-33-4 of this Chapter; or

(3) To the extent that a person obtains a permit incorporating a variance under 460:20-33-6 of this Chapter.

(b) Any application for a permit for surface coal mining and reclamation operations covered by this Section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of Section 460:20-43-42 or 460:20-45-42 of this Chapter.

(c) No permit shall be issued for any operations covered by this Section, unless the Department finds, in writing, that in addition to meeting all other requirements of this Chapter, the operation will be conducted in accordance with the requirements of Sections 460:20-43-42 or 460:20-45-42 of this Chapter.

**460:20-33-6. Permits incorporating variances from approximate original contour restoration requirements**

(a) The Department may issue a permit for nonmountaintop removal, steep slope, mining which includes a variance from the requirements of Sections 460:20-43-38, 460:20-43-39, 460:20-43-40, and 460:20-43-42 or 460:20-45-38 and 460:20-45-42 of this Chapter to restore the disturbed areas to their approximate original contour. The permit may contain such a variance only if the Department finds, in writing, that the applicant has demonstrated, on the basis of a complete application, that the following requirements are met:

(1) After reclamation, the lands to be affected by the variance within the permit area will be suitable for an industrial, commercial, residential, or public postmining land use (including recreational facilities).

(2) The requirements of Section 460:20-43-51 or 460:20-45-51 of this Chapter will be met.

(3) The watershed of lands within the proposed permit and adjacent areas will be improved by the operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed will be deemed improved only if:

(A) The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the ecology of such water, or flood hazards within the watershed containing the permit area will be reduced by reduction of the peak flow discharge from precipitation events or thaws;

(B) The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely

affects the ecology of any surface water or any existing or planned use of surface or ground water; and

(C) The appropriate State environmental agency approves the plan.

(4) The owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operations under Section 460:20-23-4 of this Chapter and shall show an understanding that the variance could not be granted without the surface owner's request.

(b) If a variance is granted under this Section:

(1) The requirements of 460:20-43-51(d) or 460:20-45-51(d) of this Chapter shall be included as a specific condition of the permit; and

(2) The permit shall be specifically marked as containing a variance from approximate original contour.

(c) A permit incorporating a variance under this Section shall be reviewed by the Department at least every 30 months following the issuance of the permit to evaluate the progress and development of the surface coal mining and reclamation operations to establish that the operator is proceeding in accordance with the terms of the variance.

(d) If the permittee demonstrates to the Department that the operations have been, and continue to be, conducted in compliance with the terms and conditions of the permit, the requirements of the Act, this Chapter, and the regulatory program, the review specified in Subsection (c) of this Section need not be held.

(e) The terms and conditions of a permit incorporating a variance under this Section may be modified at any time by the Department if it determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of the Act, this Chapter, and the regulatory program.

(f) The Department may grant variances in accordance with this Section only if it has promulgated specific rules to govern the granting of variances in accordance with the provisions of this Section and any necessary, more stringent requirements.

(g) This Section does not apply to non-steep slope sites.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-33-7. Prime farmland

(a) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmland historically used for cropland. This Section does not apply to:

(1) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(2) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

(3) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(A) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(B) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(C) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(4) For purposes of this Section:

(A) Renewal of a permit means a decision by the Department to extend the time by which the permittee may complete mining within the boundaries of the original permit, and revision of the permit means a decision by the Department to allow changes in the method of mining operations within the original permit area, or the decision of the Department to allow incidental boundary changes to the original permit;

(B) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or power line or similar crossing;

(C) A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were part of a single permitted operation. For the purposes of this Subsection, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(b) **Application contents: reconnaissance inspection.**

(1) All permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The Department in consultation with the U.S. Soil Conservation Service shall determine the nature and extent of the required reconnaissance inspection.

(2) If the reconnaissance inspection establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant shall submit a statement that no prime farmland is present. The statement shall identify the basis upon which such a conclusion was reached.

(3) If the reconnaissance inspection indicates that land within the proposed permit area may be prime farmland historically used for croplands, the applicant shall determine if a soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no soil survey exists, the applicant shall have a soil survey made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. Soil surveys of the detail used by the U.S. Soil Conservation Service for operational conservation planning shall be used to identify and locate prime farmland soils.

(A) If the soil survey indicates that no prime farmland soils are present within the proposed permit area, Subsection (b)(2) of this Section shall apply.

(B) If the soil survey indicates that prime farmland soils are present within the proposed permit area, Subsection (c) of this Section shall

apply.

(c) **Application contents: prime farmland.** All permit applications for areas in which prime farmland has been identified within the proposed permit area shall include the following:

(1) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbook 436 "Soil Taxonomy" (U.S. Soil Conservation Service, 1975) as amended on March 22,1982, and October 5,1982, and 18, "Soil Survey Manual" (U.S. Conservation Service, 1951), as amended on December 18,1979, May 7,1980, May 9, 1980, September 11, 1980, June 9, 1981, June 29, 1981, and November 16, 1982. The U.S. Soil Conservation Service establishes the standards of the National Cooperative Soil Survey and maintains a National Soils Handbook which gives current acceptable procedures for conducting soil surveys. This National Soils Handbook is available for review at area and State SCS offices.

(A) U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they exist on the date of adoption of this Section. Notices of changes made to these publications will be periodically published by OSM in the Federal Register. The handbooks are on file and available for inspection at the OSM Central Office, U.S. Department of the Interior, 1951 Constitution Avenue, NW, Washington, D.C., at each OSM Field Operations and Field Office, and at the central office of the applicable State Department, if any. Copies of these documents are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock Nos. 001-000-02597-0 and 001-000-00688-6, respectively. In addition, these documents are available for inspection at the national, State, and area offices of the Soil Conservation Service, U.S. Department of Agriculture, and at the Federal Register library, 1100 L Street, NW., Washington, D.C. Incorporation by reference provisions were approved by the Director of the Federal Register on June 29, 1981.

(B) The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the U.S. Soil Conservation Service, including, but not limited to, soil-horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the State Conservationist, U.S. Soil Conservation Service. The Department may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil-reconstruction standards of Subchapter 19 of this Chapter.

(2) A plan for soil reconstruction, replacement, and stabilization for the purpose of establishing the technological capability of the mine operator to comply with the requirements of Subchapter 19 of this Chapter.

(3) Scientific data, such as agricultural-school studies, for areas with comparable soils, climate, and management that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area.

(4) The productivity prior to mining, including the average yield of food, fiber, forage, or wood products obtained under a high level of management.

(d) **Consultation with Secretary of Agriculture.**

(1) The Secretary of Agriculture has responsibilities with respect to prime farmland soils and has assigned the prime farmland responsibilities arising under the Federal Act of the Chief of the U.S. Soil Conservation Service. The U.S. Soil Conservation Service shall carry out consultation and review through the State Conservationist located in each State.

(2) The State Conservationist shall provide to the Department a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland soil descriptions.

(3) The State Conservationist shall assist the Department in describing the nature and extent of the reconnaissance inspection required in Subsection (b)(1) of this Section.

(4) Before any permit is used for areas that include prime farmland, the Department shall consult with the State Conservationist. The State Conservationist shall provide for the review of, and comment on, the proposed method of soil reconstruction in the plan submitted under Subsection (c) of this Section. If the State Conservationist considers those methods to be inadequate, he or she shall suggest revisions to the Department which result in more complete and adequate reconstruction.

(e) **Issuance of permit.** A permit for the mining and reclamation of prime farmland may be granted by the Department, if it first finds, in writing, upon the basis of a complete application, that:

(1) The approved proposed postmining land use of these prime farmlands will be cropland;

(2) The permit incorporates as specific conditions the contents of the plan submitted under Subsection (c) of this Section, after consideration of any revisions to that plan suggested by the State Conservationist under Subsection (d)(4) of this Section;

(3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

(4) The proposed operations will be conducted in compliance with the requirements of Subchapter 19 of this Chapter and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of this chapter.

(5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the Department and the consent of all affected property owners within the permit area must be obtained.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

**460:20-33-8. Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities**

(a) **Scope.** This Section shall apply to any person or persons conducting or intending to conduct combined surface and underground mining activities where a variance is requested from the contemporaneous reclamation requirements of 460:20-43-37 of this Chapter.

(b) **Application contents for variances.** Any person desiring a variance under this Section shall file with the Department complete applications for both the surface mining activities and underground mining activities which are to be combined. The reclamation and operation plans for these permits shall contain appropriate narratives, maps, and plans, which:

(1) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the coal;

(2) Show how multiple future disturbances of surface lands or waters will be avoided;

(3) Identify the specific surface areas for which a variance is sought and the Sections of the Act, this Chapter, and the regulatory program from which a variance is being sought;

(4) Show how the activities will comply with 460:20-43-28 of this Chapter and other applicable requirements of the regulatory program;

(5) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

(6) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

(7) Show how offsite storage of spoil will be conducted to comply with the requirements of the Act, Sections 460:20-43-24 through 460:20-43-27 of this Chapter, and the regulatory program.

(c) **Issuance of permit.** A permit incorporating a variance under this Section may be issued by the Department if it first finds, in writing, upon the basis of a complete application filed in accordance with this Section, that:

(1) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(2) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

(3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the regulatory program and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(4) The surface area of surface mining activities proposed for the variance has been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(5) No substantial adverse environmental damage, either onsite or offsite, will result from the delay in completion of reclamation otherwise required by Section 745.22 of the Act, Subchapter 43 of this Chapter, and the regulatory program;

(6) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of 460:20-43-28 of this Chapter and the regulatory program;
(7) Provisions for offsite storage of spoil will comply with the requirements of Section 754.1 of the Act, Sections 460:20-43-24 through 460:20-43-27 of this Chapter, and the regulatory program;
(8) Liability under the performance bond required to be filed by the applicant with the Department pursuant to Subchapter 37 of this Chapter and the regulatory program will be for the duration of the underground mining activities and until all requirements of Subchapter 37 and the regulatory program have been complied with; and
(9) The permit for the surface mining activities contains specific conditions:
(A) Delineating the particular surface areas for which a variance is authorized;
(B) Identifying the applicable provisions the Act and Subchapter 43 of this Chapter, and the regulatory program; and
(C) Providing a detailed schedule for compliance with the provisions of this Section.

(d) **Review of permits containing variances.** Variances granted by permits issued under this Section shall be reviewed by the Department no later than 3 years from the dates of issuance of the permit and any permit renewals.

**460:20-33-9. Augering**

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations.
(b) Any application for a permit for operations covered by this Section shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with Subchapter 47 of this Chapter.
(c) No permit shall be issued for any operations covered by this Section unless the Department finds, in writing, that in addition to meeting all other applicable requirements of this Chapter, the operation will be conducted in compliance with Subchapter 47 of this Chapter.

**460:20-33-10. Coal preparation plants not located within the permit area of a mine**

(a) This section applies to any person who operates or intends to operate a coal preparation plant outside the permit area of any mine, other than such plants which are located at the site of ultimate coal use. Any person who operates such a preparation plant shall obtain a permit from the Department in accordance with the requirements of this Section.
(b) Any application for a permit for operations covered by this Section shall contain an operation and reclamation plan which specifies plans, including descriptions, maps, and cross Sections, of the construction, operation, maintenance, and removal of the preparation plant and support facilities operated incident thereto or resulting therefrom. The plan shall demonstrate that those operations will be conducted in compliance with Subchapter 53 of this Chapter.
(c) No permit shall be issued for any operation covered by this Section, unless the Department finds in writing that, in addition to meeting all other applicable requirements of this Chapter, the operations will be conducted in compliance with the requirements of Subchapter 53 of this Chapter.

**460:20-33-11. In situ processing activities**

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

(b) Any application for a permit for operations covered by this section shall be made according to all requirements of this Chapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of Subchapter 55 of this Chapter, including:

(1) Delineation of proposed holes and wells and production zone for approval of the Department:

(2) Specifications of drill holes and casings proposed to be used;

(3) A plan for treatment, confinement, or disposal of all acid- forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard caused by the mining and recovery process; and

(4) Plans for monitoring surface and groundwater and air quality, as required by the Department.

(c) No permit shall be issued for operations covered by this section, unless the Department first finds, in writing, upon the basis of a complete application made in accordance with Subsection (b) of this section, that the operation will be conducted in compliance with all requirements of this Chapter relating to underground mining activities and Subchapter 45 and Subchapter 55 of this Chapter.

**460:20-33-12. Lands eligible for remining**

(a) This section contains permitting requirements to implement Section 460:20-15-6(b)(4). Any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with this Section.

(b) Any application for a permit under this Section shall be made according to all requirements of Subchapters 13 through 33 that are applicable to coal mining and reclamation operations. In addition, the application shall:

(1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activities at the site and that could be reasonably anticipated to occur. This identification shall be based on due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.

(2) With regard to potential environmental and safety problems referred to in paragraph (b)(1) of this Section, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

(c) The requirements of this Section shall not apply after September 30, 2004.

[**Source:** Amended at 18 Ok Reg 3202, eff 7-26-01; Amended at 20 Ok Reg 2817, eff 8-26-03]

## SUBCHAPTER 35. PERMANENT REGULATORY PROGRAM: SMALL OPERATOR ASSISTANCE PROGRAM

**460:20-35-1. Definitions**

As used in this Subchapter:

**"Program administrator"** means the State or Federal official within the Department who has the authority and responsibility for overall management of the Small Operator Assistance Program; and

**"Qualified laboratory"** means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services specified in Section 460:20-35-6 under the small operator assistance program and which meets the standard of 30 CFR Section 795.10.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-35-2. Grant application procedures

A State intending to administer a Small Operator Assistance Program under a grant from the Office of Surface Mining may submit a grant application to OSM for funding of the program under the procedures of 30 CFR Part 735.

### 460:20-35-3. Eligibility for assistance

(a) An applicant is eligible for assistance if he or she:

(1) Intends to apply for a permit pursuant to the Act;

(2) Establishes that his or her probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his or her permit or during the first 5 years after issuance of his or her permit, whichever period is shorter, will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:

(A) The pro rata share, based upon percentage of ownership of the applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest,

(B) The pro rata share, based upon percentage of ownership of the applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;

(C) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management;

(D) All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them.

(3) Is not restricted in any manner from receiving a permit under this Chapter; and

(4) Does not organize or reorganize his or her company solely for the purpose of obtaining assistance under the Small Operator Assistance Program.

(b) A State may provide alternate criteria or procedures for determining the eligibility of an operator for assistance under the program, provided that such criteria may not be used as a basis for grant requests in excess of that which would be authorized under the criteria of Subsection (a) of this section.

[**Source:** Amended at 11 Ok Reg 925, eff 12-23-93 through 7-14-94 (emergency); Amended at 11 Ok Reg 4235, eff 7-25-94; Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-35-4. Filing for assistance

Each application for assistance shall include the following information:
(1) A statement of the operator's intent to file a permit application.
(2) The names and addresses of:
(A) The permit applicant; and
(B) The operator if different from the applicant.
(3) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under Section 460:20-35-3. The schedule shall include for each location:
(A) The operator or company name under which coal is or will be mined;
(B) The permit number and Mine Safety and Health Administration (MSHA) number;
(C) The actual coal production during the year preceding the year for which the applicant applies for assistance, and production that may be attributed to the applicant under Section 460:20-35-3 of this subchapter; and
(D) The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit.
(4) A description of:
(A) The proposed method of coal mining;
(B) The anticipated starting and termination dates of mining operations;
(C) The number of acres of land to be affected by the proposed mining operation; and
(D) A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated.
(5) A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows:
(A) The area of land to be affected;
(B) The location of any existing or proposed test borings; and
(C) The location and extent of known workings of any underground mines.
(6) Copies of documents which show that:
(A) The applicant has a legal right to enter and commence mining within the permit area; and
(B) A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

**460:20-35-5. Application approval and notice**
(a) If the program administrator finds the applicant eligible, he or she shall inform the applicant in writing that the application is approved.
(b) If the program administrator finds the applicant ineligible, he or she shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

**460:20-35-6. Program services and data requirements**

(a) To the extent possible with available funds, the program administrator shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in Subsection (b) of this Section for eligible operators who request assistance.
(b) The program administrator shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator shall be sufficient to satisfy the requirements for:

(1) The determination of the probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas, including the engineering analysis and designs necessary for the determination, in accordance with Sections 460:20-27-11(f) and 460:20-31-7(e) and any other applicable provisions of this Chapter; and
(2) The geologic drilling and the statement of the results of test borings and core samplings for the proposed permit area in accordance with Sections 460:20-27-12(b) and 460:20-31-15(b) and any other applicable provisions of this Chapter; and
(3) The collection of archaeological and historical information required by Section 460:20-25-5(b), 460:20-29-5(2), 460:20-27-17 and 460;20-31-10 and any other archaeological and historical information required by the Department, and the preparation of plans necessitated thereby; and
(4) The collection of site-specific resource information and the production of protection and enhancement plans for fish and wildlife habitats and other environmental values and plans required by the Department under Section 460:20-27-9, 460:20-31-14 and any other applicable regulations; and
(5) Pre-blast surveys if required under Section 460:20-19; and
(6) The development of cross-section maps and plans required under Section 460:20-25-11 and 460:20-29-11, and any other applicable regulation.

(c) Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.
(d) Data collected under this program shall be made publicly available in accordance with Section 460:20-15-5(d) of this Chapter. The program administrator shall develop procedures for interstate coordination and exchange of data.

[**Source:** Amended at 11 Ok Reg 925, eff 12-23-93 through 7-14-94 (emergency); Amended at 11 Ok Reg 4235, eff 7-25-94; Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-35-7. Applicant liability

(a) The applicant shall reimburse the Department for the cost of the services rendered pursuant to this Subchapter if:

(1) The applicant submits false information, fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;
(2) The program administrator finds that the applicant's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12-month period immediately following the issuance of the permit for which assistance is provided; or
(3) The permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000-ton annual production limit during the 12-month period immediately following the issuance of the permit. Under this Subsection the applicant and its successor are jointly and severally obligated to reimburse the Department.

(b) The program administrator may waive the reimbursement obligation if he or she finds that the applicant at all times acted in good faith.

[**Source:** Amended at 11 Ok Reg 925, eff 12-23-93 through 7-14-94 (emergency); Amended at 11 Ok Reg 4235, eff 7-25-94; Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-35-8. Assistance funding

(a) **Use of funds.** Funds specifically authorized for this program shall be used to provide the services specified in 460:20-35-6 of this Subchapter and shall not be used to cover administrative expenses.
(b) **Allocation of funds.** The program administrator shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to this Subchapter.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

## SUBCHAPTER 37. BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

### 460:20-37-1. Scope and purpose

This subchapter sets forth the minimum requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations under regulatory programs in accordance with the Act.

### 460:20-37-2. Department responsibilities

(a) The Department shall prescribe and furnish forms for filing performance bonds.
(b) The Department shall prescribe by regulation terms and conditions for performance bonds and insurance.
(c) The Department shall determine the amount of the bond for each area to be bonded, in accordance with Section 460:20-37-7. The Department shall also adjust the amount as acreage in the permit area is revised, or when other relevant conditions change according to the requirements of Section 460:20-37-8.
(d) The Department may accept a self-bond if the permittee meets the requirements of Section 460:20-37-13 and any additional requirements in the State or Federal program.
(e) The Department shall release liability under a bond or bonds in accordance with Section 460:20-37-15.
(f) If the conditions specified in Section 460:20-37-16 occur, the Department shall take appropriate action to cause all or part of a bond to be forfeited in accordance with procedures of that Section.
(g) The Department shall require in the permit that adequate bond coverage be in effect at all times. Except as provided in Section 460:20-37-9(e) (2), operating without a bond is a violation of a condition upon which the permit is issued.

### 460:20-37-3. Definitions

(a) **"Surety bond"** means an indemnity agreement in a sum certain payable to the Department, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the State where the operation is located.
(b) **"Collateral bond"** means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the Department

of one or more of the following:

(1) A cash account, which shall be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the Department upon demand, or the deposit of cash directly with the Department;

(2) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the Department;

(3) Negotiable certificates of deposit, made payable or assigned to the Department and placed in its possession;

(4) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the Department upon presentation;

(5) A perfected, first-lien security interest in real property in favor of the Department; or

(6) Other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the Department.

(c) **"Self-bond"** means an indemnity agreement in a sum certain executed by the permittee and the parent company guarantor and made payable to the Department, with or without separate surety.

**460:20-37-4. Requirement to file a bond**

(a) After a permit application under Subchapters 13, 15, 17, 19, 23, 25, 27, 29, 31, 33, and 35 has been approved, but before a permit is issued, the applicant shall file with the Department, on a form prescribed and furnished by the Department, a bond or bonds for performance made payable to the Department and conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit, and the reclamation plan.

(b)

(1) The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit.

(2) As surface coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file with the Department an additional bond or bonds to cover such increments in accordance with this Section.

(3) The operator shall identity the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application (under Subchapters 27 and 31 of this Chapter), and shall specify the bond amount to be provided for each area or increment.

(4) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the Department become necessary pursuant to Section 460:20-37-16.

(c) An operator shall not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels, or operations prior to acceptance by the Department of the required performance bond.

(d) The applicant shall file, with the approval of the Department, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area

as determined in accordance with Section 460:20-37-7:

(1) A performance bond or bonds for the entire permit area;

(2) A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or

(3) An incremental-bond schedule and the performance bond required for the first increment in the schedule.

(e) OSM may approve, as part of a State or Federal program, an alternative bonding system, 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 plan for any 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.

**460:20-37-5. Form of the performance bond**

The Department shall prescribe the form of the performance bond. The Department may allow for:

(1) A surety bond;

(2) A collateral bond;

(3) A self-bond; or

(4) A combination of any of these bonding methods.

**460:20-37-6. Period of liability**

(a)

(1) Performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in Section 460:20-43-46 or 460:20-45-46 of these Regulations or until achievement of the reclamation requirements of the Act, regulatory programs, and permit, whichever is later.

(2) With the approval of the Department, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under Sections 460:20-37-7 and 460:20-37-8. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

(b) Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the Department. Such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the Department.

(c) If the Department approves a long-term, intensive agricultural postmining land use, in accordance with Section 460:20-43-51 or 460:20-45-51 of these Regulations, the applicable 5- or 10-year period of liability shall commence at the date of initial planting for such long-term agricultural use.

(d)

(1) The bond liability of the permittee shall include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the

postmining land use approved under Section 460:20-43-51 or 460:20-45-51 of these Regulations.

(2) Implementation of an alternative postmining land use approved under Sections 460:20-43-51(c) and 460:20-45-51(c) which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be as specified in Section 460:20-37-15(c)(2).

**460:20-37-7. Determination of bond amount**

(a) The amount of the bond required for each bonded area shall:

(1) Be determined by the Department;

(2) Depend upon the requirements of the approved permit and reclamation plan;

(3) Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and

(4) Be based on, but not limited to, the estimated cost submitted by the permit applicant.

(b) The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Department in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than $10,000.

(c) An operator's financial responsibility under Section 460:20-45-47(c) of these Regulations for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under Section 460:20-37-17.

**460:20-37-8. Adjustment of amount**

(a) The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond shall be adjusted by the Department from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The Department may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

(b) The Department shall:

(1) Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under Section 460:20-37-12(f) of any proposed adjustment to the bond amount; and

(2) Provide the permittee an opportunity for an informal conference on the adjustment.

(c) A permittee may request reduction of the amount of the performance bond upon submission of evidence to the Department proving that the permittee's method of operation or other circumstances reduces the estimated cost for the Department to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of Section 460:20-37-15.

(d) In the event that an approved permit is revised in accordance with this Chapter, the Department shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

**460:20-37-9. General terms and conditions of bond**

(a) The performance bond shall be in an amount determined by the Department as provided in Section 460:20-37-7.

(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 Act, these Regulations, the regulatory program, and the approved permit, including completion of the reclamation plan.
(d) The duration of the bond shall be for the time period provided in Section 460:20-37-6.
(e)

(1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the Department and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.
(2) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the Department. The Department, upon notification received through the procedures of (e)(1) of this Section or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of Section 460:20-43-50 or 460:20-45-50 of these Regulations and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the Department has determined that an acceptable bond has been posted.

**460:20-37-10. Bonding requirements for underground coal mines and long-term coal-related surface facilities and structures**

(a) **Responsibilities.** The Department shall require bond coverage, in an amount determined under Section 460:20-37-7, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to underground mines, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities shall be considered in determining the amount of bond to complete the reclamation.
(b) **Long-term period of liability.**

(1) The period of liability for every bond covering long-term surface disturbances shall commence with the issuance of a permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period shall extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of Section 460:20-37-15, or until the bond has been replaced or extended in accordance with Section 460:20-37-10(b)(3).
(2) Long-term surface disturbances shall include long-term coal- related surface facilities and structures, and surface impacts incident to underground coal mining, which disturb an area for a period that exceeds 5 years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities, coal refuse areas, powerlines, bore-holes, ventilation shafts, preparation plants, machine shops, roads, and loading and treatment facilities.

(3) To achieve continuous bond coverage for long-term surface disturbances, the bond shall be conditioned upon extension, replacement, or payment in full, 30 days prior to the expiration of the bond term.
(4) Continuous bond coverage shall apply throughout the period of extended responsibility for successful revegetation and until the provisions of Section 460:20-37-15 have been met.

(c) **Bond forfeiture.** The Department shall take action to forfeit a bond pursuant to this Section, if 30 days prior to bond expiration, the operator has not filed:

(1) A performance bond for a new term as required for continuous coverage, or
(2) A performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

**460:20-37-11. Surety bonds**

(a) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the State where the operation is located.

(b) Surety bonds shall be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be cancelled with the prior consent of the Department. The Department shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

**460:20-37-12. Collateral bonds**

(a) Collateral bonds, except for letters of credit, cash accounts, and real property, shall be subject to the following conditions:

(1) The Department shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in this Subchapter.
(2) The Department shall value collateral at its current market value, not at face value.
(3) The Department shall require that certificates of deposit be made payable to or assigned to the Department, both in writing and upon the records of the bank issuing the certificates. If assigned, the Department shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates.
(4) The Department shall not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
(5) The Department shall only accept automatically renewable certificates of deposit

(b) Letters of credit shall be subject to the following conditions:

(1) The letter may be issued only by a bank organized or authorized to do business in the United States;
(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the Department if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date.
(3) The letter of credit shall be payable to the Department upon demand, in part or m full, upon receipt from the Department of a notice of forfeiture issued in accordance with Section 460:20-37-16.

(c) Real property posted as a collateral bond shall meet the following conditions:

(1) The applicant shall grant the Department a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under Section 460:20-37-16.

(2) In order for the Department to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant shall submit a schedule of the real property which shall be mortgaged or pledged to secure the obligations under the indemnity agreement. The list shall include-

(A) A description of the property;

(B) The fair market value as determined by an independent appraisal conducted by a certified appraiser; and

(C) Proof of possession and title to the unencumbered real property.

(3) The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this Section shall not be disturbed under any permit while it is serving as security under this Section.

(d) Cash accounts shall be subject to the following conditions:

(1) The Department may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the Department. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with Section 460:20-37-15.

(2) Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the Department has approved the payment of interest to the operator.

(3) Certificates of deposit may be substituted for a cash account with the approval of the Department.

(4) The Department shall not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(e) **Bond collateral.**

(1) The estimated bond value of all collateral posted as assurance under this Section shall be subject to a margin which is the ratio of bond value to market value, as determined by the Department The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the Department to complete reclamation.

(2) The bond value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.

(f) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the Department at the time collateral is offered.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-37-13. Self-bonding

(a) Definitions. For the purposes of this Section only:

(1) **"Current assets"** means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within 1 year or within the normal operating cycle of the business.

(2) **"Current liabilities"** means obligations which are reasonably expected to be paid or liquidated within 1 year or within the normal operating cycle of the business.

(3) **"Fixed assets"** means plants and equipment, but does not include land or coal in place.

(4) **"Liabilities"** means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

(5) **"Net worth"** means total assets minus total liabilities and is equivalent to owners' equity.

(6) **"Parent corporation"** means a corporation which owns or controls the applicant.

(7) **"Tangible net worth"** means net worth minus intangibles such as goodwill and rights to patents or royalties.

(b) The Department may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:

(1) The applicant designates a suitable agent to receive service of process m the State where the proposed surface coal mining operation is to be conducted.

(2) The applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediately preceding the time of application.

(A) The Department may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least 5 years immediately preceding the time of application.

(B) When calculating the period of continuous operation, the Department may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.

(3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(A) The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

(B) The applicant has a tangible net worth of at least $10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

(C) The applicant's fixed assets in the United States total at least $20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

(4) The applicant submits:

(A) Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;
(B) Unaudited financial statements for completed quarters in the current fiscal year; and
(C) Additional unaudited information as requested by the Department.

(c) The Department may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of Paragraphs (b)(1)-(b)(4) of this Section as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

(1) If the applicant falls to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the Department sufficient to complete the reclamation plan, but not to exceed the bond amount.
(2) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the Department at least 90 days in advance of the cancellation date, and the Department accepts the cancellation.
(3) The cancellation may be accepted by the Department if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.
(4) The Department may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of paragraphs (b)(1), (b)(2) and (b)(4) of this Section, and the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this Section. Such a written guarantee shall be referred to as a "non-parent corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of paragraphs (c)(1)(i) through (c)(1)(iii) of these Section. The Department may require the applicant to submit any information specified in paragraph (b)(3) of this Section in order to determine the financial capabilities of the applicant.

(d) For the Department to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the Department to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self.bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States. For the Department to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

(e) If the Department accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and

shall bind each jointly and severally.

(2) Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Department along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

(3) If the applicant is a partnership, joint venture, or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.

(4) Pursuant to Section 460:20-37-16, the applicant, parent or non-parent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the Department an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under State Law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

(f) The Department may require self-bonded applicants, parent and non-parent corporate guarantors to submit an update of the information required under Paragraphs (b)(3) and (b)(4) of this Section within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

(g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant, parent or non-parent corporate guarantor change so that the criteria of (b)(3) and (d) of this Section are not satisfied, the permittee shall notify the Department immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of Section 460:20-37-9(e) shall apply.

**460:20-37-14. Replacement of bonds**

(a) The Department may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

(b) The Department shall not release existing performance bonds until the permittee has submitted, and the Department has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this Section shall not constitute a release of bond under Section 460:20-37-15.

**460:20-37-15. Requirement to release performance bonds**

(a) **Bond release application.**

(1) The permittee may file an application with the Department for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the Department in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be established in the regulatory program or identified in the mining and reclamation plan required Subchapters 13,15,17,19, 23, 25, 27, 29, 31, 33, and 35 of this Chapter and approved by the Department.

(2) Within 30 days after an application for bond release has been filed with the Department, the operator shall submit a copy of an advertisement

placed at least once a week for four consecutive weeds in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan, and the name and address of the Department to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to (f) and (h) of this Section. In addition, as part of any bond release application, the applicant shall submit copies of letters which he or she has sent to adjoining property owners, surface owners, local governmental bodies, planning agencies, sewage and water treatment-authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

(3) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the Department, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

(b) **Inspection by Department.**

(1) Upon receipt of the bond release application, the Department shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the Department in making the bond release inspection. The Department may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to (f) of this Section, or, within 30 days after a public hearing has been held pursuant to (f) of this Section, the Department shall notify in writing the permittee, the surety, or other persons with an interest in bond collateral who have requested notification under Section 460:20-37-12(f), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

(c) **Bond release.** The Department may release all or part of the bond for the entire permit area or incremental area if the Department is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases 1, II, and III:

(1) At the completion of Phase I, after the operator completes the backfilling, regrading (which may include the replacement of topsoil) and

drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area.

(2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond may be released. When determining the amount of bond to be released after successful revegetation has been established, the Department shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in the permanent program performance standards for reestablishing revegetation. No part of the bond or deposit shall be released under this Paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Section 706(9) of the Act and by the permanent program performance standards or until soil productivity for prime farmland has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 725(H) of the Act and Subchapter 49 of this Chapter. Where a silt dam is to be retained as a permanent impoundment pursuant to the permanent program performance standards, the Phase II portion of the bond may be released under this Paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the Department.

(3) At the completion of Phase 111, after the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in Section 460:20-43-46 or 460:20-45-46 of these Regulations. However, no bond shall be fully released under provisions of this Section until the reclamation requirements of the Act and the permit are fully met.

(d) **Disapproval.** If the Department disapproves the application for release of the bond or portion thereof, the Department shall notify the permittee, the surety, and any person with an interest in collateral as provided for in Section 460:20-37-12(f), in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(e) **Notification.** When any application for total or partial bond release is filed with the Department, the Department shall notify the municipality or county in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or portion of the bond.

(f) **Hearing.** Any person with a valid legal interest which might be adversely affected by release of bond, or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the Department within 30 days after the last publication of the notice required by Paragraph (a)(2) of this Section. If written objections are filed and a hearing is requested, the Department shall inform all the interested parties of the time and place of the hearing, and shall hold a public

hearing within 30 days after receipt of the request for the hearing. The date, time, and location of the public hearing shall be advertised by the Department in a newspaper of general circulation in the locality for 2 consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought, at the location of the Department office, or at the State capital, at the option of the objector.

(g) **Authority.** For the purpose of the hearing under (f) of this Section, the Department shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the Department.

(h) **Informal conference.** Without prejudice to the right of an objector or the applicant, the Department may hold an informal conference as provided in Section 745.13 of the Act to resolve such written objections. The Department shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The Department shall also furnish all parties of the informal conference with a written finding of the Department based on the informal conference, and the reasons for said finding.

[**Source:** Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-37-16. Forfeiture of bonds

(a) If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the Department shall take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

(1) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited.

(2) Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to:

(A) Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the regulatory program and a demonstration that such party has the ability to satisfy the conditions; or

(B) The Department may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the Department may approve partial release authorized under Section 460:20-37-15, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including the applicable liability periods of Section 460:20-37-6.

(b) In the event forfeiture of the bond is required by this Section, the Department shall:

(1) Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the Department, or if such appeal, if taken, is unsuccessful.

(2) Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

(c) Upon default, the Department may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Unless specifically limited, as provided in Section 460:20-37-4(b), bond liability shall extend to the entire permit area under conditions of forfeiture.

(d) **Event of forfeiture.**

(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The Department may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the Department to the party from whom they were collected.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-37-17. Terms and conditions for liability insurance

(a) The Department shall require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provisions of State law. Minimum insurance coverage for bodily injury and property damage shall be $300,000 for each occurrence and $500,000 aggregate.

(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under these Regulations.

(c) The policy shall include a rider requiring that the insurer notify the Department whenever substantive changes are made in the policy including any termination or failure to renew.

(d) The Department may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable State self-insurance requirements approved as part of the regulatory program and the requirements of this Section.

## SUBCHAPTER 39. PERMANENT PROGRAM PERFORMANCE STANDARDS–GENERAL PROVISIONS

### 460:20-39-1. Scope

This Subchapter sets forth the minimum performance standards and design requirements to be adopted and implemented under the State program for coal exploration and surface coal mining and reclamation operations.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-39-2. Objective

The objective of this Subchapter is to ensure that coal exploration and surface coal mining and reclamation operations are conducted in manners which are compatible with the environmental, social, and aesthetic needs of Oklahoma.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-39-3. Responsibility

Each person conducting coal exploration, surface coal mining and reclamation operations is responsible for complying with these performance standards and design requirements. The Department is responsible for ensuring that the approved State program is implemented and enforced.

### 460:20-39-4. Applicability

Subchapter 41 applies to all coal exploration conducted under regulatory programs. Subchapter 43 applies to all surface mining activities conducted under regulatory programs. Subchapter 45 applies to all underground mining activities conducted under regulatory programs. Subchapters 47, 49, 51, 53, and 55 apply to certain special categories of surface coal mining and reclamation operations. Subchapters 43 and 45 apply to each of those special categories of operations, except to the extent that a provision of Subchapters 47, 49, 51, 53, and 55 specifically exempts a particular category from a particular requirement of Subchapter 43 or Subchapter 45.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

## SUBCHAPTER 41. PERMANENT PROGRAM PERFORMANCE STANDARDS–COAL EXPLORATION

### 460:20-41-1. Scope and purpose

This subchapter sets forth performance standards required for coal exploration which substantially disturbs the natural land surface. At the discretion of the Department, coal exploration operations may be further required to comply with the applicable standards of Subchapters 43, 45, 47, 49, 51, 53, and 55 of this Chapter.

### 460:20-41-2. Required documents

Each person who conducts coal exploration which substantially disturbs the natural land surface shall, while in the exploration area, have available a copy of the filed notice of intention to explore or a copy of the exploration permit for review by the authorized representative of the Department upon request.

### 460:20-41-3. Performance standards for coal exploration

(a) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species

identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be disturbed during coal exploration.
(b) All roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of Sections 460:20-43-52 through 460:20-43-55 of these Regulations.
(c) If excavations, artificially flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.
(d) Topsoil shall be separately removed, stored, and redistributed on areas disturbed by coal exploration activities as necessary to assure successful revegetation or as required by the Department.
(e) All areas disturbed by coal exploration activities shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation shall be accomplished in accordance with the following:

(1) All areas disturbed by coal exploration activities shall be seeded or planted to the same seasonal variety native to the areas disturbed. If the land use of the exploration area is intensive agriculture, planting of the crops normally grown will meet the requirements of this Paragraph.
(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(f) Diversions of overland flows and ephemeral, perennial, or intermittent streams shall be made in accordance with Section 460:20-43-10 of these Regulations.
(g) Each exploration hole, borehole, well, or other exposed underground opening created during exploration shall be reclaimed in accordance with Sections 460:20-43-4 through 460:20-43-6 of these Regulations.
(h) All facilities and equipment shall be promptly removed from the exploration area when they are no longer needed for exploration, except for those facilities and equipment that the Department determines may remain to:

(1) Provide additional environmental data,
(2) Reduce or control the onsite and offsite effects of the exploration activities, or
(3) Facilitate future surface mining and reclamation operations by the person conducting the exploration.

(A) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with Sections 460:20-43-8 through 460:20-43-14 of these Regulations. The Department may specify additional measures which shall be adopted by the person engaged in coal exploration.

(j) Acid-or toxic-forming materials shall be handled and disposed of in accordance with Sections 460:20-43-8(b), 460:20-43-8(f), and 460:20-43-38(e) of these Regulations. The Department may specify additional measures which shall be adopted by the person engaged in coal exploration.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

## SUBCHAPTER 43. PERMANENT PROGRAM PERFORMANCE STANDARDS: SURFACE MINING STANDARDS

### 460:20-43-1. Scope

This Subchapter sets forth the minimum environmental protection performance standards to be adopted and implemented under regulatory programs for surface mining activities.

**460:20-43-2. Objectives**

This Subchapter is intended to ensure that all surface mining activities are conducted in a manner which preserves and enhances environmental and other values in accordance with the Act.

**460:20-43-3. Signs and markers**

(a) **Specifications.** Signs and markers required under this Subchapter shall:

(1) Be posted and maintained by the person who conducts the surface mining activities;

(2) Be of a uniform design throughout the operation that can be easily seen and read;

(3) Be made of durable material; and

(4) Conform to local ordinances and codes.

(b) **Duration of maintenance.** Signs and markers shall be maintained during the conduct of all activities to which they pertain.

(c) **Mine and permit identification signs.**

(1) Identification signs shall be displayed at each point of access to the permit area from public roads.

(2) Signs shall show the name, business address, and telephone number of the person who conducts the surface mining activities and the identification number of the current permit authorizing surface mining activities.

(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(d) **Perimeter markers.** The perimeter of a permit area shall be clearly marked before the beginning of surface mining activities.

(e) **Buffer zone markers.** Buffer zones shall be marked along their boundaries as required under Section 460:20-43-16.

(f) **Topsoil markers.** Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under Section 460:20-43-7, the stockpiled material shall be clearly marked.

**460:20-43-4. Casing and sealing of drilled holes: general requirements**

Each exploration hole, other drill or borehole, well, or other exposed underground opening shall be cased, sealed, or otherwise managed, as approved by the Department, to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent area. If these openings are uncovered or exposed by surface mining activities within the permit area they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the Department. Use of a drilled hole or bore hole or monitoring well as a water well must meet the provisions of Section 460:20-43-8. This Subchapter does not apply to holes solely drilled and used for blasting.

**460:20-43-5. Casing and sealing of drilled holes: temporary**

Each exploration hole, other drill or boreholes, wells and other exposed underground openings which have been identified in the approved permit

application for use to return coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed before use and protected during use by barricades, or fences, or other protective devices approved by the Department. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the surface mining activities.

**460:20-43-6. Casing and sealing of drilled holes: permanent**

When no longer needed for monitoring or other use approved by the Department upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under Section 460:20-43-8, each exploration hole, other drilled hole or borehole, well, and other exposed underground opening shall be capped, sealed, backfilled, or otherwise properly managed, as required by the Department, under Section 460:20-43-4 and consistent with 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

**460:20-43-7. Topsoil and subsoil**

(a) **Removal.**

(1) All topsoil must be removed a minimum of 60 feet or one pit width (whichever is less) in advance of the active pit unless a different distance is determined by the Department.

(A) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(B) Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the Department in accordance with (b) of this Section shall be removed as a separate layer from the area to be disturbed, and segregated.

(2) If topsoil is less than 6 inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(3) The Department may choose not to require the removal of topsoil for minor disturbances which:

(A) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(B) Will not destroy the existing vegetation and will not cause erosion.

(4) **Timing.** All material to be removed under this Chapter shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

(b) **Substitutes and supplements.** Selected overburden materials may be substituted for, or used as a supplement to topsoil if the operator demonstrates to the Department that the resulting soil medium is equal to, or more suitable for, sustaining vegetation than the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(c) **Storage.**

(1) Materials removed under Subsection (a) of this Section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regarded areas.

(2) Stockpiled materials shall:

(A) Be selectively placed on a stable site within the permit area;

(B) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(C) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the Department; and

(D) Not be moved until required for redistribution unless approved by the Department.

(3) Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under (a) (1) of this Section would be detrimental to the quality or quantity of those materials, the Department may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that:

(A) Such action will not permanently diminish the capability of the topsoil of the host site; and

(B) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) **Redistribution.**

(1) Topsoil materials removed under Subsection (a) of this Section shall be redistributed in a manner that:

(A) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

(B) Prevents excess compaction of the materials; and

(C) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under Subsection(a) of this Section, the regraded land shall be treated, if necessary, to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The Department may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that:

(A) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently availableto prevent sedimentation, and

(B) Such embankments will be otherwise stabilized.

(4) **Nutrients and soil amendments.** Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.

(e) **Subsoil segregation.** The Department may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of Subsection(c) and (d) of this Section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of Sections 460:20-43-43,

460:20-43-44, 460:20-43-45 and 460:20-43-46.

[**Source:** Amended at 31 Ok Reg 2101, eff 9-12-14; Amended at 31 Ok Reg 2101, eff 9-12-14; Amended at 36 Ok Reg 1935, eff 9-14-19]

### 460:20-43-8. Hydrologic-balance protection

(a) **General.** All surface mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, to assure the protection or replacement of water rights, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this Chapter. The Department may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

(b) **Ground-water protection.** In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under Section 460:20-27-11(h) of this Chapter and the following:

(1) Ground-water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water.

(2) Ground-water quantity shall be protected by handling earth materials and runoff in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

(c) **Ground-water monitoring.**

(1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under Section 460:20-27-11(i) of this Chapter. The Department may require additional monitoring when necessary.

(2) Ground-water monitoring data shall submitted every 3 months to the Department or more frequently as prescribed by the Department. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then-the operator shall promptly notify the Department and immediately take the actions provided for in Sections 460:20-15-7(e) and 460:20-27-11(h) of this Chapter.

(3) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of Section 460:20-17-3 of this Chapter, the Department may modify the monitoring requirements, including the parameters covered a dthe sampling frequency, if the operator demonstrates, using the monitoring data obtained under this Section, that:

(A) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or

replaced; or

(B) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under Section 460:20-27-11(i) of this Chapter.

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of ground water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed.

(d) **Surface-water protection.** In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under Section 460:20-27-11(h) of this Chapter, and the following:

(1) Surface-water quality shall be protected by handling earth materials, ground-water discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevents water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this Chapter and Section 460:20-43-9, the operator shall use and maintain the necessary water-treatment facilities or water quality controls.

(2) Surface-water quality and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under Section 460:20-27-11 (h) of this Chapter.

(e) **Surface-water monitoring.**

(1) Surface-water monitoring shall be conducted according to the surface-water monitoring plan approved under Section 460:20-27-11(j) of this Chapter. The Department may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every 3 months to the Department or more frequently as prescribed by the Department. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the operator shall promptly notify the Department and immediately take the actions provided for in Sections 460:20-15-7(e) and 460:20-27-11 (h) of this Chapter. The reporting requirements of this Subsection do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with Section 460:20-17-3 of this Chapter, the Department may modify the monitoring requirements, except those required by the NPDES permitting authority, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under this Paragraph, that:

(A) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or

replaced; or

(B) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under Section 460:20-27-11 (j) of this Chapter.

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed.

(f) **Acid- and toxic-forming materials.**

(1) Drainage from acid- and toxic-forming materials into surface water and ground water shall be avoided by:

(A) Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health safety if not buried and/or treated, and

(B) Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water. Storage shall be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

(2) Storage, burial or treatment practices shall be consistent with other material handling disposal provisions of this Chapter.

(g) **Transfer of wells.** Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with Sections 460:20-43-4 through 460:20-43-6. With the prior approval of the Department, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with State and local law and the permittee shall remain responsible for the proper management of the well until bond release in accordance with Sections 460:20-43-4, through 460:20-43-6.

(h) **Water rights and replacement.** Any person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in Sections 460:20-27-11 and 460:20-27-12 of this Chapter shall be used to determine the extent of the impact of mining upon ground water and surface water.

(i) **Discharges into an underground mine.**

(1) Discharges into an underground mine are prohibited, unless specifically approved by the Department after a demonstration that the discharge will:

(A) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities;

(B) Not result in a violation of applicable water quality standards or effluent limitations;

(C) Be at a known rate and quality which shall meet the effluent limitations of Section 460:20-43-9 for pH and total suspended solids, except that the pH and total suspended-solids limitations may be exceeded, if approved by the Department; and

(D) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

(A) Water;

(B) Coal processing waste;

(C) Fly ash from a coal-fired facility;

(D) Sludge from an acid-mine-drainage treatment facility;

(E) Flue-gas desulfurization sludge;

(F) Inert materials used for stabilizing underground mines; and

(G) Underground mine development wastes.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-43-9. Hydrologic balance: water-quality standards and effluent limitations**

Discharges of water from areas disturbed by surface mining activities shall be made in compliance with all applicable State and Federal water-quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.

**460:20-43-10. Diversions**

(a) **General requirements.**

(1) With the approval of the Department, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of Section 460:20-43-12 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the Department under Section 460:20-43-8(i).

(2) The diversion and its appurtenant structures shall be designed, located, constructed, maintained and used to:

(A) Be stable;

(B) Provide protection against flooding and resultant damage to life and property;

(C) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

(D) Comply with all applicable local, State, and Federal laws and regulations.

(3) Temporary diversions shall be removed promptly when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this part. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of

the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.
(4) Temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a 2-year, 6-hour recurrence interval or a larger event as specified by the Department.
(5) To protect fills and property and to avoid danger to public health and safety permanent diversions shall be constructed to pass safely the peak runoff from a 6-hour, 10-year precipitation event or a larger event as specified by the Department. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete or other similar linings shall be used only when approved by the Department to prevent seepage or to provide stability.
(6) Diversions shall be designed, constructed and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to maintenance of appropriate gradients, channel linings, revegetation, roughness structures, and detention basins.
(7) No diversion shall be located so as to increase the potential for landslides. No diversion shall be constructed on existing landslides unless approved by the Department.
(8) When no longer needed, each temporary diversion shall be removed, and the affected land regraded, topsoiled, and revegetated in accordance with these Regulations.
(9) Diversion design shall incorporate the following:
(A) channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall be nondegradable, nonacid or toxic forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay, or shale.
(B) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Department, the design freeboard may be increased.
(C) Energy dissipators shall be installed when necessary at discharge points. Where diversions intersect with natural steams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.
(D) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with Sections 460:20-43-24, through 460:20-43-27.
(E) Topsoil shall be handled in compliance with Section 460:20-43-7.
(F) Diversions shall not be constructed or operated to divert water into underground mines without approval of the Department.

(b) **Diversion of perennial and intermittent streams.**
(1) Diversion of perennial and intermittent streams within the permit area may be approved by the Department after making the finding relating to stream buffer zones that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.
(3) The requirements of (a) (2) (B) of this Section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.
(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this Subchapter and any design criteria set by the Department.
(5) Flow from perennial and intermittent streams within the permit area may be diverted, if the diversions:

(A) Are approved by the Department after making the findings called for in Section 460:20-43-16(a);
(B) Comply with other requirements of this Subchapter; and
(C) Comply with local, State, and Federal statutes and regulations.

(6) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:

(A) The longitudinal profile of the stream, the channel and the flood-plain shall be designed and constructed to remain stable and to prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to stream-flow or to runoff outside the permit area. These contributions shall not be in excess of requirements of State or Federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the Department of Mines as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance;
(B) The combination of channel bank and flood-plain configurations shall be adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for temporary diversions, a 100-year 24-hour precipitation event for permanent diversions or larger events as specified by the Department. However, the capacity of the channel itself shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

(7) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated in accordance with Sections 460:20-43-9, 460:20-43-11, 460:20-43-37 through 460:20-43-40 and 460:20-43-43 through 460:20-43-46. At the time diversions are removed downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator who conducts the surface mining activities from maintenance of a water treatment facility

required under this Subchapter of the permit.

(8) When permanent diversions are constructed or stream channels restored, after temporary diversions, the operator shall:

(A) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream;

(B) Establish or restore the stream to its natural meandering shape of an environmentally acceptable gradient, as determined by the Department;

(C) Establish or restore the stream to a longitudinal profile and cross-section, including aquatic habitats (usually a patter of riffles, pools, and drops rather than a uniform depth) that approximate premining stream channel characteristics.

(c) **Diversion of miscellaneous flows.**

(1) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the Department. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in Subsection(a) of this Chapter:

(3) The requirements of (a) (2) (B) of this Section shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

**460:20-43-11. Hydrologic balance: sediment control measures**

(a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(1) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area,

(2) Meet the more stringent of applicable State or Federal effluent limitations,

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(1) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in Section 460:20-43-43(b);

(2) Stabilizing the backfill material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of Section 460:20-43-38;

(3) Retaining sediment within disturbed areas;

(4) Diverting runoff away from disturbed areas;

(5) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;
(6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment; and
(7) Treating with chemicals.

**460:20-43-12. Hydrologic balance: siltation structures**

(a) **Definitions.** For the purpose of this Section only disturbed area shall not include those areas:

(1) In which the only surface mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with this Subchapter; and
(2) For which the upstream area is not otherwise disturbed by the operator.

(b) **General requirements.**

(1) Additional contributions of suspended solids sediment to stream flow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.
(2) All surface drainage from the disturbed area shall be controlled through use of a siltation structure, a series of siltation structures, or such alternative techniques as provided in Section 460:20-43-11 of this Chapter before leaving the permit area.
(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area, and upon construction shall be certified by a qualified registered professional engineer or registered professional land surveyor to be constructed as designed and as approved in the reclamation plan. The certifying engineer or land surveyor shall have experience in pond construction.
(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with Section 460:20-43-14 of this Chapter.
(5) Siltation structures shall be maintained until removal is authorized by the Department and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than 2 years after the last augmented seeding.
(6) When siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and Sections 460:20-43-43, through 460:20-43-46 of this Chapter. Sedimentation ponds approved by the Department for retention as permanent impoundments may be exempted from this requirement.

(c) **Sedimentation ponds.**

(1) When used, sedimentation ponds shall:
(A) Be used individually or in series;
(B) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Department, and
(C) Be designed, constructed, and maintained to:
(i) Provide adequate sediment storage volume per acre of disturbed area draining into the structure;
(ii) Provide adequate detention time to allow the effluent from the ponds to meet State and Federal effluent

limitations;

(iii) Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Department based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of Section 460:20-43-9 will be met;

(iv) Provide a non-clogging dewatering device adequate to maintain the detention time required under (c)(1)(C)(ii) of this Section;

(v) Minimize, to the extent possible short circuiting;

(vi) Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

(vii) Ensure against excessive settlement;

(viii) Be free of sod, large roots, frozen soil, and acid-or toxic-forming coal processing waste; and

(ix) Be compacted properly;

(2) **Spillways.** A sedimentation pond shall include a combination of principal and emergency spillways or a single spillway configured as specified in (c)(2)(A) of this Section, designed and constructed to safely pass the applicable design precipitation event specified in (c)(2)(B) of this section, except as set forth in (c)(2)(C) of this section.

(A) The Department may approve a single open channel spillway that is:

(i) Of nonerodible construction and designed to carry sustained flows; or

(ii) Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) Except as specified in (c)(2)(C) of this Section, the required design precipitation event for a sedimentation pond meeting the spillway requirements of (c)(2) of this Section is:

(i) For a sedimentation pond meeting the size or other criteria of 30 CFR Section 77.216(a), a 100-year 6-hour event, or greater event as specified by the Department.

(ii) For a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), a 25-year 6-hour event, or greater event as specified by the Department.

(C) In lieu of meeting the requirements in (c)(2)(A) of this Section, the Department may approve a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with Section 460:20-27-14(a) of this Chapter that the sedimentation pond will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such a sedimentation pond shall be located where failure would not be expected to cause loss of life or serious property damage, except where;

(i) In the case of a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control

the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Department; or

(ii) In the case of a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a) it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the Department.

(d) **Other treatment facilities.**

(1) Other treatment facilities shall be designed to treat 10-year, 24-hour precipitation event unless a lesser design event is approved by the Department based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of Section 460:20-43-9 will be met.

(2) Other treatment facilities shall be designed in accordance with the applicable requirements of Subsection (c) of this Section.

(e) **Exemptions.** Exemptions to the requirements of this Section may be granted if:

(1) The disturbed drainage area within the total disturbed area is small; and

(2) The operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under Section 460:20-45-9 and the applicable State and Federal water quality standards for the receiving waters.

(f) **Performance standards.**

(1) **General requirements.** Sedimentation ponds shall be used individually or in series and shall:

(A) Be constructed before any disturbance of the undisturbed areas to be drained into the pond;

(B) Be located as near as possible to the disturbed area and out of perennial streams; unless approved by the Department;

(C) Meet all the criteria of this Section.

(2) Sediment ponds shall provide adequate sediment storage per acre of disturbance draining into the structure.

(3) **Detention time.** Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event).

(4) **Dewatering.** The water storage resulting from inflow shall be removed by a non-clogging dewatering device or a conduit spillway approved by the Department.

(5) Each operator who conducts surface mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this Section shall not relieve the operator from compliance with applicable effluent limitations as contained in Section 460:20-43-9.

(7) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation event or lesser events through the sedimentation pond.

(8) An appropriate combination of principal and emergency spillways or a single open channel spillway as specified in Section 460:20-43-9(c)(2) shall be provided to safely discharge the runoff from a 25-year, 6-hour

precipitation event, or large event specified by the Department. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the Department.
(9) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times including the period after settlement.
(10) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement unless it has been demonstrated to the Department that the material used and the design will ensure against all settlement.
(11) The minimum top width of the embankment shall not be less than the quotient of (h+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.
(12) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5H, with neither slope steeper than1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.
(13) The embankment foundation area shall be cleared of all organic matter, all surface sloped to no steeper than 1v:1h, and the entire foundation surface scarified.
(14) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and in no case shall coal-processing waste be used.
(15) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this Section. Compaction shall be conducted as specified in the design approved by the Department.
(16) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met;

(A) An appropriate combination of principal and emergency spillways or a single open channel spillway as specified in Section 460:20-43-9(c)(2) shall be provided to discharge safely the runoff resulting from a 100-year, 6-hour precipitation event, or a larger event specified by the Department.

(B) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(C) The criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.

(17) Each pond shall be designed and inspected during construction under the supervision of and certified after construction by a qualified registered professional engineer.
(18) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is

not successful or where rills and gullies develop shall be repaired and revegetated in accordance with Section 460:20-43-41.
(19) All ponds including those not meeting the size or other criteria of 30 CFR 77.216(a) shall be examined for structural weakness, erosion and other hazardous conditions and reports and modifications shall be made to the Department in accordance with 30 CFR 77.216-3. With the approval of the Department, dams not meeting these criteria [77.216(a)] shall be examined four times per year.
(20) Sedimentation ponds shall not be removed until the disturbed area has been restored, and the revegetation requirements of Section 460:20-43-43 through 460:20-43-46 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with Sections 460:20-43-37, through 460:20-43-41, and 460:20-43-43, through 460:20-43-46, unless the pond has been approved by the Department for retention as being compatible with the approved postmining land use under Section 460:20-43-51. If the Department approves retention, the sedimentation pond shall meet all requirements for permanent impoundments of Sections 460:20-43-14 and 460:20-43-15.

[**Source:** Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 16 Ok Reg 3526, eff 9-13-99; Amended at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-43-13. Hydrologic balance: discharge structures

Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering-design procedures.

### 460:20-43-14. Impoundments

(a) **General requirements.** The requirements of this subsection apply to both temporary and permanent impoundments.

(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-V1-TR60, Oct. 1985), shall comply with "Minimum Emergency Spillway Hydrologic criteria" table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 5529a) and 1 CFR Part 51. Copies may be obtained from the national technical Information Service (NTIS), 5285 Port royal Road, Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies can be inspected at the OSM headquarters Office, office of Surface Mining Reclamation and Enforcement, administrative Records, Room 660, 800 North Capitol Street, Washington, D.C. or at the Office of the Federal register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.
(2) Impoundments meeting the criteria of 30 CFR Section 77.216 shall comply with the requirements of 30 CFR Section 77.216 and this Section. The plan required to be submitted to the District Manager Of MSHA under

30 CFR Section 77.216 shall also be submitted to the Department as part of the permit application.

(3) Design Certification. The design of impoundments shall be certified in accordance with Section 460:20-27-14(a) of this Chapter as designed to meet the requirement of this Subchapter using current, prudent, engineering practices and any design criteria established by the Department. The qualified, registered, professional engineer or qualified , registered, professional, land surveyor shall be experienced ibn the design and construction of impounds.

(4) **Stability.**

(A) An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) Impoundments not included in Section (a)(4)(A) of this Section, except for a coal mine waste impounding structure, or located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for normal pool with a steady state seepage saturation conditions or meet the requirements of Section 460:20-27-14(c)(3).

(5) **Freeboard.** Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(6) **Foundation.**

(A) Foundation and abutments for the impoundment structure shall be stable under all conditions of construction and operation of the impoundment and shall be designed based on accurate and adequate information on the foundation conditions. For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), sufficient foundation investigations and laboratory testing of foundation material shall be performed in order to determine the design requirements for foundation stability.

(B) All vegetative and organic materials shall be removed and foundation excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(7) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(8) Faces of embankments and surrounding areas shall be vegetated, except the faces where water is impounded may be riprapped on otherwise stabilized in accordance with accepted design practices.

(9) **Spillways.** An impoundment shall include either a combination of principal emergency spillways or a single spillway configured as specified in (a)(9)(A) of this Section, designed and constructed to safety pass the applicable design precipitation event specified in (a)(9)(B) of this Section, except as set forth in (c)(2) of this Section.

(A) The Department may approve a single open-channel spillway that is:

(i) Of nonerodible construction and designed to carry sustained flows; or

(ii) Earth-or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) Except as specified in (c)(2) of this Section, the required design precipitation event for an impoundment meeting the spillway requirements of (a)(9) of this Section is:

(i) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or grater event as specified by the Department.

(ii) For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the Department.

(iii) For an impoundment not meeting the requirements of Subsection (a)(9)(B)(i) or (ii) of this Section or, a 25-year 6-hour event, or greater event as specified by the Department.

(10) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users.

(11) **Inspections.** Except as provided in (a)(11)(D)of this section, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in (a)(11)(A) of this Section. The professional engineer or specialist shall be experienced in the construction of impoundments.

(A) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(B) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in (a)(11)(D) of this Section, shall promptly after each inspection required in (a)(11)(A) of this Section provide to the Department a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this Chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage capacity, and existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the minesite.

(D) A qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the SCS Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a) and certify and submit the report required by (a)(11)(B) of this Section, except that all coal mine waste impounding structure covered by Section 460:20-43-31 of

this Chapter shall be certified by a qualified registered professional engineer. The professional land surveyor shall be experienced in the construction of impoundments.

(12) Impoundments meeting the SCS Class B or C criteria for dams in TR-60 or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Other impoundments shall be examined at least quarterly by a qualified person designated by the operator for the appearance of structural weakness and other hazardous conditions.

(13) **Emergency procedures.** If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(14) The embankment slopes of each impoundment shall not be closer than 100 feet, measured horizontally, to any public road right-of-way unless otherwise approved under procedures established in 460:20-7-4(4) and 460:20-7-5(d). The area between the road right-of-way and the impoundment slopes, clear zone slopes, shall not be steeper than a 1V:6H grade.

(b) **Permanent impoundments.** A permanent impoundment of water may be created, if authorized by the Department in the approved permit based upon the following demonstration:

(1) The size and configuration of such impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable State and Federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable State and Federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining landuse.

(c) **Temporary Impoundments.**

(1) The Department may authorize the construction of temporary impoundments as part of a surface coal mining operation.

(2) In lieu of meeting the requirements of (a)(9)(A) of this Section, the Department may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered land surveyor in accordance with Section 460:20-27-14(a) of this Chapter that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices.

Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) In the case of an impoundment meeting the SCS Class B or C criteria for dams in TR-60, or other size or other criteria of Section 77.216(a) of 30 CFR, it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Department, or

(B) In the case of an impoundment not included in Subsection (c)(2)(A) of this Section it shall be designed to control the precipitation of a 100- year 6-hour event, or greater event as specified by the Department.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99; Amended at 21 Ok Reg 2979, eff 7-26-04; Amended at 23 Ok Reg 3059, eff 7-27-06]

**460:20-43-15. Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities**

Before abandoning a permit area or seeking bond release, the operator shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this Chapter for permanent structures, have been maintained properly, and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator shall renovate such structures if necessary to meet the requirements of this Chapter and to conform to the approved reclamation plan.

**460:20-43-16. Hydrologic balance: stream buffer zones**

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities, unless the Department specifically authorizes surface mining activities closer to, or through, such a stream. The Department may authorize such activities only upon finding that:

(1) Surface mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) If there will be a temporary or permanent stream-channel diversion, it will comply with Section 460:20-43-10.

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in Section 460:20-43-3.

**460:20-43-17. Coal recovery**

Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

**460:20-43-18. Use of explosives: general requirements**

(a) Each operator shall comply with all applicable State and Federal laws and regulations in the use of explosives.

(b) Blasts that use more than 5 pounds of explosive or blasting agent shall be conducted according to the schedule required under Section 460:20-43-20.

(c) **Blasters.**

(1) No later than 12 months after the blaster certification program for a State required by Subchapter 65 of this Chapter has been approved, all blasting operations in that State shall be conducted under the direction of a certified blaster. Before that time, all such blasting operations in that State shall be conducted by competent, experienced persons who understand the hazards involved.

(2) Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations.

(3) A blaster and at least one other person shall be present at the firing of a blast.

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(A) Be familiar with the blasting plan and site-specific performance standards; and

(B) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

(d) **Blast design.**

(1) An anticipated blast design shall be submitted if blasting operations will be conducted within:

(A) 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

(B) 500 feet of an active or abandoned underground mine.

(2) The blast design may be presented as part of a permit application or at a time, before the blast, approved by the Department.

(3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in Section 460:20-43-22.

(4) The blast design shall be prepared and signed by a certified blaster.

(5) The Department may require changes to the design submitted.

**460:20-43-19. Use of explosives: preblasting survey**

(a) At least 30 days before initiation of blasting, the operator shall notify, in writing, all residents or owners of dwellings or other structures located within 1/2 mile of the permit area how to request a preblasting survey.

(b) A resident or owner of a dwelling or structure within 1/2 mile of any part of the permit area may request a preblasting survey. This request shall be made, in writing, directly to the operator or to the Department, who shall promptly notify the operator. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator if requested by the resident or owner.

(c) The operator shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the

assessment of these structures may be limited to surface conditions and other readily available data.
(d) The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the Department and to the person requesting the-survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the Department a detailed description of the specific areas of disagreement.
(e) Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting.

**460:20-43-20. Use of explosives: blasting schedule**

(a) **General requirements.**

(1) The operator shall conduct blasting operations at times approved by the Department and announced in the blasting schedule. The Department may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.

(2) All blasting shall be conducted between sunrise and sunset, unless nighttime blasting is approved by the Department based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The Department may specify more restrictive time periods for blasting.

(3) Unscheduled blasts may be conducted only where public or operator health and safety so require and for emergency blasting actions. When an operator conducts an unscheduled blast, the operator, using audible signals, shall notify residents within 1/2 mile of the blasting site and document the reason for the unscheduled blast in accordance with Section 460:20-43-23(p).

(b) **Blasting schedule publication and distribution.**

(1) The operator shall publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least 10 days, but not more than 30 days, before beginning a blasting program.

(2) The operator shall distribute copies of the schedule to local governments and public utilities and to each local residence within 1/2 mile of the proposed blasting site described in the schedule.

(3) The operator shall republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least 10 days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement.

(c) **Blasting schedule contents.** The blasting schedule shall contain, at a minimum:

(1) Name, address, and telephone number of operator;

(2) Permit number and identification of the specific areas in which blasting will take place;

(3) Dates and time periods when explosives are to be detonated;

(4) Methods to be used to control access to the blasting area; and

(5) Type and patterns of audible warning and all-clear signals to be used before and after blasting.

[**Source:** Amended at 14 Ok Reg 3496, eff 8-11-97]

**460:20-43-21. Use of explosives: blasting signs, warnings, and access control**

(a) **Blasting signs.** Blasting signs shall meet the specifications of Section 460:20-43-3. The operator shall:

(1) Conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public road right-of-way, and at the point where any other road provides access to the blasting area; and

(2) At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use," which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

(b) **Warnings.** Warning and all-clear signals of different character or pattern that are audible within a range of 1/2 mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within 1/2 mile of the permit area shall be notified of the meaning of the signals in the blasting schedule.

(c) **Access control.** Access within the blasting area shall be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that:

(1) No unusual hazards, such as imminent slides or undetonated charges, exist; and

(2) Access to and travel within the blasting area can be safely resumed.

**460:20-43-22. Use of explosives: control of adverse effects**

(a) **General requirements.** Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

(b) **Airblast.**

(1) **Limits.**

(A) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in Subsection (e) of this Section.

(B) If necessary to prevent damage, the Department shall specify lower maximum allowable airblast levels than those of (b) (1) (A) of this Section for use in the vicinity of a specific blasting operation.

(2) **Monitoring.**

(A) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The Department may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(B) The measuring systems shall have an upper-end flat-frequency response of at least 200 Mz.

(c) **Flyrock.** Flyrock travelling in the air or along the ground shall not be cast from the blasting site:

(1) More than one-half the distance to the nearest dwelling or other occupied structure;

(2) Beyond the area of control required under Section 460:20-43-21(c); or
(3) Beyond the permit boundary.

(d) **Ground vibration.**

(1) **General.** In all blasting operations, except as otherwise authorized in Subsection(e) of this Section, the maximum ground vibration shall not exceed the values approved in the blasting plan required under Section 460:20-27-6 of this Chapter. The maximum ground vibration for protected structures listed in (d) (2) (A) of this Section shall be established in accordance with either the maximum peak-particle-velocity limits of (d) (2) of this Section, the scaled-distance equation of (d) (3) of this Section, the blasting-level chart of Paragraph(d) (4), or by the Department under (d) (5) of this Section. All structures in the vicinity of the blasting area, not listed in (d) (2) (A) of this Section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator in the blasting plan and approved by the Department.

(2) **Maximum peak particle velocity.**

(A) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

(B) A seismographic record shall be provided for each blast.

(3) **Scaled-distance equation.**

(A) An operator may use the scaled-distance equation, $W=(D/D_s)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W=the maximum weight of explosives, in pounds; D=the distance, in feet, from the blasting site to the nearest protected structure; and Ds=the scaled-distance factor, which may initially be approved by the Department using the values for scaled-distance factor listed in (d) (2) (A) of this Section.

(B) The development of a modified scaled-distance factor may be authorized by the Department on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scale-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of (d) (2) (A) of this Section, at a 95-percent confidence level.

(4) **Blasting-level chart.**

(A) An operator may use the ground-vibration limits in Appendix A of this Chapter to determine the maximum allowance ground vibration.

(B) If the Appendix limits are used, a seismographic record including both particle velocity and vibration- frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the Department before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the Department beyond the limits otherwise provided by this Section, if determined necessary to provide damage protection.
(6) The Department may require an operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e) The maximum airblast and ground-vibration standards of Subsection(b) and (d) of this Section shall not apply at the following locations:
(1) At structures owned by the permittee and not leased to another person.
(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the Department before blasting.

**460:20-43-23. Use of explosives: records of blasting operations**

The operator shall retain a record of all blasts for at least 3 years. Upon request, copies of these records shall be made available to the Department and to the public for inspection. Such records shall contain the following data:
(1) Name of the operator conducting the blast.
(2) Location, date, and time of the blast.
(3) Name, signature, and certification number of the blaster conducting the blast.
(4) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in Section 460:20-43-22(e).
(5) Weather conditions, including those which may cause possible adverse lasting effects.
(6) Type of material blasted.
(7) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern.
(8) Diameter and depth of holes.
(9) Types of explosives used.
(10) Total weight of explosives used per hole.
(11) The maximum weight of explosives detonated in an 8-millisecond period.
(12) Initiation system.
(13) Type and length of stemming.
(14) Mats or other protections used.
(15) Seismographic and airblast records, if required, which shall include:
(A) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;
(B) Exact location of instrument and the date, time, and distance from the blast;
(C) Name of the person and firm taking the reading;
(D) Name of the person and firm analyzing the seismographic record and
(E) The vibration and/or airblast level recorded.
(16) Reasons and conditions for each unscheduled blast.
(17) Names of blasting crew.
(18) Expiration date of blaster's certification.
(19) A digital video of each blast with information about the location of the camera and bearing to blast.

(20) Drill logs.

[**Source:** Amended at 31 Ok Reg 2101, eff 9-12-14; Amended at 31 Ok Reg 2101, eff 9-12-14]

**460:20-43-24. Disposal of excess spoil: general requirements**

(a) **General.** Excess spoil shall be placed in designated disposal areas the permit area, in a controlled manner to:

(1) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

(2) Ensure mass stability and prevent mass movement during and after construction; and

(3) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(b) **Design certification.**

(1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet any design criteria established by the Department. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(c) **Location.** The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the Department, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(d) **Foundation.**

(1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.

(2) Where the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the Department based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with Section 460:20-27-19(c) of this Chapter to determine the size of rock toe buttresses and keyway cuts.

(e) **Placement of excess spoil.**

(1) All vegetative and organic materials shall be removed from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated and stored or redistributed in accordance with Section 460:20-43-7. If approved by the Department, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or

substitute material in accordance with Section 460:20-43-7 of this Chapter. The Department may approve a design which incorporates placement of excess spoil in horizontal lifts other than 4 feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

(3) The final configuration of the fill shall be suitable for the approved postmining land use. Terraces may be constructed on the out slope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h: Iv (50 percent)

(4) No permanent impoundments are allowed on the completed fill. Small depressions may be allowed by the Department if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation; and if they are not incompatible with the stability of the fill.

(5) Excess spoil that is acid- or toxic-forming or combustible shall be adequately covered with nonacid, nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with Section 460:20-43-8, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(f) **Drainage control.**

(1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) Diversions shall comply with the requirements of Section 460:20-43-10.

(3) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the Department. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone, or other durable rock) that does not slake in water or degrade to soil material, and which is free of coal, clay or other nondurable material. Perforated pipe underdrains shall be corrosion resistant and shall have characteristics consistent with the long-term life of the fill.

(g) **Surface area stabilization.** Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(h) **Inspections.** A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

(A) Foundation preparation, including the removal of all organic material and topsoil;
(B) Placement of underdrains and protective filter systems;
(C) Installation of final surface drainage systems; and
(D) The final graded and revegetated fill. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.

(2) The qualified registered professional engineer shall provide a certified report to the Department promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and this Chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3) **Drainage systems.**

(A) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

(B) Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with Section 460:20-43-26, color photographs shall be taken of the underdrain as the underdrain system is being formed.

(C) The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the mine site.

(i) **Coal mine waste.** Coal mine waste may be disposed of in excess spoil fills if approved by the Department and, if such waste is:

(1) Placed in accordance with Section 460:20-43-30;
(2) Nontoxic and nonacid forming; and
(3) Of the proper characteristics to be consistent with the design stability of the fill.

(j) **Underground disposal.** Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the Department and MSHA under Section 460:20-31-18 of this Chapter.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-43-25. Disposal of excess spoil: valley fills/head-of-hollow fills**

(a) Valley fills and head-of-hollow fills shall meet the requirements of Section 460:20-43-24 and the additional requirements of this Section.

(1) Drainage control.

(A) The top surface of the completed fill shall be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.

(B) Runoff from areas above the fill and runoff from the surface of the fill shall be diverted into stabilized diversion channels designed

to meet the requirements of Section 460:20-43-10 and, in addition, to safely pass the runoff from a 100-year, 6-hour precipitation event.

(b) **Rock-core chimney drains.** A rock-core chimney drain may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill. The alternative rock-core chimney drain system shall be incorporated into the design and construction of the fill as follows.

(1) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage for seepage in the disposal area. The underdrain system and rock core shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 460:20-43-24(f)

(2) A filter system to ensure the proper long-term functioning of the rock core shall be designed and constructed using current, prudent engineering practices.

(3) Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill shall be 33h:1v (3 percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge-the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3 to 5 percent grade toward the fill and a 1 percent slope toward the rock core.

**460:20-43-26. Disposal of excess spoil: durable rock fills**

The Department may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided the following conditions are met:

(1) Except as provided in this Section, the requirements of Section 460:20-43-24 are met.

(2) The excess spoil consists of at least 80 percent, by volume, durable, nonacid- and nontoxic-forming rock (e.g., sandstone or limestone) that does not slake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil or other nondurable excess spoil materials shall be mixed with excess durable rock spoil in a controlled manner such that no more than 20 percent of the fill volume, as determined by tests performed by a registered engineer and approved by the Department, is not durable rock.

(3) A qualified registered professional engineer certifies that the design will ensure the stability of the fill and meet all other applicable requirements.

(4) The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1.
(5) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.
(6) Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of Section 460:20-43-10 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

**460:20-43-27. Disposal of excess spoil: preexisting benches**

(a) The Department may approve the disposal of excess spoil through placement on preexisting benches, provided that all the standards set forth in Sections 460:20-43-24(a),(b)(1), and 460:20-43-24(d)-(I) and the requirements of this Section are met.
(b) Excess spoil shall be placed only on the solid portion of the preexisting bench.
(c) The fill shall be designed and constructed using current prudent engineering practices. The design will be certified by a registered professional engineer. The spoil shall be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long-term static safety factor of 1.3 for all portions of the fill. Any spoil deposited on any fill of the bench will be treated as excess spoil fill under 460:20:43-24.
(d) The preexisting bench shall be backfilled and graded to:
(1) Achieve the most moderate slope possible which does not exceed the angle of repose, and
(2) Eliminate the highwall to the maximum extent technically practical.
(e) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the Department provided that:
(1) The gravity transport courses are determined on a site-specific basis by the operator as part of the permit application and approved by the Department to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;
(2) All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;
(3) A safety bean is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm.

(4) Excess spoil shall not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to Section 460:20-43-7. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of this Subchapter.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

**460:20-43-28. Protection of underground mining**

No surface mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that:

(1) The activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and

(2) The nature, timing, and sequence of the activities that propose to mine closer than 500 feet to an active underground mine are jointly approved by the Department, the Mine Safety and Health Administration, and the State agency, if any, responsible for the safety of underground mine workers.

**460:20-43-29. Coal mine waste: general requirements**

(a) **General.** All coal mine waste disposed of in an area other than the mine workings or excavation shall be placed in new or existing disposal areas within a permit area, which are approved by the Department for this purpose. Coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to:

(1) Minimize adverse effects of leachate and surface-water runoff on surface and groundwater quality and quantity;

(2) Ensure mass stability and prevent mass movement during and after construction;

(3) Ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;

(4) Not create a public hazard; and

(5) Prevent combustion.

(b) Coal mine waste material from activities located outside a permit area may be disposed of in the permit area only if approved by the Department. Approval shall be based upon a showing that such disposal will be in accordance with the standards of this Section.

(c) Design certification.

(1) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the Department. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

(2) The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction. Coal waste refuse piles are to be constructed or modified with compaction which obtains 90 percent of the maximum dry density as determined in accordance with the standard Proctor method.

(d) **Foundation.** Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analysis of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.
(e) **Emergency procedures.** If any examination or inspection discloses that a potential hazard exists, the Department shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.
(f) **Underground disposal.** Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the Department and MSHA under Section 460:20-31-18 of this Chapter.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

**460:20-43-30. Coal mine waste: refuse piles**
(a) Refuse piles shall meet the requirements of Section 460:20-43-29, the additional requirements of this Section, and the requirements of 30 CFR 77.214 and 77.215.

(1) **Drainage control.**

(A) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.
(B) Uncontrolled surface drainage may not be diverted over the outslope of the refuse piles. Runoff from the areas above the refuse pile and runoff from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of Section 460:20-43-10 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.
(C) Underdrains shall comply with the requirements of Section 460:20-43-24(f) (3).

(b) **Surface area stabilization.** Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.
(c) **Placement.**

(1) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored or redistributed in accordance with Section 460:20-43-7. Construction of refuse piles shall be accomplished using lifts of 2 feet or less. If approved by the Department, organic material may be used as mulch, or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.
(2) The final configuration of the refuse pile shall be suitable for the approved postmining land use. Terraces may be constructed on the out slope of the refuse pile if required for stability, control or erosion, conservation of soil moisture, or facilitation of the approved postmining

land use. The grade of the out slope between terrace benches shall not be steeper than 2h:1v (50 percent)

(3) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the Department if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

(4) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of 4 feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The Department may allow less than 4 feet of cover material based on physical and chemical analyses which show that the requirements of Sections 460:20-43-43, through 460:20-43-46 will be met.

(d) **Inspections.** A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

(A) Foundation preparation including the removal of all organic material and topsoil;

(B) Placement of underdrains and protective filter systems;

(C) Installation of final surface drainage systems; and

(D) The final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compact ion of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated or until a later time as required by the Department.

(2) The qualified registered professional engineer shall provide a certified report to the Department promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and this Chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the minesite.

**460:20-43-31. Coal mine waste: impounding structures**

(a) New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of Section 460:20-43-29.

(b) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the Department that the stability of such a structure conforms to the requirements of this Subchapter and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the Department in accordance with Section 460:20-27-14 of this Chapter.
(c) **Impounding structures.**

(1) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with Sections 460:20-43-14(a) and (c). Such structures may not be retained permanently as part of the approved postmining land use.
(2) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of Section 77.216 (a) of 30 CFR shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event or greater event as specified by the Department.

(d) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.
(e) **Drainage control.** Runoff from areas above the disposal facility or runoff from surface of the facility that may cause instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to meet the requirements of Section 460:20-43-10 and designed to safely pass the round off from a 100-year, 6-hour design precipitation event.
(f) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period.
(g) For an impounding structure constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-43-32. Coal mine waste: burning and burned waste

(a) Coal mine waste fires shall be extinguished by the person who conducts the surface mining activities, in accordance with a plan approved by the Department and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.
(b) No burning or burned coal mine waste shall be removed from a permitted disposal area without a removal plan approved by the Department. Consideration shall be given to potential hazards to persons working or living in the vicinity of the structure.

### 460:20-43-33. Disposal of noncoal mine wastes

(a) Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and

storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.
(b) Final disposal of noncoal mine wastes shall be in a designated disposal site in the permit area or a state-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with Sections 460:20-43-43, through 460:20-43-46. Operation of the disposal site shall be conducted in accordance with all local, State and Federal requirements.
(c) At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall an excavation for a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area.
(d) Notwithstanding any other provision in these Regulations, any noncoal mine waste defined as "hazardous" under Section 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, as amended) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

**460:20-43-34. Stabilization of surface areas**
(a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.
(b) Rills and gullies, which form in areas that have been regraded and topsoiled and which either

> (1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover, or
> (2) Cause or contribute to a violation of water-quality standards for receiving streams; shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted.

**460:20-43-35. Protection of fish, wildlife, and related environmental values**
(a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable.
(b) **Endangered and threatened species.** No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act (16 U.S.C. 1531 et seq.). The operator shall promptly report to the Department any endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the Department shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.
(c) **Bald and golden eagles.** No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the Department any

golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the Department shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(d) Nothing in this Chapter shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 et seq.

(e) Each operator shall, to the extent possible using the best technology currently available:

(1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the Department determines that such requirements are unnecessary;

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law; and

(3) Design fences, overland conveyers, and other potential barriers to permit passage for large mammals, except where the Department determines that such requirements are unnecessary.

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(f) Wetlands and habitats of unusually high value for fish and wildlife. The operator conducting surface mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Surface mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

(g) Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

(1) Their proven nutritional value for fish or wildlife.

(2) Their use as cover for fish or wildlife.

(3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

(h) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(i) Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

**460:20-43-36. Slides and other damage**

(a) An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the out slope for such

distance as may be determined by the Department as is needed to assure stability. The barrier shall be retained in place to prevent slides and erosion.
(b) At any time a slide occurs which may have a potential adverse affect on public property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the Department by the fastest available means and comply with any remedial measures required by the Department.

**460:20-43-37. Contemporaneous reclamation**

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under Section 460:20-33-8 of this Chapter.

(1) **Timing of backfilling and grading.**

(A) **Contour mining.** Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The Department may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under Section 460:20-27-10(b)(3), that additional time is necessary.

(B) **Open pit mining with thin overburden.** Rough backfilling and grading shall occur in accordance with the time schedule approved by the Department, on the basis of the materials submitted under Section 460:20-27-10(b)(3), which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.

(C) **Area strip mining.** Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The Department may grant additional time for rough backfilling and grading, if the permittee can demonstrate, through a detailed written analysis under Section 460:20-27-10(b)(3), that additional time is necessary.

(2) **Annual reporting.** Every twelve months after permit issuance and until final bond release, the permittee must submit to the Department a map or maps, signed and dated by a licensed professional engineer or licensed land surveyor, showing:

(A) The current permit boundaries;

(B) The cumulative disturbed acres;

(C) The cumulative acres that have been backfilled and graded to the approved postmining contours;

(D) The cumulative acres retopsoiled;

(E) The cumulative acres where permanent vegetation has been established; and

(F) A map legend detailing the data used to create the map or maps.

[**Source:** Amended at 31 Ok Reg 2101, eff 9-12-14; Amended at 36 Ok Reg 1935, eff 9-14-19]

**460:20-43-38. Backfilling and grading: general requirements**

(a)

(1) Achieve the approximate original contour, except as provided in Subsection (k) of this Section;
(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in Subsection (h) (small depressions) and in (k) (3) (C) (previously mined highwalls) of this Section;
(3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;
(4) Minimize erosion and water pollution both on and off the site; and
(5) Support the approved postmining land use.

(b) Spoil, except excess spoil disposed of in accordance with Sections 460:20-43-24, through 460:20-43-27, shall be returned to the mined-out area.

(c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

(d) Spoil may be placed on the area outside the mined-out area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:
(1) All vegetative and organic material shall be removed from the area.
(2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with Section 460:20-43-7.
(3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this Section.

(e) Disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with Sections 460:20-43-29 and 460:20-43-30, except that a long-term static safety factor of 1.3 shall be achieved.

(f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with Section 460:20-43-8, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(g) Cut-and-fill terraces may be allowed by the Department where:
(1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; -or
(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may be approved if they meet the requirements of Sections 460:20-43-14 and 460:20-43-15 and if they are suitable for the approved postmining land use.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour when:
(1) The standards for thin overburden in Section 460:20-43-39 are met;
(2) The standards for thick overburden in Section 460:20-43-40 are met; or
(3) Approval is obtained from the Department for:

(A) Mountaintop removal operations in accordance with Section 460:20-33-4 of this Chapter;
(B) A variance from approximate original contour requirements in accordance with Section 460:20-33-6 of this Chapter; or
(C) Incomplete elimination of highwalls in previously mined areas in accordance with Section 460:20-43-41.

**460:20-43-39. Backfilling and grading: thin overburden**

(a) **Definition.** Thin overburden means insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and the coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(1) Closely resemble the surface configuration of the land prior to mining; or

(2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) **Performance standards.** Where thin overburden occurs within the permit area, the permittee at a minimum shall:

(1) Use all spoil and waste materials available from the entire permit area to attain the lowest practicable grade, but no more than the angle of repose; and

(2) Meet the requirements of Sections 460:20-43-24 (a) (2) through (j) of this Chapter.

[**Source:** Amended at 14 Ok Reg 3496, eff 8-11-97]

**460:20-43-40. Backfilling and grading: thick overburden**

(a) **Definition.** Thick overburden means more than sufficient spoil and other waste materials available from entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(1) Closely resemble the surface configuration of the land prior to mining; or

(2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) **Performance standards.** Where thick overburden occurs within the permit area, the permittee at a minimum shall:

(1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose;

(2) Meet the requirements of Sections 460:20-43-38(a)(2) through (j) of this Chapter; and

(3) Dispose of any excess spoil in accordance with Sections 460:20-43-24 through 460:20-43-27 of this Chapter.

[**Source:** Amended at 14 Ok Reg 3496, eff 8-11-97]

**460:20-43-41. Backfilling and grading: previously mined areas**

(a) Remining operations on previously mined areas that contain a preexisting highwall shall comply with the requirements of Sections 460:20-43-38, through 460:20-43-42 of this Chapter, except as provided in this Section.

(b) The requirements of Section 460:20-43-38(a) (1) and (a) (2) requiring the elimination of highwalls shall not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the Department to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) All spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area.

(2) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(3) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate, to the satisfaction of the Department, that the highwall remnant is stable.

(4) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

**460:20-43-42. Backfilling and grading: steep slopes**

(a) Surface mining activities on steep slopes shall be conducted so as to meet the requirements of Sections 460:20-43-38, through 460:20-43-41, and the requirements of this Section except where mining is conducted on flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area or where operations are conducted in accordance with Subchapter 51 of this Chapter.

(b) The following materials shall not be placed on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3) Debris, including that from clearing and grubbing.

(4) Abandoned or disabled equipment.

(c) Land above the highwall shall not be disturbed unless the Department finds that this disturbance will facilitate compliance with the environmental protection standards of the permanent program performance standards and the disturbance is limited to that necessary to facilitate compliance.

(d) Woody materials shall not be buried in the backfilled area unless the Department determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

**460:20-43-43. Revegetation: general requirements**

(a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved

permit and reclamation plan and that is:

(1) Diverse, effective, and permanent;

(2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the Department;

(3) At least equal in extent of cover to the natural vegetation of the area; and

(4) Capable of stabilizing the soil surface from erosion.

(b) The reestablished plant species shall:

(1) Be compatible with the approved postmining land use;

(2) Have the same seasonal characteristics of growth as the original vegetation;

(3) Be capable of self-regeneration and plant succession;

(4) Be compatible with the plant and animal species of the area; and

(5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The Department may grant exception to the requirements of (b) (2) and (b) (3) of this Section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the Department approves a cropland postmining land use, the Department may grant exception to the requirements of (a) (1), (a) (3), (b) (2), and (b) (3) of this Section. The requirements of Subchapter 49 of this Chapter apply to areas identified as prime farmland.

**460:20-43-44. Revegetation: timing**

(a) Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

(b) Vegetation that is in accordance with the approved permit and reclamation plan shall be established not more than 36 month after the disturbed areas have been retopsoiled, unless a written request for an extension has been submitted and approved by the Department prior to the expiration of the 36 month period.

(c) Extensions shall be approved solely on the basis of adverse climatic conditions demonstrated to the Department by the operator. Extensions shall be granted for no more than up to 12 months. Only one extension shall be approved.

[**Source:** Amended at 23 Ok Reg 3059, eff 7-27-06]

**460:20-43-45. Revegetation: mulching and other soil stabilizing practices**

Suitable mulch and other soil stabilizing practices shall be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The Department may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

**460:20-43-46. Revegetation: standards for success**

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of Section 460:20-43-43.

(1) Standards for success and statistically valid sampling techniques for measuring success are identified in the Bond Release Guidelines published by the Department.

(2) Comparison of ground cover and productivity may be made on the basis of either reference areas or technical standards representative of unmined lands in the area. Management of references areas, if required for the approved postmining land use of the permit area. Species composition of the vegetation of the reference area and the reclaimed area must be comparable. Ground cover, production, or stocking shall be considered equal to the approved success standard (reference area of technical standard) when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided t-test with a 0.10 alpha error).

(b) The following minimum success standards must be achieved:

(1) For areas with a post-mining land use of pasture land or grazing land, the minimum ground cover of desirable living plants on the revegetated area shall be equal (as defined above) to the ground cover of living plants of the approved reference area(s) or to a standard of ninety percent desirable living ground cover if no reference area is used. The minimum production of desirable living plants on the revegetated area shall be at least equal (as defined in (a)(2) of this Section to the production of desirable living plants on the approved reference area or to technical standards. For permits using reference areas, at no time shall an area reclaimed to improved pasture be released from Phase III or III liability if it is composed of less than 70 percent ground cover of desirable living plants or, if reclaimed with desirable native grasses, less than 50 percent desirable cover.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal (as defined in (a)(2) of this Section to that of a reference area or technical standards.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(A) Minimum stocking and planting arrangements for fish and wildlife habitat shall be specified by the Department after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(i) If trees or shrubs are to be planted, the following are required to be included in the wildlife habitat plan. The minimum tree and shrub stocking rate will be 250 per acre. Of that 250, there will be 100 hard mast producing trees of at least three native species such as red oak, post oak, bur oak, black oak, willow oak, shumard oak, water oak . Of that 250, there will be 100 soft mast producing trees of at least three native species such as sugarberry, sweet gum, black cherry, black gum, sycamore, and hackberry. In addition to the hard mast and soft mast producing trees, 50 soft mast producing shrubs of at least two native species such as American plum, Mexican plum, deciduous holly, Carolina buckthorn or rusty blackhaw must be planted.

(ii) If native grasses and forbs are to be planted, the following are required to be included in the wildlife habitat plan. At a minimum seeding rate of two lbs of pure live seed per species per acre, at least three of the following grasses must be planted: big bluestem, little bluestem, indiangrass, switchgrass, and side oats grama. A minimum seeding rate of one lb. of pure live seed per species per acre, at least three of the following forbs must be planted: maximilian sunflower, showy partridge peas, Illinois bundleflower, partridge pea, purple prairie clover, roundhead, common and Korean lespedeza.

(iii) If the applicant chooses not to follow (b)(3)(A)(i) or (b)(3)(A)(ii)of this subsection then an alternative wildlife habitat plan must be submitted to the Department for review, along with written approval of the alternative planting rates and species from the state agency responsible for the management of Fish and Wildlife.

(B) Minimum stocking and planting arrangements for areas to be developed for recreation, shelter belts, or forest products shall be specified by the Department on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for administration of forestry and wildlife programs and will be incorporated into an approved reclamation plan. Consultation and approval will occur on a permit specific basis.

(C) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for at least three years or 60% of the responsibility period.

(D) The technical standard for vegetative ground cover on these areas is 80 percent. In no cases shall vegetative ground cover be less than that required to achieve the approved postmining land use and must be sufficient to control erosion.

(E) Comments from state Agencies responsible for management of Fish and Wildlife are required.

(4) Bare areas shall not exceed one-sixteenth acres in size and total not more than one percent of the area planted.

(5) For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(6) For areas previously disturbed by mining that were not reclaimed to the requirements of this Chapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion. In general this is considered to be at least 70% vegetative ground cover.

(c) **Responsibility period.**

(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Department in accordance with (c)(4) of this Section.
(2) In areas of more than 26.0 inches average annual precipitation, the period of responsibility shall continue for a period of not less than:
(A) Five full years, except as provided in paragraph (c)(2)(B) of this section. The vegetation parameters identified in Subsection (b) of this Section for grazing land or pasture land and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in Subsection (b) of this Section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.
(B) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subsection (b)(6), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.
(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:
(A) Ten full years, except as provided in subsection (c)(3)(B) below. Vegetation parameters identified in Subsection (b) of this Section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.
(B) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subsection (b)(6), the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.
(4) The Department has approved selective husbandry practices that, when accomplished in accordance with (c)(4)(A) through (G) of this Section, do not extend the period of responsibility for revegetation success and bond liability. The approved practices shall be required to continue as part of the postmining land use and shall also be considered a normal husbandry practice within the region for unmined lands having uses similar to the approved postmining land use of the disturbed area. Since no absolute limits for individual parameters for fertility, liming, etc. can be set by the Department, established approved and published information sources and other variables involved shall be considered in determining what is approved selective husbandry practice. Evaluations shall include professional judgements and the incorporation of guidelines provided by approved source documents and information provided by Oklahoma State University (OSU) and the United States Department of Agriculture National Resources Conservation Service (NRCS). OSU has established and publishes many recommended fertility and management practices for row crops, hayland, and grazingland tailored for soil conditions, crop rotations, tillage and application practices plus OSU also has Extension

Offices through out the state that can provide more site specific recommendations. The Department will judge management practices on mined lands against the recommended practices provided by OSU and NRCS to judge if the practices are normal husbandry practices and shall through routine inspection process, monitor liability starts dates, liming and fertilization activities and the success of the reclamation. The Department shall review and assess whether site specific activities are outside the normal husbandry practices and the liability period must restart. Giving allowance for flexibility to maintain conditions and latitude for proper management of reclaimed areas, the Department's review and assessment, for determination of whether or not site specific activities are outside the normal husbandry practice, shall incorporate the following:

(A) The Department will consider limited reseeding and associated fertilizing and liming as non-augmentative if the area is small in relation to the permit area, watershed(s) or surface property boundary(ies), whichever is smaller. Also, the size of the area relative to the surrounding area and the ability of the reclaimed area to meet the postmining land use will be considered. Removal and reclamation of temporary structures identified in (c)(4)(E) of this Section would not be considered augmentation. Repair of rills and gullies that are not in excess of the stipulations within (c)(4)(D) of this Section would not be considered augmentation. The Department will require any minor reseeded areas to be fully established and meet the requirements of (a) and (b) of this Section at the time of the bond release.

(B) Approved agricultural practices described by the Oklahoma State University (OSU) Cooperative Extension Service are not considered augmentation. These practices include but are not limited to: fertilizing, liming, weed and pest control, and mulching. The OSU Cooperative Extension Services publishes recommended agricultural practices as Fact Sheets and are available by contacting the state or local OSU Extension Office.

(C) On all lands with a postmining land use other than cropland, any areas reseeded or replanted as a part or result of a normal husbandry practice must be sufficiently small in size and limited in extent of occurrence, as described in (c)(4)(A) of this Section, or as a part of a hay management plan that is an agricultural practice described by the OSU Cooperative Extension Service. The reestablished vegetation must be in place for a sufficient length of time to not adversely affect the Department's ability to make a valid determination at the time of bond release as to whether the site has been properly reclaimed.

(D) Pursuant to (c)(4) of this Section, the repair of rills and gullies will not be allowed in Oklahoma without restarting the revegetation liability period. However, the repair the repair of rills and gullies will not be considered an augmentation practice if the occurrences and treatment of such rills and gullies constitutes a normal conservation practice in the region as defined by the Department. In Oklahoma the normal range of precipitation during the fall or spring seeding seasons may result in the formation of rills and gullies of permanent vegetative cover for any land use. The Department has

determined the NRCS prepared guidelines for the treatment of and repair of these rills and gullies constitutes the treatment practice which is the usual degree of management customarily performed to prevent exploitation, destruction, or neglect of the soil resource and maintain the productivity of the land use. This treatment would not be prohibited as an augmentative practice because the NRCS guidance is the standard developed for the normal treatment of rills and gullies that may develop on permanent cover of vegetation on unmined lands in Oklahoma. After initial vegetation establishment, the Department defines the treatment of rills and gullies requiring permanent reseeding of more than 10 acres in a contiguous block or 10% of a permit area initially seeded during a single year to be an augmentative practice because of the potential for delayed seeding of large areas to reduce the probability of revegetation success. The NRCS guidelines for repair of rills and gullies require that acreage with active furrows, rills, ditches, or gullies be filled to aid the conservation practice application. The rills and gullies should be contoured or smoothed if the site is large.

(i) These areas must be seeded during the appropriate seeding season with approved perennial species followed by an application of mulch. If permanent seeding of the area must be delayed due to weather conditions, then appropriate temporary erosion control measures must be utilized. Mulch that is to be applied must be free of noxious weeds, anchored during or immediately after application, and may be applied at the following rates:

(I) Hay or straw shall be applied at the rate of 2 tons/acre and crimped into the soil, or 1 ton/acre with the additional application of 300 gallons/acre of asphalt emulsion spray to bind the mulch to the soil. Hay mulch must be less than 2 years old. Straw derived from small grain species shall not be used as mulch.

(II) Wood chips shall be applied at a rate of 11-15 tons/acres alone or 6/tons/acre with the additional application of 300 gallon/acre of asphalt emulsion spray to bind the mulch to the soil.

(III) Strawy manure shall be applied at the rate of 10 tons/acre. Strawy manure need not be anchored if it contains heavy solids.

(ii) The use of hay bales and rock rip-rap to fill or repair rills and gullies will be approved on a case by case basis. Monitoring will be required to assure that the treatment provides long term erosion control, does not disrupt the postmining land use, and that permanent vegetation becomes established. If this treatment is not effective then filling of the rills and gullies with topsoil then revegetating the areas will be required. If the drainage area is of sufficient size to create continued problems with rills and gullies, the operator shall install terraces to control the amount and velocity of water moving across the area. These

terraces shall be designed and constructed accordance with this Chapter.

(E) Liming, fertilization, mulching, seeding or stocking following the reclamation of any temporary roads, remaining after a Phase I Bond Release approval, temporary sediment or hydraulic control structures, areas disturbed by the installation or removal of oil and gas wells or utility lines, and areas where the vegetation was disturbed by vehicular traffic not under the control of the permittee will not be considered augmentation.

(F) Irrigation, reliming, refertilization of revegetated areas; reseeding cropland; renovating pastureland by overseeding with legumes after a Phase II bond release shall be considered normal husbandry practices and shall not restart liability period if the amount and frequency of these practices used on unmined land within the region.

(G) Other normal husbandry practices that may be conducted on postmining land uses of fish and wildlife habitat, recreation, and forestry without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting trees and shrubs in accordance with (b)(3) of this Section.

[**Source:** Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 16 Ok Reg 3526, eff 9-13-99; Amended at 18 Ok Reg 3202, eff 7-26-01; Amended at 21 Ok Reg 2979, eff 7-26-04; Amended at 23 Ok Reg 3059, eff 7-27-06; Amended at 23 Ok Reg 3059, eff 7-27-06]

### 460:20-43-47. Subsidence control

(a) The operator shall either adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this Subchapter shall be construed to prohibit the standard method of room-and-pillar mining.

(b) The operator shall comply with all provisions of the approved subsidence control plan prepared pursuant to Section 460:20-31-13 of this Chapter.

(c) The operator shall:

(1) Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence; and

(2) To the extent required under applicable provisions of State law, either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a non-cancelable premium-prepaid insurance policy.

(3) The operator shall report to the Department all instances of alleged subsidence within 30 calendar days. The report must be in writing. The report must identify the location of the alleged subsidence in relation to the

underground mine workings.

(d) Underground mining activities shall not be conducted beneath or adjacent to:

(1) Public buildings and facilities;

(2) Churches, schools, and hospitals; or

(3) Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the Department determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by Subsection (d) of this Section, the Department may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The Department shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(g) Within a schedule approved by the Department, the operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Department. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of Section 460:20-15-5(d) of this Chapter.

[**Source:** Amended at 31 Ok Reg 2095, eff 9-12-14]

### 460:20-43-48. Subsidence control: public notice

At least 6 months prior to mining, or within that period if approved by the Department, the underground mine operator shall mail a notification to all owners and occupants of surface property and structures above the underground workings. The notification shall include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined.

### 460:20-43-49. Cessation of operations: temporary

(a) Each person who conducts surface mining activities shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. To qualify for temporary cessation, additional minable coal must be available under a valid lease and the area of additional coal must be located within the boundaries of the existing permit or immediately adjacent to the permit and the subject of a pending revision application. Temporary abandonment shall not relieve a person of their obligation to comply with any provisions of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, persons who conduct surface mining activities shall submit to the Department a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.
(c) If temporary cessation exceeds twelve months in duration, a notice of intention to continue the temporary cessation must be submitted to the Department annually along with a current bond recalculation, proof of notice to landowners, and updated information on the items included in the original notice as described in 460:20-43-49(b).

[**Source:** Amended at 31 Ok Reg 2101, eff 9-12-14]

**460:20-43-50. Cessation of operations: permanent**
(a) Persons who cease surface mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this Chapter and the permit approved by the Department.
(b) All underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the Department as suitable for the postmining land use or environmental monitoring, shall be removed and the affected land reclaimed.

**460:20-43-51. Postmining land use**
(a) **General.** All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting:
(1) The uses they were capable of supporting before any mining; or
(2) Higher or better uses.
(b) **Determining premining uses of land.** The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and has been properly managed. The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the land use that existed prior to any mining: Provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.
(c) **Criteria for alternative postmining land uses.** Higher or better uses maybe approved by the Department as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:
(1) There is a reasonable likelihood for achievement of the use.
(2) The use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution.
(3) The use will not:
(A) Be impractical or unreasonable;
(B) Be inconsistent with applicable land use policies or plans;

(C) Involve unreasonable delay in implementation; or
(D) Cause or contribute to violation of Federal, State, or local law.

(d) **Approximate original contour.** Criteria for variance. Surface coal mining operations that meet the requirements of this Subsection may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

(1) The Department grants the variance under a permit issued in accordance with Section 460:20-33-6 of this Chapter.
(2) The alternative postmining land use requirements of Subsection (c) of this Section are met.
(3) All applicable requirements of the Act and the regulatory program, other than the requirement to restore disturbed areas to their approximate original contour, are met.
(4) After consultation with the appropriate land use planning agencies, if any, the potential use is shown to constitute an equal or better economic or public use.
(5) The proposed use is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.
(6) After approval, where required, of the appropriate State environmental agencies, the watershed of the permit and adjacent areas is shown to be improved.
(7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.
(8) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and this Chapter are placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with Sections 460:20-43-24, through 460:20-43-27.
(9) The surface landowner of the permit area has knowingly requested, in writing, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities)
(10) Federal, State, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.
(11) This section does not apply to non-steep slope mining.

**460:20-43-52. Roads: general**

(a) **Road Classification system.**

(1) Each road, as defined in Section 460:20-3-5 of this Chapter shall be classified as either a primary road or an ancillary road.
(2) A primary road is any road which is:
(A) Used for transporting coal or spill;
(B) Frequently used for access or other purposes for a period in excess of six months; or
(C) To be retained for an approved postmining land use.
(3) An ancillary road is any road not classified as a primary road.

(b) **Performance standards.** Each road shall be located, designed, constructed,reconstructed, used, maintained, and reclaimed so as to:

(1) Control or prevent erosion, siltation, and air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause or contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Parks System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Acts of Congress;

(7) Use non-acid-and nontoxic-forming substances in road surfacing.

(c) **Design and construction limits and establishment of design criteria.** To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, any necessary design criteria established by the Department.

(d) **Location.**

(1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Department in accordance with applicable Sections 460:20-43-8, through 460:20-43-10, and 460;20-43-16 of this Chapter.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(3) Relocation of a public road shall comply with 460:20-43-14(a)(14).

(e) **Maintenance.**

(1) A Road shall be maintained to meet the performance standards of this Subchapter and any additional criteria specified by the Department.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as practicable after the damage has occurred.

(f) **Reclamation.** A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable and is no longer needed for mining and reclamation operations. This reclamation shall include:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts unless approved as part of the postmining land use;

(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with postmining land use vegetation requirements.
(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;
(5) Protecting the natural drainage patterns by installing dikes and cross drains as necessary to control surface runoff and erosion; and
(6) scarifying and ripping the roadbed; repairing topsoil or substitute material, and revegetating disturbed surfaces in accordance with Sections 460:20-43-7 and 460:43-43, through 460:20-43-46 of this Chapter.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 21 Ok Reg 2979, eff 7-26-04]

**460:20-43-53. Primary roads**

Primary roads shall meet the requirements of Section 460:20-43-52 and the additional requirements of this Section.

(1) **Certification.** The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer. As built certifications are to be completed by a qualified registered professional engineer or a qualified registered professional land surveyor, with experience in the design and construction of roads, as meeting the requirements of this Chapter, current, prudent engineering practices, and any design criteria established by the Department. The construction or reconstruction of primary roads shall be certified in a report to the Department by a qualified registered professional engineer, or a qualified registered professional land surveyor with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.
(2) **Safety Factor.** Each primary road embankment shall have a minimum static factor of 1.3 or meet the requirements established under Section 460:20-27-20(c) of this Chapter.
(3) **Location.**
(A) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.
(B) Fords or perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the Department as temporary routes during periods of road construction.
(4) **Drainage control.** In accordance with the approved plan-
(A) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the Department.
(B) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;
(C) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;
(D) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the

weight of vehicles using the road;
(E) Natural stream channels shall not be altered or relocated without the prior approval of the Department in accordance with applicable Section 460:20-43-8 through 460:20-43-10, and 460:20-43-16 of this Chapter; and
(F) Except as provided in (c) (2) of this Section, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The Department shall ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(5) **Surfacing.** Primary roads shall be surfaced with material approved by the Department as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-43-54. Utility installations**

All surface coal mining operations shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the Department.

**460:20-43-55. Support facilities**

(a) Support facilities shall be operated in accordance with a permit issued for the mine or coal preparation operation to which it is incident or from which its operation results.
(b) In addition to the other provisions of this part, support facilities shall be located, maintained, and used in a manner that:

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and
(2) To the extent possible using the best technology currently available:
(A) Minimizes damage to fish, wildlife, and related environmental values; and
(B) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

**460:20-43-56. Interpretative rules related to general performance standards**

The following interpretations or rules promulgated in Subchapter 43 of this Chapter have been adopted by the Oklahoma Department of Mines.

(1) [Reserved] and
(2) [Reserved]
(3) Interpretation of Section 460:20-43-7 Topsoil removal
(A) Results of physical and chemical analyses of overburden and topsoil to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil,

provided that trials, and tests are certified by an approved laboratory in accordance with Section 460:20-43-7, may be obtained from any one or a combination of the following sources:

(i) U. S. Department of Agriculture Soil Conservation Service published data based on established soil series;

(ii) U. S. Department of Agriculture Soil Conservation Service Technical Guides;

(iii) State agriculture agency, university, Tennessee Valley Authority, Bureau of Land Management or U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior, or

(iv) Results of physical and chemical analyses, field site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

(4) If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with Section 460:20-43-7.

## SUBCHAPTER 45. PERMANENT PROGRAM PERFORMANCE STANDARDS: UNDERGROUND MINING ACTIVITIES

### 460:20-45-1. Scope

This Subchapter sets forth the minimum environmental protection performance standards to be adopted and implemented under regulatory programs for underground mining activities.

### 460:20-45-2. Objectives

This Subchapter is intended to ensure that all underground mining activities are conducted in a manner which preserves and enhances environmental and other values in accordance with the Act.

### 460:20-45-3. Signs and markers

(a) **Specifications.** Signs and markers required under this Subchapter shall

(1) Be posted, maintained, and removed by the person who conducts the underground mining activities;

(2) Be of a uniform design throughout the activities that can be easily seen and read;

(3) Be made of durable material; and

(4) Conform to local laws and regulations.

(b) **Duration of maintenance.** Signs and markers shall be maintained during all activities to which they pertain.

(c) **Mine and permit identification signs.**

(1) Identification signs shall be displayed at each point of access from public roads to areas of surface operations and facilities on permit areas for underground mining activities.

(2) Signs will show the name, business address, and telephone number of the person who conducts underground mining activities and the identification number of the current regulatory program permit authorizing underground mining activities.

(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(d) **Perimeter markers.** Each person who conducts underground mining activities shall clearly mark the perimeter of all areas affected by surface operations or facilities before beginning mining activities.

(e) **Buffer zone markers.** Buffer zones required by Section 460:20-45-16 shall be clearly marked to prevent disturbance by surface operations and facilities.

(f) **Topsoil markers.** Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under Section 460:20-45-7, the stockpiled material shall be clearly marked.

**460:20-45-4. Casing and sealing of exposed underground openings: general requirements**

Each exploration hole, other drillhole or borehole, shaft, well, or other exposed underground opening shall be cased, lined, or otherwise managed as approved by the Department to prevent acid or other toxic drainage from entering ground and surface waters, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent area. Each exploration hole, drill hole or borehole or well that is uncovered or exposed by mining activities within the permit area shall be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the Department. Use of a drilled hole or monitoring well as a water well must meet the provisions of Section 460:20-45-8 of this Subchapter. This Section does not apply to holes drilled and used for blasting, in the area affected by surface operations.

**460:20-45-5. Casing and sealing of underground openings:**

(a) Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining activities.

(b) Each exploration hole, other drill hole or borehole, shaft, well, and other exposed underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed until actual use.

(c) When no longer needed for monitoring or other use approved by the Department upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under Section 460:20-45-8(g), each shaft, drift, adit, tunnel, exploratory hole, entry way or other opening to the surface from underground shall be capped, sealed, backfilled, or otherwise properly managed, as required by the Department in accordance with Section 460:20-45-4 of this Subchapter and consistent with Section 30 CFR 75.1711. Temporary closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery and to keep acid or other toxic drainage from entering ground or surface waters.

[**Source:** Amended at 31 Ok Reg 2101, eff 9-12-14; Amended at 36 Ok Reg 1935, eff 9-14-19]

**460:20-45-6. Casing and sealing of underground openings: permanent**

When no longer needed for monitoring or other use approved by the Department upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under Section 460:20-45-8, each shaft, drift, adit, tunnel, exploratory hole, entry way or other opening to the surface from underground shall be capped, sealed, backfilled, or otherwise properly managed, as required by the Department in accordance with Section 460:20-45-4 of this Subchapter and consistent with Section 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.

**460:20-45-7. Topsoil and subsoil**

(a) **Removal.**

(1) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(2) Where the topsoil is of insufficient quantity or of poor quality for sustaining vegetation, the materials approved by the Department in accordance with Subsection (b) of this Section shall be removed as a separate layer from the area to be disturbed, and segregated.

(3) If topsoil is less than 6 inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(4) The Department may choose not to require the removal of topsoil for minor disturbances which:

(A) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(B) Will not destroy the existing vegetation and will not cause erosion.

(5) Timing. All materials to be removed under this Section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

(b) **Substitutes and supplements.** Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the operator demonstrates to the Department that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(c) **Storage.**

(1) Materials removed under Subsection (a) of this Section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

(2) Stockpiled materials shall:

(A) Be selectively placed on a stable site within the permit area;

(B) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(C) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the Department; and

(D) Not be moved until required for redistribution unless approved by the Department.

(3) Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under Paragraph (a) (1) of this Section would be detrimental to the quality or quantity of those materials, the Department may approve the temporary distribution of the soil materials so removed to anapproved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that:

(A) Such action will not permanently diminish the capability of the topsoil of the host site; and

(B) The material will be retained in a condition more suitable for redistribution that if stockpiled.

(d) **Redistribution.**

(1) Topsoil materials removed under Subsection (a) of this Section shall be redistributed in a manner that:

(A) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

(B) Prevents excess compaction of the materials: and

(C) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under Subsection (a) of this Section, the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The Department may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that:

(A) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and

(B) Such embankments will be otherwise stabilized.

(4) **Nutrients and soil amendments.** Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.

(e) **Subsoil segregation.** The Department may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of Subsections (c) and (d) of this Section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of Sections 460:20-45-43, 460:20-45-44, 460:20-45-45, and 460:20-45-46.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-45-8. Hydrologic-balance protection

(a) **General.** All underground mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this Subchapter. The Department may require additional preventative, remedial, or

monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

(b) **Ground-water protection.** In order to protect the hydrologic balance underground mining activities shall be conducted according to the plan approved under Section 460:20-31-7(g) of this Chapter and the following:

(1) Ground-water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water.

(2) Ground-water quantity shall be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

(c) **Ground-water monitoring.**

(1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under Section 460:20-31-7(h) of this Chapter. The Department may require additional monitoring when necessary.

(2) Ground-water monitoring data shall be submitted every 3 months to the Department or more frequently as prescribed by the Department. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the Department and immediately take the actions provided for in Sections 460:20-15-7(e) and 460:20-31-7(g) of this Chapter.

(3) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of Section 460:20-17-3 of this Chapter, the Department may modify the monitoring requirements including the parameters covered and the sampling frequency if the operator demonstrates, using the monitoring data obtained under this Subsection, that:

(A) The operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; or

(B) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under Section 460:20-31-7(h) of this Chapter.

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of ground water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed.

(d) **Surface-water protection.** In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under Section 460:20-31-7(g) of this Chapter, and the following:

(1) Surface-water quality shall be protected by handling earth materials, ground-water discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevent water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this Section and Section 460:20-45-9, the operator shall use and maintain the necessary water-treatment facilities or water-quality controls.

(2) Surface-water quantity and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under Section 460:20-31-7(g) of this Chapter.

(e) **Surface-water monitoring.**

(1) Surface-water monitoring shall be conducted according to the surface-water monitoring plan approved under Section 460:20-31-7(i) of this Chapter. The Department may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every 3 months to the Department or more frequently as prescribed by the Department. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the operator shall promptly notify the Department and immediately take the actions provided for in Sections 460:20-15-7(e) and 460:20-31-7(g) of this Chapter. The reporting requirements of this Subsection do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with Section 460:20-17-3 of this Chapter, the Department may modify the monitoring requirements, except those required by the NPDES permitting authority, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under this Subsection, that:

(A) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and

(B) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under Section 460:20-31-7(i) of this Chapter.

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed.

(f) **Acid- and toxic-forming materials.**

(1) Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water shall be avoided by:

(A) Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated, and

(B) Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water. Storage shall be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

(2) Storage, burial or treatment practices shall be consistent with other material handling and disposal provisions of this Chapter.

(g) **Transfer of wells.** Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with Sections 460:20-45-4 through 460:20-45-6. With the prior approval of the Department, wells may be transferred to another party for further use. However, at a minimum, the conditions of such transfer shall comply with State and local laws and the permittee shall remain responsible for the proper management of the well until bond release in accordance with Sections 460:20-45-4 through 460:20-45-6.

(h) **Discharges into an underground mine.**

(1) Discharges into an underground mine are prohibited, unless specifically approved by the Department after a demonstration that the discharge will:

(A) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from underground mining activities;

(B) Not result in a violation of applicable water quality standards or effluent limitations;

(C) Be at a known rate and quality which shall meet the effluent limitations of Section 460:20-45-9 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the Department; and

(D) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

(A) Water;

(B) Coal-processing waste;

(C) Fly ash from a coal-fired facility;

(D) Sludge from an acid-mine-drainage treatment facility;

(E) Flue-gas desulfurization sludge;

(F) Inert materials used for stabilizing underground mines; and

(G) Underground mine development wastes.

(3) Water from one underground mine may be diverted into other underground workings according to the requirements of this Section.

(i) **Gravity discharges from underground mines.**

(1) Surface entries and accesses to underground workings shall be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to paragraph (i)(2) of this Section, may be allowed by the Department if it is demonstrated that the untreated or treated discharge complies with the performance standards of this part and any additional

NPDES permit requirements.

(2) Notwithstanding anything to the contrary in paragraph (i)(1) of this Section, the surface entries and accesses of drift mines first used after the implementation of a State, Federal, or Federal Lands Program and located in acid-producing or iron-producing coal seams shall be located in such a manner as to prevent any gravity discharge from the mine.

(j) **Drinking, domestic or residential water supply.** The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activites conducted after October 24,1992, if the affected well or spring was in existence before the date the Department received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in 460:20-27-11 and 460:20-31-7 of this Chapter and the geologic information concerning baseline hydrologic conditions required in 460:20-27-11 and 460:20-31-15 of this Chapter will be used to determine the impact of mining activites upon the water supply.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 14 Ok Reg 3480, eff 8-11-97]

### 460:20-45-9. Hydrologic balance: water-quality standards and effluent limitations

Discharges of water from areas disturbed by underground mining activities shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.

### 460:20-45-10. Diversions

(a) **General requirements.**

(1) With the approval of the Department any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of Section 460:20-45-12 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the Department in accordance with Section 460:20-45-8(h).

(2) The diversion and its appurtenant structures shall be designed, located, constructed, and maintained to:

(A) Be stable;

(B) Provide protection against flooding and resultant damage to life and property;

(C) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to stream-flow outside the permit area; and

(D) Comply with all applicable local, State, and Federal laws and regulations.

(3) Temporary diversions shall be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this Subchapter. Before diversions are removed, downstream water-treatment facilities

previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

(4) Temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a 2-year, 6-hour recurrence interval or a larger event as specified by the Department.

(b) **Diversion of perennial and intermittent streams.**

(1) Diversion of perennial and intermittent streams within the permit area may be approved by the Department after making the finding relating to stream buffer zones called for in Section 460:20-45-16 that the diversions will notadversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of Paragraph (a) (2) (B) of this Section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this Subchapter and any design criteria set by the Department.

(5) Flow from perennial and intermittent streams within the permit area may be diverted, if the diversions:

(A) Are approved by the Department after making the findings cared for in Section 460:20-43-16(a);

(B) Comply with other requirements of this Subchapter; and

(C) Comply with local, State, and Federal statutes and regulations.

(6) When stream-flow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:

(A) The longitudinal profile of the stream, the channel and the flood-plain shall be designed and constructed to remain stable and to prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to stream-flow or to runoff outside the permit area. These contributions shall not be in excess of requirements of State or Federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance;

(B) The combination of channel bank and flood-plain configurations shall be adequate to pass safely the peak runoff of a

10-year, 6-hour precipitation event for temporary diversions, a 100-year, 24-hour precipitation event for permanent diversions or larger events as specified by the Department. However, the capacity of the channel itself shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

(7) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated in accordance with Sections 460:20-43-9, 460:20-43-10, 460:20-43-11, 460:20-43-43, and 460:20-43-40. At the time diversions are removed downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator who conducts the underground mining activities from maintenance of a water treatment facility required under this Subchapter of the permit.

(8) When permanent diversions are constructed or stream channels restored, after temporary diversions, the operator shall:

(A) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream;

(B) Establish or restore the stream to its natural meandering shape of an environmentally acceptable gradient, as determined by the Department;

(C) Establish or restore the stream to a longitudinal profile and cross-section, including aquatic habitats (usually a patter of riffles, pools, and drops rather than a uniform depth) that approximate premining stream channel characteristics.

(c) **Diversion of miscellaneous flows.**

(1) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the Department. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in Subsection (a) of this Section.

(3) The requirements of Paragraph (a) (2) (B) of this Section shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-45-11. Hydrologic balance: sediment control measures

(a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(1) Prevent, to the extent possible, additional contributions of sediment to stream flow or to runoff outside the permit area,

(2) Meet the more stringent of applicable State or Federal effluent limitations,

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(1) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in Section 460:20-45-43(b);
(2) Stabilizing the backfilled material to promote a reduction of the rate and volume of runoff in accordance with the requirements of Section 460:20-45-38;
(3) Retaining sediment within disturbed areas;
(4) Diverting runoff away from disturbed areas;
(5) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;
(6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment;
(7) Treating with chemicals; and
(8) Treating mine drainage in underground sumps.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-45-12. Hydrologic balance: siltation structures**

(a) **Definitions.** For the purposes of this Section only disturbed area shall not include those areas:

(1) In which the only surface mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with this Subchapter; and
(2) For which the upstream area is not otherwise disturbed by the operator.

(b) **General requirements.**

(1) Additional contributions of suspended solids, sediment to streamflow, or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.
(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in Paragraph (b)(5) or (e) of this Section.
(3) Siltation structures for an area shall be constructed before beginning any underground mining activities in that area, and upon construction shall be certified by a qualified registered professional engineer or registered professional land surveyor to be constructed as designed and as approved in the reclamation plan. The certifying engineer or land surveyor shall have experience in pond construction.
(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with Section 460:20-43-14 of this Chapter.
(5) Siltation structures shall be maintained until removal is authorized by the Department and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than 2 years after the last augmented seeding.

(6) When siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation
plan and Sections 460:20-45-43 through 460:20-45-46 approved by the Department for retention as permanent impoundments may be exempted from this requirement.

(c) **Sedimentation ponds.**

(1) When used, sedimentation ponds shall:

(A) Be used individually or in series;

(B) Be located as near as possible to the disturbed area and out of perennial streams; unless approved by the Department;

(C) Be designed, constructed, and maintained to:

(i) Provide adequate sediment storage volume per acre of disturbed area draining into the structure;

(ii) Provide adequate detention time to allow the effluent from the ponds to meet State and Federal effluent limitations;

(iii) Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the Department based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of Section 460:20-45-9 will be met;

(iv) Provide a non-clogging dewatering device adequate to maintain the detention time required under Paragraph (c)(1)(C)(ii) of this Section;

(v) Minimize, to the extent possible, short circuiting;

(vi) Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

(vii) Ensure against excessive settlement:

(viii) Be free of sod, large roots, frozen soil, and acid- or toxic-forming coal processing waste; and

(ix) Be compacted properly,.

(2) A sedimentation pond shall include a combination of principal and emergency spillways or a single spillway configured as specified in Paragraph (c)(2)(A) of this Section, designed and constructed to safely pass the applicable design precipitation event specified in Paragraph (c)(2)(B) of this Section, except as set forth in Paragraph (c)(2)(C) of this Section.

(A) The Department may approve a single open channel spillway that is:

(i) Of nonerodible construction and designed to carry sustained flows; or

(ii) Earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) Except as specified in Paragraph (c)(2)(C) of this Section, the required design precipitation event for a sedimentation pond meeting the spillway requirements of Paragraph (c)(2) of this Section is:

(i) For a sedimentation pond meeting the size or other criteria of 30 CFR Section 77.216(a), a 25-year 6-hour event, or greater event as specified by the Department.

(ii) For a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the Department.

(C) In lieu of meeting the requirements in Subsection (c)(2)(A) of this Section, the Department may approve a sedimentation pond that relies primarily on storage to control the runoff from the designed precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor in accordance with Section 460:20-27-14(a) of this Chapter that the sedimentation pond will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such a sedimentation pond shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(i) In the case of a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Department; or

(ii) In the case of a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the Department.

(d) **Other treatment facilities.**

(1) Other treatment facilities shall be designed to treat a 10-year, 24-hour precipitation event unless a lesser design event is approved by the Department based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of Section 460:20-45-9 will be met.

(2) Other treatment facilities shall be designed in accordance with the applicable requirements of Paragraph (c) of this Section.

(e) **Exemptions.** Exemptions to the requirements of this Section may be granted if:

(1) The disturbed drainage area within the total disturbed area is small; and

(2) The operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under Section 460:20-43-9 and the applicable State and Federal water quality standards for the receiving waters.

(f) **Performance standards.**

(1) **General requirements.** Sedimentation ponds shall be used individually or in series and shall:

(A) Be constructed before any disturbance of the undisturbed area to be drained into the pond;

(B) Be located as near as possible to the disturbed area and out of perennial streams; unless approved by the Department;

(C) Meet all the criteria of this Section;

(2) Sediment ponds shall provide adequate sediment storage per acre of disturbance draining into the structure;

(3) **Detention time.** Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond

from a 10-year, 24-hour precipitation event (design event).
(4) **Dewatering.** The water storage resulting from inflow shall be removed by a non-clogging dewatering device or conduit spillway approved by the Department.
(5) Each operator who conducts underground mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.
(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this Section shall not relieve the operator from compliance with applicable effluent limitations as contained in Section 460:20-43-9.
(7) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation event or lesser events through the sedimentation pond.
(8) Sediment shall be removed from the structure when the sediment storage volume is 80% filled;
(9) An appropriate combination of principal and emergency spillways or a single open channel spillway as specified in 9(c)(2) shall be provided to safely discharge the runoff from a 25-year, 6-hour precipitation event, or larger event specified by the Department. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the Department.
(10) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times including the period after settlement.
(11) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement unless it has been demonstrated to the Department that the material used and the design will ensure against all settlement.
(12) The minimum top width of the embankment shall not be less than the quotient of (h+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.
(13) The combined upstream and downstream side slopes of the settled embankment shall not be less than lv:5h, with either slope steeper than lv:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.
(14) The embankment foundation area shall be cleared of all organic matter, all surface sloped to no steeper than lv:lh, and the entire foundation surface scarified.
(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and in no case shall coal-processing waste be used.
(16) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layer of such thickness as is required to facilitate compaction and meet the design requirements of this Section. Compaction shall be conducted as specified in the design approved by the Department.
(17) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the

crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(A) An appropriate combination of principal and emergency spillways or a single open channel spillway as specified in 460:20-45-9(c)(2) shall be provided to discharge safely the runoff resulting from a 100-year, 6-hour precipitation event, or a larger event specified by the Department.

(B) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(C) The criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.

(18) Each pond shall be designed and inspected during construction under the supervision of and certified after construction by a qualified registered professional engineer.

(19) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with Section 460:20-45-41.

(20) All ponds including those not meeting the size or other criteria of 30 CFR 77.216(a) shall be examined for structural weakness, erosion and other hazardous conditions and reports and modifications shall be made to the Department in accordance with 30 CFR 77.216-3. With the approval of the Department, dams not meeting these criteria [77.216(a)] shall be examined four times per year.

(21) Sedimentation ponds shall not be removed until the disturbed area has been restored, and the revegetation requirements of Section 460:20-45-43 through 460:20-45-46 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with Sections 460:20-43-38 through 460:20-45-41, and 460:20-45-43 through 460:20-45-46, unless the pond has been approved by the Department for retention as being compatible with the approved postmining land use under Section 460:20-43-51. If the Department approved retention, the sedimentation pond shall meet all requirements for permanent impoundments of Sections 460:20-45-14 and 460:20-45-15.

[**Source:** Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-45-13. Hydrologic balance: discharge structures

Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

### 460:20-45-14. Impoundments

(a) **General requirements.** The requirements of this Subsection apply to both temporary and permanent impoundments.

(1) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985) shall comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(2) Impoundments meeting the criteria of 30 CFR Section 77.216(a) shall comply with the requirements of 30 CFR Section 77.216 and this section. The plan required to be submitted to the District Manager of MSHA under 30 CFR Section 77.216 shall also be submitted to the Department as part of the permit application.

(3) **Design Certification.** The design of impoundments shall be certified in accordance with Section 460:20-31-9(a) of this Chapter as designed to meet the requirement of this part using current, prudent, engineering practices and any design criteria established by the Department. The qualified, registered, professional engineer or qualified, registered, professional, land surveyor shall be experienced in the design and construction of impoundments.

(4) **Stability.**

(A) An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) Impoundments not included in Subsection (a)(4)(A) of this Section, except for a coal mine waste impounding structure, or located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Section 460:20-31-9(c)(2).

(5) **Freeboard.** Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(6) **Foundation.**

(A) Foundation and abutments for the impoundment structure shall be stable under all conditions of construction and operation of the impoundment and shall be designed based on accurate and adequate information on the foundation conditions. For an impoundment

meeting the Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a), sufficient foundation investigations and laboratory testing of foundation material shall be performed in order to determine the design requirements for foundation stability.

(B) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(7) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(8) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(9) **Spillways.** An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in paragraph (a)(9)(A) of this Section, designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(9)(B) of this Section, except as set forth in (c)(2) of this Section.

(A) The department may approve a single open-channel spillway that is:

(i) Of nonerodible construction and designed to carry sustained flows; or

(ii) Earth- or grass-lined and designed to carry short- term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) Except as specified in (c)(2) of this Section, the required design precipitation event for an impoundment meeting the spillway requirements of paragraph (a)(9) of this Section is;

(i) For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the Department.

(ii) For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the Department.

(iii) For an impoundment not included in Subsections (a)(9)(B)(I) or (ii), a 25-year 6-hour event, or greater event as specified by the Department.

(10) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users.

(11) **Inspections.** Except as provided in paragraph (a)(11)(D) of this Section, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in paragraph (a)(11)(A) of this Section. The professional engineer or specialist shall be experienced in the construction of impoundments.

(A) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the

structure of release of the performance bond.

(B) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(11)(D) of this Section, shall promptly after each inspection required in paragraph (a(11)(A) of this Section provide to the Department a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this Chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing storage capacity, and existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(C) A copy of the report shall be retained at or near the minesite.

(D) A qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the SCS Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a) and certify and submit the report required by paragraph (a)(11)(B) of this Section, except that all coal mine waste impounding structures covered by Section 460:20-45-31 of this Chapter shall be certified by a qualified registered professional engineer. The professional land surveyor shall be experienced in the construction of impoundments.

(12) Impoundments meeting the SCS Class B or C criteria for dams in TR-60 or other criteria of 30 CFR 77.216(a) must be examined in accordance with 30 CFR 77.216-3. Other impoundments shall be examined at least quarterly by a qualified person designated by the operator for the appearance of structural weakness and other hazardous conditions.

(13) **Emergency procedures.** If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) **Permanent impoundments.** A permanent impoundment of water may be created, if authorized by the Department in the approved permit based upon the following demonstration:

(1) The size and configuration of such impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable State and Federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable State and Federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.
(6) The impoundment will be suitable for the approved postmining land use.

(c) **Temporary impoundments.**

(1) The Department may authorize the construction of temporary impoundments as part of a surface coal mining operation.
(2) In lieu of meeting the requirements of paragraph (a)(9)(A) of this Section, the Department may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered land surveyor in accordance with Section 460:20-27-14(a) of this Chapter that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) In the case of an impoundment meeting the SCS Class B or C criteria for dams in TR 60, or the size or other criteria of Section 77.216(a) of 30 CFR, it shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Department, or
(B) In the case of an impoundment not included in Subsection (c)(2)(A) of this Section it shall be designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the Department.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-45-15. Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities

Before abandoning a permit area or seeking bond release, the operator shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this Chpater for permanent structures, have been maintained properly and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator shall renovate such structures if necessary to meet the requirements of this Chapter and to conform to the approved reclamation plan.

### 460:20-45-16. Hydrologic balance: stream buffer zones

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by underground mining activities, unless the Department specifically authorizes underground mining activities closer to, or through, such a stream. The Department may authorize such activities only upon finding that:

(1) Underground mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and
(2) If there will be a temporary or permanent steam-channel diversion, it will comply with Section 460:20-45-10.

(b) The area not to be disturbed shall be designated as a buffer zone, and operator shall mark it as specified in Section 460:20-45-3.

**460:20-45-17. Coal recovery and right of entry information**

(a) Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

(b) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and begin underground coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify the document by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(1) Where the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit:

(A) A copy of the written consent of the private mineral estate owner for the extraction of coal by underground methods;

(B) A copy of the conveyance that expressly grants or reserves the right to extract coal by underground mining methods;or

(C) If the conveyance does not expressly grant the right to extract coal by underground mining methods, documentation that under applicable State Law, the applicant has the legal authority to extract the coal by those methods.

(2) Nothing in this Section shall be construed to provide the Department with authority to adjudicate property right disputes.

[**Source:** Amended at 31 Ok Reg 2095, eff 9-12-14]

**460:20-45-18. Use of explosives: general requirements**

(a) Sections 460:20-45-18 through 460:20-45-23 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

(b) Each operator shall comply with all applicable State and Federal laws and regulations in the use of explosives.

(c) **Blasters.**

(1) No later than 12 months after the blaster certification program required by Subchapter 65 of this Chapter has been approved, all surface blasting operations incident to underground mining in the State shall be conducted under the direction of a certified blaster. Before that time, all such blasting operations in that State shall be conducted by competent, experienced persons who understand the hazards involved.

(2) Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations.

(3) A blaster and at least one other person shall be present at the firing of a blast.

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(A) Be familiar with the site-specific performance standards; and

(B) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

(d) **Blast design.**

(1) An anticipated blast design shall be submitted if blasting operations will be conducted within:

(A) 1,000 feet of any building used as a dwelling, public building, school, church or community or institutional building; or

(B) 500 feet of active or abandoned underground mines.

(2) The blast design may be presented as part of a permit application or at a time, before the blast, approved by the Department.

(3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in Section 460:20-45-22.

(4) The blast design shall be prepared and signed by a certified blaster.

(5) The Department may require changes to the design submitted.

**460:20-45-19. Use of explosives: preblasting survey**

(a) At least 30 days before initiation of blasting, the operator shall notify, in writing, all residents or owners of dwellings or other structures located within 1/2 mile of the permit area how to request a preblasting survey.

(b) A resident or owner of a dwelling or structure within 1/2 mile of any Subchapter of the permit area may request a preblasting survey. This request shall be made, in writing, directly to the operator or to the Department, who shall promptly notify the operator. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator if requested by the resident or owner.

(c) The operator shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, and transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

(d) The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the Department and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the Department a detailed description of the specific areas of disagreement.

(e) Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting.

**460:20-45-20. Use of explosives: general performance standards**

(a) The operator shall notify, in writing, residents within 1/2 mile of the blasting site and local governments of the proposed times and locations of blasting operations. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than 24 hours before blasting will occur.

(b) Unscheduled blasts may be conducted only where public or operator health and safety so require and for emergency blasting actions. When an operator conducts an unscheduled surface blast incidental to underground coal mining operations, the

operator, using audible signals, shall notify residents within 1/2 mile of the blasting site and document the reason in accordance with Section 460:20-45-23(p).
(c) All blasting shall be conducted between sunrise and sunset unless nighttime blasting is approved by the Department based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The Department may specify more restrictive time periods for blasting.

**460:20-45-21. Use of explosives: blasting signs, warnings, and access control**
(a) **Blasting signs.** Blasting signs shall meet the specifications of Section 460:20-45-3 of this Subchapter. The operator shall:

(1) Conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public-road right-of-way, and at the point where any other road provides access to the blasting area; and

(2) At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use," which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

(b) **Warnings.** Warning and all-clear signals of different character or pattern that are audible within a range of 1/2 mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within 1/2 mile of the permit area shall be notified of the meaning of the signals in the blasting notification required in Section 460:20-45-20(a) of this Subchapter.
(c) **Access control.** Access within the blasting areas shall be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that:

(1) No unusual hazards, such as imminent slides or undetonated charges, exist; and

(2) Access to and travel within the blasting area can be safely resumed.

**460:20-45-22. Use of explosives: control of adverse effects**
(a) **General requirements.** Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.
(b) **Airblast.**

(1) **Limits.**

(A) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in Subsection (e) of this Section.

(B) If necessary to prevent damage, the Department may specify lower maximum allowable airblast levels than those of Paragraph (b) (1) (A) of this Section for use in the vicinity of a specific blasting operation.

(2) **Monitoring.**

(A) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The Department may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(B) The measuring systems used shall have an upper-end flat-frequency response of at least 200 Hz.

(c) **Flyrock.** Flyrock travelling in the air or along the ground shall not be cast from the blasting site:

(1) More than one-half the distance to the nearest dwelling or other occupied structure;

(2) Beyond the area of control required under Section 460:20-45-21(c); or

(3) Beyond the permit boundary.

(d) **Ground vibration.**

(1) **General.** In all blasting operations, except as otherwise authorized in Subsection (e) of this Section, the maximum ground vibration shall not exceed the values approved by the Department. The maximum ground vibration for protected structures listed in Paragraph (d) (2) (A) of this Section shall be established in accordance with either the maximum peak particle velocity limits of Paragraph (d) (2), the scaled-distance equation of Paragraph (d) (3), the blasting-level chart of Paragraph (d) (4), or by the Department under Paragraph (d) (5) of this Section. All structures in the vicinity of the blasting area not listed in Paragraph (d) (2) (A) of this Section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the Department before the initiation of blasting.

(2) **Maximum peak particle velocity.**

(A) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

(B) A seismographic record shall be provided for each blast.

(3) **Scaled-distance equation.**

(A) An operator may use the scaled-distance equation, $W = (D/Ds)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W = the maximum wieght of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and Ds = the scaled-distance factor, which may initially be approved by the Department using the values for scaled-distance factor listed in Paragraph (d) (2) (A) of this Section.

(B) The development of a modified scaled-distance factor may be authorized by the Department on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of Paragraph (d) (2) (A) of this Section, at a 95-percent confidence level.

(4) **Blasting-level chart.**

(A) An operator may use the ground-vibration limits in Appendix A of this Chapter to determine the maximum allowable ground vibration.

(B) If the Appendix A limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. she method for the analysis of the predominant frequency contained in the blasting records shall be approved by the Department before application on this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the Department beyond the limits otherwise provided by this Section, if determined necessary to provide damage protection.

(6) The Department may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e) The maximum airblast and ground-vibration standards of Subsections (b) and (d) of this Section shall not apply at the following locations:

(1) At structures owned by the permittee and not leased to another person,

(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the Department before blasting.

**460:20-45-23. Use of explosives: records of blasting operations**

The operator shall retain a record of all blasts for at least 3 years. Upon request, copies of these records shall be made available to the Department and to the public for inspection. Such records shall contain the following data:

(1) Name of the operator conducting the blast.

(2) Location, date, and time of the blast.

(3) Name, signature, and certification number of the blaster conducting the blast.

(4) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community, or institutional building outside the permit area, except those described in Section 460:20-45-22(e).

(5) Weather conditions, including those which may cause possible adverse blasting effects.

(6) Type of material blasted.

(7) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern.

(8) Diameter and depth of holes.

(9) Types of explosives used.

(10) Total weight of explosives used per hole.

(11) The maximum weight of explosives detonated in an 8-millisecond period.

(12) Initiation system.

(13) Type and length of stemming.

(14) Mats or other protections used.

(15) Seismographic and airblast records, if required, which shall include:

(A) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(B) Exact location of instrument and the date, time, and distance from the blast;

(C) Name of the person and firm taking the reading;

(D) Name of the person and firm analyzing the seismographic record; and

(E) The vibration and/or airblast level recorded.

(16) Reasons and conditions for each unscheduled blast.

**460:20-45-24. Disposal of excess spoil: general requirements**

(a) **General.** Excess spoil shall be placed in designated disposal areas within the permit area, in a controlled manner to:

(1) Minimize the adverse effects of leachate and surface-water runoff from the fill on surface and ground waters;

(2) Ensure mass stability and prevent mass movement during and after construction; and

(3) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(b) **Design certification.**

(1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet any design criteria established by the Department. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(c) **Location.** The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the Department, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(d) **Foundation.**

(1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.

(2) When the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the Department based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with Section 460:20-31-12 of this Chapter to determine the size of rock toe buttresses and keyway cuts.

(e) **Placement of excess spoil.**

(1) All vegetative and organic materials shall be removed from the disposal area prior to placement of excess spoil. Topsoil shall be removed, segregated and stored and redistributed in accordance with Section 460:20-45-7. If approved by the Department, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(2) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or

substitute material in accordance with Section 460:20-45-7 of this Chapter. The Department may approve a design which incorporates placement of excess spoil in horizontal lifts other than 4 feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

(3) The final configuration of the fill shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).

(4) No permanent impoundments are allowed on the completed fill. Small depressions may be allowed by the Department if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation; and if they are not incompatible with the stability of the fill.

(5) Excess spoil that is acid- or toxic-forming or combustible shall be adequately covered with nonacid, nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with Section 460:20-45-8, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(f) **Drainage control.**

(1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) Diversions shall comply with the requirements of Section 460:20-45-10 of this Subchapter.

(3) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the Department. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-, nontoxic-forming rock (e.g., natural sand and gravel, sandstone, limestone, or other durable rock) that does not slake in water or degrade to soil materials, and which is free or coal, clay, or other nondurable material. Perforated pipe underdrains shall be corrosion resistant and shall have characteristics consistent with the long-term life of the fill.

(g) **Surface area stabilization.** Slope protection shall be provided to minimize surface erosion at the site. All distributed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(h) **Inspections.** A qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

(A) Foundation preparation, including the removal of all organic material and topsoil;
(B) Placement of underdrains and protective filter systems;
(C) Installation of final surface drainage systems; and
(D) The final graded and revegetated fill. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.

(2) The qualified registered professional engineer shall provide a certified report to the Department promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and this Chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3) **Drainage systems.**

(A) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

(B) Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with Section 460:20-45-26, color photographs shall be taken of the underdrain as the underdrain system is being formed.

(C) The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the mine site.

(i) **Coal mine waste.** Coal mines waste may be disposed of in excess spoil fills if approved by the Department and, if such waste is:

(1) Placed in accordance with Section 460:20-45-30 of this Subchapter;
(2) Nontoxic and nonacid forming; and
(3) Of the proper characteristics to be consistent with the design stability of the fill.

(j) **Underground disposal.** Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the Department and MSHA under Section 460:20-31-18 of this Chapter.

(k) **Face-up operations.** Spoil resulting from face-up operations for underground coal mine development may be placed at drift entries as part of a cut-and-fill structure, if the structure is less than 400 feet in horizontal length and designed in accordance with Section 460:20-45-24.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-45-25. Disposal of excess spoil: valley fills/head-of-hollow fills**

Valley fills and head-of-hollow fills shall meet the requirements of Section 460:20-45-24 and the additional requirements of this Section.

(1) **Drainage control.**

(A) The top surface of the completed fill shall be graded such that the final slope after settlement will be toward properly designed

drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.

(B) Runoff from areas above the fill and runoff from the surface of the fill shall be diverted into stabilized diversion channels designed to meet the requirements of Section 460:20-45-10 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

(2) **Rock-core chimney drains.** A rock-core chimney drain may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill. The alternative rock-core chimney drain system shall be incorporated into the design and construction of the fill as follows:

(A) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of the durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 460:20-45-24(f).

(B) A filter system to ensure the proper long-term functioning of the rock core shall be designed and constructed using current, prudent engineering practices.

(C) Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill shall be 33h:1v (3 percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraceson the fill shall be graded with a 3- to 5-percent grade toward the fill and a 1-percent slope toward the rock core.

**460:20-45-26. Disposal of excess spoil: durable rock fills**

The Department may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided the following conditions are met:

(1) Except as provided in this Section, the requirements of Section 460:20-45-24 are met.

(2) The excess spoil consists of at least 80 percent, by volume, durable, nonacid- and nontoxic-forming rock (e.g., sandstone or limestone) that does not slake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil, or other nondurable excess spoil material shall be mixed with excess durable rock spoil in a controlled

manner such that no more than 20 percent of the fill volume, as determined by tests performed by a registered engineer and approved by the Department, is not durable rock.

(3) A qualified registered professional engineer certifies that the design will ensure the stability of the fill and meet all other applicable requirements.

(4) The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1.

(5) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.

(6) Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of Section 460:20-45-10 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

**460:20-45-27. Disposal of excess spoil: preexisting benches**

(a) The Department may approve the disposal of excess spoil through placement on preexisting benches, provided that all the standards set forth in Sections 460:20-45-24(a),(b)(1),(d)(1) and the requirements of this Section are met.

(b) Excess spoil shall be placed only on the solid portion of the preexisting bench.

(c) The fill shall be designed, and constructed using current, prudent engineering practices. The design will be certified by a registered professional engineer. The spoil shall be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long term static safety factor of 1.3 for all portions of the fill. Any spoil deposited on any fill portion of the bench will be treated as excess spoil fill under 460:20-45-24.

(d) The preexisting bench shall be backfilled and graded to:

(1) Achieve the most moderate slope possible which does not exceed the angle of repose, and

(2) Eliminate the highwall to the maximum extent technically practical.

(e) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the Department provided that:

(1) The gravity transport courses are determined on a site-specific basis by the operator as part of the permit application and approved by the Department to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

(2) All gravity-transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

(3) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm;
(4) Excess spoil shall not be allowed on the downslope below the upper bench except on designated gravity-transport courses properly prepared according to Section 460:20-45-7. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity-transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of Subchapter 45.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-45-28. Protection of underground mining [REVOKED]

[**Source:** Revoked at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-45-29. Coal mine waste: general requirements

(a) **General.** All coal mine waste disposed of in an area other than the mine workings or excavations shall be placed in new or existing disposal areas within a permit area, which are approved by the Department for this purpose. Coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner to:

(1) Minimize adverse effects of leachate and surface-water runoff on surface and groundwater quality and quantity;
(2) Ensure mass stability and prevent mass movement during and after construction;
(3) Ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;
(4) Not create a public hazard; and
(5) Prevent combustion.

(b) Coal mine waste material from activities located outside a permit area may be disposed of in the permit area only if approved by the Department. Approval shall be based upon a showing that such disposal will be in accordance with the standards of this Section.

(c) Design certification.

(1) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the Department. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.
(2) The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction. Coal waste refuse piles are to be constructed or modified with compaction which obtains 90 percent of the maximum dry density as determined in accordance with the standard Proctor method.

(d) **Foundation.** Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analysis of the foundation conditions shall take into consideration the effect of underground mine workings, if

any, upon the stability of the disposal facility.
(e) **Emergency procedures.** If any examination or inspection discloses that a potential hazard exists, the Department shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.
(f) **Underground disposal.** Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the Department and MSHA under Section 460:20-31-18 of this Chapter.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

**460:20-45-30. Coal mine waste: refuse piles**

Refuse piles shall meet the requirements of Section 460:20-45-29 of this Subsection, the additional requirements of this Section, and the requirements of 30 CFR 77.214 and 77.215.

(1) **Drainage control.**

(A) If the disposal area contains springs, natural or manmade water courses, or wet-weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility, and ensure stability.

(B) Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from areas above the refuse pile and runoff from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of Section 460:20-45-10 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

(C) Underdrains shall comply with the requirements of Section 460:20-45-24(f) (3).

(2) **Surface-area stabilization.** Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(3) **Placement.**

(A) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored or redistributed in accordance with Section 460:20-45-7. If approved by the Department, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(B) The final configuration of the refuse pile shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).

(C) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the Department if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with the stability of the refuse pile.

(D) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of 4 feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The Department may allow less than 4 feet of cover material based on physical and chemical analyses which show that the requirements of Sections 460:20-45-43 through 460:20-45-46 will be met.

(4) **Inspections.** A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

(A) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include, at a minimum:

(i) Foundation preparation including the removal of all organic material and topsoil;

(ii) Placement of underdrains and protective filter systems;

(iii) Installation of final surface drainage systems; and

(iv) The final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compact ion of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated or until a later time as required by the Department.

(B) The qualified registered professional engineer shall provide a certified report to the Department promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and this Chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(C) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(D) A copy of each inspection report shall be retained at or near the minesite.

**460:20-45-31. Coal mine waste: impounding structures**

New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of Section 460:20-45-29.

(1) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the Department that the stability of such a structure conforms to the requirements of this Subchapter and that the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the Department in accordance with Section 460:20-27-14 of this Chapter.

(2)

(A) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed, and maintained in accordance with Section 460:20-45-14 (a) and (c) of this Subchapter. Such structures may not be retained permanently as Subchapter of the approved postmining land use.

(B) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of Section 77.216(a) of 30 CFR shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the Department.

(3) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(4) **Drainage control.** Runoff from areas above the disposal facility or runoff from the surface of the facility that may cause instability or erosion of the impounding structure shall be diverted into a stabilized diversion channels designed to meet the requirements of Section 460:20-45-10 and designed to safely pass the runoff from a 100-year, 6-hour design precipitation event.

(5) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period.

(6) For an impounding structure constructed of or impounding coal mine constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

**460:20-45-32. Coal mine waste: burning and burned waste utilization**

(a) Coal mine waste fires shall be extinguished by the person who conducts the surface mining activities, in accordance with a plan approved by the Department and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

(b) No burning or unburned coal mine waste shall be removed from a permitted disposal area without a removal plan approved by the Department. Consideration shall be given to potential hazards to persons working or living in the vicinity of the structure.

**460:20-45-33. Disposal of noncoal mine wastes**

(a) Noncoal mine wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber, and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of noncoal mine wastes shall be in a designated disposal site in the permit area or a State-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and windborne waste. When the disposal is completed, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with Sections 460:20-45-43 through 460:20-45-46. Operation of the disposal site shall be conducted in accordance with all local, State, and Federal requirements.

(c) At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall any excavation for a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area.

(d) Notwithstanding any other provision of these Regulations, any noncoal mine waste defined as "hazardous" under Section 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, as amended) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

**460:20-45-34. Stabilization of surface areas**

(a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies which form in areas that have been regraded and topsoiled and which either:

(1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover, or

(2) Cause or contribute to a violation of water quality standards for receiving streams, shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted.

**460:20-45-35. Protection of fish, wildlife, and related environmental values**

(a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable.

(b) **Endangered and threatened species.** No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary or which is likely to result in the

destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C.1531 et seq.). The operator shall promptly report to the Department any state or federally listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the Department shall consult with appropriate state and federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(c) **Bald and golden eagles.** No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the Department any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the Department shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(d) Nothing in these Regulations shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 et seq.

(e) Each operator shall, to the extent possible using the best technology currently available:

(1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, underground mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the Department determines that such requirements are unnecessary;

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or othe species protected by State or Federal law; and

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the Department determines that such requirements are unnecessary.

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(f) Wetlands and habitats of unusually high value for fish and wildlife. The operator conducting underground mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands and riparian vegetation along rivers and streams and bordering ponds and lakes. Underground mining activities shall avoid disturbances to, enhance where practicable, or restore habitats of unusually high value for fish and wildlife.

(g) Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

(1) Their proven nutritional value for fish or wildlife.

(2) Their use as cover for fish or wildlife.

(3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

(h) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator shall intersperse the fields

with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.
(i) Where residential, public service, or industrial uses are to be the postmining land use and where consistent with the approved postmining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

**460:20-45-36. Slides and other damage**

At any time a slide occurs which may have a potential adverse effect on public, property, health, safety, or the environment, the person who conducts the underground mining activities shall notify the Department by the fastest available means and comply with any remedial measures required by the Department.

**460:20-45-37. Contemporaneous reclamation**

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all areas affected by surface impacts incident to an underground coal mine shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under Section 460:20-33-8 of this Chapter. The Department may establish schedules that define contemporaneous reclamation.

(1) **Timing of backfilling and grading.**

(A) Contour mining. Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The Department may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under Section 460:20-27-10 (b) (3), that additional time is necessary;

(B) Open pit mining with thin overburden. Rough backfilling and grading shall occur in accordance with the time schedule approved by the Department, on the basis of the materials submitted under Section 460:20-27-10 (b) (3), which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.

(C) Area strip mining. Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The Department may grant additional time for rough backfilling and grading. If the permittee can demonstrate, through a detailed written analysis under Section 460:20-27-10 (b) (3), that additional time is necessary.

**460:20-45-38. Backfilling and grading: general requirements**

(a) Disturbed areas shall be backfilled and graded to:

(1) Achieve the approximate original contour, except as provided in Subsection(k) of this Section.

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in Subsection (h) (small depressions) and in (k) (2) (previously mined highwalls) of this Section;

(3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long term static safety factor of 1.3 and to prevent slides;
(4) Minimize erosion and water pollution both on and off the site; and
(5) Support the approved postmining land use.

(b) Spoil, except as provided in Subsection (1) of this Section, and except excess spoil disposed of in accordance with Sections 460:20-45-24 through 460:20-45-27, shall be returned to the mined-out surface area.

(c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

(d) Spoil may be placed on the area outside the mined-out surface area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

(1) All vegetative and organic materials shall be removed from the area.
(2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with Section 460:20-45-7 of this Chapter.
(3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this Section.

(e) Disposal of coal processing waste and underground development waste in the mined-out surface area shall be in accordance with Sections 460:20-45-29 and 460:20-45-30 of this Chapter, except that a long-term static safety factor of 1.3 shall be achieved.

(f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with Section 460:20-45-8 of this Chapter, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(g) Cut-and-fill terraces may be allowed by the Department where:

(1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or
(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may be approved if they meet the requirements of Sections 460:20-45-14 and 460:20-45-15 and if they are suitable for the approved postmining land use.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour when approval is obtained from the Department for:

(1) A variance from approximate original contour requirements in accordance with Section 460:20-33-6 of this Chapter; or
(2) Incomplete elimination of highwalls in previously mined areas in accordance with Section 460:20-45-41.

(l) Regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of underground mining activities shall not be required if the conditions of (1) or (2) of this Subsection are met.

(1)

(A) Settled and revegetated fills shall be composed of spoil or nonacid- or nontoxic-forming underground development waste.

(B) The spoil or underground development waste shall not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use.

(C) Stability of the spoil or underground development waste shall be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material not placed on a solid bench (1.5 static safety factor).

(D) The surface of the spoil or underground development waste shall be vegetated according to Section 460:20-45-46, and surface runoff shall be controlled in accordance with Section 460:20-45-10.

(2) If it is determined by the Department that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, the Department may allow the existing spoil or underground development waste pile to remain in place. The Department may require stabilization of such spoil or underground development waste in accordance with the requirements of (1) (A)-(1) (D) of this Subsection.

**460:20-45-39. Backfilling and grading: thin overburden**

In surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and where the thickness of the coal deposit relative to the thickness of the overburden is large and where the operator demonstrates that the spoil and other waste materials available from the entire permit area are insufficient, giving due consideration to volumetric expansion, to restore the disturbed area to its approximate original contour, the operator shall, at a minimum:

(1) Use all available spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose; and

(2) Meet the requirements of Sections 460:20-43-38(a) (2) through 460:20-43-38(j) of this Chapter.

(3) Thin overburden requirements apply when the final thickness of the swelled overburden is less than 80 percent of the sum of the overburden thickness and coal thickness prior to coal removal and when surface mining activity cannot achieve approximate original contour.

**460:20-45-40. Backfilling and grading: thick overburden**

The provisions of this section apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. In surface coal mining where the thickness of the overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that the volume of the spoil and other waste materials is more than sufficient to restore the disturbed area to approximate original contour, the operator shall, at a minimum, after restoring to approximate

original contour:

(1) Use the spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose;

(2) Meet the requirements of Sections 460:20-43-38(a) (2) through 460:20-43-38(j); and

(3) Dispose of any excess spoil in accordance with Sections 460:20-43-24 through 460:20-43-27.

**460:20-45-41. Backfilling and grading: previously mined areas**

(a) Remining operations on previously mined areas that contain a preexisting highwall shall comply with the requirements of Sections 460:20-45-38 through 460:20-45-42, except as provided in this Section.

(b) The requirements of Section 460:20-45-38 (a) (1) and 460:20-45-38 (a) (2) requiring that elimination of highwalls shall not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the Department to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) All spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall be included within the permit area.

(2) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(3) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate, to the satisfaction of the regulatory authority, that the highwall remnant is stable.

(4) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

**460:20-45-42. Backfilling and grading: steep slopes**

(a) Underground mining activities on steep slopes shall be conducted so as to meet the requirements of Sections 460:20-43-38 through 460:20-43-41, and the requirements of this Section

(b) The following materials shall not be placed on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3) Debris, including that from clearing and grubbing.

(4) Abandoned or disabled equipment.

(c) Land above the highwall shall not be disturbed unless the Department finds that this disturbance will facilitate compliance with the environmental protection standards of the permanent program performance standards and the disturbance is limited to that necessary to facilitate compliance.

(d) Woody materials shall not be buried in the backfilled area unless the Department determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

**460:20-45-43. Revegetation: general requirements**

(a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

(1) Diverse, effective, and permanent;

(2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the Department;

(3) At least equal in extent of cover to the natural vegetation of the area; and

(4) Capable of stabilizing the soil surface from erosion.

(b) The reestablished plant species shall:

(1) Be compatible with the approved postmining land use;

(2) Have the same seasonal characteristics of growth as the original vegetation;

(3) Be capable of self-regeneration and plant succession;

(4) Be compatible with the plant and animal species of the area; and

(5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The Department may grant exception to the requirements of (b) (2) and (b) (3) of this Section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the Department approves a cropland postmining land use, the Department may grant exception to the requirements of (a) (1), (a) (3), (b) (2), and (b) (3) of this Section. The requirements of Subchapter 49 of this Chapter apply to areas identified as prime farmland.

**460:20-45-44. Revegetation: timing**

(a) Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

(b) Vegetation that is in accordance with the approved permit and reclamation plan shall be established not more than 36 months after the disturbed areas have been retopsopiled, unless a written request for an extension has been submitted and approved by the Department prior to the expiration of the 36 month period.

(c) Extensions shall be approved solely on the basis of adverse climatic conditions demonstrated to the Department by the operator. Extensions shall be granted for no more than up to 12 months. Only one extension shall be approved.

[**Source:** Amended at 23 Ok Reg 3059, eff 7-27-06]

**460:20-45-45. Revegetation: mulching and other soil stabilizing practices.**

Suitable mulch and other soil stabilizing practices shall be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The Department may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

**460:20-45-46. Revegetation: standards for success**

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of Section 460:20-43-43.

(1) Standards for success and statistically valid sampling techniques for measuring success are identified in the Bond Release Guidelines published by the Department.

(2) Comparison of ground cover and productivity may be made on the basis of either reference areas or technical standards representative of unmined lands in the area. Management of references areas, if required for the approved postmining land use of the permit area. Species composition of the vegetation of the reference area and the reclaimed area must be comparable. Ground cover, production, or stocking shall be considered equal to the approved success standard (reference area of technical standard) when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided t-test with a 0.10 alpha error).

(b) The following minimum success standards must be achieved:

(1) For areas with a post-mining land use of pasture land or grazing land, the minimum ground cover of desirable living plants on the revegetated area shall be equal (as defined above) to the ground cover of living plants of the approved reference area(s) or to a standard of ninety percent desirable living ground cover if no reference area is used. The minimum production of desirable living plants on the revegetated area shall be at least equal (as defined in (a)(2) of this Section to the production of desirable living plants on the approved reference area or to technical standards. For permits using reference areas, at no time shall an area reclaimed to improved pasture be released from Phase III or III liability if it is composed of less than 70 percent ground cover of desirable living plants or, if reclaimed with desirable native grasses, less than 50 percent desirable cover.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal (as defined in (a)(2) of this Section to that of a reference area or technical standards.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(A) Minimum stocking and planting arrangements for fish and wildlife habitat shall be specified by the Department after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(i) If trees and shrubs are to be planted, the following are required to be included in the wildlife habitat plan. The minimum tree and shrub stocking rate is 250 per acre. Of that 250, there will be 100 hard mast producing trees of at least three native species such as red oak, post oak, bur oak, black oak, willow oak, shumard oak, water oak, of that 250, there will be 100 soft mast producing trees of at least three native species such as sugarberry, sweet gum, black cherry, black gum sycamore, and hackberry. In addition to the hard

mast and soft mast producing trees, 50 soft mast producing shrubs of at least two native species such as Americam plum, Mexican plum, deciduous holly, Carolina buckthorn or rusty blackhaw must be planted.

(ii) If native grasses and forbs are to be planted the following are required. A minimum of two lbs of pure live seed per species per acre, at least three of the following grasses must be planted: big bluestem, little blue stem, indiangrass, switchgrass, and side oats grama. At a minimum seeding rate of one lb of pure live seed per species per acre, at least three of the following forbs must be planted: maximilian sunflower, showy partridge pea, Illinois bundleflower, purple prairie clover, roundhead, common and Korean lespedeza.

(iii) If the Applicant chooses not to follow (b)(3)(A)(i) or (b)(3)(A)(ii) of this Subsection then an alternative wildlife habitat plan must be submitted to the Department for review, along with written approval of the alternative planting rates and species from the state agency responsible for the management of Fish and Wildlife.

(B) Minimum stocking and planting arrangements for areas to be developed for recreation, shelter belts, or forest products shall be specified by the Department on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs and will be incorporated into an approved reclamation plan. Consultation and approval will occur on a permit specific basis.

(C) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for at least three years or 60% of the responsibility period.

(D) The technical standard for vegetative ground cover on these areas is 80 percent. In no cases shall vegetative ground cover be less than that required to achieve the approved postmining land use and must be sufficient to control erosion.

(E) Comments from State agencies responsible for management of Fish and wildlife are required.

(4) Bare areas shall not exceed one-sixteenth acres in size and total not more than one percent of the area planted.

(5) For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(6) For areas previously disturbed by mining that were not reclaimed to the requirements of this Chapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance

and shall be adequate to control erosion. In general this is considered to be at least 70% vegetative ground cover.

(c) **Responsibility time frame.**

(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Department in accordance with (c)(4) of this Section.

(2) In areas of more than 26.0 inches average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Five full years, except as provided in paragraph (c)(2)(B) of this section. The vegetation parameters identified in Subsection (b)of this Section for grazing land or pasture land and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in Subsection (b) of this Section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(B) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subsection (b), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(A) Ten full years, except as provided in subsection (c)(3)(B) below. Vegetation parameters identified in Subsection (b) of this Section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

(B) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by subsection (b), the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

(4) The Department has approved selective husbandry practices that, when accomplished in accordance with (c)(4)(A) through (G) of this Section, do not extend the period of responsibility for revegetation success and bond liability. The approved practices shall be required to continue as part of the postmining land use and shall also be considered a normal husbandry practice within the region for unmined lands having uses similar to the approved postmining land use of the disturbed area. Since no absolute limits for individual parameters for fertility, liming, etc. can be set by the Department, established approved and published information sources and other variables involved shall be considered in determining what is approved selective husbandry practice. Evaluations shall include professional judgements and the incorporation of guidelines provided by approved source documents and information provided by Oklahoma State University (OSU) and the United States Department of Agriculture National Resources Conservation Service (NRCS). OSU has established and publishes many recommended fertility and management practices for

row crops, hayland, and grazingland tailored for soil conditions, crop rotations, tillage and application practices plus OSU also has Extension Offices through out the state that can provide more site specific recommendations. The Department will judge management practices on mined lands against the recommended practices provided by OSU and NRCS to judge if the practices are normal husbandry practices and shall through routine inspection process, monitor liability starts dates, liming and fertilization activities and the success of the reclamation. The Department shall review and assess whether site specific activities are outside the normal husbandry practices and the liability period must restart. Giving allowance for flexibility to maintain conditions and latitude for proper management of reclaimed areas, the Department's review and assessment, for determination of whether or not site specific activities are outside the normal husbandry practice, shall incorporate the following:

(A) The Department will consider limited reseeding and associated fertilizing and liming as non-augmentative if the area is small in relation to the permit area, watershed(s) or surface property boundary(ies), whichever is smaller. Also, the size of the area relative to the surrounding area and the ability of the reclaimed area to meet the postmining land use will be considered. Removal and reclamation of temporary structures identified in (c)(4)(E) of this Section would not be considered augmentation. Repair of rills and gullies that are not in excess of the stipulations within (c)(4)(D) of this Section would not be considered augmentation. The Department will require any minor reseeded areas to be fully established and meet the requirements of (a) and (b) of this Section at the time of the bond release.

(B) Approved agricultural practices described by the Oklahoma State University (OSU) Cooperative Extension Service are not considered augmentation. These practices include but are not limited to: fertilizing, liming, weed and pest control, and mulching. The OSU Cooperative Extension Services publishes recommended agricultural practices as Fact Sheets and are available by contacting the state or local OSU Extension Office.

(C) On all lands with a postmining land use other than cropland, any areas reseeded or replanted as a part or result of a normal husbandry practice must be sufficiently small in size and limited in extent of occurrence, as described in (c)(4)(A) of this Section, or as a part of a hay management plan that is an agricultural practice described by the OSU Cooperative Extension Service. The reestablished vegetation must be in place for a sufficient length of time to not adversely affect the Department's ability to make a valid determination at the time of bond release as to whether the site has been properly reclaimed.

(D) Pursuant to (c)(4) of this Section, the repair of rills and gullies will not be allowed in Oklahoma without restarting the revegetation liability period. However, the repair the repair of rills and gullies will not be considered an augmentation practice if the occurrences and treatment of such rills and gullies constitutes a normal conservation practice in the region as defined by the Department. In Oklahoma the normal range of precipitation during the fall or spring

seeding seasons may result in the formation of rills and gullies of permanent vegetative cover for any land use. The Department has determined the NRCS prepared guidelines for the treatment of and repair of these rills and gullies constitutes the treatment practice which is the usual degree of management customarily performed to prevent exploitation, destruction, or neglect of the soil resource and maintain the productivity of the land use. This treatment would not be prohibited as an augmentative practice because the NRCS guidance is the standard developed for the normal treatment of rills and gullies that may develop on permanent cover of vegetation on unmined lands in Oklahoma. After initial vegetation establishment, the Department defines the treatment of rills and gullies requiring permanent reseeding of more than 10 acres in a contiguous block or 10% of a permit area initially seeded during a single year to be an augmentative practice because of the potential for delayed seeding of large areas to reduce the probability of revegetation success. The NRCS guidelines for repair of rills and gullies require that acreage with active furrows, rills, ditches, or gullies be filled to aid the conservation practice application. The rills and gullies should be contoured or smoothed if the site is large.

(i) These areas must be seeded during the appropriate seeding season with approved perennial species followed by an application of mulch. If permanent seeding of the area must be delayed due to weather conditions, then appropriate temporary erosion control measures must be utilized. Mulch that is to be applied must be free of noxious weeds, anchored during or immediately after application, and may be applied at the following rates:

(I) Hay or straw shall be applied at the rate of 2 tons/acre and crimped into the soil, or 1 ton/acre with the additional application of 300 gallons/acre of asphalt emulsion spray to bind the mulch to the soil. Hay mulch must be less than 2 years old. Straw derived from small grain species shall not be used as mulch.

(II) Wood chips shall be applied at a rate of 11-15 tons/acres alone or 6/tons/acre with the additional application of 300 gallon/acre of asphalt emulsion spray to bind the mulch to the soil.

(III) Strawy manure shall be applied at the rate of 10 tons/acre. Strawy manure need not be anchored if it contains heavy solids.

(ii) The use of hay bales and rock rip-rap to fill or repair rills and gullies will be approved on a case by case basis. Monitoring will be required to assure that the treatment provides long term erosion control, does not disrupt the postmining land use, and that permanent vegetation becomes established. If this treatment is not effective then filling of the rills and gullies with topsoil then revegetating the areas will be required. If the drainage area is of sufficient size to create continued problems with rills and

gullies, the operator shall install terraces to control the amount and velocity of water moving across the area. These terraces shall be designed and constructed accordance with this Chapter.

(E) Liming, fertilization, mulching, seeding or stocking following the reclamation of any temporary roads, remaining after a Phase I Bond Release approval, temporary sediment or hydraulic control structures, areas disturbed by the installation or removal of oil and gas wells or utility lines, and areas where the vegetation was disturbed by vehicular traffic not under the control of the permittee will not be considered augmentation.

(F) Irrigation, reliming, refertilization of revegetated areas; reseeding cropland; renovating pastureland by overseeding with legumes after a Phase II bond release shall be considered normal husbandry practices and shall not restart liability period if the amount and frequency of these practices used on unmined land within the region.

(G) Other normal husbandry practices that may be conducted on postmining land uses of fish and wildlife habitat, recreation, and forestry without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting trees and shrubs in accordance with (b)(3) of this Section.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99; Amended at 18 Ok Reg 3202, eff 7-26-01; Amended at 21 Ok Reg 2979, eff 7-26-04; Amended at 23 Ok Reg 3059, eff 7-27-06]

**460:20-45-47. Subsidence control**

(a) **Operator measures to prevent or minimize damage.**

(1) The operator shall either adopt measures consistent with known technology which prevents subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface land; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this Subchapter shall be construed to prohibit the standard method of room-and-pillar mining.

(2) If an operator employs mining technology that provides for planned subsidence in
a predictable and controlled manner, the operator must take necessary and prudent measures, consistent with mining method employed, to minimize material damage to the extent technologically and economically feasible to non-commercial buildings and to minimize material damages to such structures are not required if:

(A) The operator has the written consent of their owners or

(B) Unless the anticipated damage would constitute a threat to health or safety, costs of such measures exceed the anticipated costs of repair.

(3) Nothing in this part prohibits the standard method of room-and pillar-mining.

(b) Operator compliance. The operator shall comply with all provisions of the approved subsidence control plan prepared pursuant to Section 460:20-31-13 of this Chapter.

(c) Repair of damage to surface lands. The operator shall:

(1) Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence; and
(2) Promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair option is selected, the operator must fully rehabilitate, restore, or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidencerelated damage. The operator may provide compensation by the purchase, before mining, of non-cancelable premium-prepaid insurance policy. The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.
(3) Either correct material damages resulting from subsidence caused to any structures or facilities not protected by paragraph (c)(2) of this section by repairing the damage or compensate the owner of the structure or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase, before mining of a non-cancelable premium-prepaid insurance policy.
(4) Be governed by a rebuttable presumption of causation by subsidence. The information to be considered in determination of causation is whether damage to protected structures was caused by subsidence from underground mining. All relevant and reasonably available information will be considered by the Department.
(5) **Adjustments of bond amounts for subsidence damage.** When subsidence related material damage to land, structures, or facilities protected under paragraph (c)(1) through (c)(3) of this section occurs, or when contamination, diminution, or interruption to a water supply protected under 460:20-45-8(j) occurs, the Department must require the operator to obtain additional performance bond in the amount of the estimated cost of repairs if the operator will be repairing, or in the amount of the decrease in value if the operator will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the operator will be replacing the water supply, until the repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The Department may extend a 90-day time frame, but not to exceed one year, if the operator demonstrates and the Department finds in writing that the subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence related material damage to lands or protected structures, or the replacement of the protected water supply.

(6) The operator shall report to the Department all instances of alleged subsidence within 30 calendar days. The report must be in writing. The report must identify the location of the alleged subsidence in relation to the underground mine workings.

(d) Underground mining activities shall not be conducted beneath or adjacent to:

(1) Public buildings and facilities;

(2) Churches, schools, and hospitals; or

(3) Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the Department determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significantwater source for any public supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by Subsection (d) of this Section, the Department may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The Department shall suspend underground mining activities under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(g) Within a schedule approved by the Department, the operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Department. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of Section 460:20-15-5 (d) of this Chapter.

[**Source:** Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 12 Ok Reg 3592, eff 10-12-95; Amended at 14 Ok Reg 3480, eff 8-11-97; Amended at 21 Ok Reg 2979, eff 7-26-04; Amended at 23 Ok Reg 3059, eff 7-27-06; Amended at 31 Ok Reg 2095, eff 9-12-14]

### 460:20-45-48. Subsidence control: public notice

At least 6 months prior to mining, or within that period if approved by the Department, the underground mine operator shall mail a notification to all owners and occupants of surface property and structures above the underground workings. The notification shall include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined.

### 460:20-45-49. Cessation of operations: temporary

(a) Each person who conducts underground mining activities shall effectively support and maintain all surface access openings to underground operations, and secure surface facilities in areas in which there are no current operations, but operations are to be resumed under an approved permit. Temporary abandonment

shall not relieve a person of his or her obligation to comply with any provisions of the approved permit.
(b) Before temporary cessation of mining and reclamation operations for a period of 30 days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, each person who conducts underground mining activities shall submit to the Department a notice of intention to cease or abandon operations. This notice shall include a statement of the exact number of surface acres and the horizontal and vertical extent of subsurface strata which have been in the permit area prior to cessation or abandonment, the extent and kind of surface area reclamation which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures, and water-treatment activities that will continue during the temporary cessation.

**460:20-45-50. Cessation of operations: permanent**
(a) The person who conducts underground mining activities shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this Chapter and according to the permit approved by the Department.
(b) All surface equipment, structures, or other facilities not required for continued underground mining activities and monitoring, unless approved as suitable for the postmining land use or environmental monitoring, shall be removed and the affected lands reclaimed.

**460:20-45-51. Postmining land use**
(a) **General.** All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting:
(1) The uses they were capable of supporting before any mining; or
(2) Higher or better uses.
(b) **Determining premining uses of land.** The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and has been properly managed. The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the land use that existed prior to any mining; Provided that, If the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.
(c) **Criteria for alternative postmining land uses.** Higher or better uses may be approved by the Department as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:
(1) There is a reasonable likelihood for achievement of the use.
(2) The use does not present any actual or probable hazard to public health and safety, or threat of water diminution or pollution.
(3) The use will not:
(A) Be impractical or unreasonable;
(B) Be inconsistent with applicable land use policies or plans;
(C) Involve unreasonable delay in implementation; or
(D) Cause or contribute to violation of Federal, State, or local law.

(d) **Approximate original contour: Criteria for variance.** Surface coal mining operations that meet the requirements of this Paragraph may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

(1) The Department grants the variance under a permit issued in accordance with Section 460:20-33-6 of this Chapter.

(2) The alternative postmining land use requirements of Subsection (c) of this Section are met.

(3) All applicable requirements of the Act and the regulatory program, other than the requirement to restore disturbed areas to their approximate original contour are met.

(4) After consultation with the appropriate land use planning agencies, if any, the potential use is shown to constitute an equal or better economic or public use.

(5) The proposed use is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability,drainage, and configuration necessary for the intended use of the site.

(6) After approval, where required, of the appropriate State environmental agencies, the watershed of the permit and adjacent areas is shown to be improved.

(7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.

(8) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and this Chapter is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with Sections 460:20-43-24 through 460:20-43-27.

(9) The surface landowner of the permit area has knowingly requested, in writing, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities).

(10) Federal, State, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

(11) This section does not apply to non-steep slope mining.

**460:20-45-52. Roads: general**

(a) **Road Classification system.**

(1) Each road, as defined in Section 460:20-3-5 of this Chapter shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is:

(A) Used for transporting coal or spill;

(B) Frequently used for access or other purposes for a period in excess of six months; or

(C) To be retained for an approved postmining land use.

(3) An ancillary road is any road not classified as a primary road.

(b) **Performance standards.** Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

(1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;
(2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;
(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;
(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;
(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;
(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress;
(7) Use nonacid- and nontoxic-forming substances in road surfacing;

(c) **Design and construction limits and establishment of design criteria.** To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the Department.

(d) **Location.**

(1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Department in accordance with applicable Sections 460:20-43-8 through 460:20-43-10 and 460:20-43-16 of this Chapter.
(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) **Maintenance.**

(1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the Department.
(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(f) **Reclamation.** A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable and it is no longer needed for mining and reclamation operations. This reclamation shall include;

(1) Closing the road to traffic;
(2) Removing all bridges and culverts unless approved as part of the postmining land use;
(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use revegetation requirements;
(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and
(6) Scarifying or ripping the roadbed; replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with Sections 460:20-43-7 and 460:20-43-43 through 460:20-43-46 of this Chapter.

**460:20-45-53. Primary roads**

Primary roads shall meet the requirements of Section 460:20-43-52 and the additional requirements of this Section.

(1) **Certification.** The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer. As built certifications are to be completed by registered professional engineer or a qualified registered professional land surveyor, with experience in design and construction of roads, as meeting the requirements of this Chapter, current, prudent engineering practices; and any design criteria established by the Department. The construction or reconstruction of primary roads shall be certified in a report to the Department by a qualified registered professional engineer, or a qualified registered professional land surveyor with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(2) **Safety Factor.** Each primary road embankment shall have a minimum static factor of 1.3 or meet the requirements established under Section 460:20-27-20(c) of this Chapter.

(3) **Location.**

(A) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(B) Fords or perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the Department as temporary routes during periods of road construction.

(4) **Drainage control.** In accordance with the approved plan-

(A) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the Department;

(B) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;

(C) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

(D) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

(E) Natural stream channels shall not be altered or relocated without the prior approval of the Department in accordance with applicable Section 460:20-43-8 through 460:20-43-16 of this Chapter; and

(F) Except as provided in (3) (B) of this section, structures for perennial or intermittent stream channel crossings shall be made

using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The Department shall ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(5) **Surfacing.** Primary roads shall be surfaced with material approved by the Department as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-45-54. Utility installations**

All underground coal mining operations shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coalslurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the Department.

**460:20-45-55. Support facilities**

(a) Support facilities shall be operated in accordance with a permit issued for the mine or coal preparation operation to which it is incident or from which its operation results.

(b) In addition to the other provisions of this Subchapter, support facilities shall be located, maintained, and used in a manner that:

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

(2) To the extent possible using the best technology currently available:

(A) Minimizes damage to fish, wildlife, and related environmental values; and

(B) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

**460:20-45-56. Interpretative rules related to general performance**

The following interpretations of rules promulgated in Subchapter 45 of this Chapter have been adopted by the Oklahoma Department of Mines.

(1) [Reserved] and

(2) [Reserved]

(3) Interpretation of Section 460:20-45-7

(4) Topsoil removal.

(A) Results of physical and chemical analyses of overburden and topsoil to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil, provided that trials and tests are certified by an approved laboratory in accordance with Section 460:20-45-7, may be obtained from any one or a combination of the following sources:

(i) U.S. Department of Agriculture Soil Conservation Service published data based on established soil series;

(ii) U.S. Department of Agriculture Soil Conservation Service Technical Guides;
(iii) State agricultural agency, university, Tennessee valley Authority, Bureau of Land Management or U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior; or
(iv) Results of physical and chemical analyses, field site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

(B) If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with Section 460:20-45-7.

(5) Interpretation of Section 460:20-45-51: Postmining land use.

(A) The requirements of Section 460:20-31-8 (a) (2) of this Chapter, for approval of an alternative postmining land use, may be met by requesting approval through the permit revision procedures of Section 460:20-17-3 of this Chapter rather than requesting such approval through the permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land use capability as required by Section 460:20-45-51(a). An application for a permit revision of this type:
(i) Must be submitted in accordance with the filing deadlines of Section 460:20-17-3 of this Chapter,
(ii) Shall constitute a significant alteration from the mining operations contemplated by the original permit, and
(iii) Shall be subject to the requirements of Subchapters 15 and 19 of this Chapter.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

## SUBCHAPTER 47. SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS: AUGER MINING

### 460:20-47-1. Scope

This subchapter sets environmental protection performance standards for surface coal mining and reclamation operations involving auger mining.

### 460:20-47-2. Auger mining: general

(a) Auger mining operations shall be conducted in accordance with the requirements of Subchapter 43 of this Chapter, except as provided in this Subchapter.

(b) The this Department may prohibit auger mining, if necessary to:
(1) Maximize the utilization, recoverability, or conservation of the solid-fuel resource, or
(2) Protect against adverse water-quality impacts.

### 460:20-47-3. Auger mining: coal recovery

(a) Auger mining shall be conducted so as to maximize the utilization and conservation of the coal in accordance with Section 460:20-43-17 of these Regulations.

(b) Auger mining shall be planned and conducted to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete.
(c) Each person who conducts auger mining operations shall leave areas of undisturbed coal, as approved by the Department, to provide access for future underground mining activities to coal reserves remaining after augering is completed, unless it is established that the coal reserves have been depleted or are so limited in thickness or extent that it will not be practicable to recover the remaining coal. This determination shall be made by the Department upon presentation of appropriate technical evidence by the operator.

**460:20-47-4. Auger mining: hydrologic balance**

(a) Auger mining shall be planned and conducted to minimize disturbances of the prevailing hydrologic balance in accordance with the requirements of Sections 460:20-43-8 and 460:20-43-9 of these Regulations.
(b) All auger holes, except as provided in (c) of this Section, shall be:
(1) Sealed within 72 hours after completion with an impervious and noncombustible material, if the holes are discharging water containing acid- or toxic-forming material. If sealing is not possible within 72 hours, the discharge shall be treated commencing within 72 hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed; and
(2) Sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the Department, if the holes are not discharging water containing acid- or toxic-forming material.
(c) Auger holes need not be sealed with an impervious material so as to prevent drainage if the Department determines that:
(1) The resulting impoundment of water may create a hazard to the environment or public health or safety, and
(2) The drainage from the auger holes will:
(A) Not pose a threat of pollution to surface water, and
(B) Comply with the requirements of Sections 460:20-43-8 and 460:20-43-9 of these Regulations.
(d) Surface drainage must be directed away from the highwall during augering operations in order to maintain the stability of the highwall and protect persons conducting the augering.

[**Source:** Amended at 31 Ok Reg 2101, eff 9-12-14]

**460:20-47-5. Auger mining: subsidence protection**

Auger mining shall be conducted in accordance with the requirements of Sections 460:20-45-47(a) and (c) of these Regulations.

**460:20-47-6. Auger mining: backfilling and grading**

(a) **General.** Auger mining shall be conducted in accordance with the backfilling and grading requirements of Sections 460:20-43-38 and 460:20-43-39 through 460:20-43-41 of these Regulations.
(b) **Remining.** Where auger mining operations affect previously mined areas that were not reclaimed to the standards of these Regulations and the volume of all reasonably available spoil is demonstrated in writing to the Department to be insufficient to completely backfill the highwall, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) The person who conducts the auger mining operation shall demonstrate to the Department that the backfill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least 1.3.
(2) All spoil generated by the auger mining operation and any associated surface coal mining and reclamation operation, and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area shall include spoil in the immediate vicinity of the auger mining operation.
(3) The coal seam mined shall be covered with a minimum of 4 feet of nonacid-, nontoxic-forming material and the backfill graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.
(4) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.
(5) Spoil placed on the outslope during previous mining operations shall not be distributed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

**460:20-47-7. Auger mining: protection of underground mining**

Auger holes shall not extend closer than 500 feet (measured horizontally) to any abandoned or active underground mine workings, except as approved in accordance with Section 460:20-43-28 of these Regulations.

## SUBCHAPTER 49. SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS: OPERATIONS ON PRIME FARMLAND

**460:20-49-1. Scope**

This subchapter sets forth special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

**460:20-49-2. Objective**

The objective of this Subchapter is to set forth those soil removal stockpiling, and replacement operational requirements and revegetation and other reclamation standards for prime farmlands to ensure both that the land will have agricultural productive capacity which is equal after mining to pre-mining levels and the land is not lost as an important national resource.

**460:20-49-3. Responsibilities**

(a) The U.S. Soil Conservation Service within each State shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.
(b) The Department within each State shall use the soil reconstruction specifications of (a) of this Section to carry out its responsibilities under Section 460:20-33-7 and Subchapter 37 of this Chapter.

**460:20-49-4. Prime farmland: special requirements**

Surface coal mining and reclamation operations conducted on prime farmland shall meet the following requirements:

(1) A permit shall be obtained for those operations under Section 460:20-33-7.

(2) Soil materials to be used in the reconstruction of prime farmland shall be removed before drilling, blasting, or mining, in accordance with Section 460:20-49-5 and in a manner that prevents mixing or contaminating these materials with undesirable material. Where removal of soil materials results in erosion that may cause air and water pollution, the Department shall specify methods to control erosion of exposed overburden.

(3) Revegetation success on prime farmlands shall be measured upon a finding by the Department that equivalent or higher levels of yield as non-mined prime farmland in the surrounding area has been achieved in accordance with 45 O.S. Supp. 1980, Section 757.

(4) The requirements of this subchapter shall not apply to disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator shall minimize the area of prime farmland used for such purposes.

**460:20-49-5. Prime farmland: soil removal**

(a) Surface coal mining and reclamation operations on prime farmland shall be conducted to:

(1) Separately remove the entire A and E horizon or other suitable soil materials which will create a final soil greater productive capacity than which existed prior to mining.

(2) Separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material that will create a reconstructed soil of equal or greater productive capacity than that which existed before mining.

(3) Separately remove the underlying C horizons, other strata, or a combination of horizons or other strata, to be used instead of the B horizon. When replaced, these combinations shall be equal to, or more favorable for plant growth than, the B horizon.

(b) The minimum depth of soil material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacement requirements of Section 460:20-49-7(1).

[**Source:** Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-49-6. Prime farmland: soil stockpiling**

If not utilized immediately, the A and E horizon or other suitable soil materials specified in Section 460:20-49-5 (a) (1) and the B horizon or other suitable materials specified in Sections 460:20-49-5 (a) (2) and 460:20-49-5(a)(3) shall be stored separately from each other and from spoil. These stockpiles shall be placed within the permit area where they are not disturbed or exposed to excessive water or wind erosion before the stockpiled horizons can be redistributed. Stockpiles in place for more than 30 days shall meet the requirements of Section 460:20-43-7 or 460:20-45-7.

[**Source:** Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 12 Ok Reg 3592, eff 10-12-95]

## 460:20-49-7. Prime farmland: soil replacement

Surface coal mining and reclamation operations on prime farmland shall be conducted according to the following:

(1) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be 48 inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The Department shall specify a depth greater than 48 inches, wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity.

(2) Replace soil material only on land which has been first returned to final grade and scarified according to Sections 460:20-43-38 through 460:20-43-40, unless site-specific evidence is provided and approved by the Department showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield.

(3) Replace the soil horizons or other suitable soil material in a manner that avoids excessive compaction in accordance with Section 460:20-33-7(b)(3).

(4) The operator shall replace the B horizon, C horizon, or other suitable material specified in Section 460:20-49-5 (c) (2) to the thickness needed to meet the requirements of (b) of this section. In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore pre-mining capabilities.

(5) Replace the A and E horizon or other suitable soil materials specified in Section 460:2049-5 (a) (1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil, as determined in Section 460:20-33-7(c)(1)(B), and be replaced in a manner that protects the surface layer from wind and water erosion before it is needed or planted.

(6) Apply nutrients and soil amendments as needed to quickly establish vegetation growth.

[**Source:** Amended at 12 Ok Reg 117, eff 9-29-94 through 7-14-95 (emergency); Amended at 13 Ok Reg 3495, eff 8-26-96]

## 460:20-49-8. Prime farmland: revegetation

(a) Following prime farmland soil replacement, the soil surface shall be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.

(b) Prime farmland soil productivity shall be restored in accordance with the following provisions:

(1) Measurement of soil productivity shall be initiated within 10 years after completion of soil replacement.

(2) Soil productivity shall be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under Paragraph (b) (6) of this Section. A statistically valid

sampling technique at a 90-percent or greater statistical confidence level shall be used as approved by the Department in consultation with the U.S. Soil Conservation Service.
(3) The measurement period for determining average annual crop production (yield) shall be a minimum of 3 crop years prior to release of the operator's performance bond.
(4) The level of management applied during the measurement period shall be the same as the level of management used on nonmined prime farmland in the surrounding area.
(5) Restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.
(6) The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops.
(7) Reference crop yields for a given crop season are to be determined from:

(A) The current yield records of representative local farms in the surrounding area, with concurrence by the U.S. Soil Conservation Service; or

(B) The average county yields recognized by the U.S. Department of Agriculture, which have been adjusted by the U.S. Soil Conservation Service for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop.

(8) Under either procedure in Paragraph(b) (7) of this Section, the average reference crop yield may be adjusted, with the concurrence of the U.S. Soil Conservation Service, for:

(A) Disease, pest, and weather-induced seasonal variations; or

(B) Differences in specific management practices where the overall management practices of the crops being compared are equivalent.

## SUBCHAPTER 51. SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS: MOUNTAINTOP REMOVAL

### 460:20-51-1. Scope

This Subchapter sets forth special environmental protection performance, reclamation, and design standards for surface coal mining activities constituting mountaintop removal mining.

### 460:20-51-2. Objectives

The objectives of this Subchapter are to:
(1) Enhance coal recovery;
(2) Reclaim the land to equal or higher postmining use; and
(3) Protect and enhance environmental and other values protected under the Act and this Chapter.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-51-3. Mountaintop removal: performance standards**

(a) Under an approved regulatory program, surface coal mining activities may be conducted under a variance from the requirement of these Regulations for restoring affected areas to their approximate original contour, if:

(1) The Department grants the variance under a permit, in accordance with Section 460:20-33-4;

(2) The activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining;

(3) An industrial, commercial, agricultural, residential or public facility (including recreation facilities) use is proposed and approved for the affected land;

(4) The alternative land use requirements of Sections 460:20-43-51(a)-(c) are met;

(5) All applicable requirements of these Regulations and the regulatory program, other than the requirement to restore affected areas to their approximate original contour, are met:

(6) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden, are retained to prevent slides and erosion, except that the Department may permit an exemption to the retention of the coal barrier requirement if the following conditions are satisfied:

(A) The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or

(B) A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier;

(7) The final graded slopes on the mined area are less than 1v:5h, so as to create a level plateau or gently rolling configuration, and the outslopes of the plateau do not exceed 1v:2h except where engineering data substantiates, and the Department finds, in writing, and includes in the permit under Section 460:20-33-4 of these Regulations, that a minimum static safety factor of 1.5 will be attained;

(8) The resulting level or gently rolling contour is graded to drain inward from the outslope, except at specified points where it drains over the outslope in stable and protected channels. The drainage shall not be through or over a valley or head-of-hollow fill.

(9) Natural watercourses below the lowest coal seam mined are not damaged;

(10) All waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with non-toxic spoil to prevent pollution and achieve the approved postmining land use; and

(11) Spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under Paragraphs (a) (3) and (a) (4) of this Section. All excess spoil material not retained on the mountaintop shall be placed in accordance with Sections 460:20-43-8, 460:20-43-10 and 460:20-43-24 through 460:20-43-27 of this Chapter.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

## SUBCHAPTER 53. PERMANENT PROGRAM PERFORMANCE STANDARDS: COAL PREPARATION PLANTS NOT LOCATED WITHIN THE PERMIT AREA OF A MINE

### 460:20-53-1. Scope

This subchapter sets forth requirements for coal preparation plants not within the permit area for a specific mine other than those plants which are located at the site of ultimate coal use.

### 460:20-53-2. General requirements

Each person who operates a coal preparation plant subject to this part shall obtain a permit in accordance with Section 460:20-33-10 of this Chapter, obtain a bond in accordance with Subchapter 37 of this Chapter, and operate that plant in accordance with the requirements of this subchapter.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-53-3. Coal processing plants: performance standards

Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by this Subchapter shall comply with the following:

(1) Signs and markers for the coal processing plant, coal processing waste disposal area, and water treatment facilities shall comply with Section 460:20-43-3.

(2) Roads, transport, and associated structures shall be constructed, maintained, and reclaimed in accordance with Sections 460:20-43-52 through 460:20-43-55.

(3) Any stream or channel realignment shall comply with Section 460:20-43-10.

(4) Any disturbed area related to the coal processing plant, or associated facilities shall have sediment control structures in compliance with Sections 460:20-43-11 and 460:20-43-12, and all discharges from these areas shall meet the requirements of Section 460:20-43-8 through 460:20-43-9 and any other applicable State or Federal law.

(5) Permanent impoundments associated with coal processing plants shall meet the requirements of Sections 460:20-43-14 and 460:20-43-15. Dams constructed of or impounding coal processing waste shall comply with Sections 460:20-43-31.

(6) Use of water wells shall comply with Section 460:20-43-8(g) and (h).

(7) Disposal of coal processing waste solid waste, and any excavated materials shall comply with Sections 460:20-43-29, 460:20-43-30, 460:20-43-32, and 460:20-43-33 and 460:20-43-24 through 460:20-43-27 respectively.

(8) Discharge structures for diversions and sediment control structures shall comply with Section 460:20-43-13.

(9) Fish, wildlife and related environmental values shall be protected in accordance with Section 460:20-43-35.

(10) Slide areas and other surface areas shall comply with Section 460:20-43-36.

(11) Adverse effects upon or resulting from nearby underground coal mining activities shall be minimized by appropriate measures including but

not limited to compliance with Section 460:20-43-28.
(12) Reclamation shall include proper topsoil handling procedures, revegetation, and abandonment, in accordance with Sections 460:20-43-7, 460:20-43-37 through 460:20-43-41, 460:20-43-43 through 460:20-43-46, and 460:20-43-51.
(13) Conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system related to the coal processing plant shall comply with Subchapter 43 of this Chapter.
(14) Any coal process plant or associated structures located on prime farmland shall meet the requirements of Subchapter 49 of this Chapter.
(15) Erosion and air pollution attendant to erosion shall be controlled in accordance with Section 460:20-43-34 of these Regulations.
(16) Support facilities related to the coal preparation plant shall comply with 460:20-43-55 of these Regulations.
(17) Cessation of operations shall be in accordance with Sections 460:20-43-49 and 460:20-43-50 of these Regulations.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

## SUBCHAPTER 55. SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS: IN SITU PROCESSING

### 460:20-55-1. Scope

This Subchapter sets forth special environmental protection performance, reclamation and design standards for in situ processing activities.

### 460:20-55-2. Objectives

This Subchapter is intended to ensure that all in situ processing activities are conducted in a manner which preserves and enhances environmental values in accordance with the Act. This Subchapter provides additional performance, reclamation and design standards to reflect the nature of in situ processing.

### 460:20-55-3. In situ processing: performance standards

(a) The person who conducts in situ processing activities shall comply with Subchapter 45 of this Chapter and this Section.
(b) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:
(1) Avoiding discharge of fluids into holes or wells, other than as approved by the Department;
(2) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the Department;
(3) Avoiding annular injection between the wall of the drill hole and the casing; and
(4) Preventing discharge of process fluid into surface waters.
(c) Each person who conducts in situ processing activities shall submit for approval as part of the application for permit under Section 460:20-33-11 of these Regulations, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

(d) Each person who conducts in situ processing activities shall prevent flow of the process recovery fluid:

(1) Horizontally beyond the affected area identified in the permit; and

(2) Vertically into overlying or underlying aquifers.

(e) Each person who conducts in situ processing activities shall restore the quality of affected ground water in the permit area and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

**460:20-55-4. In situ processing: monitoring**

(a) Each person who conducts in situ processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the Department under Section 460:20-45-8, to measure changes in the quantity and quality of water in surface and ground water systems in the permit area and adjacent area.

(b) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the Department as necessary according to appropriate Federal and State air and water quality standards.

## SUBCHAPTER 57. STATE INSPECTIONS

**460:20-57-1. Scope**

This Subchapter sets forth general procedures governing State inspections under the permanent regulatory program.

**460:20-57-2. State inspections and monitoring**

(a) The Department shall conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction, and shall conduct such partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the State program. A partial inspection is an on-site or aerial review of an operator's compliance with some of the permit conditions and requirements imposed under the State program.

(b) The Department shall conduct an average of a least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of an operator's compliance with all permit conditions and requirements imposed under the State program within the entire area disturbed or affected by the surface coal mining and reclamation operations.

(c) The Department shall conduct such inspections of coal explorations as are necessary to ensure compliance with the State program with respect to coal exploration operations which substantially disturb the natural land surface.

(d) **Aerial inspections.**

(1) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(2) Any potential violation observed during an aerial inspection shall be investigated on site within three days; provided, that any indication of a condition, practice, or violation constituting cause for issuance of a cessation order under 45 O.S. 1981, Section 776 shall be investigated on site immediately, and provided further, than an on-site investigation shall

not be considered to be an additional partial or complete inspection for purposes of (a) and (b) of this section.

(e) The inspections required under (a),(b),(c), and (d) 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 permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the State program.

(f) For the purposes of this Section, an inactive surface coal mining and reclamation operation is one for which:

(1) The Department has secured from the permittee the written notice provided for under Section 460:20-43-49(b) or Section 460:20-45-49(b); or

(2) Reclamation Phase II as defined at Section 460:20-37-15 has been completed and the liability of the permittee has been reduced by the Department in accordance with the State program;

(g) Abandoned site means a surface coal mining and reclamation operation for which the Department has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The Department has issued at least one notice of violation or the initial program equivalent, and either:

(A) Is unable to serve the notice despite diligent efforts to do so; or

(B) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(3) The Department:

(A) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(B) Is taking action pursuant to Subchapters 23 or 27 of this Chapter to ensure that abatement occurs or that there will not be recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted or bonded:

(A) The permit has expired or been revoked, and

(B) The Department has initiated and is diligently pursuing forfeiture of, or has forfeited, the performance bond.

(h) **Inspection frequency.**

(1) In lieu of the inspection frequency established in (a) and (b) of this section, the Department shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(A) In selecting an alternate inspection frequency authorized under paragraph (h)(1), the Department shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (h)(2) of this section. Following the inspection and public

notice, the Department shall prepare and maintain for public review a written finding justifying the new inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria.

(B) How the site meets each of the criteria under the definition of an abandoned site under paragraph (g) of this section and thereby qualifies for a reduction in inspection frequency.

(C) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(D) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit.

(E) The degree to which erosion and sediment control is present and functioning;

(F) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(G) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and

(H) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (h)(1) of this section shall be provided as follows:

(A) The Department shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

(B) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the Department where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

### 460:20-57-3. Citizens' request for State inspections

(a) A person 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 telephone number and address where the person can be contacted.

(b) The identity of any person supplying information to the Department relating to a possible violation or imminent danger or harm shall remain confidential with the Department, if requested by that person, unless otherwise required by law or unless disclosure is required under law.
(c) If a State inspection is conducted as a result of information provided to the Department by a person as described in (a) of this Section, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Director during the inspection. Such person has the right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction, and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.
(d) Within ten days of the State inspection, or, if there is no inspection, within fifteen days of receipt of the person's written statement, the Department shall send the person the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copes of the State inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;
(2) If no State inspection was conducted, an explanation of the reason why and;
(3) An explanation of the person;s right if any, to informal review of the action or inaction of the Department under Section 460:20-57-6.

(e) The Department shall give copies of all materials in paragraphs (d) (1) and (2) of this Section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of his or her identity is permitted under (b) of this Section.

**460:20-57-4. Right of entry**

(a) Each authorized representative of the Director conducting a State inspection under Title 45:

(1) Shall have a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice or a search warrant, upon presentation of appropriate credentials;
(2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of exploration or operation required under the applicable program; and
(3) Shall have a right to gather physical and photographic evidence to document conditions, practices, or violations at the site.

(b) No search warrant shall be required with respect to any activity under (a) of this Section, except that a search warrant may be required for entry into a building.

**460:20-57-5. Review of adequacy and completeness of inspections**

Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the Director in writing of any alleged failure on the part of the Inspection and Enforcement Division to make adequate and complete or periodic inspections. The notification shall include sufficient information to create a reasonable belief that the regulations

of this part are not being complied with and to demonstrate that the person is or may be adversely affected. The Director shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The Director shall furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

**460:20-57-6. Review of decision not to inspect or enforce**

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may request the Department to review informally an authorized representative's decision not to inspect or take the appropriate enforcement action with respect to any violation alleged by that person in request for a State inspection under Section 460:20-57-3. 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 Department shall conduct the review in accordance with the Department's Rules of Practice and Procedure for the Coal Reclamation Act of 1979, OAC 460:2-31-1 et seq., and inform the adversely affected person, in writing, of the review results within 30 days from the receipt of the request, unless said time-frame has been waived by that person. The operator alleged to be in violation shall also be given a copy of the results of the review, except the name of the affected person shall not be disclosed,in the result copy, unless confidentiality was not requested pursuant to 460:20-57-3(b), or if disclosure of that person is required by law.

(c) If the person requesting the informal review withdraws the request before the review is held, the informal review may be canceled.

(d) Informal review under this Section shall not affect any right to formal review under 45 O.S., Section 786, or to a citizen's suit under 45 O.S, Section 774.

(e) Any determination made under (b) of this Section shall constitute a decision of the Department within the meaning of OAC 460:2-21-1 et seq., the Department's Rules of Practice and Procedure for the Coal Reclamation Act of 1979.

[**Source:** Amended at 21 Ok Reg 2979, eff 7-26-04; Amended at 23 Ok Reg 3059, eff 7-27-06]

**460:20-57-7. Availability of records**

(a) Copies of all records, reports, inspection materials, or information obtained by the Department under of the Act, these Regulations, or Sections 460:20-57-3 shall be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or covered by any portion of a reclamation bond so that they are conveniently available to residents of that area; except:

(1) As otherwise provided by Federal law; and

(2) For information not required to be made available under Sections 460:20-13-8, 460:20-15-5(d), and (d) of this Section by either;

(b) The Department shall ensure compliance with (a) of this Section by either:

(1) Making copies of all such records, reports, inspection materials, and other information available for public inspection at a Federal, State, or local government office in the county where the mining is occurring or is proposed to occur; or

(2) At the Department's option and expense, providing copies of such information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur, provided that the

Department shall maintain for public inspection at a Federal, State, or local government office in the county where the mining is occurring or is proposed to occur a description of the information available for mailing and the procedure for obtaining such information.

(c) The Department shall make available to the Director of the Office of Surface Mining, upon request, copies of all documents relating to applications for an approvals for existing, new or revised coal exploration approvals or surface coal mining and reclamation operations, permits, and all documents relating to inspection and enforcement actions.

(d) In order to protect preparation for hearing and enforcement proceedings, the Director of the Office of Surface Mining and the Department may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

## SUBCHAPTER 59. STATE ENFORECMENT

### 460:20-59-1. Scope

This Subchapter sets forth general rules regarding enforcement by the Department of the Act, these Regulations and all conditions of permits and coal exploration approvals or permits imposed under the State program, the Act, or this Chapter.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-59-2. Definitions.

As used in this Subchapter, the following term have these specified meanings:

**"Unwarranted failure to comply"** means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care.

[**Source:** Amended at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-59-3. Cessation orders.

(a) **An order of cessation:**

(1) The Director or his or her authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he or she finds, on the basis of any inspection, any condition or practice, or any violation of the Act, this Chapter , any applicable program, or any condition of an exploration approval or permit imposed under any such program, the Act, or this Chapter which:

(A) Creates an imminent danger to the health or safety of the public; or

(B) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations:

(A) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or

(B) Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the State.

(3) If the cessation ordered under paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the Director his or her authorized representative, shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(b) **A notice of violation.**

(1) When a notice of violation has been issued under Section 460:20-59-4(a) of this Subchapter and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Department shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this Subsection shall require the permittee to take all steps the authorized representative of the Department deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this Section shall be in writing, signed by the Director or his or her authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the condition, practice, or violation;

(2) The remedial action or affirmative obligation required, If any, including interim steps, if appropriate;

(3) The time established for abatement if appropriate; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified, or terminated in writing by the Director or his or her authorized representative, or until the order expires pursuant to 45 O.S. Section 779 and Section 460:20-59-7 of this Subchapter.

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

(e) The Director or his or her authorized representative may modify, terminate, or vacate acessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

(f) The Director or an authorized representative shall terminate a cessation order by written notice to the permittee, when he or she determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the Department to assess civil penalties for those violations under Section 460:20-64-4 of this Chapter.

(g) Within 60 days after issuing a cessation order, the Department will notify in writing the Permittee, the Operator, and any person who has been listed or identified by the Applicant, Permittee, or the Department as an owner or controller of the operation, as defined in Section 460:20-3-5 of this Chapter.

[**Source:** Amended at 27 Ok Reg 2558, eff 7-25-10]

**460:20-59-4. Notices of violation**

(a) The Director or his authorized representative shall issue a notice of violation if, on the basis of a inspection he or she finds a violation of the Act, these regulations, or any condition of a permit or exploration approval imposed under the Act or these Regulations, which does not create an imminent danger or harm for which a cessation order must be issued under Section 460:20-59-3.

(b) A notice of violation issued under this Section shall be in writing and signed by the authorized representative who issues it, 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 replacement of interim steps; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(c) The Director or his 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 permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the Violation within 90 calender days due to one or more of the circumstances in (f) of this Section. An extended abatement date pursuant to this Section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(d) The following steps shall be taken:

(1) If the permittee fails to meet the time set for abatement, the authorized representative shall issue a cessation order under Section 460:20-29-3(b).

(2) If the permittee fails to meet the time set for accomplishment of any interim stepthe authorized representative may issue a cessation order under Section 460:20-59-3(b).

(e) The Director or his authorized representative shall terminate a notice of violation by written notice to the permittee when he determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Department to assess civil penalties for those violations under Subchapter 61 of this Chapter.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is require, for reasons not within the control of the permittee;

(2) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit revision which abates an

outstanding violation and which includes no other changes to permit design or plans, but such revision approval has not or will not be issued within 90 days for reasons not within the control of the permittee;
(3) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;
(4) Where the permittee cannot abate within 90 days due to a labor strike;
(5) Where climate conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or
(6) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or to the environment.

(h) If any of the conditions in (f) of this Section exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of (c) and (f) of this Section. In determining whether or not to grant an abatement period exceeding 90 days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reason for his or her concurrence or disapproval in the file.

(i) Any determination made under (h) of this Section shall contain a right of appeal to the Office Of Hearing and Appeals in accordance with these Regulations and the rules of practice and procedures.

(j) No extension granted under (h) of this Section may exceed 90 days in length. Where the conditions or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of (h) of this Section.

[**Source:** Amended at 24 Ok Reg 2922, eff 9-17-07]

### 460:20-59-5. Suspension or revocation of permits

(a) **Show cause order.**

(1) The Compliance Manager shall issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the Act should not be suspended or revoked, if the Coal Administrator determines that a pattern of violations of any requirement of the Act, this Chapter, the applicable program, or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the

permittee, unless the permittee establishes that they were acts of deliberate sabotage. The Compliance Manager shall promptly file a copy of any order to show cause with the Department.

(2) The Coal Administrator may determine that a pattern of violations exists or has existed, based upon two or more inspections of the permit area within any 12-month period, after considering the circumstances, including:

(A) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this Chapter, the applicable program, or the permit;

(B) The number of violations, cited on more than one occasion, of different requirements of the Act, this Chapter, the applicable program, or the permit; and

(C) The extent to which the violations were isolated departures from lawful conduct.

(3) The Coal administrator shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the Act, this Chapter, the applicable program, or the permit during three or more State inspections of the permit area within any 12-month period. If, after such review, the Coal Administrator determines that pattern of violations exists or has existed, he or she shall issue written findings and pursuant to these findings the Compliance Manager shall issue an order to show cause as provided in Paragraph (a)(1) of this Section.

(b) If the permittee files an answer to the show cause order and requests a hearing, a public hearing shall be provided as set forth in the Rules of Practice and Procedure. The Department shall give 30 days written notice of the date, time, and place of the hearing to the Director, the Coal Administrator, the permittee, and any intervenor. Upon receipt of a notice, the Department shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operation, and shall post it at the State or field office closest to those operations.

(c) If the Department revokes or suspends the permit and permittee's rights to mine under the Act, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and the right to mine under the Act are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

(d) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Coal Administrator shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this Section, and shall issue written findings to the Compliance Manager who shall issue an order to show cause as appropriate pursuant to Section 460:20-61-7(b)(2).

[**Source:** Amended at 19 Ok Reg 2841, eff 8-27-02]

### 460:20-59-6. Service of notices of violation, cessation orders, and show-cause orders

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

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. 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 Paragraph (a) (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 permittee or his or her 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.

(b) Designation by any person of an agent for service of notices and orders shall be made in writing to the Department.

**460:20-59-7. Informal 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 an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Department and the person to whom the notice or order was issued. The Oklahoma Department of Mines Department in Oklahoma City shall be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Department. Expiration of a notice or order shall not affect the Department's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this Section only, "mining" includes:

(1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and

(2) the processing, cleaning, concentrating, preparing, or loading of coal where such operations occur at a place other than at a mine site.

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

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

(A) Is informed, by written notice served in the manner provided in Paragraph (b) (2) of this Section, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; and

(B) Fails to request an informal public hearing within that time.

(2) The written notice referred to in (b) (1) (A) 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 informal public hearing if his or her 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 informal public hearing to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to that notice or order; and

(3) The Department.

(d) The Department shall also post notice of the hearing at the State or field Department closest to the mine site and, where practicable, publish it in a newspaper of general circulation in the area of the mine.

(e) An informal public hearing shall be conducted by a 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 informal public hearing, the Department shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The Department.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under 45 O.S. 1981, Sections 769B, 778, or 786.

(h) The person conducting the hearing for the Department shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

**460:20-59-8. Formal review of citations**

(a) A person issued a notice of violation or cessation order under Section 460:20-59-3 or 460:20-59-4, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under the Rules of Practice and Procedure, within 30 days after receiving notice of the action.

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

**460:20-59-9. Inability to comply**

(a) No cessation order or notice of violation issued under this part may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under Subchapter 61 of this Chapter and of the duration of the suspension of a permit under Section 460:20-59-5(c).

**460:20-59-10. Injunction relief**

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 other order, in the district court for the district in which the coal exploration or surface coal mining and reclamation operation is located or in which the operator to whom the notice or order has been issued has his principal Department, whenever that operator, or his agent, in violation of the Act, this Chapter, or any condition of an exploration approval or permit imposed under the Act or this Chapter:

(1) violates or fails or refuses to comply with any order or decision of the Department under the Act or these Regulations;
(2) Interferes with, hinders, or delays the Department in carrying out the provisions of the Act or these Regulations;
(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 record; or
(7) Refuses to permit inspection of monitoring equipment.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

### 460:20-59-11. Compliance conference

(a) A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of 45 O.S.1981, Section 766 and OAC 460:20-57-2.
(b) The Department may accept or refuse any request to conduct a compliance conference under (a) of this Section. Where the Department accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.
(c) The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act or any applicable permit or exploration approval.
(d) Neither the holding of a compliance conference under this Section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the Department or of the permittee with respect to any inspection, notice of violation, or cessation order, whether prior or subsequent to such conference; or
(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

### 460:20-59-12. Enforcement actions at abandoned sites

The Department may refrain from issuing a notice of violation or cessation order for a violation at an abandoned site, as defined in Section 460:20-57-2(e) of this chapter if abatement of the violation is required under any previously issued notice order.

## SUBCHAPTER 61. CIVIL PENALTIES

**460:20-61-1. Scope**

This Subchapter covers the assessment of civil penalties pursuant to 45 O.S. 1981, Section 769, with respect to cessation orders and notices of violation issued under Subchapter 59 of this Chapter, except for the assessments of individual civil penalties which is covered in Subchapter 63 of this Chapter.

**460:20-61-2. Objective**

Civil penalties are assessed pursuant to 45 O.S. 1981, Section 769, to deter violations and to ensure maximum compliance with the terms and purposes of the Act on the part of the coal mining industry.

**460:20-61-3. How assessments are made**

The Department shall review each notice of violation and cessation order in accordance with the assessment procedures described in Sections 460:20-61-4, 460:20-61-5, 460:20-61-6, 460:20-61-7, and 460:20-61-8 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

**460:20-61-4. When penalty will be assessed**

(a) The Department shall assess a penalty for each cessation order.
(b) The Department shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in Section 460:20-61-5.
(c) The Department may assess a penalty for each notice of violation assigned 30 points or less under the point system described in Section 460:20-61-5. In determining whether to assess a penalty, the Department shall consider the factors listed in Section 460:20-61-5.

**460:20-61-5. Point system for penalties**

The Department shall use the point system described in this Section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in Section 460:20-61-4(b). Points shall be assigned as follows:

(1) **History of previous violations.** The Department shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(A) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only 1 year;

(B) No violation for which the notice or order has been vacated shall be counted; and

(C) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) **Seriousness.** The Department shall assign up to 30 points based on the seriousness of the violation, as follows:

(A) **Probability of occurrence.** The Department shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

(B) **Extent of potential or actual damage.** The Department shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(i) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the Department shall assign 0 to 7 points, depending on the duration and extent of the damage or impact.

(ii) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the Department shall assign 8 to 15 points, depending on the duration and extent of the damage or impact.

(C) **Alternative.** In the case of a violation of an administrative requirement, such as a requirement to keep records, the Department shall, in lieu of (2)(A) and (B), assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) **Negligence.**

(A) The Department shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(i) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(ii) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(iii) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(B) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(i) No negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(ii) Negligence means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or these Regulations due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act

due to indifference, lack of diligence, or lack of reasonable care.

(iii) A greater degree of fault than negligence means reckless, knowing, or intentional conduct.

(C) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) **Good faith in attempting to achieve compliance.**

(A) The Department shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

(B) The following definitions shall apply under (4) (A) of this Section:

(i) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(ii) Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(C) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

[**Source:** Amended at 12 Ok Reg 3592, eff 10-12-95]

**460:20-61-6. Determination of amount of penalty**

The Department shall determine the amount of any civil penalty by converting the total number of points assigned under Section 460:20-61-5 to a dollar amount, according to the following schedule:

| POINTS | DOLLARS | POINTS | DOLLARS |
|---|---|---|---|
| 1 | $20 | 36 | 1,600 |
| 2 | 40 | 37 | 1,700 |
| 3 | 60 | 38 | 1,800 |
| 4 | 80 | 39 | 1,900 |
| 5 | 100 | 40 | 2,000 |
| 6 | 120 | 41 | 2,100 |
| 7 | 140 | 42 | 2,200 |
| 8 | 160 | 43 | 2,300 |
| 9 | 180 | 44 | 2,400 |
| 10 | 200 | 45 | 2,500 |
| 11 | 220 | 46 | 2,600 |
| 12 | 240 | 47 | 2,700 |

| | | | |
|---|---|---|---|
| 13 | 260 | 48 | 2,800 |
| 14 | 280 | 49 | 2,900 |
| 15 | 300 | 50 | 3,000 |
| 16 | 320 | 51 | 3,100 |
| 17 | 340 | 52 | 3,200 |
| 18 | 360 | 53 | 3,300 |
| 19 | 380 | 54 | 3,400 |
| 20 | 400 | 55 | 3,500 |
| 21 | 420 | 56 | 3,600 |
| 22 | 440 | 57 | 3,700 |
| 23 | 460 | 58 | 3,800 |
| 24 | 480 | 59 | 3,900 |
| 25 | 500 | 60 | 4,000 |
| 26 | 600 | 61 | 4,100 |
| 27 | 700 | 62 | 4,200 |
| 28 | 800 | 63 | 4,300 |
| 29 | 900 | 64 | 4,400 |
| 30 | 1,000 | 65 | 4,500 |
| 31 | 1,100 | 66 | 4,600 |
| 32 | 1,200 | 67 | 4,700 |
| 33 | 1,300 | 68 | 4,800 |
| 34 | 1,400 | 69 | 4,900 |
| 35 | 1,500 | 70 & above | 5,000 |

**460:20-61-7. Assessment of separate violations for each day**

(a) The Department may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Department shall consider the factors listed in Section 460:20-61-5 may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for 2 or more days and which is assigned more than 70 points under Section 460:20-61-5, the Department shall assess a penalty for a minimum of 2 separate days.

(b) In addition to the civil penalty provided for in (a), whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to 45 O.S. 1981, Section 869H, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, except that:

(1)

(A) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under 45 O.S.1981, Section 786C, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the

Department issues a final order with respect to the violation in question; and

(B) If the person to whom the notice or order was issued initiates review proceedings under 45 O.S. 1981, Section 787 with respect to the violations, in which the obligations to abate are suspended by the court pursuant to 45 O.S. 1981, Section 787, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court;

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30-day period, the Department shall take appropriate action pursuant to 45 O.S.1981, Sections 769E, 769F, 778, and 780 within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

**460:20-61-8. Waiver of use of formula to determine civil penalty**

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in Section 460:20-61-5 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, these Regulations, the state program, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in Section 460:20-61-5 to determine the appropriate penalty. When the Department has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person whom the notice or order was issued.

**460:20-61-9. Procedures for assessment of civil penalties**

(a) Within 15 days of service of notice or order, the person to whom it was issued may submit written information about the violation to the Department and to the inspector who issued the notice of violation or cessation order. The Department shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Department shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, within 30 days of the issuance of the notice or order.

(1) If the mail is tendered at the address of that person set forth in the sign required under Section 460:20-43-3 of these Regulations, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this Paragraph shall be deemed to have been complied with upon such tender.

(2) Failure by the Department to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed:

(A) Proves actual prejudice as a result of the delay; and

(B) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

(c) Unless a conference has been requested, the Department shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Department shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in (b) of this Section, within 30 days after the date the violation is abated.

**460:20-61-10. Procedures for assessment conference**

(a) The Department shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is mailed.

(b) **Assessment conference.**

(1) The Department shall assign a conference officer to hold the assessment conference. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the original abatement period, whichever is later, Provided: That a failure by the Department to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The Department shall post notice of the time and place of the conference at the State or field office closest to the mine at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(A) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the Department and by the person assessed; or

(B) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than $500 shall not be final and binding, until approved by the Director.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in Section 460:20-61-9 (b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d) **Settlement agreements.**

(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the Department within 30 days after the date of signing, the Department may enforce the agreement or rescind it and proceed according

to (b)(3)(B) of this Section within 30 days from the date of the rescission.
(e) The conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.
(f) At formal review proceedings under 45 O.S. 1981, Sections 769, 775, 776, 77, 78, 79,. 780, and 786, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

[**Source:** Amended at 13 Ok Reg 3495, eff 8-26-96]

**460:20-61-11. Request for hearing**
(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Department (to be held in escrow as provided in (b) of this Section) within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under Section 460:20-59-8.
(b) All funds submitted under (a) of this Section to the Department, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in Section 460:20-61-12.

[**Source:** Amended at 16 Ok Reg 3526, eff 9-13-99]

**460:20-61-12. Final assessment and payment of penalty**
(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in Section 460:20-61-11, the proposed assessment shall become a final order of the Director and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.
(b) If any party requests judicial review of a final order of the Director, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to (c) of this Section, the escrowed funds shall be transferred to the Department in payment of the penalty, and the escrow shall end.
(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this subchapter, the Department shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.
(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Department within 15 days after the order is mailed to such person.

**460:20-61-13. Use of civil penalties for reclamation**
(a) The Director may utilize money collected by the State of Oklahoma pursuant to the assessment of civil penalties for reclamation of lands adversely affected by coal mining practices after August 3, 1977.
(b) The Director may allocate funds at his discretion for reclamation projects on lands within the State based on the following priorities.
(1) Bond forfeiture sites with imminent environmental harm.

(2) All other State bond forfeiture sites.
(c) Notwithstanding (b) of this section, at his discretion, the Director may allocate funds for any other reclamation project which constitutes a danger to the environment or to the public health and safety.

## SUBCHAPTER 63. INDIVIDUAL CIVIL PENALTIES

### 460:20-63-1. Scope

This subchapter covers the assessment of individual civil penalties pursuant to 45 O.S., 1981 Section 769.

### 460:20-63-2. Definitions [REVOKED]

[**Source:** Revoked at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-63-3. When an individual civil penalty may be assessed

(a) Except as provided in (b) of this section, the Department may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.
(b) The Department shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Department to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

### 460:20-63-4. Amount of individual civil penalty

(a) In determining the amount of an individual civil penalty assessed under Section 460:20-63-3, the Department shall consider the criteria specified in section 769(a) of the Act, including:

(1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

(2) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(3) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(b) The penalty shall not exceed $5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the Department may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Director, until abatement or compliance is achieved.

### 460:20-63-5. Procedure for assessment of individual civil penalty

(a) **Notice.** The Department shall service on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for a penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) **Final order and opportunity for review.** The notice of proposed individual civil penalty assessment shall become a final order of the Director 30 days after service upon the individual unless:

(1) The individual files within 30 days of service of the notice proposed individual civil penalty assessment a petition for review with the Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106, according to the Rules of Practice and Procedures.

(2) The Department and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure, or refusal.

(c) **Service.** The individual civil penalty shall be served on the person to whom it is directed or his or her designated service agent promptly after issuance as follows:

(1) By tendering a copy to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge at the exploration or surface coal mining and reclamation operation.

(2) As an alternative to paragraph (b)(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 permittee or his or her 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.

(d) **Service agent.** Designation by any person of an agent for service of notice and Orders shall be made in writing to the Department.

[**Source:** Amended at 31 Ok Reg 2095, eff 9-12-14; Amended at 36 Ok Reg 1935, eff 9-14-19]

### 460:20-63-6. Payment of penalty

(a) **No abatement or appeal.** If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(b) **Appeal.** If an individual named in a notice of proposed individual civil penalty assessment files a petition for review, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(c) **Abatement agreement.** Where the Department and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Department stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

## SUBCHAPTER 64. ALTERNATIVE ENFORCEMENT

### 460:20-64-1. Scope

This part governs the use of measures provided in sections 769(G) and (I), and 780 of the Act for criminal penalties and civil actions to compel compliance with provisions of the Act.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-64-2. General provisions

(a) Whenever a court of competent jurisdiction enters a judgment against or convicts a person under these provisions, the Department must update AVS to reflect the judgment or conviction.
(b) The existence of a performance bond or bond forfeiture cannot be used as the sole basis for determining that an alternative enforcement action is unwarranted.
(c) Nothing in this part eliminates or limits any additional enforcement rights or procedures available the Department under other State law.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-64-3. Criminal penalties

Under sections 769(G) and (I) of the Act, the Department, may request the Oklahoma Attorney General to pursue criminal penalties against any person who:

(1) Willfully and knowingly violates a condition of the permit;

(2) Willfully and knowingly fails or refuses to comply with:

(A) Any order issued under section 780 of the Act; or

(B) Any order incorporated into a final decision issued by the Secretary under the Act, except for those orders specifically excluded under section 780 of the Act;

(3) Knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Chapter or any order or decision issued by the Director under the Act.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

### 460:20-64-4. Civil actions for relief

(a) Under Section 780 of the Act, the Department may request the Oklahoma Attorney General to institute a civil action for relief whenever the Applicant or its Agent:

(1) Violates or fails or refuses to comply with any order or decision that the Department issues under the Act or this Chapter;

(2) Interferes with, hinders, or delays the Department in carrying out the provisions of the Act or its implementing regulations;

(3) Refuses to admit authorized representatives onto the site of a surface coal mining and reclamation operation;

(4) Refuses to allow authorized representatives to inspect a surface coal mining and reclamation operation;

(5) Refuses to furnish any information or report that the Department requests under the Act or regulatory program; or

(6) Refuses to allow access to, or copying of, those records that the Department determines necessary to carry out the provisions of the Act and its implementing regulations.

(b) A civil action for relief includes a permanent or temporary injunction, restraining order, or any other appropriate order in the district court for the district in which the surface coal mining and reclamation operation is located or in which the Applicant has its principal office.

[**Source:** Added at 27 Ok Reg 2558, eff 7-25-10]

## SUBCHAPTER 65. PERMANENT REGULATORY PROGRAM REQUIREMENTS: STANDARDS FOR CERTIFICATION OF BLASTERS

**460:20-65-1. Scope**

This subchapter establishes the requirements and the procedures applicable to the development of regulatory programs for training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations.

**460:20-65-2. Definitions**

As used in this subchapter:

**"Blaster"** means a person directly responsible for the use of explosives in surface coal mining operations who is certified under this part.

**"OMTI"** means the Oklahoma Miner Training Institute which is a major safety training school under the direct supervision and control of the Oklahoma Mining Commission and the Director.

**460:20-65-3. Responsibilities**

(a) The Department of Mines is responsible for promulgating rules governing the training, examination, certification and enforcement of a blaster certification program for surface coal mining operations.

(b) The Department of Mines with assistance from OMTI developed and maintains a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

**460:20-65-4. Training**

(a) The Department shall establish procedures which require that:

(1) Persons seeking to become certified as blasters receive training including, but not limited to, the technical aspects of blasting operations and State and Federal laws governing the storage, transportation, and use of explosives; and

(2) Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives receive direction and on-the-job training from a blaster.

(b) The Department shall ensure that courses are available to train persons responsible far the use of explosives in surface coal mining operations. The courses shall provide training and discuss practical applications of:

(1) Explosives, including:

(A) Selection of the type of explosive to be used;

(B) Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and

(C) Handling, transportation, and storage;

(2) Blast designs, including:

(A) Geologic and topographic considerations;

(B) Design of a blast hole, with critical dimensions;

(C) Pattern design, field layout, and timing of blast holes; and

(D) Field applications;

(3) Loading blastholes, including priming and bolstering;

(4) Initiation systems and blasting machines;

(5) Blasting vibrations, airblast, and flyrock, including:

(A) Monitoring techniques, and

(B) Methods to control adverse affects;

(6) Secondary blasting applications;

(7) Current Federal and State rules applicable to the use of explosives;
(8) Blast records;
(9) Schedules;
(10) Preblasting surveys, including:
(A) Availability,
(B) Coverage, and
(C) Use of in-blast design;
(11) Blast-plan requirements;
(12) Certification and training;
(13) Signs, warning signals, and site control;
(14) Unpredictable hazards, including:
(A) Lightning,
(B) Stray currents,
(C) Radio waves, and
(D) Misfires.

**460:20-65-5. Examination**

(a) The Department shall ensure that candidates for blaster certification are examined by reviewing and verifying the:

(1) Competence of persons directly responsible for the use of explosives in surface coal mining operations through a written examination in technical aspects of blasting and State and Federal laws governing the storage, use, and transportation of explosives; and

(2) Practical field experience of the candidates as necessary to qualify a person to accept the responsibility for blasting operations in surface coal mining operations. Such experience shall demonstrate that the candidate possesses practical knowledge of blasting techniques, understands the hazards involved in the use of explosives, and otherwise has exhibited a pattern of conduct consistent with the acceptance of responsibility for blasting operations.

(b) Applicants for blaster certification shall be examined, at a minimum, in the topics set forth in Section 460:20-65-4(b).

**460:20-65-6. Certification**

(a) **Issuance of certification.** The Department of Mines shall certify for a two-year period those candidates examined and found to be competent and to have the necessary experience to accept responsibility for blasting operations in surface coal mining operations.

(b) **Suspension and revocation.**

(1) The Department, when practicable, following written notice and opportunity for a hearing, may, and upon a finding of willful conduct, shall suspend or revoke the certification of a blaster during the term of the certification or take other necessary action for any of the following reasons:

(A) Noncompliance with any order of the Department.

(B) Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs.

(C) Violation of any provision of the State or Federal explosives laws or regulations.

(D) Providing false information or a misrepresentation to obtain certification.

(2) If advance notice and opportunity for hearing cannot be provided, an opportunity for a hearing shall be provided as soon as practical following the suspension, revocation, or other adverse action.

(3) Upon notice of a revocation, the blaster shall immediately surrender to the Department the revoked certificate.

(c) **Recertification.** The Department may require the periodic reexamination, training, or other demonstration of continued blaster competency.

(d) **Protection of certification.** Certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the certifying authority.

(e) **Conditions.** The Department shall specify conditions for maintaining certification which shall include the following:

(1) A blaster shall immediately exhibit his or her certificate to any authorized representative of the Department or the Office upon request.

(2) Blasters' certifications shall not be assigned or transferred.

(3) Blasters shall not delegate their responsibility to any individual who is not a certified blaster.

## APPENDIX A. ALTERNATIVE BLASTING LEVEL CRITERIA

Figure 1

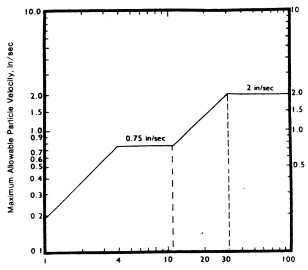


Figure 1. Alternative blasting level criteria.
(Source: Modified from figure B-1,
Bureau of Mines R18507)

# CHAPTER 25. OKLAHOMA EXPLOSIVES AND BLASTING RULES AND REGULATIONS

[**Authority:** 45 O.S., § 1.5 et seq.; 63 O.S., §§ 123.1 et seq.; 75 O.S., § 250 et seq.]
[**Source:** Codified 8-26-96]

## SUBCHAPTER 1. GENERAL REQUIREMENTS

### 460:25-1-1. Purpose

The regulations of this Chapter establish the procedure through which the Oklahoma Department of Mines will implement Title 63 O.S. (1995), Sections 123.1 et seq. These regulations do not govern any blasting activities on a mine site governed by Title 45, which includes both Coal and Non-Coal Mining.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

**460:25-1-2. Objective**

The objective of this Chapter is to fulfill the purpose of 63 O.S. (1995), Section 123.1 et seq. in a manner which is consistent with the language of the Title, its legislative history, other applicable laws, and judicial interpretations.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

**460:25-1-3. Authority**

The Department of Mines is authorized to administer the requirements of 63 O.S. (1995), Section 123.1 et seq., except authority which may be retained by the State Fire Marshall pursuant to 63 O.S. (1995) Sections 141.2 et seq., and other state agencies to enforce State Laws and Regulations which are not inconsistent with 63 O.S. (1995), set in 123.1 et seq., and the regulations of this Chapter.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

**460:25-1-4. Responsibility**

The Department is responsible for the administration, regulation and enforcement of all permitted blasting operations, and permit exemptions, and the use of all blasting agents and explosives by any person, which is not located within the area of a mining operation or site, pursuant to O.S. Title 63, Section 123.1 et seq., The Oklahoma Explosive and Blasting Regulations Act.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 15 Ok Reg 3975, eff 8-28-98]

**460:25-1-5. Definitions**

In addition to terms defined, the following words or terms, when used in this Chapter, shall have the following meaning:

**"American Table of Distances"**(also known as Quantity Distance Tables) means American Table of Distance for Storage of Explosives as revised and approved by the Institute of the Makers of Explosives, latest revision.

**"Approved storage facility"**means a facility for the storage of explosive materials conforming to the requirements of this part and covered by a license or permit issued under authority of the Bureau of Alcohol, Tobacco and Firearms.

**"Blast area"**means the area in which concussion (shock wave), flying material or gases from an explosion may cause injury to persons.

**"Blast site"**means the area where explosive material is handled during loading, including the perimeter formed by the loaded blast holes and 50 feet in all directions from loaded holes.

**"Blasting agent"**means a blasting agent is any material or mixture consisting of a fuel and oxidizer used for blasting, but not classified as an explosive and in which none of the ingredients is classified as an explosive provided the furnished (mixed) product cannot be detonated with a No. 8 test blasting cap when confined. A common blasting agent presently in use is a mixture of ammonium nitrate (general) and carbonaceous combustibles, such as fuel oil or coal, and may either be procured as premixed and packaged from explosives companies or mixed in the field.

**"Blasting Agent"**(as referenced by law) means any material or mixture consisting of a fuel and oxider, intended for blasting, not otherwise classified as an explosive, provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated when unconfined by means of a test blasting cap

containing two (2) grams of a mixture eighty percent (80%) mercury fulminate and twenty percent (20%) potassium chlorate, or a cap of equivalent strength. Blasting agent shall not include explosives in the forms prescribed in the official United States Pharmacopoeia; fireworks as defined by Section 1622 of Title 68 of the Oklahoma Statutes; or small arms ammunition and components therefore, which are subject to the Gun Control Act of 1968 (Title 18, Chapter 44, U.S. Code) and regulations promulgated thereunder.

**"Blasting cap"** means a metallic tube closed at one end, containing a charge of one or more detonating compounds, and designed for and capable of detonation from the sparks or flame from a safety fuse inserted and crimped into the open end. Blasting caps are now known as nonelectric detonators.

**"Block holing"** means the breaking of boulders by firing a charge of explosives that has been loaded in a small diameter drill hole.

**"Certified Blaster"** means a person who shall be able to understand and give written and oral orders and be capable of carrying out the required duties. The person is required to furnish satisfactory evidence of competency in handling explosives and performance in a safe manner the type of blasting that will be required. The person must be knowledgeable and competent in the use of each type of blasting method used. The person must have a current blasting certificate issued by a state recognized school or equivalent.

**"Conveyance"** means any unit for transporting explosives or blasting agents, including but not limited to trucks, trailers, rail cars, barges, and vessels.

**"Detonating cord"** means a flexible cord containing a center core of high explosives.

**"Detonator"** means any device containing an initiating or primary explosive that is used for initiating detonation. The term includes, but is not limited to electric detonators of instantaneous and delay types, detonators for use with safety fuses, detonating cord delay connectors, and non-electric detonators of instantaneous and delay types that consist of detonating cord, shock tube, or an other replacement of electric leg wires.

**"Electric blasting cap"** means a blasting cap designed for and capable of detonation by means of an electric current.

**"Electric blasting circuitry"** means as follows:

(A) Bus wire. An expendable wire, used in parallel or series circuits, to which are connected the leg wires of electric blasting caps.

(B) Connecting wire. An insulated expendable wire used between electric blasting caps and the leading wires or between the bus wire and the leading wires.

(C) Leading wire. An insulated wire used between the electric power source and the electric blasting cap circuit.

(D) Permanent blasting wire. A permanently mounted insulated wire used between the electric power source and the electric blasting cap circuit.

**"Electric delay blasting caps"** means caps designed to detonate at a predetermined period of time after energy is applied to the ignition system.

**"Explosive"** means as follows:

(A) Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion; that is, with substantially instantaneous release of gas and heat, unless such compound, mixture or devise is otherwise specifically classified by

the U.S. Department of Transportation.

(B) All material which is classified as Class I. Class I is as follows:

(i) Division 1.1 - Class A explosives (dynamite, cast boosters, cap sensitive emulsions, water gels and slurries, Class A detonators).

(ii) Division 1.2 - Class A or Class B explosives (Division 1.2 will generally be some sort of ammunition or materials that have a projection hazard).

(iii) Division 1.3 - Class B explosives (generally propellants or explosives that have a fire hazard and a mass detonation hazard).

(iv) Division 1.4 - Class C explosives (Class C detonators, safety fuse, and other Class C explosives).

(v) Division 1.5 - Blasting agents {ANFO, non cap sensitive emulsions, water gels, slurries, packaged blasting agents (wethole materials.)}.

(vi) Division 1.6 - No applicable class. {Currently there are no commercial explosives in Division 1.6}.

**"Explosives"**(as referenced by law) means any chemical compound or mechanical mixture that is commonly used or which is intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, by chemical reaction, or by detonation of any part of the compound or mixture may cause gaseous pressures capable of producing destructive effects on contiguous objects or of destroying life or limb Provided, that dynamite, nitroglycerin, gunpowder, blasting powder and trinitrotoluene shall be deemed explosives without further proof of their nature. It shall also include all material which is classified as explosive by the United States Department of Transportation. The term "explosive" shall not include in the forms prescribed by the official United States Pharmacopeia; fireworks as defined by Section 1622 of Title 68 of the Oklahoma Statutes; or small arms ammunition and components therefor, which are subject to the Gun Control Act of 1968 (Title 18, Chapter 44, U.S. Code) and regulations promulgated thereunder.

**"Fuse lighters"**means special devices for the purpose of igniting safety fuse.

**"Magazine"**means any building or structure, other than an explosives manufacturing building, used for the storage of explosives.

**"Misfire"**means an explosive charge which fails to detonate completely.

**"Mud-capping"**(sometimes known as adobe blasting, or dobying) means the blasting of boulders by placing a quantity of explosives against a rock, boulder, or other object without confining the explosives in a drill hole.

**"Nonelectric delay blasting cap"**means a blasting cap with an integral delay element in conjunction with and capable of being detonated by a detonation pulse or signal from miniaturized detonating cord.

**"Person"**means any individual, firm, copartnership, corporation, company, association, joint stock association, and includes any trustee, receiver, assignee or personal representative thereof.

**"Primary blasting"**means the blasting operation by which the original rock formation is dislodged from its natural location.

**"Primer"**means a unit, package or cartridge used to initiate other explosives or blasting agents and that contains a detonator or a detonating cord to

which is attached a detonator designed to initiate the cord.

**"Safety fuse"**means a flexible cord containing an internal burning medium by which fire is conveyed at a continuous and uniform rate for the purpose of firing blasting caps.

**"Secondary blasting"**means the reduction of oversized material by the use of explosives to the dimension required for handling, including mudcapping and blockholing.

**"Semiconductive hose"**means a hose with an electrical resistance high enough to limit flow of stray electric currents to safe levels, yet not so high as to prevent drainage of static electric charges to ground; hose of not more than 2 megohms resistance over its entire length and of not less than 5,000 ohms per foot meets the requirements.

**"Springing"**means the creation of a pocket in the bottom of a drill hole by the use of a moderate quantity of explosives in order that larger quantities or explosives may be inserted therein.

**"Stemming"**means suitable inert incombustible material or device used to confine or separate explosives in a drill hole, or to cover explosives in mud-capping.

**"Water gels, or slurry explosives"**means a wide variety of materials used for blasting. They all contain substantial proportions of water and high proportions of ammonium nitrate, some of which is in solution in the water. Two broad classes of water gels are: (1)Those which are sensitized by a material classed as an explosive, such as TNT or smokeless powder, and (2)those which contain no ingredient classified as an explosive; these are sensitized with metals such as aluminum or with other fuels. Water gels may be premixed at an explosives plant or mixed at the site immediately before delivery into the bore hole.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

**460:25-1-6. Applicability**

(a) Chapter 25 applies to all uses of explosives and blasting by all persons except those exempted in (b) of this section.

(b) **Exemptions.** The following persons are exempt from the requirements ofChapter 25.

(1) **Oil and Gas Exploration** any person engaged in shooting wells or seismographic operations for the purpose of oil and gas production;

(2) **Mining operations** any mining operation regulated by Title 45 of the Oklahoma Statutes, which includes Coal and Non-Coal mining;

(3) **Non-Commercial use** any persons using explosives or blasting agents for noncommercial use on their own land, owned in fee or by contract, for the removal of trees, rocks and dams or for other normal agricultural purposes;

(4) **Incidental or Construction** any person who is using explosives or blasting agents as an incidental part of Federal, State or local government-financed highway or other Federal, State, or local government-financed construction; this exemption shall not apply to contractors of the person who is a party to the government-financed contract;

(5) Duly qualified bomb technicians of municipal, county, state, and federal law enforcement agencies for transportation, storage or disposal of any explosive chemical, compound or device, when such technician is performing responsibilities for the preservation of public peace, safety, or criminal investigation.

(c) The following persons are exempt from the permitting requirements of this Chapter, which are contained within Subchapter 3 through Subchapter 9, but must comply with the remaining Subchapters of these rules promulgated by the Oklahoma Mining Commission;

(1) Any municipalities or counties in this state using any blasting agents, explosives or conducting, supervising or controlling a blasting operation in this state.

(2) The Department of Transportation in the conducting, supervision or controlling of any blasting operations in this state.

(3) Contractors of persons using explosives or blasting as an incidental part of government-financed highway construction.

(d) A request for Permit Exemption with the accompanying Application for Permit Exemption must be filed with a written notification, Affidavit of Permit Exemption, obtained from the Department of Mines by any person seeking to qualify as permit exempt.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 15 Ok Reg 3975, eff 8-28-98; Amended at 19 Ok Reg 2851, eff 8-27-02; Amended at 21 Ok Reg 2992, eff 7-26-04]

### 460:25-1-7. Information to be maintained on site

Any person, exempted from permitting only, who uses explosives or blasting agents must maintain the following documents on site:

(1) A description of the project;

(2) The general location of the use of explosives or blasting agent, right-of-way or the boundaries of the area which will be directly affected by the use of explosives or blasting agents.

(3) A copy of the Application of and Request for Permit Exemption.

(4) A copy of the Affidavit of Permit Exemption.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 15 Ok Reg 3975, eff 8-28-98]

### 460:25-1-8. Petitions to initiate rulemaking

(a) Any interested person may petition the Director of the Oklahoma Department of Mines to initiate a proceeding for the issuance, amendment, or repeal of any regulations under the Chapter. The petition shall be submitted to the Director, Oklahoma Department of Mines, 2915 North 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 the Chapter and shall indicate whether the petitioner desires a public hearing.

(c) Upon review of the submitted petition, the Director shall determine if the petition sets forth the requirements of Subsection (b) of this Section as to provide a reasonable basis to initiate rulemaking action. If the Director determines that the petition has reasonable basis, a notice may be published in the Oklahoma Register seeking comment 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 of 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:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 31 Ok Reg 2108, eff 9-12-14]

### 460:25-1-9. Availability of records [REVOKED]

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 31 Ok Reg 2108, eff 9-12-14; Revoked at 39 Ok Reg 2036, eff 9-11-22]

### 460:25-1-10. 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 Saturday, Sunday, or legal holiday.
(c) Intermediate Saturday, Sunday, or legal holidays are excluded from the computation when the period or prescribed time is seven or less.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

## SUBCHAPTER 3. GENERAL REQUIREMENTS FOR PERMITS AND APPLICATIONS

### 460:25-3-1. Purpose

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

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-3-2. Objectives

The objectives of this Subchapter are to ensure that the use of explosives and blasting agents are conducted only under permits issued in accordance with the requirements of the State regulatory program, that all persons making timely application for permits, to provide general requirements on permit fee systems, and to provide the general content requirements of permit applications.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-3-3. Authority

The Oklahoma Department of Mines is required by Oklahoma Statutes Title 63, Section 123.1 et seq., to promulgate rules and regulations to enforce the provisions of the Oklahoma Explosives and Blasting Regulations Act.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-3-4. Responsibility

The Oklahoma Department of Mines shall assume primary responsibility for the regulation of explosives and blasting program meeting all applicable requirements of 63 O.S. (1995), Section 123.1 et seq., and this Chapter. The Oklahoma Department of Mines has responsibility for review and decisions on issuing permits for blasting and the use of explosives for compliance with 63 O.S., Section 123.1 et seq., and this Chapter, permits approvals and for enforcement of the State program.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-3-5. Applicability

Chapter 25 requirements shall be effective and shall apply to each explosives and blasting operation which is required to obtain a permit under 63 O.S. (1995), Section 123.1 et. seq., and those in 460:25-1-6(c) and this Chapter, on or by June 1, 1996, upon which the Title 63 of the Oklahoma Statutes and this Chapter requires a permit to be obtained.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-3-6. General requirements for permits - operators

No person shall engage in or carry out blasting on non-Federal or non-Indian lands within the State, or use explosives or blasting agent unless that person has first obtained a valid permit issued by the Department. Any person planning to use explosives for blasting must obtain a valid permit issued by the Oklahoma Department of Mines, unless exempted by 460:25-1-6(b) or (c).

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-3-7. Compliance with permits

All persons shall conduct the use of explosives and blasting agent operations under permit issued pursuant to this Chapter and shall comply with the terms and conditions of the permit and the requirements of 63 O.S. (1995), et seq., and this Chapter.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-3-8. Permit application filing deadlines

(a) **General.** By June 1, 1996, all applicants using explosives or conducting blasting must have a valid permit issued by the State of Oklahoma.
(b) **Renewal of valid permits.** An application for renewal of a permit shall be filed with the Department prior to the expiration of the permit involved.
(c) **Revisions of permit.** Any application for revision of a permit shall be filed with the Department no more than 7 days after the revision is implemented.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 31 Ok Reg 2108, eff 9-12-14]

### 460:25-3-9. Permit fees

Each application for the use of explosives or blasting agent permit pursuant to the Department shall be accompanied by a fee. The fees shall be as follows:

(1) One Time Permit fee will be $50.00.
(2) Limited Time Permit fee will be $100.00.
(3) Continuous Permit fee will be $150.00.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

## SUBCHAPTER 5. USE OF EXPLOSIVES AND BLASTING PERMIT APPLICATIONS

### 460:25-5-1. Purpose

This Subchapter establishes the minimum requirements regarding the legal, financial, compliance and general information that must be contained in permit

applications for the use of explosives and blasting activities.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-5-2. Objectives

The object of this Subchapter is to ensure that all relevant information regarding the persons who uses explosives and conduct blasting, the ownership and control of the property to be affected by this operation, the compliance status and history of such applications and other important information is provided in the application to the Department for a permit per attached Application form.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-5-3. Responsibility

It is the responsibility of the explosive and blasting permit applicant to provide to the Department all of the information by this Subchapter.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-5-4. Applicability

This Subchapter applies to any person who is required to have a permit to use explosives or conduct blasting activities.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-5-5. Identifications of interests

(a) Each application for the use of explosives or blasting permit shall contain the names and addresses of the permit applicant, including his or her telephone number.
(b) Each application shall contain the Certified Blaster's number with issuance date and expiration date.
(c) Each application shall contain the names and address of the Certified Blaster's employer per application form.
(d) A copy of the Certified Blasting Certificate.
(e) Proof of blasting liability insurance.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-5-6. Compliance information

Each blasting permit application shall contain:

(1) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under the common control with the applicant has had a permit suspended or revoked in the last five years; or

(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;

(B) The current status of the permit involved;

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

(D) The current status of these proceedings.

(3) Indication of compliance with the terms and conditions of the permit and the requirements of 63 O.S., Section 141.1, et seq., and this Chapter, along with all other applicable State, Federal, and local permitting and licensing requirements.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 18 Ok Reg 3221, eff 7-26-01]

### 460:25-5-7. Permit application - location descriptions

Information set forth in the application required shall be current, clear and concise as possible.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-5-8. Verification of application

Each application for permits shall be verified by an 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.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

## SUBCHAPTER 7. PERMIT INFORMATION

### 460:25-7-1. Responsibilities

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

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-7-2. Public notices of filing of permit application

A permit application shall be posted at the principal office of the Oklahoma Department of Mines when filed with the Department. The posted permit application, which will serve as public notice, shall contain, at a minimum, the following information:

(1) The name and business address of the applicant;

(2) Verification of application;

(3) Blaster's state certificate number with issuance date and expiration date; and

(4) Copy of the certificate of blasting.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 31 Ok Reg 2108, eff 9-12-14; Amended at 39 Ok Reg 2036, eff 9-11-22]

### 460:25-7-3. Public availability of information in permit applications on file with Department

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

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-7-4. Review of permit application

The Department shall review the complete application and written comments, and written objections submitted.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-7-5. 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 the permit application is accurate and complete and in compliance with all requirements of the Chapter.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-7-6. Permit approval or denial actions

(a) The Department shall approve, require modifications of, or deny, applications for permit on the basis of:

(1) Complete applications for permits and revisions or renewals thereof; and

(2) Processing and review of application as required by this Subchapter,

(b) The Department shall take action as required under (a) of this Section, within the 30 days after the receipt by the Department of the complete application.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-7-7. Permit terms

(a) Each permit shall be for a term of:

(1) One-Time use from date of issuance.

(2) Limited time use not to exceed 4 months from issuance date.

(3) Continuous Blasting Operations permit for one year from date of issuance.

(b) Permit may be suspended, revoked, or modified by the Department, in accordance with this Chapter and the Oklahoma Administrative Procedures Act.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-7-8. Environmental, 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.

(2) 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.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

## SUBCHAPTER 9. PERMIT REVISIONS AND RENEWALS

### 460:25-9-1. Purpose

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

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-9-2. Objectives

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

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-9-3. Responsibilities

The Department shall:

(1) Ensure that permits requesting revisions are revised prior to changes in the blasting operations;

(2) Effectively review and act on applications to renew existing permits, in a timely manner, to ensure that blasting operations continue, if they comply with and 63 O.S. (1995), Section 123.1 - 123.8 et seq., and this Chapter.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-9-4. Permit revisions

(a) A revision to a permit shall be obtained: For changes in the blasting operations described in the original permit, when such changes constitute a significant departure from the method of conduct of blasting contemplated by the original permit. Significant departures may include change in certified blaster, incidental enlargement of the permit area, changes in the blasting design such as a change in explosives.

(b) The application for revision shall submit the application information required.

(c) The Department shall approve or disapprove the complete application for a revision in accordance with the requirements of Subchapter 11 of this Chapter, with 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:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-9-5. Permit renewals

(a) **General requirements.** Any valid, existing permit issued pursuant to a regulatory program shall carry with it the right of successive renewal(s) upon the expiration of the term of the permit, in accordance with Subchapter 3 of this Chapter. 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.

(b) **Completed applications.** Complete application for renewals of a permit shall be made prior to the date of expiration. Renewal applications shall contain, at a minimum, information approved on the original permit with any changes.

(c) **Term.** Any permit renewal shall be for a term of the permit not to exceed one year from the date of issuance.

(d) **Approval or denial.** The Department shall, upon the basis for a complete application for renewal and completion of all procedures required, either approve or deny said application.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 20 Ok Reg 2818, eff 8-26-03]

## SUBCHAPTER 10. PERMIT EXEMPTIONS

### 460:25-10-1. Purpose

This subchapter contains minimum requirements for obtaining permit exemptions which are allowed by O.S. Title 63, Sections 123.1 et seq.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98]

### 460:25-10-2. Objectives

(a) The objectives of this subchapter are to ensure that each person who is exempt from the permit requirements of this Chapter has on file with the Department of Mines and on site an Affidavit of Permit Exemption.
(b) To ensure that all persons, exempt from the permitting requirements of this Chapter, obtains and maintains an Affidavit of Permit Exemption to present upon the purchase of blasting agents or explosives in this State.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98]

### 460:25-10-3. Authority

The Department of Mines is required by Oklahoma Statutes Title 63, Section 123.1 et seq., to promulgate rules and regulations to enforce the provisions of the Oklahoma Explosives and Blasting Regulations Act which creates and requires permit exemptions.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98]

### 460:25-10-4. Responsibility

The Oklahoma Department of Mines shall assume primary responsibility for review and decisions on issuing Affidavit for Permit Exemptions.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98]

### 460:25-10-5. Applicability

(a) **Exemptions.** Pursuant to Subchapter 1, Section 6, the following persons are exempt from the permitting requirements of this Chapter:

(1) Oil and Gas Exploration;
(2) Mining operations;
(3) Non-Commercial use;
(4) Incidental or construction done as an incidental part of a Federal, State, or local government-financed highway or other Federal. State, or local government-financed construction;
(5) Duly qualified bomb technicians;

(b) The following persons are exempt from permitting requirements of this Chapter, but must comply with this Subchapter and Subchapters 11 through 17.

(1) Any municipalities or counties in this state using any blasting agents, explosives or conducting, supervising or controlling a blasting operation in this state.
(2) The Department of Transportation in conducting , supervising, or controlling of any blasting operations in this State.

(c) Any persons purchasing blasting agents or explosives in this State must obtain either a blasting permit or an Affidavit of Permit Exemption.
(d) An application for Permit Exemption must be filed with and written notification obtained from the Department of Mines by anyone seeking to qualify as permit exempt.
(e) The receipt of an Affidavit of Exemption does not relieve the holder of the responsibility for compliance with all other State and federal laws and requirements.
(f) Any persons exempted from the provisions of the Oklahoma Explosives and Blasting Regulations Act pursuant to this Chapter shall be liable for all damages

caused by the use of explosives, or blasting agents and blasting operations, which damages shall be recoverable in any court of competent jurisdiction.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98; Amended at 19 Ok Reg 2851, eff 8-27-02]

**460:25-10-6. Contents of application for permit exemption**

An application for exemption shall include at a minimum:

(1) The name and address of the applicant;

(2) Name and address of employer;

(3) Type of exemption:

(A) Oil and Gas Exploration;

(B) Mining Operations;

(C) Non-Commercial use;

(D) Incidental or other construction done as an incidental part of a Federal, State, or local government-financed highway or other Federal, State, or local government-financed construction;

(E) Duly qualified bomb technicians;

(F) Any municipalities or counties in this State using any blasting agents, explosives or conducting, supervising or controlling a blasting operation in this State.

(G) The Department of Transportation in the conducting, supervision or controlling of any blasting operations in the State.

(4) A current copy of their Criminal History Information Request from the Oklahoma State Bureau of Investigation.

(5) A description of the activity to be performed using the blasting agent and/or explosives.

(6) Reason for purchasing a blasting agent or explosive.

(7) A brief description of why the exemption provisions apply to the applicant.

(8) Description of the blasting area, including but not limited to the owner of record of the property affected.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98; Amended at 19 Ok Reg 2851, eff 8-27-02]

**460:25-10-7. Information to be maintained on site**

Any person, exempted from permitting only, who uses explosives or blasting agents must maintain the following documents on site

(1) A description of the project;

(2) The general location of the use of explosives or blasting agent, right-of-way or the boundaries of the area which will be directly affected by the use of explosives or blasting agents.

(3) A copy of the Affidavit of Permit Exemption.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98]

**460:25-10-8. Permit exemption application terms and deadlines**

(a) **General.** Permit exemptions are for a twelve month period from date of issuance.

(b) **Renewal of valid permit exemptions.** An application for renewal of a permit exemption shall be filed with the Department at least 30 days before the expiration of the permit exemption involved.

(c) It is the exempt persons responsibility to notify the Department of any status change that occurs with in the permit exemption term.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98]

### 460:25-10-9. Permit Exemption Fees

Each Permit Exemption Application for the use of explosives or blasting agent shall be accompanied by a fee in the amount of twenty five dollars.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98; Amended at 20 Ok Reg 2818, eff 8-26-03]

### 460:25-10-10. Permit Exemption approval or denial actions

(a) The Department shall approve, require modifications of, or deny applications for permit exemptions on the basis of:

(1) Complete applications for permit exemption thereof; and

(2) Processing and review of applications as required by this Subchapter.

(b) The Department shall take action within 30 days after the receipt by the Department ofthe complete application.

(c) The Department shall not issue an exemption to any persons convicted of a felony.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98; Amended at 20 Ok Reg 2818, eff 8-26-03]

### 460:25-10-11. Use of Affidavit of Permit Exemption

(a) No person shall purchase blasting agents or explosives in this State without first obtaining a permit or obtain written notification from the Department that the person is exempt from this permit requirement.

(b) Distributors or sellers of blasting agents or explosives shall require presentation of either the permit to blast or Affidavit of Permit Exemption before the sale or transfer of blasting agents or explosives.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98]

### 460:25-10-12. Inspections for compliance

The Department may conduct periodic inspections on all issued Affidavit for Permit Exemptions. Additional inspections may be ordered for just cause by the Director of the Department of Mines or his designees.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98; Amended at 20 Ok Reg 2818, eff 8-26-03]

### 460:25-10-13. Violations and orders

(a) Any violation of this Subchapter shall be subject to the penalties and orders contained within Subchapter 17 of this Chapter.

(b) Any violation or order issued for noncompliance of any provision of this Subchapter shall be subject to all applicable hearing requirements contained within Subchapter 17 of this Chapter.

[**Source:** Added at 15 Ok Reg 3975, eff 8-28-98]

## SUBCHAPTER 11. GENERAL REQUIREMENTS FOR INSURANCE

### 460:25-11-1. Purpose

This Subchapter sets forth the provisions for insurance in conjunction with the use of explosives and blasting operations.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-11-2. Objective

The objective of this Subchapter is to set forth the minimum requirements and responsibilities for insurance coverage in conjunction with the use of explosives and blasting operations.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-11-3. Liability insurance for blasting operations

(a) The Department shall require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the blasting operation for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the blasting operations. Minimum insurance coverage for bodily injury and property damage shall be $300,000 for each occurrence and $500,000 aggregate.
(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary for permit release.
(c) The policy shall include a rider requiring that the insurer notify the Department whenever substantive changes are made in the policy including any termination or failure to renew.
(d) The Department may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable State selfinsurance policy requirements approved as part of the regulatory program and the requirements of this Section.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

## SUBCHAPTER 13. PERFORMANCE STANDARDS

### 460:25-13-1. Purpose

This Subchapter established guidelines for the safe use of explosives in all blasting operations except those exempted in Section 460: 25-1-6.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-13-2. Objective

The objective of this Subchapter is to ensure that the general public and employees on site 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 Oklahoma Statutes, Title 63.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-13-3. Authority

The Department is authorized, through this Subchapter, to make necessary inspection to monitor compliance with this Subchapter.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-13-4. Responsibility

It is the responsibility of the certified blaster to conduct the blasting and the use of explosives in a safe manner and to maintain the record required by this Subchapter.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

## 460:25-13-5. General requirements

(a) Each certified blaster shall comply with all applicable State, Federal, and Local 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 63. O.S. (1995), Section 460:25-13-6.
(c) Blasting certification shall be carried by the blaster or shall be on file at the blasting area during the blasting operation.
(d) A blaster and at least one other person shall be present at the firing of any and all blasts.
(e) The blaster shall permit only authorized and qualified persons to handle and use explosives.
(f) Smoking, firearms, matches, open flame lamps, and other fires, flame or heat producing devices and sparks shall be prohibited in or near explosive magazines or while explosives are being handled, transported or used.
(g) No person shall be allowed to handle or use explosives while under the influence of intoxicating liquors, narcotics, or other dangerous drugs.
(h) All explosives shall be accounted for at all times. Explosives not being used shall be kept in a locked magazine, unavailable to persons not authorized to handle them. The employer shall maintain an inventory and use record of all explosives. ATF shall be notified of any loss, theft, or unauthorized entry into a magazine.
(i) No explosives or blasting agents shall be abandoned.
(j) No fire shall be fought where the fire is in imminent danger of contact with explosives. All employees shall be removed to a safe area and the fire area guarded against intruders.
(k) When blasting is done in congested areas or in proximity to a structure, railway, or highway, or any other installation that may be damaged, the blaster shall take special precautions in the loading, delaying, initiation, and confinement of each blast with mats or other methods so as to control the throw of fragments and not to exceed the peak particle velocity limits requirements of 460: 25-1319(a) at a structure.
(l) Employees authorized to prepare explosives charges or conduct blasting operations shall use every reasonable precaution including, but not limited to, visual and audible warning signals, flags, or barricades, to ensure employee safety.
(m) Blasting operations above ground shall be conducted between sunrise and sunset.
(n) Due precautions shall be taken to prevent accidental discharge of electric blasting caps from current induced by radar, radio transmitters, lightning, adjacent power lines, dust storms, or other sources of extraneous electricity. These precautions shall include:

(1) Detonators shall be short-circuited in holes which have been primed and shunted.
(2) The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electric storm;
(3) Signs and warnings shall be done in the following manner:

(A) The prominent display of adequate signs, warning against the use of mobile radio transmitters on all roads within 1,000 feet of blasting operations. Whenever adherence to the 1,000-foot distance

would create an operational handicap, this distance may be modified so long as the modification is adequately designed in compliance with paragraph (5) of this subsection to prevent any premature firing of electric blasting caps.
(B) Specimens of signs which would meet the requirements of Section 460: 25-138(p) are the following:

(4) Ensuring that mobile radio transmitters and cellular phones which are less than 100 feet away from electric blasting caps, in other than original containers, shall be deenergized and effectively locked;
(5) Compliance with the recommendations of The Institute of the Makers of Explosives with regard to blasting in the vicinity of radio transmitters as stipulated in Radio Frequency Energy-A Potential Hazard in the Use of Electric Blasting Caps, IME Publication No. 20, March 1971.

(o) Empty boxes and paper and fiber packing materials, which have previously contained high explosives, can be destroyed by burning at an approved location on site.
(p) Explosives, blasting agents, and blasting supplies that are obviously deteriorated or damaged shall not be used. Contact the manufacturer for instructions.
(q) Delivery and issue of explosives shall only be made by and to authorized persons and into authorized magazines or approved temporary storage or handling areas.
(r) Blasting operations in the proximity of overhead power lines, communication lines, utility services, or other services and structures shall not be carried on until the operators and/or owners have been notified and measures for safe control have been taken.
(s) The use of black powder for blasting shall be prohibited.
(t) All loading and firing shall be directed and supervised by a certified blaster.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 39 Ok Reg 2036, eff 9-11-22]

### 460:25-13-6. Certified blaster qualifications

(a) Any person performing blasting activities must have a valid, current blasters certificate acceptable by the Department. Reciprocity shall be granted upon submittal of a recognized blasting certificate from another State.
(b) The blaster certification shall be carried by the blaster or shall be on file at the blasting area during the blasting operation.
(c) A blaster shall be able to understand and give written and oral orders.
(d) A blaster shall be capable of carrying out the duties and not be addicted to narcotics, intoxicants, or similar type of drugs.
(e) A blaster shall be qualified, by reason of training, knowledge, or experience, in the field of transporting, storing, handling, or use of explosives, and have a working knowledge of State and local laws and regulations which pertain to explosives.
(f) Blasters shall be required to furnish satisfactory evidence of competency in handling explosives and performing in a safe manner the type of blasting that will be required.
(g) The blaster shall be knowledgeable and competent in the use of each type of blasting method used.
(h) 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 re-issuance. A certification or recertification shall not be granted to any person with

a felony conviction.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 28 Ok Reg 2371, eff 9-11-11]

### 460:25-13-7. Storage of explosives and blasting agents

Explosives and related materials shall be stored in approved facilities required under the applicable provisions of the Bureau of Alcohol, Tobacco and Firearms regulations contained in 27 CFR part 55, Commerce in Explosives.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-13-8. Loading of explosives or blasting agents

(a) Procedures that permit safe and efficient loading shall be established before loading is started.
(b) All drill holes shall be sufficiently large to admit freely the insertion of the cartridges of explosives.
(c) Tamping shall be done only with wood rods or plastic tamping poles without exposed metal parts, but nonsparking metal connectors may be used for jointed poles. Violent tamping shall be avoided. The primer shall never be tamped.
(d) No holes shall be loaded except those to be fired in the next round of blasting. After loading, all remaining explosives and detonators shall be immediately returned to an authorized magazine.
(e) Drilling shall not be started until all remaining butts of old holes are examined for unexploded charges, and if any are found. they shall be refired before work proceeds.
(f) No person shall be allowed to deepen drill holes which have contained explosives or blasting agents.
(g) No explosives or blasting agents shall be left unattended at the blast site.
(h) Any equipment not to be used in the loading shall be removed from the immediate location of holes before explosives are delivered. Equipment shall not be operated within 50 feet of loaded holes.
(i) No activity of any nature other than that which is required for loading holes with explosives shall be permitted in a blast area.
(j) Power lines and portable electric cables for equipment being used shall be kept a safe distance from explosives or blasting agents being loaded into drill holes. Energized cables in the proximity of the blast area shall be deenergized and locked out by the blaster.
(k) Holes shall be checked prior to loading to determine depth and conditions. Where a hole has been loaded with explosives but the explosives have failed to detonate, there shall be no drilling within 50 feet of the hole. Follow the regulations for misfires 460: 25-13-14.
(l) When loading a long line of holes with more than one loading crew, the crews shall be separated by practical distance consistent with efficient operation and supervision of crews.
(m) No explosive shall be loaded or used underground in the presence of combustible gases or combustible dusts.
(n) No explosives other than those in Fume Class 1, as set forth by the Institute of Makers of Explosives, shall be used; however, explosives complying with the requirements of Fume Class 2 and Fume Class 3 may be used if adequate ventilation has been provided.
(o) All blast holes in open work shall be stemmed to the collar or to a point which will confine the charge.

(p) Warning signs, indicating a blasting area, shall be maintained at all approaches to the blast area. The warning sign lettering shall not be less than 4 inches in height on a contrasting background.
(q) A bore hole shall never be sprung when it is adjacent to or near a hole that is loaded.
(r) Drill holes which have been sprung or chambered, and which are not water-filled, shall be allowed to cool before explosives are loaded.
(s) No loaded holes shall be left unattended or unprotected until ready for firing.
(t) The blaster shall keep an accurate, up-to-date record of explosives, blasting agents, and blasting supplies used in a blast and shall keep an accurate running inventory of all explosives and blasting agents stored on the operation.
(u) When loading blasting agents pneumatically over electric blasting caps, semiconductive delivery hose shall be used and equipment shall be bonded and grounded.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-13-9. Initiation of explosive charges-electric blasting

(a) Electric blasting caps shall not be used when sources of extraneous electricity make the use of electric blasting caps dangerous; the blaster must chose a non-electric system.
(b) Blasting cap leg wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.
(c) Before adopting any system of electrical firing, the blaster shall conduct a thorough survey for extraneous currents, and all dangerous currents shall be eliminated before any holes are loaded.
(d) In any single blast using electric blasting caps, all caps shall be of the same style or function, and the same manufacture.
(e) Electric blasting shall be carried out by using blasting circuits or power circuits in accordance with the electric blasting cap manufacturer's recommendations, or an approved contractor or his designated representative.
(f) When firing a circuit of electric blasting caps, care must be exercised to ensure that an adequate quantity of delivered current is available, in accordance with the manufacturer's recommendation.
(g) Connecting wires and lead wires shall be insulated single solid wires of sufficient currentcarrying capacity.
(h) Bus wires shall be solid single wires of sufficient current-carrying capacity.
(i) When firing electrically, the insulation on all firing lines shall be adequate and in good condition.
(j) A power circuit used for firing electric blasting caps shall not be grounded.
(k) In underground operations there shall be a "lightning" gap of at least 5 feet in the firing system ahead of the main firing switch; that is, between this switch and the source of power. This gap shall be bridged by a flexible jumper cord just before firing the blast.
(l) When firing from a power circuit, the firing switch shall be locked in the open or "Off" position at all times, except when firing. It shall be so designed that the firing lines to the cap circuit are automatically short-circuited when the switch is on the "Off" position. Keys to this shall be entrusted only to the blaster.
(m) Blasting machines shall be in good condition and the efficiency of the machine shall be tested annually to make certain that it can deliver power at its rated capacity.

(n) When firing with blasting machines, the connections shall be made as recommended by the manufacturer of the electric blasting caps used.
(o) The number of electric blasting caps or circuits connected to a blasting machine shall not be in excess of its rated capacity. Furthermore, in primary blasting, a series circuit shall contain no more caps than the limit recommended by the manufacturer of the electric blasting caps in use.
(p) The blaster shall be in charge of the blasting machines, and no other person shall connect the leading wires to the machine.
(q) Blasters, when testing circuits to charged holes, shall use instruments designed solely for blasting such as Blasters ohmmeter, Blasters Multimeter, or Blasters galvanometer.
(r) Whenever the possibility exists that a leading line or blasting wire might be thrown over a live power line by the force of explosion, care shall be taken to see that the total length of wires are kept too short to hit the lines, or that the wires are securely anchored to the ground. If neither of the requirements can be satisfied, a nonelectric system shall be used.
(s) In electrical firing, only the blaster making leading wire final connections shall fire the shot. All connections shall be made in sequence from the bore hole back to the source of firing current, and the leading wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.
(t) After firing an electric blast from a blasting machine, the leading wires shall be immediately disconnected from the machine and short-circuited. The leading wires should be tested immediately so defects caused by flyrock can be repaired before the next blast.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-13-10. Use of safety fuse

(a) The use of a fuse that has been hammered or injured in any way shall be forbidden.
(b) The hanging of a fuse on nails or other projections which will cause a sharp bend to be formed in the fuse is prohibited.
(c) Before capping safety fuse, a short length shall be cut from the end of the supply reel so as to assure a fresh cut end in each blasting cap.
(d) Only a cap crimper of approved design shall be used for attaching blasting caps to safety fuse. Crimpers shall be kept in good repair and accessible for use.
(e) No unused cap or short capped fuse shall be placed in any hole to be blasted; such unused detonators shall be removed from the working place and destroyed.
(f) No fuse shall be capped, or primers made up, in any magazine or near any possible source of ignition.
(g) No one shall be permitted to carry detonators or primers of any kind on his person.
(h) The minimum length of safety fuse to be used in blasting shall not be less than 120 inches.
(i) At least two men shall be present when multiple cap and fuse blasting is done by hand lighting mehods.
(j) Not more than 12 fuses shall be lighted by each blaster when hand lighting devices are used. However, when two or more safety fuses in a group are lighted as one by means of igniter cord, or other similar fuse-lighting devices, they may be considered as one fuse.

(k) The so-called "drop fuse" method of dropping or pushing a primer or any explosive with a lighted fuse attached is forbidden.
(l) Cap and fuse shall not be used for firing mudcap charges unless charges are separated sufficiently to prevent one charge from dislodging other shots in the blast.
(m) Cap and fuse shall not be used to mitiate blasts in conjested areas or on or adjacent to highways open to traffic.
(n) When blasting with safety fuses, consideration shall be given to the length and burning rate of the fuse. Sufficient time, with a margin of safety, shall always be provided for the blasters to reach a place of safety.
(o) When a roll of fuse has not been used for three months, the burning rate shall be redetermined.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-13-11. Use of detonating cord

(a) Care shall be taken to select a detonating cord consistent with the type and physical condition of the bore hole and stemming and the type of explosives used.
(b) Detonating cord shall be handled and used with the same respect and care given other explosives.
(c) The line of detonating cord extending out of a bore hole or from a charge shall be cut from the supply spool before loading the remainder of the bore hole or placing additional charges.
(d) Detonating cord shall be handled and used with care to avoid damaging or severing the cord during and after loading and hooking-up.
(e) Detonating cord connections shall be competent and positive in accordance with approved and recommended methods. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive cord is dry.
(f) All detonating cord trunk lines and branch lines shall be as near to 90 degree angles as possible and free of loops, sharp kinks, or angles that direct the cord back toward the oncoming line of detonation.
(g) All detonating cord connections shall be inspected before firing the blast.
(h) When detonating cord milli-second-delay connectors or short-interval-delay electric blasting caps are used with detonating cord, the practice shall conform strictly to the manufacturer's recommendations.
(i) When connecting a blasting cap or an electric blasting cap to detonating cord, the cap shall be taped or otherwise attached securely along the side or the end of the detonating cord, with the end of the cap containing the explosive charge pointed in the direction in which the detonation is to proceed.
(j) Detonators for firing the trunkline shall not be brought to the loading area nor attached to the detonating cord until everything else is in readiness for the blast.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-13-12. Firing the blast

(a) A code of blasting signals equivalent to those identified in (1) through (3) of this subsection, shall be posted on one or more conspicuous places at the operation, and all employees shall be required to familiarize themselves with the code and conform to it. Danger signs shall be placed at suitable locations.

(1) Warning Signal-A 1-minute series of long blasts 5 minutes prior to blast signal.
(2) Blast Signal-A series of short blasts 1 minute prior to the shot.

(3) All clear Signal-A prolonged blast following the inspection of blast area.

(b) Before a blast is fired, the blaster in charge, shall make certain that all explosives are in a safe place and all employees, livestock, vehicles, and equipment are at a safe distance, or under sufficient cover.

(c) Flagmen shall be safely stationed on highways which pass through the danger zone so as to stop traffic during blasting operations. Flagmen shall not release traffic until the all clear signal is sounded. Walkie talkie communication is permissible.

(d) It shall be the duty of the blaster to fix the time of blasting.

(e) Before firing an underground blast, warning shall be given, and all possible entries into the blasting area, and any entrances to any working place where a drift, raise, or other opening is about to hole through, shall be carefully guarded. The blaster shall make sure that all employees are out of the blast area before firing a blast.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-13-13. Inspection after blasting

(a) Immediately after the blast has been fired, the firing line shall be disconnected from the blasting machine, or where power switches are used, they shall be locked open or in the off position.

(b) Sufficient time shall be allowed, not less than 15 minutes in tunnels, for the smoke and fumes to leave the blasted area before returning to the shot. An inspection of the area and the surrounding rubble shall be made by the blaster to determine if all charges have been exploded before the guards release traffic into the blasting site and employees are allowed to return to the operation, and in tunnels, after the muck pile has been wetted down.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-13-14. Misfires

(a) If a misfire is found, the blaster shall provide proper safeguards for excluding all employees from the danger zone. Misfires shall be reported to the supervisor immediately.

(b) No other work shall be done except that necessary to remove the hazard of the misfire and only those employees necessary to do the work shall remain in the danger zone.

(c) No attempt shall be made to extract explosives from any charges or misfired hole; a new primer shall be put in and the hole reblasted. If refiring of the misfired hole presents a hazard, the explosives may be removed by washing out with water or, where the misfire is under water, blown out with air.

(d) If there are any misfires while using cap and fuse, all employees shall remain away from the charge for at least 1 hour.

(e) If there are any misfires using other non-electric detonators (that is other than cap and fuse) or using electric detonators, all personnel shall stay out of the blast site for at least 30 minutes.

(f) Misfires shall be handled under the direction of the person in charge of the blasting. All wires shall be carefully traced and a search made for unexploded charges.

(g) No drilling, digging, or picking shall be permitted until all missed holes have been detonated or the authorized representative has approved that work can proceed.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

## 460:25-13-15. Underwater blasting

(a) A blaster shall conduct all blasting operations, and no shot shall be fired without his approval.
(b) Loading tubes and casings of dissimilar metals shall not be used because of possible electric transient currents from galvanic action of the metals and water.
(c) Only water-resistant explosives, blasting caps and detonating cords shall be used for all marine blasting. Loading shall be done through a nonsparking metal loading tube when tube is necessary.
(d) No blast shall be fired while any vessel under way is closer than 1,500 feet to the blasting area. Those on board vessels or crafted, moored or anchored within 1,500 feet shall be notified before a blast is fired.
(e) No blast shall be fired while any swimming or diving operations are in progress in the vicinity of the blasting area. If such operations are in progress, signals and arrangements shall be agreed upon to assure that no blast shall be fired while any person is in the water.
(f) Blasting flags shall be displayed.
(g) The storage and handling of explosives aboard vessels used in underwater blasting operations shall be according to provisions on handling and storing explosives.
(h) When more than one charge is placed under water, a float device shall be attached to an element of each charge to assure that no holes are missed and in such manner that it will be released by the firing. Misfires shall be handled in accordance of 460; 25-13-14.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

## 460:25-13-16. Blasting in excavation work under compressed air

(a) Detonators and explosives shall not be stored or kept in tunnels, shafts, or caissons. Detonators and explosives for each round shall be taken directly from the magazines to the blasting zone and immediately loaded. Detonators and explosives left over after loading a round shall be removed from the working chamber before the connecting wires are connected up.
(b) When detonators or explosives are brought into an air lock, no employee except the powderman, blaster, lock tender and the employees necessary for carrying, shall be permitted to enter the air lock. No other material, supplies, or equipment shall be locked through with the explosives.
(c) Detonators and explosives shall be taken separately into pressure working chambers.
(d) The blaster or powderman shall be responsible for the receipt, unloading, storage, and on-site transportation of explosives and detonators.
(e) All metal pipes, rails, air locks, and steel tunnel lining shall be electrically bonded together and grounded at or near the portal or shaft, and such pipes and rails shall be cross-bonded together at not less than 1,000-foot intervals throughout the length of the tunnel. In addition, each low air supply pipe shall be grounded at its delivery end.
(f) The explosives suitable for use in wet holes shall be water-resistant and shall be Fume Class 1.
(g) When tunnel excavation is in a rock face and is approaching a mixed face, and when tunnel excavation is in mixed face, blasting shall be performed with light charges and with light burden on each hole. Advance drilling shall be performed as

tunnel excavation in rock face approaches mixed face, to determine the general nature and extent of rock over and the reaming distance ahead to soft ground as excavation advances.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-13-17. Blasting plan

(a) Each permitted blasting operation shall be conducted pursuant to a blasting plan and the blasting plan shall include at a minimum the following information;

(1) Types and appropriate amounts of explosives to be used for the 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.

(b) The blasting plan shall be submitted to the Department at least seven days before the blast or 48 hours after the blast in emergency situations.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 19 Ok Reg 2851, eff 8-27-02]

### 460:25-13-18. 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 sunrise 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 of a potential safety hazard.

(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 warning signals given, and a copy of the blast report.

(b) 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 safely be resumed.

(c) Flyrock shall not be cast from the blast area.

(d) In all blasting operations, except as otherwise authorized in this Section, the maximum safe peak particle velocity shall not exceed the requirements of Section 460: 25-13-19(a) at the location of any dwelling, public building, school, church, or commercial or institutional building.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-13-19. Blasting standards

(a) In all blasting operations, except as hereinafter otherwise provided, the maximum safe peak particle velocity shall not exceed at the immediate location of any dwelling house, public building, school, church, commercial or institutional building, the following:

(1) Distance of structure from a blast 0-300 feet 2.0"/sec PPV.

(2) Distances of structure from blast 301 feet and beyond 1.0"/sec PPV initially until the blaster can determine from a history of blasts that a preponderance of frequencies, 40 HZ or above, are high enough to justify the 2.0"/sec PPV limit.

(b) This ground velocity limit is not construed to mean property owned, leased, or contracted by the blaster or blaster's company or property on which the owner gives a written waiver.

(c) No two (2) consecutive subcharges within any charge shall be separated by a delay time of less than eight (8) milliseconds.

(d) The standard table for the maximum charge per delay shall be generated by the formula: W = (D/scaled distance)2; Where W is the weight of explosive in pounds and D is the distance from the charge to the nearest dwelling house, public building, school, church, commercial or institutional building in feet. The scaled distance factors allowed for various distances from the blast site, the table in Subsection (h) will be used. On sites where the Department decides it necessary to comply with the provision of the law this formula may be altered.

(e) For the purpose of well shooting below 100 feet, the table shall be generated by the formula: W = (D/50)3; Where W is the total weight of explosives in the hole and D is the distance from the charge to the nearest dwelling house, public building, school, church, commercial, or institutional building.

(f) Scaled Distance factors allowed for various distances from blast site:

(1) 0 to 300 ft. from blast site-Use scaled distance factor of 50 without seismic monitoring.

(2) 301 to 5,000 ft. from blast site - Use scaled distance factor of 55 without seismic monitoring.

(3) 5,001 ft and beyond from blast site - Use scaled distance factor of 65 without seismic monitoring.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 38 Ok Reg 2418, eff 9-11-21; Amended at 39 Ok Reg 2036, eff 9-11-22]

### 460:25-13-20. Seismographic measurements

(a) If a blaster decides that the table of maximum pound per delay established in 460: 25-17-19, is too conservative, he may use seismographic measurements and increase the charge per delay period, provided the velocity as required by Section 460: 25-13-19(a) is not violated. He must use the seismographic on every shot thereafter so long as the table is not being complied with.

(b) If a blaster considers the table too conservative for his particular area, he may, upon submission of seismographic reports, petition for a modified table for blasting operation at the particular site, but in no case shall the Department allow a table that would allow velocities above the requirements of Section 460: 25-13-19(a).

(c) In making a seismographic determination of the velocity at a particular position, the following formula shall be used: V = VO(Do/D)1.5; Where VO is the maximum ground particle velocity at the seismograph, Do is the distance of the seismograph from the blast, and D is the distance from the blast to the position in question and in the same general direction. The distance Do may not be greater than D, and D cannot be more than five (5) times Do. This determined velocity at the site of any

dwelling house, public building, school, church, commercial or institutional building shall not exceed the requirements of Section 460: 25-13-19(a).
(d) If special conditions occur which indicate that abnormal or potentially damaging ground vibrations may result from blasting, the Department may require a seismograph recording of any or all blasts.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

**460:25-13-21. Airblast**

(a) Maximum allowable airblast at any dwelling, public building, school, church, commercial or institutional building shall not exceed one hundred and twenty nine (129) decibels when measured by an instrument having a flat frequency response (+/-3 decibels) over a range of at least 6 to 200 hertz. If the airblast is measured with an instrument having a flat frequency response of (+/- 3 decibels) over a range of at least 2 to 200 hertz, the corresponding limit is one hundred and thirtythree (133) decibels.
(b) If the department believes that the airblast from a blasting operation is exceeding or threatening to exceed the limits in section (a), it may require theat the blaster monitor the air airblast for a specified period.
(c) The blaster shall take precautions, including the adequate confinement of all explosive materials, to ensure that the airblast limits in section 460:25-13-21(a) are met.
(d) The Department may require lower limits than those specified in section 460:25-13-21(a) in the vicinity of buildings with increased susceptibility to damage from airblast, such as those with large plate glass windows, or in areas where excessive airblast could be deemed unacceptable, such as near hospitals or schools.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

**460:25-13-22. 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 at a minimum the following data:

(1) Name of company or contractor.
(2) Exact location of the blast, date, and time of detonation.
(3) Name, signature and license number of blaster in charge.
(4) Type of material blasted.
(5) Number of holes, burden and spacing.
(6) Diameter and depth of holes.
(7) Types of explosives used.
(8) Total amount of explosives used.
(9) Maximum amount of explosives per delay period of eight (8) milliseconds or greater.
(10) Method of firing and type of circuit.
(11) Direction, distance in feet, and identification of nearest dwelling, house, public building, school, church, commercial or institutional building neither owned nor leased by the person conducting the blast.
(12) Weather conditions including temperature, wind velocity, and direction.
(13) Type and height or length of stemming.
(14) A statement as to whether mats or other protections against flyrock were used.

(15) Type of delay electric blasting caps used and delay periods used.
(16) The person taking the seismograph reading shall accurately indicate exact location of seismograph if used and shall also show the distance of seismograph from blast and the distance from the nearest seismograph and the nearest structure.
(17) Seismograph records, where required:
(A) Name of person and firm analyzing the seismograph record
(B) Seismograph reading
(18) Maximum number of holes per delay period of eight (8) milliseconds or greater.
(19) Sketch of blast pattern including number of holes, burden and spacing distance delay pattern, and if decking is used, a hole profile.
(20) Digital or video recordings of each shot must be available for review upon request. Digital or video recordings must clearly show top and bottom of blast.
(21) Information provided with digital or video recordings must include:
(A) Date of recording;
(B) GPS location of recording and camera bearing;
(C) Name of person recording the blast.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Amended at 31 Ok Reg 2108, eff 9-12-14]

### 460:25-13-23. Variances

(a) The Department of Mines may grant variances from any provisions of this Chapter, if it can be demonstrated that said variance improves safety conditions or that said variance will provide such safe conditions as those which would prevail if there was compliance with the standards.
(b) Such a variance may be modified or revoked by the Department.

[**Source:** Added at 13 Ok Reg 3499, eff 8-26-96]

## SUBCHAPTER 15. STATE INSPECTION

### 460:25-15-1. Purpose

This Subchapter sets forth general procedures governing state inspections.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-15-2. State inspections

(a) The Department may conduct an average of at least one inspection every year on all blasting permits under its jurisdiction. Additional inspections may be ordered for just cause by the Director of the Oklahoma Department of Mines or his designees.
(b) The inspections required under (a) of this section shall:
(1) Be carried out on an irregular basis, 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 63 O.S. (1995), this Chapter and the permit.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-15-3. Citizens requests for inspection

(a) A citizen may request a site inspection by furnishing to an authorized representative of the Director of the Oklahoma Department of Mines 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 if any; or

(2) If no state inspection was conducted, an explanation of the reason why.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-15-4. Right of entry

Each authorized representative of the Director of the Department of Mines conducting a state inspection of any blasting operation under Title 63 of the Oklahoma Statutes:

(1) Shall have the right of entry to inspect and investigate any blasting operation, without advance notice or a search warrant, upon presentation of appropriate credentials, and

(2) May, at reasonable time and without delay, have access to a copy of any records required to be maintained by 63 O.S. (1995), Section and this Chapter, and may inspect any monitoring equipment required by 63 O.S. (1995), Section or this Chapter.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-15-5. Availability of records [REVOKED]

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96; Revoked at 39 Ok Reg 2036, eff 9-11-22]

## SUBCHAPTER 17. VIOLATIONS AND CESSATION ORDERS

### 460:25-17-1. Purpose

This Subchapter sets forth general rules regarding Departmental enforcement of 63 O.S. (1995), Section 123.1 et seq., this Chapter and all conditions of permits imposed under 63 O.S. (1995), Section 123.1 et seq. and this chapter.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-2. Cessation Orders [EXPIRED]

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 through 7-14-96 (emergency)[1]]

***EDITOR'S NOTE:*** *[1]This emergency action expired without being superseded by a permanent action. Upon expiration of an emergency action enacting a new Section, the Section is no longer effective. Therefore, on 7-15-96 (after the 7-14-96 expiration of the emergency action), Section 460:25-17-2 was no longer effective. For the official text of the emergency rule that was effective from 1-11-96 through 7-14-96, see 13 Ok Reg 1111.*

### 460:25-17-3. Notices of violation

(a) The Director of the Oklahoma Department of Mines or authorized representatives shall issue a notice of violation if, on the basis of an inspection, he or she finds a violation of 63 O.S. (1995), Section 123.1 et seq., this Chapter or any condition of a permit imposed under the 63 O.S. (1995), Section 123.1 et seq. or this Chapter, which does not create an imminent danger or harm for which a cessation order must be issued under Section 460:25-17-4.
(b) A notice of violation issued under this Section shall be in writing, signed by the Director, or his 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 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 his authorized representative shall issue a cessation order under Section 460:25-17-4.
(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 determines that all violations listed in the notice have been abated.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-3.1. Cessation orders

(a) The Director of the Department of Mines or his authorized representative shall immediately order a cessation of blasting operations or of the relevant portion, thereof, if finding on the basis of any inspection, and condition or practice, of any violation of 63 O.S. (1995) Section 123.1 et seq., this Chapter, other state law, or any condition of a permit imposed under 63 O.S. (1995) Section 123.1 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 authorized representative shall impose affirmative obligations on the operator to whom it was issued to abate the condition, practice or violation. The order shall specify the time by which abatement shall be accomplished.
(b) The Director of the Department of Mines or his authorized representative shall immediately order a cessation of the blasting operations, or of the relevant portion thereof, when a notice of violation has been issued and fails to abate the violations 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 authorized representative deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.
(c) A Cessation order issued under (a) or (b) of this Section shall be in writing, signed by the Director or his authorized representative, and shall set forth with reasonable specificity:

(1) the nature of the violation;

(2) the remedial action or affirmative obligation required, or recommended 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 position of the blasting operations 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 of the Department of Mines.

(d) Any action or 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.

(e) 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 previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(f) 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:** Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-4. Service of notices of violations 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 blasting operation to the designated agent or to the individual who, based upon reasonable inquiry by the Director or his authorized representative, appears to be in charge of the blasting 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 on 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 of the mail and shall not be deemed incomplete because of refusal to accept.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-5. Review of citations

(a) Upon the issuance of a notice or order charging that a violation of the Oklahoma Explosives and Blasting Regulations Act has occurred, the Department shall inform the operator within thirty (30) days of the proposed amount of said penalty.

(b) The person charged with the penalty shall then have thirty (30) days form receipt of the proposed assessment notice to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Department for placement in an escrow account.

(c) If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the Department shall within thirty (30) day remit the appropriate amount

to the person.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-6. Violator enforcement

(a) Any person who violates any permit condition or any other provision of the Oklahoma Explosives and Blasting Regulation Act or this Chapter may be assessed an administrative penalty by the Department. The penalty assessment will be as follows:

(1) Such penalty shall not exceed Five Thousand Dollars ($5,000.00) for each violation.

(2) Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments.

(b) In determining the amount of the penalty, consideration shall be given to the following:

(1) The person's history of previous violations regarding explosives and blasting operations;

(2) The seriousness of the violation, including harm to the environment and any hazard to the health or safety of the public;

(3) Whether the person was negligent; and

(4) Whether the person demonstrated good faith in attempting to achieve rapid compliance after notification of the violation.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-6.1. When penalty will be assessed

(a) The Department shall assess a penalty for each cessation order.

(b) The Department shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in Section 460-25-17-6.3.

(c) The Department may assess a penalty for each notice of violation assigned 30 points or less under the point system described in Section 460:25-17-6.3. In determining whether to assess a penalty, the Department shall consider the factors listed in Section 460:25-17-6.

[**Source:** Added at 18 Ok Reg 3221, eff 7-26-01]

### 460:25-17-6.2. Procedures for assessment of civil penalties

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the Department and to the inspector who issued the notice of violation or cessation order. The Department shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Department shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, within 30 days of the issuance of the notice or order

(1) If the mail is tendered at the address of that person set forth in the permit application or any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(2) Failure by the Department to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed:

(A) Proves actual prejudice as a result of the delay; and

(B) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

(c) Unless a conference has been requested, the Department shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Department shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in (b) of this Section, within 30 days after the date the violation is abated.

[**Source:** Added at 18 Ok Reg 3221, eff 7-26-01]

**460:25-17-6.3. Point system for penalties**

The Department shall use the point system described in this Section to determine the amount of the penalty and, in the case of notices of violations, whether a mandatory penalty should be assessed as provided in 460:20-17-6.1(b). Points shall be assigned as follows:

(1) **History of previous violations.** The Department shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in the notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular blasting operation. Points shall be assigned as follows:

(A) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request said review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year;

(B) No violation for which the notice or order has been vacated shall be counted; and

(C) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) **Seriousness.** The Department shall assign up to 30 points based on the seriousness of the violation, as follows:

(A) **Probability of occurrence.** The Department shall assign up to 15 points based on the probability of occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

(i) No probability of occurrence: 0 points

(ii) Insignificant probability of occurrence: 1-4 points

(iii) Unlikely probability of occurrence: 5-9 points

(iv) Likely probability of occurrence: 10-14 points

(v) Occurred: 15 points

(B) **Extent of potential or actual damage.** The Department shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment,

as follows:

(i) If the damage or impact which the violated standard is designed to prevent would remain within the blast site or permit area, the Department shall assign 0 to 7 points, depending on the duration and extent of the damage or impact.

(ii) If the damage or impact which the violated standard is designed to prevent would extend outside the blast site or permit, the Department shall assign 8 to 15 points, depending on the duration and extent of the damage or impact.

(C) **Alternative.** In the case of a violation of an administrative requirement, such as a requirement to keep records, the Department shall, in lieu of (2)(A) and (B) of this Section, assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) **Negligence.**

(A) The Department shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(i) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(ii) A violationwhich is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(iii) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(B) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(i) No negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(ii) Negligence means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement under this Chapter due to indifference, lack of diligence, or lack of reasonable care or the failure to abate any violation of such permit or this Chapter due to indifference, lack of diligence, or lack of reasonable care.

(iii) A greater degree of fault than negligence means reckless, knowing, or intentional conduct.

(C) In calculating points to be assigned for negligence, the acts of all persons working on the blasting site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) **Good faith in attempting to achieve compliance.**

(A) The Department shall add points based the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation.

Points shall be assigned as follows:

(i) Rapid compliance:1 TO 10 points

(ii) Normal compliance: 0 points

(B) The following definitions shall apply under (4)(A) of this Section:

(i) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(ii) Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(C) If consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

[**Source:** Added at 18 Ok Reg 3221, eff 7-26-01]

**460:25-17-6.4. Determination of amount of penalty**

The Department shall determine the amount of any civil penalty by converting the total number of points assigned under Section 460:25-17-6.3 to a dollar amount, according to the following schedule:

(1) 1 point = $20
(2) 2 points = $40
(3) 3 points = $60
(4) 4 points = $80
(5) 5 points = $100
(6) 6 points = $120
(7) 7 points = $140
(8) 8 points = $160
(9) 9 points = $180
(10) 10 points = $200
(11) 11 points = $220
(12) 12 points = $240
(13) 13 points = $260
(14) 14 points = $280
(15) 15 points = $300
(16) 16 points = $320
(17) 17 points = $340
(18) 18 points = $360
(19) 19 points = $380
(20) 20 points = $400
(21) 21 points = $420
(22) 22 points = $440
(23) 23 points = $460
(24) 24 points = $480
(25) 25 points = $500
(26) 26 points = $600
(27) 27 points = $700
(28) 28 points = $800
(29) 29 points = $900

(30) 30 points = $1,000
(31) 31 points = $1,100
(32) 32 points = $1,200
(33) 33 points = $1,300
(34) 34 points = $1,400
(35) 35 points = $1,500
(36) 36 points = $1,600
(37) 37 points = $1,700
(38) 38 points = $1,800
(39) 39 points = $1,900
(40) 40 points = $2,000
(41) 41 points = $2,100
(42) 42 points = $2,200
(43) 43 points = $2,300
(44) 44 points = $2,400
(45) 45 points = $2,500
(46) 46 points = $2,600
(47) 47 points = $2,700
(48) 48 points = $2,800
(49) 49 points = $2,900
(50) 50 points = $3,000
(51) 51 points = $3,100
(52) 52 points = $3,200
(53) 53 points = $3,300
(54) 54 points = $3,400
(55) 55 points = $3,500
(56) 56 points = $3,600
(57) 57 points = $3,700
(58) 58 points = $3,800
(59) 59 points = $3,900
(60) 60 points = $4,000
(61) 61 points = $4,100
(62) 62 points = $4,200
(63) 63 points = $4,300
(64) 64 points = $4,400
(65) 65 points = $4,500
(66) 66 points = $4,600
(67) 67 points = $4,700
(68) 68 points = $4,800
(69) 69 points = $4,900
(70) 70 points = & above $5,000

[**Source:** Added at 18 Ok Reg 3221, eff 7-26-01]

**460:25-17-6.5. Assessment of separate violations for each day**

(a) The Department may assess separately a civil penalty or each day from the date of the issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Department shall consider the factors listed in Section 460:25-17-6.1 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for 2 or more days and which is assigned more than 70 points

under Section 460:25-17-6.3, the Department shall assess a penalty for a minimum of 2 separate days.
(b) In addition to the civil penalty provided for in (a) of this Section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended, a civil penalty of not less $750.00 shall be assessed for each day during which such failure to abate continues, except that:

(1) The entry of a final order by the Department after an expedited hearing which ordered the suspension of the abatement requirements of the citation because it was determined that the person will suffer irreparable loss or damage from the application of the abatement requirements; or
(2) The entry of an order by the court in any review proceedings initiated by the person in which the court orders the suspension of the abatement requirements.

[**Source:** Added at 18 Ok Reg 3221, eff 7-26-01]

**460:25-17-6.6. Procedures for assessment conference**

(a) The Department shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is mailed.
(b) **Assessment conference.**

(1) The Department shall assign a Conference Officer to hold the assessment conference. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or end of the abatement period, whichever is later, provided that a failure by the Department to hold said conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.
(2) The Department shall post notice of the time and place of the conference at the State or field office closest to the blast site at least 5 days before the conference.
(3) The Conference Officer shall consider all relevant information on the violation and within 30 days after the conference is held, the conference officer shall either:

(A) Settle the issues, in which case a settlement agreement shall be prepared and signed by the Conference Officer on behalf of the Department and by the person assessed; or
(B) Affirm, raise. lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than $500.00 shall not be final and binding until approved by the Director.

(c) The Conference Officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in Section 460:25-17-6.2 (b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.
(d) **Settlement agreements.**

(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the

settlement agreement. The settlement agreement shall contain a clause to this effect.
(2) If full payment of the amount specified in the agreement is not received by the Department within 30 days after the date of signing, the Department may enforce the agreement or rescind it and proceed according to (b)(3)(B) of this Section within 30 days from the date of the rescission.

(e) The Conference Officer may terminate the conference when he or she determines that the issues can not be resolved or that the person assessed is not diligently working toward resolution of the issues.
(f) At a formal review proceeding on the results of the assessment conference no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

[**Source:** Amended at 18 Ok Reg 3221, eff 7-26-01]

### 460:25-17-6.7. Request for hearing

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the assessed or affirmed penalty to the Department (to be held in escrow as provided in (b) of this Section) within 30 days from receipt of the proposed assessment or reassessment or 15 days from the date of service of the Conference Officer's action, whichever islater. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under 460:25-17-9.
(b) All funds submitted under (a) of this Section to the Department, which shall hold them in escrow pending completion of the administrative and judicial process, at which time it shall disburse them as provided in Section 460:20-61-12.

[**Source:** Added at 18 Ok Reg 3221, eff 7-26-01]

### 460:25-17-6.8. Final assessment and payment penalty

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 460:25-17-6.7, the proposed assessment shall become a final order of the Director and the penalty assessed shall become due and payable upon the expiration of the time allowed to request a hearing.
(b) If any party requests judicial review of a final order of the Director, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to (c) of this Section, the escrowed funds shall be transferred to the Department in payment of the penalty, and the escrow shall end.
(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this Subchapter, the Department shall within 30 days of the receipt of the order refund to the person assessed all or part of the escrowed amount.
(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Department within 15 days after the order is mailed to such person.

[**Source:** Added at 18 Ok Reg 3221, eff 7-26-01]

### 460:25-17-7. Hearing request

(a) An administrative penalty shall be assessed by the Department only after the person charged with a violation described under section 460:25-17-6 of this Section has been given an opportunity for a hearing pursuant to Article II of the

Administrative Procedures Act. Any hearing under this Section shall be of record.
(b) Where such a hearing has been held, the Department shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid.
(c) When appropriate, the Department shall consolidate such hearings with other proceedings under the Oklahoma Explosives and Blasting Regulation Act.
(d) Where the person charged with such a violation fails to avail himself of the opportunity for a hearing, an administrative penalty shall be assessed by the Department after determining that a violation did occur, and the amount of the penalty which is warranted, and issuing an order requiring that the penalty be paid.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-8. Informal conferences

(a) Any person having an interest which is or may be adversely affected by a decision on a permit application or a notice or order of the Department, may request in writing that the Department hold an informal conference on the application, notice or order. The request shall contain:

(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 blasting operation; the Oklahoma Department of Mines Office in Oklahoma City shall be deemed reasonably close to the blasting operation unless a closer location is requested and agreed to by the Department.

(3) Be filed with the Department no later than thirty (30) days after notice of the affected action.

(4) 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 record shall be made of the conference, unless waived by all of the parties. The record shall be maintained and shall be accessible to the parties of the conference.

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

(1) If requested under (a)(2) of this Section it shall be held in the locality of the proposed blasting operation.

(2) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and shall be publicly posted by the Department.

(3) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(c) Within thirty (30) days after the close of the informal conference, the Hearing Officer shall issue a proposed order affirming, modifying or vacating the decision, notice or order under appeal at the conference.
(d) The proposed order of the Hearing Officer shall be subject to formal review.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-9. Formal administrative review

(a) Within thirty (30) days after receipt of notification of a departmental decision concerning a permit application decision concerning approval, denial, suspension, revocation, a proposed order of the Hearing Officer or a notice or order of the Department, the applicant or permittee or any person with an affected interest may request a hearing on the reasons for the decision, in accordance with this Section, this Chapter and the Administrative Procedures Act.
(b) The filing of any application for review and request for a hearing shall not operate as a stay of notice of violation or cessation order issued by the Department nor shall the request by a stay of any modification, termination, or vacation of said notice or order.
(c) The Department shall start the administrative hearing within thirty (30) days of such request for administrative review. The hearing shall be on the record and adjudicatory in nature. No person who presided at an informal conference under 460:25-17-8 shall either preside at the hearing or participate in the decision following the hearing or administrative appeal.
(d) The hearing shall be conducted under the following conditions:

(1) The hearing authority may administer oaths and affirmation, subpoenas, witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery and take evidence including, but not limited to, site inspections of the area to be affected.
(2) A verbatim record of each hearing required by this Section shall be made, and transcription made available on the motion of any party or by order of the hearing authority.
(3) Ex parte contacts between representatives of the parties appearing before the hearing authority and the hearing authority shall be prohibited.

(e) The burden of proof at such hearing shall be on the party seeking to reverse the decision of the Department.
(f) Within thirty (30) days after the close of the record, the hearing authority shall issue and furnish the applicant and each person who participated in the hearing with the written findings of act, conclusions of law and order of the hearing authority with respect to the appeal of the decision, which is subject to judicial review by a court of competent jurisdiction pursuant to the Oklahoma Administrative Procedures Act.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-10. Willful violators

Any person who willfully and knowingly violates a condition of a permit issued pursuant to this Chapter or fails or refuses to comply with any order issued under this Chapter, or any order incorporated in a final decision issued by the Department under this Chapter, shall, upon conviction, be punished by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than one (1) year, or both.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-11. Corporate Permittee violators

Whenever a corporate permittee violates a condition of a permit issued pursuant to this Chapter or fails or refuses to comply with any order issued under this Chapter, or any order incorporated with a final decision issued by the Director of the Department of Mines under this Chapter, any director, officer or agent of such corporation who willfully and knowingly authorized, ordered or carried out such violation, failure or refusal shall be subject to the same administrative

penalties, fines and imprisonment that may be imposed upon a person under sections 460:25-17-6 and 460:25-17-9 of this Chapter.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-12. False information given

Whoever knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Chapter or any order of decision issued by the Department under this Chapter, shall, upon conviction, be punished by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than one (1) year or, both.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-13. Corrective action

Any person who fails to correct a violation for which a citation has been issued within the period permitted for its correction shall be assessed an administrative penalty of not less than Seven Hundred Fifty Dollars ($750.00) for each day during which such failure or violation continues.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-14. Correction period

The period permitted for corrections of violations shall not end until the following:

(1) The entry of a final order by the Department after an expedited hearing which ordered the suspension of the abatement requirements of the citation because it was determined that the person will/would suffer irreparable loss or damage from the application of the abatement requirements: or

(2) The entry of an order by a court in any review proceedings initiated by the person in which the court orders the suspension of the abatement requirements.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-15. Unlawful resistance

Any person who shall, except as permitted by law, willfully resist, prevent, impede or interfere with the Department or any of the agents or employees thereof in the performance of duties pursuant to this division shall, upon conviction, be punished by a fine of not more than Five Thousand Dollars ($5,000.00), or by imprisonment for not more than one (1) year, or both.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

### 460:25-17-16. Penalty recovery

Administrative penalties owed under the Oklahoma Explosives and Blasting Regulation Act may be recovered in a civil action brought by the Attorney General or any district attorney in the district in which the violation occurred at the request of the Department in the appropriate district court. Such action, also may be brought by the Department.

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

## APPENDIX A. TABLE TO BE USED FOR DETERMINING WEIGHT OF EXPLOSIVES TO BE USED ON A SINGLE DELAY [REVOKED]

[**Source:** Added at 13 Ok Reg 1111, eff 1-11-96 (emergency); Added at 13 Ok Reg 3499, eff 8-26-96]

# CHAPTER 30. COAL COMBUSTION BY-PRODUCT PLACEMENT RULES AND REGULATIONS

[**Authority:** 45 O.S.§§ 1.5 et. seq., § 732, and § 940; 75 O.S. §§ 302 et. seq.]
[**Source:** Codified 8-26-03]

## SUBCHAPTER 1. GENERAL REQUIREMENTS

### 460:30-1-1. Scope

This Subchapter sets forth the requirements for mining operations which include regulation of Coal Combustion By-products (CCB) placed in active or inactive coal or non-coal mines under 45 O.S. Sec. 940.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-1-2. Responsibility

The Department shall be responsible for the regulation of placement of CCB in active or inactive mines. It is the responsibility of a permit applicant to provide the Department with all of the information required by this Chapter.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-1-3. Definitions

All of the definitions contained within OAC 460:10 and OAC 460:20 shall be applicable to this Chapter. In addition, the following terms used in this Chapter shall have the following meanings, unless otherwise defined:

**"Artesian waters"** means ground water under sufficient pressure to force the water above surface level when a sufficient conduit is present.

**"Ash"** means the residue left over from the combustion of bituminous, anthracite, or lignite coal as part of the process used to generate electrical energy.

**"Cement Kiln Dust" (CKD)** means the residue recovered from the combustion of bituminous, anthracite, or lignite coal along with various alternate fuels as part of the process used to produce cement.

**"Coal Combustion By-products" (CCB)** means ash and cement kiln dust.

**"Cover"** means earthen materials used to temporarily or permanently cover CCB.

**"Intermediate cover"** means the application of earthen material, water, or other substance approved by the Department during active CCB placement operations to stabilize exposed CCB to arrest the formation of fugitive dust.

**"pH"** means the indication of the hydrogen ion concentration of a solution.

**"Placement"** means the propitious deposition of CCB in a location that at the time the application is submitted is not anticipated to be later reutilized, recycled, or otherwise incorporated into products or utilized to provide a service.

**"T.C.L.P"** means Toxicity Characteristic Leaching Procedure.

**"Total Dissolved Solids" (TDS)** means the solids in water that can pass through a filter and is a measure of the amount of material dissolved in water.

**"Total Suspended Solids" (TSS)** or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the

procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

**"Wetland"** means those lands subject to periodic or seasonal flooding by water as defined under Section 404 of the Clean Water Act and so designated by the State or Federal agency charged with making such determination.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-1-4. Applicability

This Chapter applies to all mining operations which include CCB placement operations and which are exempt from the solid waste permitting requirements pursuant to Title 27A of the Oklahoma Statutes, provided such CCB is constructively reutilized or placed in any active or inactive coal or Non-coal mining operation subject to the provisions contained in Title 45 of the Oklahoma Statutes.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

## SUBCHAPTER 3. CCB PLACEMENT APPLICATIONS

### 460:30-3-1. Insurance

Each application shall contain a certificate of liability insurance with a minimum insurance coverage for bodily injury and property damage amount of $500,000 for each occurrence and $1,000,000 aggregate.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-3-2. Environmental resources information; Cultural

(a) All permits shall comply with the requirements of OAC 460:10 or OAC 46:20 as appropriate as well as the following Subchapter:

(b) A description of the current and historic cultural resources within and adjacent to the proposed mining permit area. The following minimum requirements apply to this description.

(1) A description of the historic resources that would be affected by the proposed operation. This description shall include comments from the State Historic Preservation Officer.

(2) A description of the population in and adjacent to the proposed mining permit area, as well as distance to and description of the nearest community to the proposed operation.

(3) Additional site information may be required if needed by the Department or other State agencies charged with protection of historic and cultural resources.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-3-3. Environmental resources information: Hydrologic

(a) Surface water information.

(1) Each application shall contain information on location, chemical composition, sources, and use of surface water resources within and adjacent to the proposed mining permit area, including, but not limited to ponds, impoundments, and open pits.

(2) Stream channels within the mining permit area shall be described according to classification, flow rate, source of discharge, and chemical analysis.

(3) The physical and chemical composition shall include the following information:

(A) Ash site surface water testing parameters: initial

(i) pH
(ii) TDS
(iii) TSS
(iv) Specific conductance
(v) Sulfates
(vi) Temperature
(vii) Total iron
(viii) Total manganese
(ix) Arsenic
(x) Barium
(xi) Cadmium
(xii) Chromium (total)
(xiii) Lead
(xiv) Fluoride
(xv) Selenium
(xvi) Flow in streams, flow rate of discharges of impoundments
(xvii) Impoundment freeboard
(xviii) Impoundment depth
(xix) Alkalinity
(xx) Chloride
(xxi) Nitrate
(xxii) Nitrite
(xxiii) Ammonia
(xxiv) Aluminum
(xxv) Calcium
(xxvi) Sodium
(xxvii) Additional parameters may be required by the Department based on conditions at the site.

(B) CKD site surface water testing parameters: initial

(i) Surface water elevation
(ii) Temperature
(iii) pH
(iv) Specific conductance
(v) TDS
(vi) Chloride
(vii) Sulfates
(viii) Potassium
(ix) Sodium
(x) Antimony
(xi) Arsenic
(xii) Barium
(xviii) Beryllium
(xiv) Cadmium
(xv) Chromium (total)
(xvi) Lead
(xvii) Mercury
(xviii) Nickel

(xix) Selenium
(xx) Silver
(xxi) Thallium
(xxii) Alkalinity
(xxiii) Aluminum
(xxiv) Calcium
(xxv) TSS
(xxvi) Additional parameters may be required by the Department based on conditions at the site.

(b) Ground water information

(1) Each application shall contain information on the ground water resources within the permit area. Each application shall contain a minimum of 12 background samples from each monitoring point taken at monthly intervals prior to placement of coal ash.

(2) The physical and chemical composition shall include the following information:

(A) Ash site ground water testing parameters: initial

(i) pH
(ii) TDS
(iii) Specific conductance
(iv) Sulfates
(v) Temperature
(vi) Total iron
(vii) Total manganese
(viii) Arsenic
(ix) Barium
(x) Cadmium
(xi) Chromium (total)
(xii) Lead
(xiii) Fluoride
(xiv) Selenium
(xv) Depth to water
(xvi) Alkalinity
(xvii) Chloride
(xviii) Nitrate
(xix) Nitrite
(xx) Ammonia
(xxi) Aluminum
(xxii) Calcium
(xxiii) Sodium
(xxiv) TSS
(xxv) Additional parameters may be required by the Department based on conditions at the site.

(B) CKD site ground water testing parameters: initial

(i) Depth to water
(ii) Temperature
(iii) pH
(iv) Specific conductance
(v) TDS
(vi) Chloride
(vii) Sulfates

(viii) Potassium
(ix) Sodium
(x) Antimony
(xi) Arsenic
(xii) Barium
(xiii) Beryllium
(xiv) Cadmium
(xv) Chromium (total)
(xvi) Lead
(xvii) Mercury
(xviii) Nickel
(xix) Selenium
(xx) Silver
(xxi) Thallium
(xxii) Alkalinity
(xxiii) Aluminum
(xxiv) Calcium
(xxv) TSS
(xxvi) Additional parameters may be required by the Department based on conditions at the site.

(3) Monitoring wells shall be placed up-gradient and down-gradient of the placement area and noted accordingly in the mining permit application.

(A) There shall be at least one monitoring well at a point hydraulically upgradient from the CCB placement area in the direction of increasing static head that is capable of providing representative data of groundwater not affected by placement of CCB, except when the CCB placement area occupies the most upgradient position in the flow system. In that case, sufficient downgradient monitoring points shall be placed to determine the extent of adverse effects on groundwater from the CCB placement.

(B) There shall be at least three (3) groundwater monitoring points hydraulically downgradient in the direction of decreasing static head from the area in which CCB has been or will be placed. The Department at its discretion may accept two (2) downgradient monitoring points on small sites that can be represented by two (2) points. The Department may allow one (1) or more springs, seeps and mine discharges to substitute for wells if these points are hydraulically downgradient from the area in which CCB has been or will be placed and if these points will be as effective or more effective at monitoring the CCB placement area than wells. Downgradient monitoring points must be hydrologically connected to the area of CCB placement, and must be located and constructed so as to detect any chemical influence of the CCB placement area. The downgradient points must be proximate enough to detect contaminants within the life of the placement operation. All monitoring points must be developed and protected in a manner approved by the Department. In addition to groundwater monitoring points the Department may require downstream monitoring where downstream monitoring is likely to show any chemical influence that the CCB placement area may have on the hydrologic regime.

(C) Monitoring wells shall be located within 200 feet of the CCB placement area, unless another location is approved by the Department.

(4) Logs and cross sections of wells drilled for collection of ground water information and as monitoring wells shall be included in the application.

(5) An inventory of the chemical composition and completion data available from other reporting agencies or other sources for all ground water wells within one-half mile of the permit area boundary.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03; Amended at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-3-4. Environmental resources information: Geologic

(a) Each application shall contain a narrative description of the surficial and subsurface geology under and adjacent to the proposed mining permit area down to the first stratigraphic unit below the level where CCB would be placed. This description shall include structural geology of the mining permit and adjacent areas that would influence the movement of surface and ground water.

(b) The description shall include information on permeability of the sides and bottom of proposed CCB placement sites in the mining permit area, obtained from visual inspection and laboratory testing of rock strata or other earthen materials that would be in direct contact with placed CCB. The permeability of the *in situ* material, or any liner material approved by the Department, on the sides and bottom of the proposed CCB placement site must not exceed $10^{-5}$ cm/sec. If accessibility is prohibited to test the permeability of the sides and bottom of the proposed placement site, core samples may be taken contiguous to the pit or a representative area of the permit site which corresponds to the same geologic stratum. These testing sites must not exceed $10^{-5}$ cm/sec.

(c) Logs of holes drilled to obtain geologic information shall be provided.

(d) If required, the Department may require the collection of additional geologic information and analyses in addition to that required by this Paragraphs (a) and (b) of this Section.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-3-5. Environmental resources information: Soils

(a) A description of the soil types under the proposed mining permit area from United States Department of Agriculture Natural Resource Conservation Service county soil surveys or equivalent permit area soil survey is required. Such description shall contain the following at a minimum; lateral extent of each soil type under the mining permit area, thickness, color, composition, slopes, land use suitability and engineering properties.

(b) Additional soils description, including, but not limited to, permeability tests as specified by the Department may be required.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-3-6. CCB placement: General

The application shall contain a detailed narrative description of the CCB placement operations to be conducted, including, but not limited to the following:

(1) The method of CCB placement, including equipment dedicated to the operation.

(2) A description of the life expectancy of the operation, and the daily and annual quantities of CCB to be placed on the mining permit area, as well as

the total quantity to be placed over the life of the operation.
(3) Sources of CCB to be placed on the mining permit area.
(4) A description of measures to be taken to ensure employee safety and the safety of the general public during CCB placement activities. This includes a plan to provide emergency services in case of injury or accident.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

**460:30-3-7. CCB placement: Analysis**

Each application shall contain a complete analysis of the CCB to be placed in the mining permit area. An additional analysis of CCB placed in the mining permit area will be submitted to the Department biennially and annually. Specific parameters to be analyzed initially, biennially and annually thereafter shall be:

(1) Ash testing parameters: initial, biennially, annually and if the source ash changes.

(A) T.C.L.P. analysis (Conducted biennially and if the source of ash changes)

(i) Arsenic
(ii) Barium
(iii) Cadmium
(iv) Chromium (total)
(v) Lead
(vi) Selenium

(B) Chemical analysis of pH (Conducted annually and if the source of ash changes)

(2) CKD testing parameters: initial, biennially, annually and if manufacturing/production processes that effect CKD change;

(A) T.C.L.P. analysis (Conducted biennially and if manufacturing/production processes that effect CKD change.

(i) Antimony
(ii) Arsenic
(iii) Barium
(iv) Beryllium
(v) Cadmium
(vi) Chromium (total)
(vii) Lead
(viii) Mercury
(ix) Nickel
(x) Silver
(xi) Selenium
(xii) Thallium

(B) Chemical analysis of pH (Conducted annually and if manufacturing/production processes that effect CKD change.)

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03; Amended at 21 Ok Reg 2993, eff 7-26-04]

**460:30-3-8. CCB placement: Hydrologic balance protection**

(a) **General.** A general description of the surface drainage plan for the proposed operation shall be provided. This description shall include, but not be limited to, description of proposed handling of off-site drainage entering the mining permit area, mining permit area sediment control, measures to prevent CCB from entering water leaving the mining permit area, and general description of measures to prevent non-CCB contaminants from entering storm water leaving the mining

permit area.

(b) **Surface water monitoring plan.** A plan for surface water monitoring shall include the following parameters to be analyzed annually and semi-annually:

(1) Ash site surface water testing parameters: annually

(A) pH
(B) TDS
(C) TSS
(D) Specific conductance
(E) Sulfates
(F) Temperature
(G) Total iron
(H) Total manganese
(I) Arsenic
(J) Barium
(K) Cadmium
(L) Chromium (total)
(M) Lead
(N) Fluoride
(O) Selenium
(P) Flow in streams, flow rate of discharges of impoundments
(Q) Impoundment freeboard
(R) Impoundment depth
(S) Alkalinity
(T) Chloride
(U) Nitrate
(V) Nitrite
(W) Ammonia
(X) Aluminum
(Y) Calcium
(Z) Sodium
(AA) Additional parameters may be required by the Department based on conditions at the site.

(2) Ash site surface water testing parameters: (Semi-annually for active sites, inactive sites and sites in temporary cessation status as set forth in 30-5-22 complying with 30-5-11)

(A) pH
(B) TDS
(C) TSS
(D) Specific conductance
(E) Sulfates
(F) Temperature
(G) Flow in streams, flow rate of discharges of impoundments
(H) Impoundment freeboard
(I) Impoundment depth
(J) Alkalinity
(K) Chloride
(L) Nitrate
(M) Nitrite
(N) Ammonia
(O) Aluminum
(P) Calcium

(Q) Sodium
(R) Additional parameters may be required by the Department based on conditions at the site.

(3) CKD site surface water testing parameters: annually;
(A) Surface water elevation
(B) Temperature
(C) pH
(D) Specific conductance
(E) Potassium
(F) Sodium
(G) TDS
(H) Chloride
(I) Sulfates
(J) Antimony
(K) Arsenic
(L) Barium
(M) Beryllium
(N) Cadmium
(O) Chromium (total)
(P) Lead
(Q) Mercury
(R) Nickel
(S) Selenium
(T) Silver
(U) Thallium
(V) Alkalinity
(W) Aluminum
(X) Calcium
(Y) TSS
(Z) Additional parameters may be required by the Department based on conditions at the site.

(4) CKD site surface water testing parameters: semi-annually
(A) Surface water elevation
(B) Temperature
(C) pH
(D) Specific conductance
(E) TDS
(F) Chloride
(G) Sulfates
(H) Potassium
(I) Sodium
(J) Alkalinity
(K) Aluminum
(L) Calcium
(M) TSS
(N) Additional parameters may be required by the Department based on the conditions at the site.

(5) Water quality monitoring shall continue for permits issued after July 1, 2011, at the same frequency stated above for a minimum of 5 years after final placement of CCBs at the site. The Department may require more frequent or longer water quality monitoring if the results of water quality

monitoring indicate that contamination may be occurring.

(c) **Ground water monitoring plan.** A plan for ground water monitoring shall include the following parameters to be analyzed annually and semi-annually:

(1) Ash site ground water testing parameters: annually

(A) pH
(B) TDS
(C) Specific conductance
(D) Sulfates
(E) Temperature
(F) Total iron
(G) Total manganese
(H) Arsenic
(I) Barium
(J) Cadmium
(K) Chromium (total)
(L) Lead
(M) Fluoride
(N) Selenium
(O) Depth to water
(P) Alkalinity
(Q) Chloride
(R) Nitrate
(S) Nitrite
(T) Ammonia
(U) Aluminum
(V) Calcium
(W) Sodium
(X) TSS
(Y) Additional parameters may be required by the Department based on conditions at the site.

(2) Ash site ground water testing parameters: (Semi-annually for active sites, inactive sites and sites in temporary cessation status as set forth in Section 30-5-22 complying with 30-5-11 )

(A) pH
(B) TDS
(C) Specific conductance
(D) Sulfates
(E) Temperature
(F) Depth to water
(G) Alkalinity
(H) Chloride
(I) Nitrate
(J) Nitrite
(K) Ammonia
(L) Aluminum
(M) Calcium
(N) Sodium
(O) TSS
(P) Additional parameters may be required by the Department based on conditions at the site.

(3) CKD site ground water testing parameters: annually

(A) Depth to water
(B) Temperature
(C) pH
(D) Specific conductance
(E) TDS
(F) Chloride
(G) Sulfates
(H) Potassium
(I) Sodium
(J) Antimony
(K) Arsenic
(L) Barium
(M) Beryllium
(N) Cadmium
(O) Chromium (total)
(P) Lead
(Q) Mercury
(R) Nickel
(S) Selenium
(T) Silver
(U) Thallium
(V) Alkalinity
(W) Aluminum
(X) Calcium
(Y) TSS
(Z) Additional parameters may be required by the Department based on conditions at the site.

(4) CKD site ground water testing parameters: semi-annually

(A) Depth to water
(B) Temperature
(C) pH
(D) Specific conductance
(E) TDS
(F) Chloride
(G) Sulfates
(H) Potassium
(I) Sodium
(J) Alkalinity
(K) Aluminum
(L) Calcium
(M) TSS
(N) Additional parameters may be required by the Department based on conditions at the site.

(5) Water quality monitoring shall continue for permits issued after July 1, 2011, at the same frequency as stated above for a minimum of 5 years after final placement of CCB at the site. The Department may require more frequent or longer water quality monitoring if the results of water quality monitoring indicate that contamination may be occurring.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03; Amended at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-3-9. Mining permit maps: General

(a) Maps submitted with applications shall include all the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the mining permit area shall be on a scale of one inch equals 200 feet (1:2400). General location maps and maps of the adjacent area shall clearly show the land and waters within those areas and be on a scale to be determined by the Department, but in no case shall be smaller than 1:24,000.
(b) The mining permit application shall include maps showing the following:

(1) The boundaries of the proposed mining permit area.
(2) All boundaries of lands and names of present owners of record of the surface of those lands included in or contiguous to the proposed mining permit area.
(3) The location, ownership, and uses of all buildings inside and within 1000 feet of the proposed mining permit area.
(4) The location of surface and subsurface man made features within or passing through the proposed mining permit area, including, but not limited to electric transmission lines, pipelines, and telephone lines.
(5) Each public road easement located in or within 100 feet of the proposed mining permit area.
(6) Each cemetery that is located in or within 100 feet of the proposed mining permit area.
(7) The boundaries of any public park, wildlife refuge, or recreational area within or bordering the proposed mining permit area.
(8) Other relevant information required by the Department.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

**460:30-3-10. Mining permit maps and cross sections: Environmental resources**

(a) The mining permit application that includes the placement of CCB as a part ofits reclamation plan shall contain the following environmental resources maps:

(1) Locations and elevations of drill holes used to obtain soil, hydrologic, or geologic information.
(2) Locations and elevations of monitoring points used to obtain surface and ground water information used to prepare the mining permit application.
(3) Location of active, inactive, reclaimed, or abandoned surface and underground mines.
(4) Location of surface water bodies such as streams, ponds, lakes, springs, and irrigation ditches within and adjacent to the proposed mining permit area.
(5) Location of existing areas of mine and non-mine wastes, including CCB.
(6) Location of water, oil and gas wells within the proposed mining permit area.
(7) Potentiometric map indicating ground water elevations and movement of ground water in the mining permit area. Previously published data and mapping representative of the area may be utilized to comply with this requirement.
(8) Cross sections passing through the proposed CCB placement area. Such cross sections shall show relevant geologic and hydrologic information, and other relevant information as specified by the Department. The number of cross sections required is to be determined by the Department.
(9) Location of soil series units under the proposed mining permit area.

(10) A map showing the permit area in relation to 100-year flood plain areas as shown on maps published by the Untied States Geological Survey in cooperation with the United States Department of Housing and Urban Development.

(b) Other relevant environmental resources information may be required by the Department on maps as part of its review.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-3-11. Mining permit maps: Operations and reclamation plan

Each application shall contain the following operations and reclamation plan maps:

(1) Buildings, roads, facilities, and utility lines to be used.

(2) The detailed operation, according to the sequence of CCB placement.

(3) Each topsoil, cover material, CCB, and non-CCB waste storage area.

(4) Each water storage, treatment, discharge, and diversion facility to be used.

(5) Each air pollution control facility.

(6) Location of each sedimentation pond and permanent impoundment.

(7) A contoured map showing the final surface configuration of the disturbed area.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

## SUBCHAPTER 4. BOND REQUIREMENTS FOR CCB OPERATIONS

### 460:30-4-1. Scope and purpose

This subchapter sets forth the minimum requirements for filing and maintaining bonds and insurance for CCB operations under regulatory programs in accordance with the Act. This Subchapter does not apply to Cement Kiln Dust operations.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-4-2. Department responsibilities

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

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

(c) The Department shall determine the amount of the bond for each area to be bonded, in accordance with Section 460:30-4-7. The Department shall also adjust the amount as acreage in the permit area is revised, or when other relevant conditions change according to the requirements of Section 460:30-4-8.

(d) The Department may accept a self-bond if the permittee meets the requirements of Section 460:30-4-13 and any additional requirements in the State or Federal program.

(e) The Department shall release liability under a bond or bonds in accordance with Section 460:30-4-15.

(f) If the conditions specified in Section 460:30-4-16 occur, the Department shall take appropriate action to cause all or part of a bond to be forfeited in accordance with procedures of that Section.

(g) The Department shall require in the permit that adequate bond coverage be in effect at all times. Except as provided in Section 460:30-4-9(e)(2), operating without a bond is a violation of a condition upon which the permit is issued.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

## 460:30-4-3. Definitions

As used in this Subchapter, the following terms, which describe types of performance bonds allowed by the Department, have these specified meanings, except where otherwise indicated:

**"Collateral bond"** means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the Department of one or more of the following:

(A) A cash account, which shall be the deposit of cash in one or more federally insured or equivalently protected accounts, payable only to the Department upon demand, or the deposit of cash directly with the Department;

(B) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the Department;

(C) Negotiable certificates of deposit made payable or assigned to the Department and placed in its possession;

(D) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the Department upon presentation;

(E) A perfected, first-lien security interest in real property in favor of the Department; or

(F) Other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the Department.

**"Self-bond"** means an indemnity agreement in a sum certain executed by the permittee and the parent company guarantor and made payable to the Department, with or without separate surety.

**"Surety bond"** means an indemnity agreement in a sum certain payable to the Department, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the State where the operation is located.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11; Amended at 39 Ok Reg 2040, eff 9-11-22]

## 460:30-4-4. Requirement to file a bond

(a) After a permit application under has been approved, but before a permit is issued, the applicant shall file with the Department, on a form prescribed and furnished by the Department, a bond or bonds for performance made payable to the Department and conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit, and the reclamation plan.

(b) **Coverage.**

(1) The bond or bonds shall cover the entire permit area, or an identifiedincrement of land within the permit area upon which the operator will initiate and conduct CCB operations during the initial term of the permit.

(2) As CCB operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file with the Department an additional bond or bonds to cover such increments in accordance with this Section.

(3) The operator shall identity the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application (under Subchapters 27 and 31 of this Chapter), and shall specify the bond amount to be provided for each area or increment.

(4) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the Department become necessary pursuant to Section 460:30-4-16 of this Subchapter.

(c) An operator shall not disturb any surface areas, succeeding increments, or extend any operations prior to acceptance by the Department of the required performance bond.

(d) The applicant shall file, with the approval of the Department, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in accordance with Section 460:30-4-7:

(1) A performance bond or bonds for the entire permit area;

(2) A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; o r

(3) An incremental-bond schedule and the performance bond required for the first increment in the schedule.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-4-5. Form of the performance bond [REVOKED]

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11; Revoked at 39 Ok Reg 2040, eff 9-11-22]

### 460:30-4-6. Period of liability

(a) **Bond liability.**

(1) Performance bond liability shall be for the duration of the CCB operation and for a period which is coincident with the operator's period of extended responsibility. For permits issued after July 1, 2011, the liability period is a minimum of five years.

(2) With the approval of the Department, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under Sections 460:30-4-7 and 460:30-4-8 of this Subchapter. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

(b) Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the Department. Such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the Department.

(c) If the Department approves a long-term, intensive agricultural postmining land use, in accordance with this Chapter, the applicable 5-year period of liability shall commence at the date of initial planting for such long-term agricultural use.(For permits issued after July 1, 2011, only.)

(d) **Bond liability obligation.**

(1) The bond liability of the permittee shall include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the

approved postmining land use.

(2) Implementation of an alternative approved postmining land use which is beyond the control of the permittee, need not be covered by the bond.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-4-7. Determination of bond amount

(a) The amount of the bond required for each bonded area shall:

(1) Be determined by the Department;

(2) Depend upon the requirements of the approved permit and reclamation plan;

(3) Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and

(4) Be based on, but not limited to, the estimated cost submitted by the permit applicant.

(b) The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Department in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than 10,000.00 thousand dollars.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-4-8. Adjustment of amount

(a) The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond shall be adjusted by the Department from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The Department may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

(b) The Department shall:

(1) Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under Section 460:30-4-12(f) of this Subchapter of any proposed adjustment to the bond amount; and

(2) Provide the permittee an opportunity for an informal conference on the adjustment.

(c) A permittee may request reduction of the amount of the performance bond upon submission of evidence to the Department proving that the permittee's method of operation or other circumstances reduces the estimated cost for the Department to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of Section 460:30-4-15 of this Chapter.

(d) In the event that an approved permit is revised in accordance with this Chapter, the Department shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-4-9. General terms and conditions of bond

(a) The performance bond shall be in an amount determined by the Department as provided in Section 460:30-4-7.

(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 Act, these Regulations, the regulatory program, and the

approved permit, including completion of the reclamation plan.
(d) The duration of the bond shall be for the time period provided in Section 460:30-4-6 (e)of this Subchapter.

(1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the Department and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(2) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the Department. The Department, upon notification received through the procedures of (e)(1) of this Section or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease CCB placement and shall comply with the provisions of Section of the approved permit and this Chapter and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. CCB operations shall not resume until the Department has determined that an acceptable bond has been posted.

(c) **Bond forfeiture.** The Department shall take action to forfeit a bond pursuant to this Section, if 30 days prior to bond expiration, the operator has not filed:

(1) A performance bond for a new term as required for continuous coverage, or

(2) A performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-4-11. Surety bonds

(a) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the State where the operation is located.
(b) Surety bonds shall be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be cancelled with the prior consent of the Department. The Department shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-4-12. Collateral bonds

(a) Collateral bonds, except for letters of credit, cash accounts, and real property, shall be subject to the following conditions:

(1) The Department shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in this Subchapter.

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

(3) The Department shall require that certificates of deposit be made payable to or assigned to the Department, both in writing and upon the records of the bank issuing the certificates. If assigned, the Department shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates.

(4) The Department shall not accept an individual certificate of deposit in an amount in excess of 100,000.00 dollars or the maximum insurable amount as determined by the Federal deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
(5) The Department shall only accept automatically renewable certificates of deposit.

(b) Letters of credit shall be subject to the following conditions:
(1) The letter may be issued only by a bank organized or authorized to do business in the United States;
(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the Department if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date.
(3) The letter of credit shall be payable to the Department upon demand, in part or in full, upon receipt from the Department of a notice of forfeiture issued in accordance with Section 460:30-4-16 of this Subchapter.

(c) Real property posted as a collateral bond shall meet the following conditions:
(1) The applicant shall grant the Department a first mortgage, first deed of trust, or perfected first lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under Section 460:30-4-16 of this Subchapter.
(2) In order for the Department to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant shall submit a schedule of the real property which shall be mortgaged or pledged to secure the obligations under the indemnity agreement. The list shall include:
(A) A description of the property;
(B) The fair market value as determined by an independent appraisal conducted by a certified appraiser; and
(C) Proof of possession and title to unencumbered real property.
(3) The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this Section shall not be disturbed under any permit while it is serving as security under this Section.

(d) Cash accounts shall be subject to the following conditions:
(1) The Department may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to or deposited directly with, the Department. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with Section 460:30-4-15 of this Subchapter.
(2) Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the Department has approved the payment of interest to the operator.excess of 100,000.00 dollars or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
(3) Certificates of deposit may be substituted for a cash account with the approval of the Department.

(4) The Department shall not accept an individual cash account in the amount in excess of 100,00.00 dollars or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation.

(e) Bond collateral.

(1) The estimated bond value of all collateral posted as assurance under this Section shall be subject to a margin which is the ratio of bond value to market value, as determined by the Department The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the Department to complete reclamation.

(2) The bond value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.

(f) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the Department at the time collateral is offered.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

**460:30-4-13. Self-bonding**

(a) As used in this Section, the following terms have specified meanings, except where otherwise indicated:

(1) **"Current assets"** means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within 1 year or within the normal operating cycle of the business.

(2) **"Current liabilities"** means obligations which are reasonably expected to be paid or liquidated within 1 year or within the normal operating cycle of the business.

(3) **"Fixed assets"** means plants and equipment, but does not include land.

(4) **"Liabilities"** means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

(5) **"Net worth"** means total assets minus total liabilities and is equivalent to owners' equity.

(6) **"Parent corporation"** means a corporation which owns or controls the applicant.

(7) **"Tangible net worth"** means net worth minus intangibles such as goodwill and rights to patents or royalties.

(b) The Department may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:

(1) The applicant designates a suitable agent to receive service of process in the State where the proposed CCB operation is to be conducted.

(2) The applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediately preceding the time of application.

(A) The Department may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least 5 years immediately

proceeding the time of application.

(B) When calculating the period of continuous operation, the Department may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed CCB operations.

(3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(A) The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

(B) The applicant has a tangible net worth of at least 10 million dollars, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

(C) The applicant's fixed assets in the United States total at least 20 million dollars, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

(4) The applicant submits:

(A) Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

(B) Unaudited financial statements for completed quarters in the current fiscal year; and

(C) Additional unaudited information as requested by the Department.

(c) The Department may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of Paragraphs (b)(1)-(b)(4) of this Section as if it were the applicant. Such a written guarantee shall be referred to as a corporate guarantee. The terms of the corporate guarantee shall provide for the following:

(1) If the applicant falls to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the Department sufficient to complete the reclamation plan, but not to exceed the bond amount.

(2) The corporate guarantee shall remain in force un- less the guarantor sends notice of cancellation by certified mail to the applicant and to the Department at least 90 days in advance of the cancellation date, and the Department accepts the cancellation.

(3) The cancellation may be accepted by the Department if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which theself-bond, or portion thereof, was accepted have not been disturbed.

(4) The Department may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of paragraphs (b)(1), (b)(2) and (b)(4) of this Section, and the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this Section. Such a written guarantee shall be referred to as a "non-parent

corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of paragraphs (c)(1)(i) through (c)(1)(iii) of these Section. The Department may require the applicant to submit any information specified in paragraph (b)(3) of this Section in order to determine the financial capabilities of the applicant.

(d) For the Department to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for CCB operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the Department to accept a corporate guarantee the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self bonds for CCB operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States. For the Department to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

(e) If the Department accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally.

(2) Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Department along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

(3) If the applicant is a partnership, joint venture, or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.

(4) Pursuant to Section 460:30-4-16 of this Subchapter, the applicant, parent or non-parent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the Department an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under State Law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

(f) The Department may require self-bonded applicants, parent and non-parent corporate guarantors to submit an update of the information required under Paragraphs (b)(3) and (b)(4) of this Section within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

(g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant, parent or non-parent corporate guarantor change so that the criteria of (b)(3) and (d) of this Section are not satisfied, the permittee shall notify the Department immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of Section 460:30-4-9(e) of this Subchapter shall apply.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

**460:30-4-14. Replacement of bonds**

(a) The Department may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

(b) The Department shall not release existing performance bonds until the permittee has submitted, and the Department has approved, acceptable replacement performance bonds. Re-placement of a performance bond pursuant to this Section shall not constitute a release of bond under Section 460:30-4-15 of this Chapter.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

**460:30-4-15. Requirement to release performance bonds**

(a) **Bond release application.**

(1) The permittee may file an application with the Department for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the Department in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be established in the regulatory program or identified in the mining and reclamation plan this Chapter and approved by the Department.

(2) Within 30 days after an application for bond release has been filed with the Department, the operator shall submit a copy of an advertisement placed at least once a week for four consecutive weeds in a newspaper of general circulation in the locality of the CCB operation. The advertisement shall be considered part of any bond release application and shall contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan, and the name and address of the Department to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to (f) and (h) of this Section. In addition, as part of any bond release application, the applicant shall submit copies of letters which he or she has sent to adjoining property owners, surface owners, local governmental bodies, planning agencies, sewage and water treatment-authorities, and water companies in the locality in which the CCB operation took place, notifying them of the intention to seek release from the bond.

(3) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of 45 O.S. Section 1.5 et seq., this Chapter, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

(b) **Department inspections.**

(1) Upon receipt of the bond release application, the Department shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such

pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the Department in making the bond release inspection. The Department may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to (f) of this Section, or, within 30 days after a public hearing has been held pursuant to (f) of this Section, the Department shall notify in writing the permittee, the surety, or other persons with an interest in bond collateral who have requested notification under Section 460:30-4-12(f) of this Subchapter, and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

(c) **Bond release.** The Department may release all or part of the bond for the entire permit area or incremental area if the Department is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II, and III:

(1) At the completion of Phase I, after the operator completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area.

(2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond may be released. When determining the amount of bond to be released after successful revegetation has been established, the Department shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements set by the approved permit and by the program performance standards. Where a silt dam is to be retained as a permanent impoundment, the Phase II portion of the bond may be released under this Paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the Department.

(3) At the completion of Phase III, after the operator has successfully completed all CCB activities and reclamation, the remaining portion of the bond may be released. For permits issued after July 1, 2011, this final release can not occur prior to the expiration of a five year liability period.

(d) **Disapproval.** If the Department disapproves the application for release of the bond or portion thereof, the Department shall notify the permittee, the surety, and any person with an interest in collateral as provided for in Section 460:30-4-12(f) of this Subchapter, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(e) **Notification.** When any application for total or partial bond release is filed with the Department, the Department shall notify the municipality or county in which the CCB operation is located by certified mail at least 30 days prior to the release of all or portion of the bond.
(f) **Hearing.** Any person with a valid legal interest which might be adversely affected by release of bond, or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the Department within 30 days after the last publication of the notice required by Paragraph (a)(2) of this Section. If written objections are filed and a hearing is requested, the Department shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date, time, and location of the public hearing shall be advertised by the Department in a newspaper of general circulation in the locality for 2 consecutive weeks. The public hearing shall be held in the locality of the CCB operation from which bond release is sought, at the location of the Department Field office, or at the State Office in Oklahoma City, at the option of the objector.
(g) **Authority.** For the purpose of the hearing under (f) of this Section, the Department shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other CCB operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the Department.
(h) **Informal conference.** Without prejudice to the right of an objector or the applicant, the Department may hold an informal conference as provided in 45 O.S. Section 1.5 et seq., and this Chapter to resolve such written objections. The Department shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The Department shall also furnish all parties of the informal conference with a written finding of the Department based on the informal conference, and the reasons for said finding.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-4-16. Forfeiture of bonds

(a) If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the Department shall take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

(1) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited.

(2) Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to:

(A) Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule

which meets the conditions of the permit, the reclamation plan, and the regulatory program and a demonstration that such party has the ability to satisfy the conditions; or

(B) The Department may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the Department may approve partial release authorized under Section 460:30-4-15 of this Subchapter, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including the applicable liability periods of Section 460:30-4-6 of this Subchapter.

(b) In the event forfeiture of the bond is required by this Section, the Department shall:

(1) Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the Department, or if such appeal, if taken, is unsuccessful.

(2) Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

(c) Upon default, the Department may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Unless specifically limited, as provided in Section 460:30-4-4(b) of this Subchapter, bond liability shall extend to the entire permit area under conditions of forfeiture.

(d) **Event of forfeiture.**

(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The Department may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the Department to the party from whom they were collected.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

## SUBCHAPTER 5. PERFORMANCE STANDARDS

### 460:30-5-1. Scope

This Subchapter sets forth the minimum environmental protection performance standards to be adopted and implemented under this Chapter for mining permits that include CCB placement as part of its reclamation plan.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-2. Objectives

This Subchapter is intended to ensure that all CCB placement operations are conducted in a manner which preserves environmental and other values.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

**460:30-5-3. Signs and markers**

(a) Signs and markers shall:

(1) Be posted and maintained by the person who conducts mining that includes CCB placement as part of its reclamation plan.

(2) Be made of durable materials.

(3) Be of a uniform design that can be easily seen and read.

(4) Be maintained during the life of the operations and until release of all performance bonds.

(b) Permit identification signs shall:

(1) Be posted at each point of access to the mining permit area from public roads.

(2) Show the name, business address, mining permit number, and telephone number of the person conducting CCB placement operations.

(c) Perimeter markers of the mining permit area shall be clearly marked before any disturbance takes place on the permitted mining area and during the life of the mining permit.

(d) Buffer zones, if required by this Chapter or other applicable regulations shall be maintained along their applicable boundaries.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

**460:30-5-4. Management of drilled holes**

All holes drilled in conjunction with environmental resources data collection that are not being utilized as monitoring wells shall be adequately plugged to prevent surface contamination of or cross-communication between aquifers in a manner to be prescribed by the Department.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

**460:30-5-5. Topsoil and subsoil**

(a) Topsoil encountered during CCB placement operations shall be salvaged and stored for reclamation of the CCB placement area prior to surface disturbance of the affected area.

(b) Where topsoil is unavailable or of poor quality, subsoil or other materials approved by the Department shall be segregated and stored for final closure of the mining permit, including CCB placement, area.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

**460:30-5-6. Hydrologic balance protection: General**

(a) CCB placement and reclamation operations shall be conducted in a manner that minimizes diminution of quantity and quality of surface and ground water.

(b) CCB shall not be placed in artesian waters or over springs.

(c) CCB may not be placed within 8 feet of the water table, unless the Department approves placement within 8 feet based upon a demonstration that groundwater contamination will not occur.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03; Amended at 28 Ok Reg 2371, eff 9-11-11]

**460:30-5-7. Flood-prone areas**

CCB shall not be placed in areas identified within 100-year flood plain areas as described in maps published by the United States Geological Survey in cooperation with the U.S. Department of Housing and Urban Development unless

engineered to allow for the area to be excluded from the 100-year flood plain area. These areas are subject to Departmental approval.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-8. Hydrologic balance: Effluent limitations

Other provisions of these Regulations notwithstanding, the permittee shall conduct mining and CCB placement operations in a manner that complies with effluent discharge standards contained in the permittee's National Pollutant Discharge Elimination System permit, if required by the United States Environmental Protection Agency, or its equivalent State enforcement agency; and the discharge standards specified at 40 CFR Part 425-699.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-9. Hydrologic balance: Sediment control measures

CCB placement and reclamation operations shall be conducted in a manner that minimizes erosion and retains sediment on the mining permit area, using the best available control technology. Sediment control measures may include, but not be limited to construction of diversions, sedimentation ponds, and vegetative buffer zones around affected areas.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-10. Hydrologic balance: Diversions

Diversions shall be constructed in a workmanlike manner that minimizes contribution of suspended solids to surface water flow outside the mining permit area. Permanent diversions shall be constructed at a minimum with a permanent and stable vegetative cover. Alternative designs may be approved by the Department on a case-by-case basis.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-11. Hydrologic balance: Monitoring

(a) **General.** The permittee shall maintain records of surface and ground water monitoring for inspection. Reports shall include the date and location of sample, depth, if applicable, and the analytical results of each sample taken during the reporting period. These reports shall be submitted to the Department within 28 days of the end of each reporting period as required throughout the life of the permit.

(1) Water monitoring on permitted areas that are permitted to accept the placement of CCB shall be conducted according to the following monitoring frequency schedule:

(A) All sites shall conduct water monitoring on an annual basis as prescribed by Section 30-3-8.

(B) All sites shall conduct water monitoring on a semi-annual basis as prescribed in Section 30-3-8 during active CCB placement.

(C) All sites that have never accepted CCB shall only conduct water monitoring on an annual basis as prescribed in Section 30-3-8.

(2) The Department may require additional monitoring when necessary.

(3) Monitoring shall be conducted until release of all performance bonds.

(4) The permittee may apply to the Department for a reduction of water monitoring requirements if the permittee can affirmatively demonstrate that CCB placement operations are not causing adverse impact on the quantity or quality of surface and ground water resources.

(5) Upon review of Water Monitoring Reports, the Department may require additional analysis.

(b) **Surface water.** Surface water monitoring shall be conducted according to the surface water monitoring plan in the CCB permit application approved at Section 30-3-8 of this Chapter.

(c) **Ground water.** Ground water monitoring shall be conducted according to the ground water monitoring plan in the CCB operations application approved at Section 30-3-8 of this Chapter.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03; Amended at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-5-12. Hydrologic balance: Wetlands

All CCB placement operations shall be conducted in a manner that minimizes disturbance of wetlands existing prior to permit issuance. Operations shall comply with applicable requirements of Section 404 of the Clean Water Act (33 U.S.C. Sec. 1251 et. seq.) as prescribed by the State or Federal agency charged with the implementation of wetlands protection, and any wetlands protection permits required by that agency.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-13. Hydrologic balance: Impoundments

Permanent impoundments may be left on mining permit areas provided the impoundment is not:

(1) In contact with CCB.

(2) Impounding water of such quality that it is incompatible with intended post-placement use.

(3) Constructed in a manner that causes erosion.

(4) Resulting in diminution in quantity or quality of water received downstream off the mining permit area.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-14. CCB placement: General requirements

(a) CCB shall be placed in a manner that minimizes damage to air, water, soil, and biological resources as well as damage to human health and private property.

(b) CCB shall be placed below the surface elevation of pre-existing, undisturbedground in excavations that are the result of coal or non-coal mining, or other such configurations as may be approved by the Department.

(c) CCB shall not be placed within 100 feet of an intermittent or perennial stream.

(d) CCB shall not be placed within 300 feet downgradient of a public or private groundwater source.

(e) CCB shall not be placed within 1,000 feet upgradient of a public or private groundwater source, except that the Department may waive or modify these isolation distances if the person demonstrates and the Department finds, in writing, that the following conditions have been met.

(1) The owners of the public or private water sources in the isolation area have consented, in writing, to the location of the proposed CCB placement area.

(2) The person storing CCB and each water source owner have agreed, in writing, that the person storing CCB will construct and maintain at the CCB operator's expense a permanent alternative water supply of like quantity and quality at no additional cost to the water source owner if the existing source

is adversely affected by the CCB placement area.

(3) The person storing CCB has demonstrated that a replacement water source is technically and economically feasible and readily available for every public or private water source in the isolation area.

(f) CCB shall not be placed within 100 feet of a property line, unless the current owner has provided a written consent to the CCB placement area being closer than 100 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03; Amended at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-5-15. CCB placement: Fugitive dust control

(a) CCB placement shall be conducted in a manner that minimizes fugitive dust production, using the best available control technology. This may include, but not be limited to use of water sprays, limiting amount placed at any one time, limiting placing during windy conditions, and use of surfactant, if approved by the Department.

(b) The requirements of this Chapter notwithstanding, the permittee shall conduct CCB placement operations in a manner consistent with any air quality permit required under the Oklahoma Clean Air Act (63 O.S. Sec. 1-1801).

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-16. CCB placement: Intermediate cover

The exposed CCB surface on the mining permit area shall be stabilized during CCB placement operations to prevent wind and water erosion, and subsequent transport off the mining permit area. This may be accomplished through application of water or earthen materials. Chemical stabilizers or other substances may be used, if approved by the Department.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-17. Hazardous and solid wastes

This Chapter notwithstanding, the permittee shall not dispose or place solid wastes nor hazardous wastes on the mining permit area without first complying with the requirements of the Resource Conservation and Recovery Act (42 U.S.C. 6901 et. Seq.) and any implementing regulations. Only the CCB, as set forth in the mining permit issued by the Department, shall be placed on the permitted area.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-18. Reclamation: General requirements

Reclamation shall be conducted contemporaneously with CCB placement when feasible to reduce the area of exposed CCB. When CCB placement is completed, reclamation shall commence at the earliest practicable time. Final grading and placement of final cover shall be completed within one year of completion of CCB placement.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-19. Reclamation: Final cover

(a) Upon completion of CCB placement, a final capping of natural, non-toxic, and non-acidic earthen material shall be placed over the final graded CCB surface. The final capping shall be a minimum of one and one-half (1.5) feet thick, not including topsoil cover above the capping material. The Department may require a thicker

final capping prior to distribution of topsoil or other suitable material as approved by the Department, depending upon its review of the mining permit application.
(b) A minimum of six (6) inches of topsoil or other suitable material as approved by the Department shall be placed over the final capping material to support a permanent vegetative cover over the area affected by CCB placement.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-20. Reclamation: Slope stability

CCB placement areas shall be graded to slopes not exceeding twenty-five percent (4:1). Other slopes which demonstrate achievable slope stability through recognized and accepted engineering practices may be approved by the Department.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-21. Reclamation: Revegetation

The permittee shall establish a permanent vegetative cover capable of resisting erosion without subsequent irrigation, fertilization, or other maintenance. Species planted shall be consistent with climatic, soil, and land uses in the general area of the mining permit area.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-22. Cessation of operations: Temporary

If no CCB is placed on site for 180 consecutive days and the permittee decides to temporarily cease CCB placement operations, the permittee shall petition the Department for temporary cessation status. Permittees in temporary cessation status shall adhere to the semi-annual water monitoring plan as prescribed in Section 30-3-8.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-23. Roads

Access roads utilized within the mining permit area shall be maintained in a manners that:

(1) Minimizes production of fugitive dust, and

(2) Minimizes contribution of suspended solids to surface water runoff.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-24. Utility installations

CCB placement and reclamation operations shall be conducted in a manner that avoids disruption to utility services including, but not limited to telephone, water, sewer, electricity, and oil and gas pipelines.

[**Source:** Added at 20 Ok Reg 2819, eff 8-26-03]

### 460:30-5-25. CCB Placement Reporting

Quarterly reports shall be submitted to the Department specifying the amount of CCB placed at the site the previous quarter. These reports shall be submitted to the Department within 28 days of the end of each reporting period as required throughout the life of the permit.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

## SUBCHAPTER 6. STATE INSPECTIONS

### 460:30-6-1. Scope

This Subchapter sets forth general procedures governing State inspections of CCB operations. This Subchapter does not apply to Cement Kiln Dust operations.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-6-2. State inspections and monitoring

(a) The Department shall conduct an average of at least one partial inspection per month of each active CCB placement operation under its jurisdiction, and shall conduct such partial inspections of each inactive or in reclamation CCB operation under its jurisdiction as are necessary to ensure effective enforcement of the State program. A partial inspection is an onsite review of an operator's compliance with some of the permit conditions and requirements imposed under the State program.
(b) The Department shall conduct an average of at least one complete inspection per calendar quarter of each CCB operation under its jurisdiction. A complete inspection is an on site review of an operator's compliance with all permit conditions and requirements imposed under this Subchapter within the entire area disturbed or affected by the CCB operations.
(c) The Department shall conduct such inspections of CCB operations as are necessary to ensure compliance with this Subchapter and all other applicable regulations.
(d) The inspections required under (a), (b), and (c) 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 permittee or any agent or employee of such permittee, except for necessary on-site meetings; and inspection was conducted, an explanation of the reason why and;
(3) Include the prompt filing of inspection reports adequate to enforce the requirements of this Subchapter.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-6-3. Citizens' request for State inspections

(a) A person 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 telephone number and address where the person can be contacted.
(b) The identity of any person supplying information to the Department relating to a possible violation or imminent danger or harm shall remain confidential with the Department, if requested by that person, unless otherwise required by law or unless disclosure is required under law.
(c) If a State inspection is conducted as a result of information provided to the Department by a person as described in (a) of this Section, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Director during the inspection. Such person has the right of entry to, upon and through the CCB operation about which he or she supplied information, but only if he or she is in the

presence of and is under the control, direction, and supervision of the authorized representative while on the CCB property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.
(d) Within ten days of the State inspection, or, if there is no inspection, within fifteen days of receipt of the person's written statement, the Department shall send the person the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the State inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;
(2) If no State inspection was conducted, an explanation of the reason why and;
(3) An explanation of the person's right if any, to informal review of the action or inaction of the Department under Section 460:30-6-6 of this Subchapter.

(e) The Department shall give copies of all materials in paragraphs (d) (1) and (2) of this Section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of his or her identity is permitted under (b) of this Section.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-6-4. Right of entry

(a) Each authorized representative of the Director conducting a State inspection pursuant to 45 O.S. Section 1.5 et seq. and this Chapter:

(1) Shall have a right of entry to, upon, and through any CCB operation without advance notice or a search warrant, upon presentation of appropriate credentials;
(2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under the applicable program; and
(3) Shall have a right to gather physical and photographic evidence to document conditions, practices, or violations at the site.

(b) No search warrant shall be required with respect to any activity under (a) of this Section, except that a search warrant may be required for entry into a building.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-6-5. Review of adequacy and completeness of inspections

Any person who is or may be adversely affected by a CCB operation may notify the Director in writing of any alleged failure on the part of the Department to make adequate and complete or periodic inspections. The notification shall include sufficient information to create a reasonable belief that the regulations of this part are not being complied with and to demonstrate that the person is or may be adversely affected. The Director shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The Director shall furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-6-6. Review of decision not to inspect or enforce

(a) Any person who is or may be adversely affected by a CCB operation may request the Department to review informally an authorized representative's decision not to inspect or take the appropriate enforcement action with respect to any violation alleged by that person in request for a State inspection under section 460:30-6-3 of this Subchapter. 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 Department shall conduct the review in accordance with the applicable Rules of Practice and Procedure and inform the adversely affected person, in writing, of the review results within 30 days from the receipt of the request, unless said time-frame has been waived by that person. The operator alleged to be in violation shall also be given a copy of the results of the review, except the name of the affected person shall not be disclosed, in the result copy, unless confidentiality was not requested pursuant to 460:30-6-3(b) of this Subchapter, or if disclosure of that person is required by law.
(c) If the person requesting the informal review withdraws the request before the review is held, the informal review may be canceled.
(d) Informal review under this Section shall not affect any right to formal review.
(e) Any determination made under (b) of this Section shall constitute a decision of the Department.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-6-7. Availability of records

(a) Copies of all records, reports, inspection materials, or information obtained by the Department under 45 O.S. Section 1.5 et seq., this Chapter, or Sections 460:30-6-3 of the Subchapter shall be made available to the public in the area of the CCB operation until at least five years after expiration of the period during which the subject operation is active or covered by any portion of a reclamation bond.
(b) The Department shall ensure compliance with (a) of this Section by either:

(1) Making copies of all such records, reports, inspection materials, and other information available for public inspection at a State office in the county where the CCB operation is occurring or is proposed to occur; or by proper arrangement in the county where the CCB operation is or will be located.

(2) At the Department's option and expense, providing copies of such information promptly by mail at the request of any resident of the area where the CCB operation is occurring or is proposed to occur.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

## SUBCHAPTER 7. STATE ENFORCEMENT

### 460:30-7-1. Scope

This Subchapter sets forth general rules regarding enforcement by the Department of the 45 O. S. Section 1.5 et seq, this Chapter, and all conditions of permits imposed under this Chapter, and all other applicable state laws and regulations. This Subchapter does not apply to Cement Kiln Dust operations.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

**460:30-7-2. Definitions**

As used in this Subchapter, the following term has this specified meaning:

**"Unwarranted failure to comply"** means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of this Chapter or 45 O.S. Section 1.5 et seq., due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or state law due to indifference, lack of diligence, or lack of reasonable care.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

**460:30-7-3. Cessation orders**

(a) **An order of cessation**:

(1) The Director or his or her authorized representative shall immediately order a cessation of CCB operation or of the relevant portion thereof, if he or she finds, on the basis of any inspection, any condition or practice, or any violation of this Chapter, any other applicable program or state law, or any condition of a permit imposed under any state program or law, 45 O.S. Section 1.5 et seq., or this Chapter which:

(A) Creates an imminent danger to the health or safety of the public; or

(B) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) CCB operations conducted by any person without a valid CCB permit constitutes a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted CCB operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

(3) If the cessation ordered under paragraph (a)(1) of 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 permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(b) **A notice of violation.**

(1) When a notice of violation has been issued under a section of this Subchapter and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Department shall immediately order a cessation of CCB operations, or of the portion relevant to the violation.

(2) A cessation order issued under this Subsection shall require the permittee to take all steps the authorized representative of the Department deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this Section shall be in writing, signed by the Director or his or her authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the condition, practice, or violation;

(2) The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;
(3) The time established for abatement if appropriate; and
(4) A reasonable description of the portion of the CCB operation to which it applies. The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified, or terminated in writing by the Director or his or her authorized representative, or until the order expires pursuant to 45 O.S. Section 1.5 et seq., or an by an order of the Department pursuant to this Subchapter.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.
(e) The Director or his or her 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 previously set was not caused by lack of diligence on the part of the permittee.
(f) The Director or an authorized representative shall terminate a cessation order by written notice to the permittee, when he or she determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the Department to assess penalties for those violations under this Chapter.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

**460:30-7-4. Notices of violations**

(a) The Director or his or her authorized representative shall issue a notice of violation if, on the basis of a inspection he or she finds a violation of 45 O.S. Section 1.5 et seq., this Subchapter, or any condition of a permit or exploration approval imposed pursuant to 45 O.S. Section 1.5 et seq., or this Chapter, which does not create an imminent danger or harm for which a cessation order must be issued under Section 460:30-7-3.
(b) A notice of violation issued under this Section shall be in writing and signed by the authorized representative who issues it, 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 replacement of interim steps; and
(4) A reasonable description of the portion of the CCB 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 permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in (f) of this Section. An extended abatement date pursuant to this Section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.
(d) The following steps shall be taken:

(1) If the permittee fails to meet the time set for abatement, the authorized representative shall issue a cessation order under Section 460:30-7(b).
(2) If the permittee fails to meet the time set for accomplishment of any interim step the authorized representative may issue a cessation order under Section 460:30-7-3(b).

(e) The Director or his or her authorized representative shall terminate a notice of violation by written notice to the permittee when he or she determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Department to assess penalties for those violations under Subchapter 8 of this Chapter.

(f) Circumstances which may qualify a CCB operation for an abatement period of more than 90 days are:

(1) Where the permittee of an Oklahoma operation has timely applied for and diligently pursued a permit renewal but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required for reasons not within the control of the permittee;
(2) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit revision which abates an outstanding violation and which includes no other changes to permit design or plans, but such revision approval has not or will not be issued within 90 days for reasons not within the control of the permittee;
(3) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;
(4) Where the permittee cannot abate within 90 days due to a labor strike;
(5) Where climate conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or
(6) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the any state or federal health or safety laws.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or to the environment.

(h) If any of the conditions in (f) of this Section exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of (c) and (f) of this Section. In determining whether or not to grant an abatement period exceeding 90 days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reason for his or her concurrence or disapproval in the file.

(i) Any determination made under (h) of this Section shall contain a right of appeal to the Legal Division of the Department of Mines with this Chapter and the

applicable rules of practice and procedures.
(j) No extension granted under (h) of this Section may exceed 90 days in length. Where the conditions or circumstances which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of (h) of this Section.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

**460:30-7-5. Suspension or revocation of permits**

(a) **Show cause order.**

(1) The authorized representative of the Department shall issue an order to a permittee requiring him or her to show cause why his or her permit pursuant to 45 O.S. Section 1.5 et seq., and this Chapter should not be suspended or revoked, if the CCB Program Director determines that a pattern of violations of any requirement of 45 O.S. Section 1.5 et seq., this Chapter, or any permit condition required by the statutes or this Chapter exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting CCB operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage. The authorized representative of the Department shall promptly file a copy of any order to show cause with the Department.

(2) The CCB Program Director may determine that a pattern of violations exists or has existed, based upon two or more inspections of the permit area within any 12-month period, after considering the circumstances, including:

(A) The number of violations cited on more than one occasion, of the same or related requirements of 45 O .S. Section 1.5 et seq., this Chapter, other applicable the applicable laws, or the permit;

(B) The number of violations, cited on more than one occasion, of different requirements of 45 O.S. Section 1.5 et seq., this Chapter, other applicable laws or the permit; and

(C) The extent to which the violations were isolated departures from lawfulconduct.

(3) The CCB Program Director shall promptly review the history of violations of any permittee whohas been cited for violations of the same or related requirements of 45 O.S. Section 1.5 et seq., this Chapter, other applicable laws or the permit during three or more State inspections of the permit area within any 12 month period. If, after such review, the CCB Program Director determines that pattern of violations exists or has existed, he or she shall issue written findings and pursuant to these findings the authorized representative of the Department shall issue an order to show cause as provided in Paragraph (a)(1) of this Section.

(b) If the permittee files an answer to the show cause order and requests a hearing, a public hearing shall be provided as set forth pursuant to the applicable Rules of Practice and Procedure. The Department shall give 30 days written notice of the date, time, and place of the hearing to the Director, the CCB Program Director, the permittee, and any intervener. Upon receipt of a notice, the Department shall publish it, if practicable, in a newspaper of general circulation in the area of the CCB operation, and shall post it at the State or field office closest to those operations.

(c) If the Department revokes or suspends the permit and permittee's rights pursuant to 45 O.S. Section 1.5 et seq., the permittee shall immediately cease CCB operations on the permit area and shall:

(1) If the permit is revoked, complete reclamation within the time specified in the order; or

(2) If the permit is suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

(d) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the CCB Program Director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this Section, and shall issue written findings to the Compliance Manager who shall issue an order to show cause as appropriate pursuant to Section 460:30-8-7(b)(2) of this Chapter.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-7-6. Service of notices of violation, cessation orders, and show-cause orders

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

(1) By tendering a copy at the CCB operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. 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 Paragraph (a) (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 permittee or his or her 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.

(b) Designation by a person or an agent for service of notices and orders shall be made in writing to the Department.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-7-8. Formal review of citations

(a) A person issued a notice of violation or cessation order under Sections 460:30-7-3 or 460:30-7-4 of this Subchapter, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under the applicable Rules of Practice and Procedure, within 30 days after receiving notice of the action.

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

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-7-9. Inability to comply

(a) No cessation order or notice of violation issued under this part may be vacated because of inability to comply.
(b) Inability to comply may not be considered in determining whether a pattern of violations exists.
(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of penalty under Subchapter 8 of this Chapter and of the duration of the suspension of a permit under Section 460:30-7-5 of this Subchapter.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-7-10. Injunction relief

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 other order, in the district court for the district in which the CCB operation is located or in which the operator to whom the notice or order has been issued has his principal office, whenever that operator, or his agent, in violation of 45 O.S. Section 1.5 et seq., this Chapter, or any condition of a CCB permit imposed under the statues or this Chapter:

(1) Violates or fails or refuses to comply with any order or decision of the Department pursuant to 45 O. S. Section 1.5 et seq., or this Chapter;
(2) Interferes with, hinders, or delays the Department in carrying out the provisions of the statues or this Chapter;
(3) Refuses to admit an authorized representative of the Department to an operation;
(4) Refuses to permit inspection of an operation 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 record; or
(7) Refuses to permit inspection of monitoring equipment.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-7-11. Compliance conference

(a) A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any CCB operation. Any such conference shall not constitute an inspection pursuant to 45 O.S., Section 1.5 et. seq., and OAC 460:30-6-2 of this Chapter.
(b) The Department may accept or refuse any request to conduct a compliance conference under (a) of this Section. Where the Department accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.
(c) The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of the statues, or any applicable permit.
(d) Neither the holding of a compliance conference under this Section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the Department or of the permittee with respect to any inspection, notice of violation, or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

## SUBCHAPTER 8. PENALTIES

### 460:30-8-1. Scope

This Subchapter covers the assessment of penalties, pursuant to 45 O.S. Section 1.5 et seq., with respect to cessation orders and notices of violation issued under Subchapter 7 of this Chapter. This Subchapter does not apply to Cement Kiln Dust operations.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-8-2. Objective

Penalties are assessed, pursuant to 45 O.S. Section 1.5 et seq., to deter violations and to ensure maximum compliance with the terms, purposes and permit conditions and this Chapter

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-8-3. Assessments determinations

The Department shall review each notice of violation and cessation order in accordance with the assessment procedures described in Sections 460:30-8-4, 460:30-8-5, 460:30-8-6, 460:30-8-7, and 460:30-8-8 of this Subchapter to determine whether a penalty will be assessed, the amount assessed, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total assessment.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-8-4. Penalty assessments

(a) The Department shall assess a penalty for each cessation order.
(b) The Department shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in Section 460:30-8-5 of this Subchapter.
(c) The Department may assess a penalty for each notice of violation assigned 30 points or less under the point system described in Section 460:30-8-5 of this Subchapter. In determining whether to assess a penalty, the Department shall consider the factors listed in Section 460:30-8-5 of this Subchapter.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-8-5. Point system for assessments

The Department shall use the point system described in this Section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in Section 460:30-8-4(b) of this Subchapter. Points shall be assigned as follows:

(1) **History of previous violations.** The Department shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the

purpose of assigning points, shall be determined and the points assigned with respect to a particular CCB operation. Points shall be assigned as follows:

(A) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only 1 year;

(B) No violation for which the notice or order has been vacated shall be counted; and

(C) Each violation shall be counted without regard to whether it led to a penalty assessment.

(2) **Seriousness.** The Department shall assign up to 30 points based on the seriousness of the violation, as follows:

(A) **Probability of occurrence.** The Department shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

(i) No probability of occurrence = 0 points.

(ii) Insignificant probability of occurrence = 1 to 4 points.

(iii) Unlikely probability of occurrence = 5 to 9 points.

(iv) Likely probability of occurrence = 10 to 14 points.

(v) Occurred = 15 points.

(B) **Extent of potential or actual damage.** The Department shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(i) If the damage or impact which the violated standard is designed to prevent wouldremain within the CCB permit area, the Department shall assign 0 to 7 points, depending on the duration and extent of the damage or impact.

(ii) If the damage or impact which the violated standard is designed to prevent would extend outside the permit area, the Department shall assign 8 to 15 points, depending on the duration and extent of the damage or impact.

(C) **Alternative.** In the case of a violation of an administrative requirement, such as a requirement to keep records, the Department shall, in lieu of (2)(A) and (B), assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) **Negligence.**

(A) The Department shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(i) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(ii) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(iii) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(B) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(i) No negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(ii) Negligence means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of 45 O.S Section 1.5 et seq., or this Chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the applicable statutes due to indifference, lack of diligence, or lack of reasonable care.

(iii) A greater degree of fault than negligence means reckless, knowing, or intentional conduct.

(C) In calculating points to be assigned for negligence, the acts of all persons working on the CCB permit area shall be attributed to the person to whom thenotice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) **Good faith in attempting to achieve compliance.**

(A) The Department shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

(i) Rapid compliance = minus 1 to minus 10 points.

(ii) Normal comp shortest possible time and that abatement was achieved before the time set liance = 0 points.

(B) The following definitions shall apply under (4) (A) of this Section:

(i) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the for abatement.

(ii) Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(C) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

**460:30-8-6. Determination of amount of penalty**

The Department shall determine the amount of any penalty by converting the total number of points assigned under Section 460:30-8-5 of this Subchapter to a dollar amount, according to the following schedule:

(1) For a penalty of 1 point, the assessment amount will be $20.00 dollars.

(2) For a penalty of 2 points, the assessment amount will be $40.00 dollars.

(3) For a penalty of 3 points, the assessment amount will be $60.00 dollars.

(4) For a penalty of 4 points, the assessment amount will be $80.00 dollars.

(5) For a penalty of 5 points, the assessment amount will be $100.00 dollars.
(6) For a penalty of 6 points, the assessment amount will be $120.00 dollars.
(7) For a penalty of 7 points, the assessment amount will be $140.00 dollars.
(8) For a penalty of 8 points, the assessment amount will be $160.00 dollars.
(9) For a penalty of 9 points, the assessment amount will be $180.00 dollars.
(10) For a penalty of 10 points, the assessment amount will be $200.00 dollars.
(11) For a penalty of 11 points, the assessment amount will be $220.00 dollars.
(12) For a penalty of 12 points, the assessment amount will be $240.00 dollars.
(13) For a penalty of 13 points, the assessment amount will be $260.00 dollars.
(14) For a penalty of 14 points, the assessment amount will be $280.00 dollars.
(15) For a penalty of 15 points, the assessment amount will be $300.00 dollars.
(16) For a penalty of 16 points, the assessment amount will be $320.00 dollars.
(17) For a penalty of 17 points, the assessment amount will be $340.00 dollars.
(18) For a penalty of 18 points, the assessment amount will be $360.00 dollars.
(19) For a penalty of 19 points, the assessment amount will be $380.00 dollars.
(20) For a penalty of 20 points, the assessment amount will be $400.00 dollars.
(21) For a penalty of 21 points, the assessment amount will be $420.00 dollars.
(22) For a penalty of 22 points, the assessment amount will be $440.00 dollars.
(23) For a penalty of 23 points, the assessment amount will be $460.00 dollars.
(24) For a penalty of 24 points, the assessment amount will be $480.00 dollars.
(25) For a penalty of 25 points, the assessment amount will be $500.00 dollars.
(26) For a penalty of 26 points, the assessment amount will be $600.00 dollars.
(27) For a penalty of 27 points, the assessment amount will be $700.00 dollars.
(28) For a penalty of 28 points, the assessment amount will be $800.00 dollars.
(29) For a penalty of 29 points, the assessment amount will be $900.00 dollars.

(30) For a penalty of 30 points, the assessment amount will be $1,000.00 dollars.
(31) For a penalty of 31 points, the assessment amount will be $1,100.00 dollars.
(32) For a penalty of 32 points, the assessment amount will be $1,200.00 dollars.
(33) For a penalty of 33 points, the assessment amount will be $1,300.00 dollars.
(34) For a penalty of 34 points, the assessment amount will be $1,400.00 dollars.
(35) For a penalty of 35 points, the assessment amount will be $1,500.00 dollars.
(36) For a penalty of 36 points, the assessment amount will be $1,600.00 dollars.
(37) For a penalty of 37 points, the assessment amount will be $1,700.00 dollars.
(38) For a penalty of 38 points, the assessment amount will be $1,800.00 dollars.
(39) For a penalty of 39 points, the assessment amount will be $1,900.00 dollars.
(40) For a penalty of 40 points, the assessment amount will be $2,000.00 dollars.
(41) For a penalty of 41 points, the assessment amount will be $2,100.00 dollars.
(42) For a penalty of 42 points, the assessment amount will be $2,200.00 dollars.
(43) For a penalty of 43 points, the assessment amount will be $2,300.00 dollars.
(44) For a penalty of 44 points, the assessment amount will be $2,400.00 dollars.
(45) For a penalty of 45 points, the assessment amount will be $2,500.00 dollars.
(46) For a penalty of 46 points, the assessment amount will be $2,600.00 dollars.
(47) For a penalty of 47 points, the assessment amount will be $2,700.00 dollars.
(48) For a penalty of 48 points, the assessment amount will be $2,800.00 dollars.
(49) For a penalty of 49 points, the assessment amount will be $2,900.00 dollars.
(50) For a penalty of 50 points, the assessment amount will be $3,000.00 dollars.
(51) For a penalty of 51 points, the assessment amount will be $3,100.00 dollars.
(52) For a penalty of 52 points, the assessment amount will be $3,200.00 dollars.
(53) For a penalty of 53 points, the assessment amount will be $3,300.00 dollars.
(54) For a penalty of 54 points, the assessment amount will be $3,400.00 dollars.

(55) For a penalty of 55 points, the assessment amount will be $3,500.00 dollars.
(56) For a penalty of 56 points, the assessment amount will be $3,600.00 dollars.
(57) For a penalty of 57 points, the assessment amount will be $3,700.00 dollars.
(58) For a penalty of 58 points, the assessment amount will be $3,800.00 dollars.
(59) For a penalty of 59 points, the assessment amount will be $3,900.00 dollars.
(60) For a penalty of 60 points, the assessment amount will be $4,000.00 dollars.
(61) For a penalty of 61 points, the assessment amount will be $4,100.00 dollars.
(62) For a penalty of 62 points, the assessment amount will be $4,200.00 dollars.
(63) For a penalty of 63 points, the assessment amount will be $4,300.00 dollars.
(64) For a penalty of 64 points, the assessment amount will be $4,400.00 dollars.
(65) For a penalty of 65 points, the assessment amount will be $4,500.00 dollars.
(66) For a penalty of 66 points, the assessment amount will be $4,600.00 dollars.
(67) For a penalty of 67 points, the assessment amount will be $4,700.00 dollars.
(68) For a penalty of 68 points, the assessment amount will be $4,800.00 dollars.
(69) For a penalty of 69 points, the assessment amount will be $4,900.00 dollars.
(70) For a penalty of 70 points and above, the assessment will be $5,000.00 dollars.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

**460:30-8-7. Assessment of separate violations for each day**

(a) The Department may assess separately a penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Department shall consider the factors listed in Section 460:30-8-5 of this Subchapter may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for 2 or more days and which is assigned more than 70 points under Section 460:30-8-5 of this Subchapter, the Department shall assess a penalty for a minimum of 2 separate days.

(b) In addition to the penalty provided for in (a), whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to 45 O.S. Section 1.5 et seq., a penalty of not less than 750.00 dollars shall be assessed for each day during which such failure to abate continues, except that:

(1) Time continuation for finalization

(A) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under 45 O.S. Section 1.5 et seq., after a determination that theperson to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Department issues a final order with respect to the violation in question; and
(B) If the person to whom the notice or order was issued initiates review proceedings under 45 O.S. Section 1.5 et seq., with respect to the violations, in which the obligations to abate are suspended by the court pursuant to 45 O.S. Section 1.5 et seq., the daily assessment of a penalty shall not be made for any period before entry of a final order by the court;

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30-day period, the Department shall take appropriate action pursuant to 45 O.S.Section 1.5 et seq., within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

**460:30-8-8. Waiver of use of formula to determine assessment amount**

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in Section 460:30-8-5 of this Subchapter to set the penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the statutes, this Chapter, or any condition of any permit. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in Section 460:30-8-5 of this Subchapter to determine the appropriate penalty. When the Department has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person whom the notice or order was issued.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

**460:30-8-9. Procedures for the assessment of penalties**

(a) Within 15 days of service of notice or order, the person to whom it was issued may submit written information about the violation to the Department and to the inspector who issued the notice of violation or cessation order. The Department shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Department shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, within 30 days of the issuance of the notice or order.

(1) If the mail is tendered at the address of that person set forth in the sign required under Section 460:30-5-3 of this Chapter, or at any address at which that person is in fact located, and he or she refuses to accept delivery

of or to collect such mail, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(2) Failure by the Department to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed:

(A) Proves actual prejudice as a result of the delay; and

(B) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

(c) Unless a conference has been requested, the Department shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Department shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in (b) of this Section, within 30 days after the date the violation is abated.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

**460:30-8-10. Procedures for assessment conference**

(a) The Department shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is mailed.

(b) **Assessment conference.**

(1) The Department shall assign a Conference Officer to hold the assessment conference. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the original abatement period, whichever is later, provided that a failure by the Department to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The Department shall post notice of the time and place of the conference at the State office or field office closest to the CCB permit at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The Conference Officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the Conference Officer shall either:

(A) Settle the issues, in which case a settlement agreement shall be prepared and signed by the Conference Officer on behalf of the Department and by the person assessed; or

(B) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed penalty assessment of more than 25 percent and more than 500.00 dollars shall not be final and binding, until approved by the Director.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in Section 460:30-8-9 (b) of this Chapter and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d) **Settlement agreements.**

(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.
(2) If full payment of the amount specified in the settlement agreement is not received by the Department within 30 days after the date of signing, the Department may enforce the agreement or rescind it and proceed according to (b)(3)(B) of this Section within 30 days from the date of the rescission.

(e) The Conference Officer may terminate the conference when he or she determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.
(f) At formal review proceedings under 45 O.S. Section 1.5 et seq., no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-8-11. Request for hearing

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Department, to be held in escrow as provided in (b) of this Section, within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the Conference Officer's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under Section 460:30-7-8 of this Chapter.
(b) All funds submitted under (a) of this Section to the Department, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in Section 460:30-8-12 of this Subchapter.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

### 460:30-8-12. Final assessment and payment of penalty

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in Section 460:30-8-11 of this Subchapter, the proposed assessment shall become a final order of the Director and the penalty assessed shall become due and payable upon expiration of the time allowed to request said hearing.
(b) If any party requests judicial review of a final order of the Director, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this Section, the escrowed funds shall be transferred to the Department in payment of the penalty, and the escrow shall end.
(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this Subchapter, the Department shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.
(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Department within 15 days after the order is mailed to such person.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]

## 460:30-8-13. Use of collected penalties for reclamation

(a) The Director may utilize money collected by the State of Oklahoma pursuant to the assessment of penalties for reclamation of lands adversely affected by CCB operations.

(b) The Director may allocate funds at his discretion for reclamation projects on lands within the State based on the following priorities.

(1) Bond forfeiture sites with imminent environmental harm.

(2) All other State bond forfeiture sites.

(c) Notwithstanding paragraph (b) of this section, at his or her discretion, the Director may allocate funds for any other reclamation project which constitutes a danger to the environment or to the public health and safety.

[**Source:** Added at 28 Ok Reg 2371, eff 9-11-11]