

Volume 28
Number 24
September 1, 2011
Pages 2351 - 2396

The Oklahoma Register

Oklahoma
Secretary of State
Office of Administrative Rules



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Secretary of State
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INFORMATION ABOUT THIS PUBLICATION may be obtained by contacting the OAR by mail at Oklahoma Secretary of State, Office of Administrative Rules, 2300 North Lincoln Boulevard, Suite 101, Oklahoma City, OK 73105, by phone at (405) 521-4911, or by fax at (405) 522-3555. Information may also be obtained by visiting the OAR's office, located in Room 220, Will Rogers Building, 2401 N. Lincoln Boulevard, Oklahoma City, between 8:00 a.m. and 5:00 p.m., Monday through Friday.

This publication is issued and printed by the Secretary of State as authorized by 75 O.S., Section 255. 57 copies have been prepared and distributed at a cost of \$255.53. Copies have been deposited with the Oklahoma Department of Libraries, Publications Clearinghouse.

ISSN 0030-1728

the information and data involved by an alternative means of access that allows the individual to use the information and data in accordance with other applicable State and Federal laws such as Title I and Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

260:15-1-7. Processing a complaint

- (a) Upon receipt of a complaint, the agency Accessibility Compliance Representative will review the complaint to determine whether the technology listed in the complaint is subject to the IT accessibility standards Accessibility Standards.
- (b) The Accessibility Compliance Representative will send a written notice to the complainant within ten (10) business days, excluding holidays, from the receipt of the written complaint, which will include:
 - (1) a statement indicating whether the technology in question is or is not subject to the IT Accessibility Standards;
 - (2) a statement that the agency will conduct a review to confirm whether the technology in question is non-compliant, if the technology in question has been determined to be subject to the IT Accessibility Standards; and
 - (3) a copy of these complaint procedures.
- (c) The Accessibility Compliance Representative will conduct a review within thirty (30) days from the receipt of the written complaint to determine whether the technology in question is non-compliant. The Information Services Director, Office of State Finance and/or the Electronic and Information Technology Accessibility (EITA) Advisory Council may assist with the review, if necessary.
- (d) Upon completion of the review, the agency shall provide written notice of the results of the review to the complainant, and the Office of State Finance and the EITA Advisory Council, which shall include one of the following:
 - (1) Documentation that the technology conforms to all applicable accessibility standards Standards;
 - (2) A documented explanation that any non conformance with accessibility standards the Standards was exempted due to an exception or undue burden; or
 - (3) An agreement in part or in whole with the written complaint that includes a plan with reasonable timelines for conforming to applicable IT Accessibility Standards.

260:15-1-8. Disagreement with final complaint response

- (a) If a complainant is not satisfied with the final complaint response issued by an agency, a complaint may be refiled with the agency or with the Information Services Director of the Office of State Finance (OSF) and the EITA Advisory Council, ~~or Oklahoma ABLE Tech.~~
- (b) Whenever a complaint is filed with OSF and the EITA Advisory Council pursuant to this section, a review team will convene to review the complaint and the agency response. Members of this team shall include a representative of the IT Services Division of OSF, a representative of the EITA

- ~~Advisory Council Oklahoma ABLE Tech~~ and may include additional members with technical expertise needed to determine conformance with the accessibility standards Standards.
- (c) Written notice of receipt of a complaint pursuant to this section shall be sent to the complainant, within ten (10) business days, excluding holidays, from the date the complaint is filed ~~with either entity.~~
- (d) The review team shall evaluate the complaint and the agency response and may gather additional information as necessary to render an independent decision.
 - (1) If the review team determines the technology does not comply with IT Accessibility Standards, the team shall send written notice to the agency of such findings and request a plan of resolution including timelines.
 - (2) The team shall also send written notice of their findings to the complainant and the agency indicating an agreement or disagreement with the agency's initial complaint response. If the technology in question is out of compliance, the written notice shall also include a copy of the agency's plan for resolution.
- (e) The review team must conclude this review and send the final written notice to the complainant and the agency no later than sixty (60) calendar days from the receipt of the written complaint with the Office of State Finance ~~or EITA Advisory Council.~~
- (f) Any actions, decisions or individual proceedings that may occur as a result of a formal complaint shall be in accordance with 75 O.S. §250 et seq.

[OAR Docket #11-980; filed 8-9-11]

**TITLE 460. DEPARTMENT OF MINES
CHAPTER 15. UNDERGROUND COAL AND ASPHALT**

[OAR Docket #11-975]

- RULEMAKING ACTION:**
PERMANENT final adoption
- RULES:**
Subchapter 1. General Standards [NEW]
460:15-1-10. Certificates of Competency [AMENDED]
- DATES:**
Comment period:
February 1, 2011 through March 5, 2011
- Public hearing:**
March 8, 2011
- Adoption:**
March 17, 2011
- Submitted to Governor:**
March 25, 2011
- Submitted to House:**
March 25, 2011
- Submitted to Senate:**
March 25, 2011
- Gubernatorial approval:**
May 3, 2011
- Legislative approval:**
Failure of the Legislature to disapprove the rules resulted in final approval on May 19, 2011
- Final adoption:**
May 19, 2011

Permanent Final Adoptions

Effective Date:

September 11, 2011

SUPERSEDED EMERGENCY ACTION:

n/a

INCORPORATED BY REFERENCE:

n/a

ANALYSIS:

This amendment ensures that all persons utilizing explosives in underground mining obtains a shot-firer certification and that a current OSBI criminal background check is submitted as a portion of the certification application. A shot-firer certificate is valid for a two year period and that a renewal certification also requires a current OSBI background check before recertification can be obtained. No persons with a felony conviction may be granted a shot-firer certificate or a recertification of a shot-firer certificate.

CONTACT PERSON:

Cathy Frank, Legal Officer, Department of Mines, 1102 Cherokee St., Suite D, Wagoner, OK 74467 (918) 485-3999.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2011:

SUBCHAPTER 1. GENERAL STANDARDS

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 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 the 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. Applicants for such certificate 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) Superintendent - 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. ~~(4981)~~, 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. Certificates 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 the 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 apprentices, shall never be out of sight or sound of a certified miner and 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 ~~out by~~ 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 re-certification. A certification or recertification shall not be granted to any person with a felony conviction.

[OAR Docket #11-975; filed 8-4-11]

**TITLE 460. DEPARTMENT OF MINES
CHAPTER 25. OKLAHOMA EXPLOSIVES
AND BLASTING REGULATIONS**

[OAR Docket #11-976]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 13. Performance Standards
460:25-13-6. Certified blaster qualifications[AMENDED]

DATES:

Comment period:

February 1, 2011 through March 5, 2011

Public hearing:

March 8, 2011

Adoption:

March 17, 2011

Submitted to Governor:

March 25, 2011

Submitted to House:

March 25, 2011

Submitted to Senate:

March 25, 2011

Gubernatorial approval:

May 3, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in final approval on May 19, 2011

Final adoption:

May 19, 2011

Effective Date:

September 11, 2011

SUPERSEDED EMERGENCY ACTION:

n/a

INCORPORATED BY REFERENCE:

n/a

ANALYSIS:

This amendment ensures that a blaster's certification is valid for a two year period and that after the two years, prior to the issuance of a renewal

certification, a current OSBI background check is submitted. A blaster's certification or re-certification certificate shall not be granted to any person with a felony conviction.

CONTACT PERSON:

Cathy Frank, Legal Officer, Department of Mines, 1102 Cherokee St., Suite D, Wagoner, OK 74467 (918) 485-3999.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2011:

SUBCHAPTER 13. PERFORMANCE STANDARDS

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.

[OAR Docket #11-976; filed 8-4-11]

**TITLE 460. DEPARTMENT OF MINES
CHAPTER 30. COAL COMBUSTION
BY-PRODUCT PLACEMENT RULES AND
REGULATIONS**

[OAR Docket #11-977]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Chapter 30. Coal Combustion By-product Placement Rules and Regulations [AMENDED]

Permanent Final Adoptions

DATES:

Comment period:

February 1, 2011 through March 5, 2011

Public hearing:

March 8, 2011

Adoption:

March 17, 2011

Submitted to Governor:

March 25, 2011

Submitted to House:

March 25, 2011

Submitted to Senate:

March 25, 2011

Gubernatorial approval:

May 3, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in final approval on May 19, 2011

Final adoption:

May 19, 2011

Effective Date:

September 11, 2011

SUPERSEDED EMERGENCY ACTION:

n/a

INCORPORATED BY REFERENCE:

n/a

ANALYSIS:

Pursuant to the authority and the requirements contain in 45 O.S. Sections 45 and 940, the Department is required to regulate the placement of coal combustion by-products in active or inactive coal or non-coal mines. In 2003, Chapter 30 was promulgated to establish basic permitting and disposal standards. These amendments establish additional standards to help complete the regulatory process. The amendments include bonding standards, state inspection and enforcement standards, civil penalties, and individual civil penalties and alternative enforcement standards. Additional parameters for monitoring water and water wells and CCB placements were also added to ensure that proper environmental data is gather prior to, during, and after placement on the approved sites to ensure the beneficial use of the land following complete reclamation.

CONTACT PERSON:

Cathy Frank, Legal Officer, department of Mines, 1102 Cherokee St., Suite D, Wagoner, OK 74467 (918) 485-3999.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2011:

SUBCHAPTER 3. CCB PLACEMENT APPLICATIONS

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. ~~Previously published data may be utilized to comply with this requirement.~~ 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. ~~The specific number of monitoring wells shall be site specific and determined by the Department on a case by case basis. However, the minimum number of monitoring wells shall be one up gradient and two down gradient.~~
- (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.

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(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.

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.

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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.

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.

460:30-4-3. Definitions

As used in this Subchapter, the following terms 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.

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 identified increment 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 identify 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; or

(3) An incremental-bond schedule and the performance bond required for the first increment in the schedule.

460:30-4-5. 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.

460:30-4-6. 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.

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.

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.

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

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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.

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.

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.

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 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 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 fails 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.

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(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 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.

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.

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 weeks 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

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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.

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.

SUBCHAPTER 5. PERFORMANCE STANDARDS

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.

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.

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, undisturbed ground 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.

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.

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.

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 on-site 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.

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

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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.

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.

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.

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.

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.

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.

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.

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.

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,

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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.

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 lawful conduct.

(3) The CCB Program Director shall promptly review the history of violations of any permittee who has 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.

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.

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.

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.

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.

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Section 1.5 et seq., this Chapter, or any condition of a CCB permit imposed under the statutes 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 statutes 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.

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 statutes, 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.

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.

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

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.

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.

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 would remain 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 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:

- (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.

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.

- (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.

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 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. 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.

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.

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.

Permanent Final Adoptions

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.

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.

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.

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.

[OAR Docket #11-977; filed 8-4-11]
