MISSISSIPPI SURFACE MINING AND RECLAMATION RULES AND REGULATIONS

Under the Authority of
Miss. Code Ann. § 53-7-11

MISSISSIPPI
COMMISSION ON ENVIRONMENTAL QUALITY
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CHAPTER 1

General Procedural Rules

Section 100. PURPOSE AND SCOPE OF REGULATIONS

(a) The purpose of these Regulations is to provide an orderly and efficient system of procedure by which the Mississippi Commission on Environmental Quality, through the Mississippi Environmental Permit Board and the Mississippi Department of Environmental Quality, shall administer the Mississippi Surface Mining and Reclamation Act as set forth in Miss. Code Ann. §§ 53-7-1, *et seq*. The Legislature, recognizing its duty and obligation to foster the economic well-being of the state and nation, to encourage the development of its natural resources, and to preserve the beauty of its lands, declares that the purpose of the Mississippi Surface Mining and Reclamation Act is to:

(1) Provide for the regulation and control of surface mining so as to minimize its injurious effects by requiring proper reclamation of surface-mined lands;

(2) Establish a regulatory system of permits and reclamation standards, supplemented by the knowledge, expertise and concerns of mining operators, landowners and the general public which is designed to

achieve an acceptable, workable balance between the economic necessities of developing our natural resources and the public interest in protecting our birthright of natural beauty and a pristine environment; and

(3) Establish a regulatory system of uniform standards and procedures to govern the mining and reclamation of land, accepting the proposition that varied types of mining, varied types of materials being mined and varied geographical and ecological areas of this state may require variations in methods of surface mining and reclamation, but any variation shall be designed to restore the affected area to a useful, productive, and beneficial purpose.

(b) Unless otherwise provided for by law, these Regulations shall govern the procedure for all notification, filing, permitting, hearing, and other procedures pertaining to the requirements of implementing the Mississippi Surface Mining and Reclamation Act.

Section 101. DEFINITIONS

As used in these Regulations, the following terms have the specified meaning, except where otherwise indicated.

(1) Act means the Mississippi Surface Mining and Reclamation Act and any amendments thereto as codified in Miss. Code Ann. §§ 53-7-1, *et seq.*

(2) Administratively complete application means an application for a permit, permit renewal, or the transfer or sale of permit rights, which the Department determines to contain sufficient information addressing each application requirement of the Act and these Regulations and to contain all information necessary to initiate formal processing and public review.

(3) Affected area means any area from which any materials are removed or are to be removed in a surface mining operation and upon which any materials are to be deposited, handled or processed. The affected area includes all areas affected by the construction of new roads, or the improvement or use of existing roads other than public roads to gain access and to haul materials.

(4) Appeal means an appeal to an appropriate court of the state taken from a final decision of the Permit Board or Commission made after a

formal hearing before that body.

(5) Applicant means a person applying for a permit, coverage under a general permit, permit renewal, or the transfer or sale of permit rights from the Permit Board to conduct surface mining and reclamation operations.

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

(7) As recorded in the minutes of the Permit Board means the date of the Permit Board meeting at which the action concerned is taken by the Permit Board.

(8) Cemetery means any area of land where human bodies are interred.

(9) Commission means the Mississippi Commission on Environmental Quality.

(10) Department means the Mississippi Department of Environmental Quality.

(11) Director of the Office of Geology means the person charged with the direction and management of the activities and personnel of the Office of Geology.

(12) Executive Director means the Executive Director of the Mississippi Department of Environmental Quality.

(13) Exploration activity means the disturbance of the surface or subsurface for the purpose of determining the location, quantity, or quality of a deposit of any material, except the drilling of test holes or core holes of twelve (12) inches or less in diameter.

(14) Formal hearing means a hearing on the record, as recorded and transcribed by a court reporter, before the Commission or Permit Board where all parties to the hearing are allowed to present witnesses, cross-examine witnesses and present evidence for inclusion into the record, as appropriate under rules promulgated by the Commission or Permit Board.

(15) Fund means the Surface Mining and Reclamation Fund created by

Miss. Code Ann. § 53-7-69.

(16) General Permit means a general permit as defined in Miss. Code Ann. § 49-17-5.

(17) Highwall means a wall created by mining having a slope steeper than two (2) vertical units to one (1) horizontal unit.

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

(19) Interested party means an interested party as provided under Miss. Code Ann. § 49-17-29.

(20) Intermittent stream means a stream or reach of a stream that flows only at certain times of the year. A stream that does not flow continuously as when water losses from evaporation or seepage exceed the available streamflow.

(21) Material means bentonite, metallic ore, mineral clay, dolomite, phosphate, sand, gravel, soil, clay, sand clay, clay gravel, stone, chalk, and any other materials designated by the Commission.

(22) Nearest approximate original contour means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Permanent water impoundments may be permitted where the Permit Board determines the impoundments are in compliance with these Regulations.

(23) Occupied dwelling means any building that is currently being used on a regular or temporary basis for human habitation.

(24) Operator means the person that is to engage, or is engaged, or has been engaged in a surface mining operation, whether on a permanent, continuous basis, or for a limited period of time and for a specific or ancillary purpose, including any person whose permit or coverage under a general permit has expired or been suspended or revoked.

(25) Overburden means all materials which are removed to gain access to other materials in the process of surface mining, including the material before or after its removal by surface mining.

(26) Perennial stream means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or runoff.

(27) Permit means a permit to conduct surface mining and reclamation operations pursuant to these Regulations and the Act.

(28) Permit area means all the area designated in the permit application or application for coverage under a general permit. It shall include all land to be affected by the surface mining operations during the term of the permit and may include any contiguous area which the operator proposes to surface mine thereafter.

(29) Permit Board means the Permit Board created by Miss. Code Ann. § 49-17-28.

(30) Person means any individual, trust, firm, joint-stock company, public or private corporation, joint venture, partnership, association, cooperative, state, or any agency or institution thereof, municipality, commission, political subdivision of a state or any interstate body, and includes any officer or governing or managing body of any municipality, political subdivision, or the United States or any officer or employee of the United States.

(31) Public hearing means a public forum organized by the Commission, Department or Permit Board for the purpose of providing information to the public regarding a surface mining and reclamation operation and at which members of the public are allowed to make comments or ask questions or both of the Commission, Department or the Permit Board regarding a proposed operation or permit.

(32) Public road means a road which: (a) has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; (c) there is substantial (more than incidental) public use; and (d) meets road construction standards for other public roads of the same

classification within the jurisdiction.

(33) Reclamation means work necessary to restore an area of land affected by surface mining to a useful, productive, and beneficial purpose, the entire process being designed to restore the land to a useful, productive, and beneficial purpose, suitable and amenable to surrounding land and consistent with local environmental conditions in accordance with the standards set forth in these Regulations and the Act.

(34) Regulations mean the regulations promulgated by the Commission pursuant to the Mississippi Surface Mining and Reclamation Act.

(35) Sedimentation pond means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

(36) Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

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

(38) Spoil pile means the overburden and other mined waste material as it is piled or deposited in the process of surface mining.

(39) State means the State of Mississippi.

(40) Surface mining or mining means the extraction of materials from the ground or water or from waste or stock piles or from pits or banks or natural occurrences by methods including, but not limited to, strip, drift, open pit, contour or auger mining, dredging, placering, quarrying and leaching, and activities related thereto, which will alter the surface.

(41) Surface mining operation or operation means the activities conducted at a mining site, including extraction, storage, processing and shipping of materials and reclamation of the affected area. This term does not include the following: the dredging and removal of oyster shells from navigable bodies of water; the dredging and removal of any materials from the bed of navigable streams, when the activity is

regulated and permitted under an individual permit by the United States Corps of Engineers; the extraction of hydrocarbons in a liquid or gaseous state by means of wells, pipe, or other on-site methods; the off-site transportation of materials; exploration activities; construction activities at a construction site; or any other exception set out in these Regulations.

(42) Topsoil means the organic or inorganic matter naturally present on the surface of the earth which has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(43) Toxic material means any substance present in sufficient concentration or amount to cause significant injury or illness to plant, animal, aquatic, or human life.

(44) Transfer means a change in ownership or other effective control over the right to conduct surface mining operations under a permit issued by the Permit Board. The person to which the permit has been transferred shall have, at a minimum, as stated in these Regulations, the legal right to mine, a performance bond and liability insurance.

Section 102. AWARENESS OF THE ACT

It shall be the duty and responsibility of all persons affected by the Mississippi Surface Mining and Reclamation Act and these Regulations to read and be cognizant of their content.

Section 103. COMPUTATION OF TIME

Time for any period prescribed or allowed by the Act and these Regulations shall be computed according to law.

Section 104. INSPECTION OF PUBLIC RECORDS

Requests for public documents generated or obtained by the Department under these Regulations or the Act shall be made pursuant to the Mississippi Commission on Environmental Quality Regulation MCEQ-2. Public records

requests are managed by the Department's Freedom of Information Administrator. As of the date of approval of these Regulations, the Department's Freedom of Information Administrator may be contacted at Post Office Box 2261, Jackson, Mississippi 39225, by fax at (601) 354-6356, or by e-mail at freedomofinformationcontact@deq.state.ms.us.

Section 105. DESIGNATION AND PROTECTION OF CONFIDENTIAL INFORMATION

(a) Information submitted to the Department, Commission, Permit Board or local Soil and Water Conservation District pertaining to the deposits of materials, trade secrets or privileged commercial or financial information relating to the competitive rights of the applicant and which is specifically identified as confidential, shall not be available for public examination and shall not be considered as a public record if:

(1) The applicant submits a written confidentiality claim to the Commission before submission of the information; and

(2) The Commission determines the confidentiality claim to be valid.

(b) The confidentiality claim shall include a generic description of the nature of the information included in the submission. Any information for which a confidentiality claim is asserted shall not be disclosed pending the outcome of any formal hearing and all appeals.

(c) Any person knowingly and willfully making unauthorized disclosures of any information determined to be confidential shall be liable for civil damages arising from the unauthorized disclosure and, upon conviction, shall be guilty of a misdemeanor and shall be fined a sum not to exceed One Thousand Dollars ($1,000.00) and dismissed from public office or employment.

Section 106. SEVERABILITY

If any provision, section, subsection, sentence, clause or phrase of any of these regulations, or the application of same to any person or set of circumstances, is for any reason challenged or held to be invalid or void, the validity of the remaining regulations and/or portions thereof or their application to other persons or sets of circumstances shall not be affected thereby.

CHAPTER 2

Permitting Procedures

Section 200. APPLICABILITY AND EXEMPTIONS

(a) Any person engaging in surface mining or surface mining operations in the State of Mississippi shall be required to conform to and comply with all applicable provisions of the Act and these Regulations.

(b) Except as expressly provided, the Act and these Regulations shall not apply to:

(1) Excavations made by the owner of land for the owner's use and not for commercial purposes, where the materials removed do not exceed one thousand (1,000) cubic yards per year and where one (1) acre or less of land is affected.

(2) Excavations made by a public agency on a one-time basis for emergency use at an emergency site if:

(A) the excavation lies in the vicinity of the emergency site and affects less than one-fourth (1/4) acre of mined surface area;

(B) the landowner has signed a statement giving approval for the removal of the materials; and

(C) the public agency notifies the Department as required by the Commission within two (2) working days of the removal of the materials.

(3) Operations for any materials on any affected area conducted before April 15, 1978, unless it has been reclaimed, including natural vegetation. These Regulations shall apply to any additional land which the operation extended to or encompassed after April 15, 1978.

(4) Operations for any materials that affect four (4) acres or less and are greater than one thousand three hundred and twenty (1320) feet from any other affected area if:

(A) the operation began before July 1, 2002; and

(B) the operator notified the Department of the commencement, expansion or resumption of the operation before July 1, 2002.

(5) Operations for any materials that affect four (4) acres or less, are greater than one thousand three hundred and twenty (1320) feet from any other affected area, and commenced after July 1, 2002, if the operator notifies the Department at least seven (7) calendar days before commencement or expansion of the operation. The seven day notice prior to mining requirement shall be waived and the operator may begin mining immediately after notifying the Department if:

(A) The operator agrees, in the notification, to reclaim the mine site in accordance with the minimum standards adopted by the Commission; or

(B) The exempted operation is conducted for Mississippi Department of Transportation (MDOT) projects or state aid road construction projects funded in whole or in part by public funds.

(6) Excavations made by the owner of land where the materials removed are transported to another location on that same land without using any public highway, road or street, and where the distance between the excavation and the location where the materials are deposited does not exceed five (5) miles; provided, that the owner of such land has the legal right to the materials.

(c) If a landowner refuses to allow the operator to complete reclamation in accordance with minimum standards or interferes with or authorizes a third party to disturb or interfere with reclamation in accordance with minimum standards, the landowner shall assume the exempt notice and shall be responsible for any reclamation.

(d) All operations exempted under Miss. Code Ann. §§ 53-7-7(2)(d) and 53-7-7(2)(e) of the Act and Section 200(b)(4) or (5) of these Regulations shall be subject to the prohibitions on mining in certain areas contained in Miss. Code Ann. §§ 53-7-49 and 53-7-51 and Chapter 4 of these Regulations and may be subject to the penalties set forth in the Act and these Regulations.

(e) Any operator conducting operations exempted under Miss. Code Ann. §§ 53-7-7(2)(b) or 53-7-7(2)(e) and Section 200(b)(2) or (5) of these Regulations, failing to notify the Department, may be subject to penalties provided in the Act and these Regulations. Any operator of an exempted surface mining operation who agrees in the notification to reclaim and fails to reclaim in accordance with that paragraph may be subject to penalties as provided in the Act and these Regulations.

(f) The Department may investigate any mining, or mining operations, or suspected mining, to ensure compliance with the Act and these Regulations.

Section 201. PERMIT APPLICATION

(a) Unless exempted under Miss. Code Ann. § 53-7-7 and Section 200 of these Regulations, no person shall engage in surface mining without having first obtained coverage under a general permit, or having obtained from the Permit Board a permit for each operation.
(b) Before commencing any operation for which a permit is required, each applicant for a permit shall submit to the Permit Board an application, a proposed initial reclamation plan and a performance bond in an amount proposed to be sufficient by the applicant to reclaim the permit area. The application shall be in the form prescribed by the Department and shall be deemed administratively complete if it contains:

(1) A legal description of the tract or tracts of land in the affected area and one or more maps or plats of adequate scale to clearly portray the location of the affected area. The description shall contain sufficient information so that the affected area may be located and distinguished from other lands and shall identify the access from the nearest public road. Said description of the tract shall be sufficient for the Department to define and locate the permit boundary.

(2) The approximate location and depth of the deposit in the permit area and the total number of acres in the permit area;

(3) The name, address and management officers of the permit applicant and any affiliated persons who shall be engaged in the operations;

(4) The name and address of any person holding legal and equitable interests of record, if reasonably ascertainable, in the surface estate of the permit area and in the surface estate of land located within five

hundred (500) feet of the exterior limits of the permit area;

(5) The name and address of any person residing on the property of the permit area at the time of application;

(6) Current or previous surface mining permits held by the applicant, including any revocations, suspensions or bond forfeitures;

(7) The type and method of operation, the engineering techniques and the equipment that is proposed to be used, including mining schedules, the nature and expected amount of overburden to be removed, the depth of excavations, a description of the permit area, the anticipated hydrologic consequences of the mining operation, and the proposed use of explosives for blasting, including the nature of the explosive, the proposed location of the blasting and the expected effect of the blasting;

(8) A notarized statement, supported by sufficient documentation, showing the applicant's legal right to surface mine the affected area;

(9) All other approvals, permits, clearances, easements and/or agreements, for the construction and operation of the permit, which may be required;

(10) The names and locations of all lakes, rivers, reservoirs, streams, creeks and other bodies of water in the vicinity of the contemplated operations which may be affected by the operations and the types of existing vegetative cover on the area affected thereby and on adjoining lands within five hundred (500) feet of the exterior limits of the affected area;

(11) A topographical survey map showing the surface drainage plan on and away from the permit area;

(12) The surface location and extent of all existing and proposed waste and spoil piles, cuts, pits, tailing dumps, ponds, borrow pits, evaporation and settling basins, roads, buildings, access ways, workings and installations sufficient to provide a reasonably clear and accurate portrayal of the existing surface conditions and the proposed mining operations;

(13) If the surface and mineral estates, or any part of those estates, in

land covered by the application, have been severed and are owned by separate owners, the applicant shall provide a notarized statement subscribed to by each surface owner and lessee of those lands, unless the lease or other conveyance to the applicant specifically states the material to be mined by the operator granting consent for the applicant to initiate and conduct surface mining, exploration and reclamation activities on the land;

(14) A copy of a proposed initial reclamation plan prepared in accordance with the Act and these Regulations.

(15) The application fee as set forth in Chapter 5 of these Regulations;

(16) The application form with all requested information provided;

(17) Any other applicable forms;

(18) Certificate of Insurance: (see Section 209 (f))

(19) Any other information needed to clarify the required parts of the application as may be requested by the Department.

Section 202. GENERAL PERMITS

(a) The Permit Board may issue general permits to cover those surface mining operations deemed appropriate by the Permit Board. Conditions in any general permit shall provide that no operation shall be conducted on lands designated as unsuitable for mining and that each operator shall submit a proposed initial reclamation plan and a performance bond in an amount sufficient to properly reclaim the permit area. The Permit Board may include other conditions to ensure compliance with these Regulations and the Act.
(b) Before commencing any operation for which coverage under a general permit may be obtained, each applicant for coverage under a general permit shall submit to the Department an application, in the form prescribed by the Department, and containing the following:

(1) a copy of the proposed initial reclamation plan;

(2) a performance bond in an amount proposed by the applicant and approved by the Permit Board;

(3) an application fee in accordance with Chapter 5 of these

Regulations;

(4) any other information deemed necessary by the Department.

(c) The Permit Board shall issue a general permit for surface mining operations having a permitted area of more than four (4) acres but less than ten (10) acres which are conducted for projects funded in whole or in part by public funds for the Mississippi Department of Transportation or the Division of State Aid Road Construction. The general permit issued under this subsection shall require that all materials obtained from an operation covered under such general permit shall be used exclusively on the Mississippi Department of Transportation or Division of State Aid Road Construction project and that no materials from an operation covered under such permit may be provided or sold for any other purpose. The Permit Board shall consult with the Mississippi Department of Transportation on the development of general permits issued under this subsection. An applicant for coverage under a general permit issued under this subsection shall submit an application for coverage and a proposed initial reclamation plan. The applicant may submit either a surface mining performance bond for the operation or a copy of the bond posted with the Mississippi Department of Transportation or the Division of State Aid Road Construction if the latter bond specifically covers the surface mining operation. If a copy of the bond posted with the Mississippi Department of Transportation or the Division of State Aid Road Construction is submitted, the Mississippi Department of Transportation or the Division of State Aid Road Construction shall not release the bond until all reclamation requirements of the general permit issued under this subsection have been met. The Permit Board may include other conditions in any general permit issued under this subsection to ensure compliance with these Regulations and the Act. The Mississippi Department of Environmental Quality shall be responsible for inspecting the reclamation of the mining operation.

(d) Within three (3) working days after receiving the application for coverage under a general permit, the Department shall review the application, determine if the proposed surface mining operation is eligible for coverage under a general permit, and notify the applicant in writing accordingly. Operations may commence at the mining site after the operator receives notice of coverage.

(e) Any site and/or operator covered or eligible to be covered under a general permit may be required to obtain a surface mining permit at the discretion of the Permit Board. Any interested person may petition the Permit Board to take action under this paragraph.

(f) Any site and/or operator covered by a general permit may request to be excluded from such coverage by applying for a surface mining permit. The applicability of the general permit is automatically terminated upon issuance of a surface mining permit.

(g) Any site and/or operator excluded from coverage under a general permit solely because it is already covered under a surface mining permit may request that the surface mining permit be revoked and that it be covered by the general permit. Upon revocation of the surface mining permit by the Permit Board, the general permit shall apply to the site and/or operator.

Section 203. NOTIFICATION OF EXEMPT OPERATIONS

(a) Any person wishing to conduct surface mining operations under the exempt status defined in Section 200 of these Regulations shall notify the Department. The notification shall consist, at a minimum, of the following:

(1) the operator's name, address, and telephone number;

(2) legal description of the affected area;

(3) number of acres to be mined;

(4) number of acres not actually mined, but involved with other aspects of the operation;

(5) date of commencement of the operation;

(6) expected life of the operation;

(7) a description of the reclamation plan: and

(8) other information as may be required by the Department.

(b) The notification shall be sent to the Department in a form prescribed by the Department before the commencement of the operation occurs. Before the operation expands to a size where it will affect an area greater than four (4) acres, the operator shall be required to file an application to conduct surface mining operations and comply with all provisions of the Act and these Regulations.

Section 204. PROCESSING OF PERMIT APPLICATIONS

(a) Applications for the issuance of any surface mining permit issued under this chapter shall be filed with the Department. The Department shall:

(1) conduct an initial review of a completed permit application within thirty (30) days following receipt of the complete application.

(2) make a recommendation to the Permit Board on the completed permit application no later than the next regularly scheduled Permit Board meeting following the thirty-day initial review period, unless a public hearing is held on the application or the applicant agrees in writing to an additional time frame. If a public hearing is held, the Department shall make its recommendation at the next regularly scheduled Permit Board meeting following the public hearing, if practicable.

(3) file a copy of each permit application for public inspection with the chancery clerk of the county where any portion of the operation is proposed to occur after deleting any confidential information according to Section 105 of these Regulations.

(4) submit copies, excluding all confidential information, of the permit application as soon as possible to:

(A) the Mississippi Soil and Water Conservation Commission, Mississippi Department of Wildlife, Fisheries, and Parks, Mississippi Forestry Commission, Mississippi Department of Environmental Quality, Mississippi Department of Archives and History, Mississippi Department of Transportation, Mississippi State Oil and Gas Board and Mississippi Department of Agriculture and Commerce, and any other state or federal agency whose jurisdiction the Department believes the particular mining operation may affect.

(B) any person who requests in writing a copy of the application; and

(C) the owner of the land.

(5) require payment of a reasonable fee established by the Department for reimbursement of the costs of reproducing and providing the copy.

(6) The Department shall notify the applicant if any part of the

proposed operation lies within an area already designated as unsuitable for surface mining or for which a petition to have lands designated unsuitable for surface mining has been filed.

(7) The Department shall cause an initial site inspection of the proposed affected area to be made within 30 days following receipt of the completed application.

(b) Each agency shall review the permit application and submit, within fifteen (15) days of receipt of the application, any comments, recommendations and evaluations as the agency deems necessary and proper based only upon the effect of the proposed operation on matters within the agency's jurisdiction. The comments shall include a listing of permits or licenses required under the agency's jurisdiction. Comments and recommendations shall be made a part of the record and one (1) copy shall be furnished to the applicant. All comments and recommendations shall be considered by, but shall not be binding upon, the Permit Board. The failure of any agency to submit comments shall not preclude action by the Permit Board.

Section 205. REVIEW AND COMMENT BY THE PUBLIC

Persons reviewing a copy of a permit application or general permit application may make comments, recommendations, or evaluations to the Department. The deadline for such comments shall be the same as that for state agencies.

Section 206. PERMIT APPROVAL AND DENIAL

(a) The Permit Board, consistent with the Act and these Regulations, may reissue, deny, modify, revoke, cancel, rescind, suspend or transfer a permit for a surface mining operation. The Director of the Office of Geology, as a member of the Permit Board, shall abstain in any action taken by the Permit Board pursuant to the Act or these Regulations.
(b) Any permit approved by the Permit Board is not transferable to any person except after notice to and approval by the Permit Board.
(c) The Permit Board shall issue a permit if the Permit Board determines that the applicant and completed application comply with the requirements of the Act and these Regulations.
(d) The Permit Board may deny a permit if:

(1) The Permit Board finds that the reclamation as required by this chapter cannot be accomplished by means of the proposed reclamation plan;

(2) Any part of the proposed operation lies within an area designated as unsuitable for surface mining;

(3) The Permit Board finds that the proposed mining operation will cause pollution of any water of the state or of the ambient air of the state in violation of applicable state and federal laws and regulations;

(4) The applicant has had any other surface mining permit revoked, or any bond or deposit posted to comply with this chapter forfeited, and the conditions causing the permit to be revoked or the bond or deposit to be forfeited have not been corrected to the satisfaction of the Permit Board;

(5) The Permit Board determines that the proposed operation will endanger the health and safety of the public or will create imminent environmental harm;

(6) The operation will likely adversely affect any public highway or road unless the operation is intended to stabilize or repair the public road or highway; or

(7) The applicant is unable to meet the public liability insurance or performance bonding requirements of the Act and these Regulations.

(e) The Permit Board shall deny a permit if the Permit Board finds by clear and convincing evidence on the basis of the information contained in the permit application or obtained by on-site inspection that the proposed operation cannot comply with the Act or these Regulations or that the proposed method of operation, road system construction, shaping or revegetation of the affected area cannot be carried out in a manner consistent with this chapter and applicable state and federal laws, rules and regulations.

(f) The Department on behalf of the Permit Board may hold a public hearing to obtain comments from the public on its proposed action. If the Department on behalf of the Permit Board holds a public hearing, the Permit Board shall publish notice and conduct the hearing as provided in Miss. Code Ann. § 49-17-29.

(g) The Permit Board may authorize the Executive Director, under any conditions the Permit Board may prescribe, to make decisions on permit issuance, reissuance, modification, rescission or cancellation. A decision by the Executive Director is a decision of the Permit Board and shall be subject to formal hearing and appeal as provided in Miss. Code Ann. § 49-17-29. The Executive Director shall report all permit decisions to the Permit Board at its next regularly scheduled meeting and those decisions shall be deemed as recorded in the minutes of the Permit Board at that time.

Section 207. AMENDMENTS

The Permit Board may modify any surface mining permit to increase or decrease the permit area and shall require an increase in the performance bond and a modified reclamation plan for any expanded area.

Section 208. CERTIFICATE OF COMPLIANCE

Each operator who holds either a surface mining permit or a general permit shall file an annual certificate of compliance with the Department. The Department shall provide a form to the operator at least thirty (30) days before the anniversary date of each permit. The operator shall complete the form and declare under oath that he is following his approved mining and reclamation plan and is abiding by the provisions of the Act and these Regulations. The operator shall return the certificate of compliance together with a fee of Fifty Dollars ($50.00) and the operator's annual report to the Department within five (5) days after the anniversary date of the period

Section 209. OPERATOR REQUIREMENTS

(a) Each operator holding a permit shall establish and maintain records, including:

(1) fees and bonds and penalties paid to the Department;

(2) all correspondence with the Department and its authorized representatives;

(3) reports, in writing, from authorized field inspectors;

(4) the results of readings, taken on a specified periodic basis, from any

monitoring equipment installed pursuant to orders from the Commission or from the Permit Board.

(b) Each permittee shall make a report to the Department annually. This report shall accompany the certificate of compliance and shall include, as a minimum:

(1) the name of the operator and the permit number;

(2) area of land, in acres, affected by the operation during the previous year, with an itemization, in acres, of how the area was affected (i.e., vegetation removed, overburden removed, material extracted, regrading, revegetation, etc.);

(3) estimation of acreage to be affected by the operation during the following year; and

(4) a description of reclamation procedures and their degree of success and any suggestions or ideas the operator has regarding reclamation.

(c) Each permittee shall install, use and maintain any monitoring equipment required by the Commission or the Permit Board for the purpose of observing and determining relevant surface or subsurface effects of the mining operation or reclamation program. Before requiring the operator to install monitoring equipment, the Permit Board, or Department, shall discuss and describe proper installation, use, and design of equipment and the purpose for such devices.

(d) Each permittee shall be required to post signs at the points of access to each operation adjacent to the nearest public highway or road. These signs shall be at least two (2) feet by four (4) feet, constructed of a durable material, and clearly identify the name and address of the operator and the number of his surface mining permit. Signs shall be maintained during the life of an operation, including periods of temporary suspension and reclamation activity.

(e) Records required to be held under these Regulations shall be held for a period of three (3) years from the date of their submission to the Department, or from the date of their preparation if not required to be so submitted, or such shorter period as may now or hereafter be specifically permitted for individual records. The Department may, in the adoption of its forms, specify the retention period of that form thereon.

(f) Except for governmental agencies, a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to conduct business in the State of Mississippi

covering all operations of the applicant in this state and affording bodily injury protection and property damage protection in an amount not less than the following:

(1) One Hundred Thousand Dollars ($100,000.00) for all damages because of bodily injury sustained by one (1) person as the result of any one (1) occurrence, and Three Hundred Thousand Dollars ($300,000.00) for all damages because of bodily injury sustained by two (2) or more persons as the result of any one (1) occurrence; and

(2) One Hundred Thousand Dollars ($100,000.00) for all claims arising out of damage to property as the result of any one (1) occurrence including completed operations.

(3) The policy shall be maintained in full force and effect during the term of the permit, including the length of all reclamation operations.

(g) Each permittee shall mark the permit boundary and place durable posts at the corners of the permit area. The posts shall be painted or flagged to be readily visible during the life of the operation.

Section 210. PERMIT TRANSFERS, REVOCATIONS, CANCELLATIONS, SUSPENSIONS, RESCISSIONS, AND REISSUANCE

(a) The Permit Board may transfer, modify, revoke, cancel, rescind, suspend, or reissue a permit. Applications for the modification, transfer or reissuance of any surface mining permit issued under the Act and these Regulations may be filed with the Department on forms prescribed by the Department.
(b) The Permit Board may cancel a permit at the request of the operator, if the operator does not commence operations under the permit by stripping, grubbing or mining any part of the permit area.
(c) The Permit Board may rescind a permit, if because of a change in post-mining use of the land by the landowner, the completion of the approved reclamation plan by the operator is no longer feasible. If a permit is canceled or rescinded, the remaining portion of the bond or deposit required under the Act and these Regulations shall be returned to the operator.
(d) Any permit issued under the Act and these Regulations shall carry with it the right of successive reissuance upon expiration for areas within the boundaries of the existing permit. The operator may apply for reissuance and that permit shall be reissued, except as provided in this subsection. On application for reissuance the burden of proving that the permit should not be

reissued shall be on the opponents of reissuance or the Department. If the opponents to reissuance or the Department establish and the Permit Board finds, in writing, that the operator is not satisfactorily meeting the terms and conditions of the existing permit or the present surface mining and reclamation operation is not in compliance with the Act and these Regulations, the Permit Board shall not reissue the permit.

(e) Any permit reissuance shall be for a term not to exceed the term of the original permit. Application for permit reissuance shall be filed with the Permit Board at least sixty (60) days before the expiration of the permit. If an application for reissuance is timely filed, the operator may continue surface mining operations under the existing permit until the Permit Board takes action on the reissuance application.

Section 211. PROPERTY RIGHTS, ALL PERMITS

A permit issued by the Permit Board does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, State, or local laws or regulations.

CHAPTER 3

Performance Bonds

Section 300. PURPOSE OF THE BOND

The bond is a performance bond designed to insure that the operator satisfactorily performs all of the requirements of the Act, these Regulations, and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations with the initial term of the permit.

Section 301. FORM OF THE BOND

(a) Before a permit is issued by the Permit Board, the applicant shall file with the Department, in the manner and form prescribed by the Department, a bond for performance payable to the Commission and conditioned on full and satisfactory performance of the requirements of this chapter and the permit. The bond shall not be less than Five Hundred Dollars ($500.00) nor more

than Two Thousand Five Hundred Dollars ($2,500.00) for each estimated acre of the permit area of the respective operation. The Department shall make a recommendation to the Permit Board as to the amount of the bond. The Permit Board shall make its decision based on the Department's recommendation, topographical features of the proposed affected area, impact on the environment, and all other factors deemed appropriate by the Permit Board.

(b) The bond is a performance bond designed to insure that the operator satisfactorily performs all of the requirements of the Act, these Regulations, and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. Any operator who fails to comply with the Act, these Regulations, or the permit shall be declared by the Commission to be in violation, and the Commission may rule that he shall forfeit the bond, collateral, or deposit. Should the operator default, the bond shall be expended to reclaim, in accordance with the provisions of the Act and these Regulations, the lands with respect to which the bond, collateral, or deposit was filed. Any unused funds may be used to reclaim other unreclaimed lands.

(c) The bond shall be executed by the applicant and a corporate surety licensed to do business in the state. The applicant may elect to deposit the following in lieu of the surety bond: cash, negotiable bonds of the United States government or the state, assignment of real or personal property, or a savings account acceptable to the Department, negotiable certificates of deposit or a letter of credit of any bank organized or transacting business in the state and insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) or a similar federal banking or savings and loan insurance organization. The cash deposit or market value of the securities shall be equal to or greater than the amount of the bond required for the permit area. Cash, negotiable bonds, negotiable certificates of deposit, letter of credit, assignment of real or personal property, or a savings account or other securities shall be deposited on the same terms as the terms on which surety bonds may be deposited.

(d) The amount of the bond or deposit required and the terms of acceptance of the applicant's bond or deposit may be increased or decreased by the Permit Board from time to time to reflect changes in the cost of future reclamation of land mined or to be mined subject to the limitations on the amount of the bond set forth in this section.

(e) All state agencies, political subdivisions of the state and local governing bodies shall be exempt from the bonding requirements of this section.

Section 302. DURATION OF LIABILITY

The operator is liable under the bond until such time as the reclamation operations are completed to the satisfaction of the Permit Board that all requirements of the Act, these Regulations, and the permit have been met.

Section 303. APPLICATION FOR RELEASE OF THE BOND

(a) Upon completion of the operation in the permit area, the operator may file an application with the Permit Board for the release of the performance bond or deposit. The application for performance bond release shall require a description of the results achieved in accordance with the operator's reclamation plan, which includes revegetation and end result plans, and any other information the Permit Board may require in accordance with this chapter. The Permit Board shall file a copy of the performance bond release application for public inspection with the chancery clerk of the county where the majority of the surface mining operation is located and with the local Soil and Water Conservation District. The Permit Board shall give notice of the pending bond release application in the same manner as required for notice of permit application.

(b) After receipt of the application for bond release, the Department shall, and the local Soil and Water District Commissioners may, within thirty (30) days, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the occurrence of pollution of surface and subsurface water; the probability of continuance or future occurrence of pollution; the estimated cost of abating the pollution; whether grading or backfilling has been completed pursuant to the reclamation plan; whether trash, debris, and discarded equipment have been disposed of properly; and whether work on revegetation or other end use plan is progressing satisfactorily. Results of the evaluation and findings of the Department or the Soil and Water Commissioners, or both, shall be provided within thirty (30) days after the inspection to the operator and other interested parties making written request for the evaluation and findings. The evaluation and findings of the soil and water commissioners, if any shall be forwarded to the Department before the end of the thirty (30) days.

(c) The Permit Board may release in whole or in part the performance bond or deposit if it is satisfied that reclamation covered by the performance bond or deposit or portion thereof has been accomplished as required by this chapter according to the following schedule:

(1) When the operator or surety completes proper trash, debris, and equipment disposal; required backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan; and the work on revegetation or other end use plan is progressing satisfactorily, the Permit Board may release up to ninety percent (90%) of the performance bond or deposit for the applicable permit area. The amount of the unreleased portion of the performance bond or deposit shall not be less than the amount necessary to assure completion of the reclamation work by a third party in the event of default by the operator; and

(2) When the operator has successfully completed the remaining reclamation activities, but not before two (2) years beyond the date of the initial performance bond release, the Permit Board may release the remaining portion of the performance bond or deposit. No performance bond or deposit shall be fully released until all reclamation requirements of this chapter are fully met.

(3) Notwithstanding the provisions of paragraphs (c)(1) and (c)(2) of this section, the Permit Board may release one hundred percent (100%) of the performance bond or deposit to private contractors surface mining on areas provided to them by the United States Army Corps of Engineers. The Permit Board may release the performance bond or deposit only if the contractors have completed the reclamation work required in paragraph (c)(1) of this section and the Corps of Engineers furnishes written assurance to the Permit Board that it accepts responsibility for restoration of the mined areas in accordance with all applicable reclamation standards of this chapter.

(d) If the Permit Board denies the application for release of the performance bond or deposit or portion thereof, it shall notify the operator, in writing, stating the reasons for denial and recommending corrective actions necessary to secure the release.

(e) The Permit Board shall authorize the Executive Director under those conditions the Permit Board may prescribe to administratively release any performance bond or deposit provided by an operator for coverage under a general permit. A decision of the Executive Director is a decision of the Permit Board and shall be subject to review and appeal as provided in Miss. Code Ann. § 49-17-29.

CHAPTER 4

Lands Unsuitable for Mining

Section 400. LANDS DESIGNATED AS UNSUITABLE FOR SURFACE MINING

(a) To the extent that the Commission, the Permit Board and the Department may exercise jurisdiction over the areas specified in this section, no surface mining operation shall be conducted on lands which are part of a national park, national monument, national historic landmark, any property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wild or scenic river, state scenic stream, state park, state wildlife refuge, state forest, recorded state historical landmark, state historic site, state archaeological landmark or city or county park, forest or historical area. For good cause shown and after any public hearing the Commission may elect to hold, the Commission may make an exception to this section.

(b) With the assistance of the Mississippi Commission on Wildlife, Fisheries and Parks and the Mississippi Department of Marine Resources, the Commission shall identify and designate as unsuitable certain lands for all or certain types of surface mining. Prior to an action by the Commission to designate an area as unsuitable for surface mining, or prior to an action by the Commission to remove an area from the list of lands designated as unsuitable for surface mining, notice shall be given to prospective operators and other interested parties as required by Miss. Code Ann. § 25-43-7(1). The Commission may designate areas as unsuitable for surface mining lands if the Commission determines:

(1) The operations will result in significant damage to important areas of historic, cultural or archaeological value or to important natural systems;

(2) The operations will affect renewable resource lands resulting in a substantial loss or reduction of long-range productivity of water supply or food or fiber products, including aquifers and aquifer recharge areas;

(3) The operations are located in areas of unstable geological formations and may reasonably be expected to endanger life and

property;

(4) The operations will damage ecologically sensitive areas;

(5) The operations will significantly and adversely affect any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wild or scenic river area, state scenic stream, state park, state wildlife refuge, state forest, recorded state historical landmark, state historic site, state archaeological landmark, or city or county park;

(6) The operations will endanger any public road, public building, cemetery, school, church or similar structure or existing dwelling outside the permit area; or

(7) The operations and the affected area cannot be feasibly reclaimed under the requirements of this chapter.

(c) Unless an operation is exempted under Miss. Code Ann. §§ 53-7-7(2)(a) or 53-7-7(2)(b) and Section 200(b)(1) and (2) of these Regulations, it is unlawful to conduct surface mining operations within an area designated as unsuitable for surface mining, or to conduct surface mining operations in rivers, lakes, bayous, intermittent or perennial streams or navigable waterways, natural or manmade, without a permit or coverage under a general permit issued or reissued consistent with these Regulations.

(d) After May 24, 2004, no new surface mining operations shall be permitted to conduct mining:

(1) Within one hundred (100) feet of the outside right-of-way line of any public road, except where mine access roads or haul roads join such right-of-way line. However, the Permit Board may allow the area affected by mining to lie within one hundred (100) feet of such right-of-way line with written permission from the governmental entity having authority over the road.

(2) Within three hundred (300) feet of any occupied dwelling, unless waived by the owner or occupant thereof, nor within three hundred (300) feet of any public building, school, church, community or institutional building.

(3) Within one hundred (100) feet of a cemetery.

(4) Within the following distance from a permit boundary, where a highwall will be created:

Depth of excavation	distance from permit boundary
1-5 feet	30 feet
6-10 feet	40 feet
11-15 feet	50 feet
16-25 feet	60 feet
26-30 feet	70 feet

Any excavation exceeding thirty feet in depth shall apply the following formula to determine the minimum distance of disturbance from the permit boundary:

Twenty-five (25) feet plus one and one half (1 ½) times the depth of the excavation.

The Permit Board will consider requests for exemptions to, or variances from, the requirements in Section 400(d)(1), (2), (3), and (4), upon sufficient proof that affected governmental entities, property owners, or occupants have had timely and sufficient notice of the proposed operation. Any comments received as a result of such notice shall be considered prior to any action upon any request for exceptions to, or variances from, the buffer zone requirements. The Permit Board may consider such factors as it deems appropriate in determining whether to grant a variance or exception.

Section 401. REGISTER OF LANDS DESIGNATED AS UNSUITABLE FOR SURFACE MINING

The Department shall maintain and have available for public inspection in its office a register of all areas that have been designated as unsuitable for all or certain types of surface mining operations. This register shall include all areas for which petitions to have an area designated as unsuitable for surface mining have been submitted. The register will be in such a form that the locations of the lands may be readily identified; it will also contain all necessary information explaining the reasons why the land was designated as unsuitable for surface mining.

Section 402. PETITION TO HAVE LANDS DESIGNATED AS UNSUITABLE FOR SURFACE MINING

(a) The Commission, upon petition, may designate an area as unsuitable for mining or modify or terminate the designation of an area as unsuitable for surface mining. The Commission, upon its own motion, may terminate the

designation of an area as unsuitable for surface mining. The Commission may conduct a public hearing on its proposed action in accordance with Miss. Code Ann. § 49-17-33.
(b) A petition shall contain allegations of facts with supporting evidence. The Commission shall make a determination based upon the validity of the facts contained in the petition, and may designate, modify or terminate the designation of the lands included in the petition as unsuitable for mining.
(c) Any person aggrieved by an action of the Commission under this section may appeal as provided in Miss. Code Ann. § 49-17-41.

CHAPTER 5

Fees

Section 500. FEES

(a) Each application for a surface mining permit, for a surface mining permit modification to add acreage, and for coverage under a general permit shall be accompanied by an application fee in the amount of One Hundred Dollars ($100.00) plus Ten Dollars ($10.00) per acre. The maximum permit fee shall not exceed Five Hundred Dollars ($500.00).
(b) Each submission of the annual certificate of compliance as required in Section 208 of these Regulations shall be accompanied by a fee in the amount of Fifty Dollars ($50.00).
(c) State agencies, political subdivisions of the state, and local governing bodies shall be exempt from all fees.

Section 501. SURFACE MINE WORKER SAFETY TRAINING FEES

(a) Recipients of Surface Mine Worker Safety Training given by the Department shall pay a fee. The fee shall be set by order of the Commission, and shall not exceed the cost of providing the training.
(b) All monies collected under this section shall be deposited into the Surface Mine Worker Safety Training Program Operations Fund to be administered by the Executive Director of MDEQ.
(c) The Commission delegates to the Department responsibility for the collection of fees under this section.
(d) Any person required to pay a fee under this section who disagrees with the calculation or applicability of the fee may petition the Commission for a hearing in accordance with Miss. Code Ann. §§ 49-17-33 and 49-17-35.

(e) Monies in the special fund shall be utilized to pay reasonable direct and indirect costs associated with surface mine worker safety training provided by the Department including, but not limited to, matching funds for federal grants to meet federal grant requirements to pay a proportional share of the total cost of the training.
(f) The special fund may receive monies from any available public or private source including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, judicial actions and appropriated funds.

CHAPTER 6

Inspections

Section 600. INSPECTIONS

(a) Authorized representatives of the Department, on presentation of appropriate credentials, may enter and inspect any operation or any premises in which records required to be maintained under these Regulations are located and may at reasonable times, and without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required by these Regulations, the Act, or a permit.

(b) Inspections of operations, with or without a permit, by the Department, shall occur at a frequency necessary to insure compliance with the Act and these Regulations and the terms and conditions of any permit. Inspections shall occur only during normal operating hours if practical, may occur without prior notice to the permittee or the agents or employees of the permittee, and shall include the filing of an inspection report. The Department shall make those reports part of the record and shall provide one (1) copy of the report to the operator. The Department shall, as practical, establish a system of rotation of field inspectors.

(c) Each field inspector, on detection of each violation of the Act, these Regulations, or the permit for the operation, shall inform the operator or the operator's agent orally at the time of the inspection and subsequently in writing and shall report any violation in writing to the Commission.

(d) Any representative of the local Soil and Water Conservation District, upon presentation of appropriate credentials may enter and inspect the operation for the purpose of making recommendations regarding reclamation

activities. The representative shall make any recommendations on the progress of reclamation activities in writing to the Department on behalf of the Permit Board.

(e) The Department shall conduct an initial review of a completed permit application within thirty (30) days following receipt of the completed application. The Department shall make a recommendation to the Permit Board on the permit application no later than the next regularly scheduled Permit Board meeting following the thirty-day initial review period, unless a public hearing is held on the application or the applicant agrees in writing to an additional time frame. If a public hearing is held, the Department shall make its recommendation at the next regularly scheduled Permit Board meeting following the public hearing, if practicable.

(f) An on-site inspection of the proposed affected area shall be made by the Department within the thirty-day time period specified in Section 600(e) of these Regulations, and before a permit is issued.

(g) After receipt of the application for bond release, the Department shall conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the occurrence of pollution of surface and subsurface water, the probability of continuance or future occurrence of pollution, and the estimated cost of abating the pollution. Results of the evaluation and findings of the Department, and the local Soil and Water Commissioners if such evaluations and findings are so made, shall be provided within thirty (30) days after the inspection to the operator and other interested parties, making written request for the evaluation and findings.

CHAPTER 7

Reclamation

Section 700. RECLAMATION PLAN

(a) A reclamation plan shall be developed in a manner consistent with local, physical, environmental and climatological conditions and current mining and reclamation technology. A proposed initial reclamation plan submitted as part of a permit application shall include the following information:

(1) The identification of the proposed affected area, accompanied by a detailed topographic map on a scale required by regulation showing:

(A) The proposed affected area, the location of any stream or standing body of water into which the area drains, the location of drainways and any planned siltation traps and other impoundments, and the location of access roads to be prepared or used by the operator in the mining operation;

(B) The location of any buildings, cemeteries, public highways, railroad tracks, gas and oil wells, publicly owned land, sanitary landfills, officially designated scenic areas, utility lines, underground mines, transmission lines or pipelines within the affected area or within five hundred (500) feet of the exterior limits of the affected area;

(C) The approximate location of the cuts or excavations to be made in the surface and the estimated location and height of spoil banks, and the total number of acres involved in the affected area;

(D) The date the map was prepared and a statement of its accuracy by the person responsible for its preparation.

(b) The condition of the land to be covered by the permit before any mining, including:

(1) The land use existing at the time of the application, and if the land has a history of previous mining, the land use, if reasonably ascertainable, which immediately preceded any mining; and

(2) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography and vegetative cover.

(c) The capacity of the land to support its anticipated use following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses.

(d) A description of how the proposed postmining land condition is to be achieved and the necessary support activities that may be needed to achieve the condition, including an estimate of the cost per acre of the reclamation.

(e) The steps taken to comply with applicable air and water quality and water rights laws and regulations and any applicable health and safety standards, including copies of any pertinent permit applications.
(f) A general timetable that the applicant estimates will be necessary for accomplishing the major events contained in the reclamation plan.
(g) Any other information as the Permit Board shall determine to be reasonably necessary to effectuate the purposes of the Act and these Regulations.

Section 701. RECLAMATION OF LIEU LANDS

(a) The Permit Board may, in its discretion, authorize the reclamation of lands in lieu of the lands included in the permit application. The acreage of the authorized lieu lands reclaimed shall not be less than the acreage of the lands in the permit application. Any applicant who proposes to reclaim lands in lieu of those lands included in the permit application shall state that fact in the application or subsequent or amended application and shall submit the reclamation plan accordingly. The Permit Board shall not authorize the reclamation of lieu lands unless the applicant submits with the reclamation plan a notarized statement of each surface owner and lessee of all lands included in the permit application. The statement shall contain the consent of each surface owner and lessee for the reclamation of the proposed lieu lands.
(b) If the Permit Board does not authorize the reclamation of the lieu lands, the applicant shall submit a reclamation plan for the lands contained in the permit application.

Section 702. RECLAMATION STANDARDS

(a) Any permit issued under the Act and these Regulations shall require operations to comply with all applicable reclamation standards. Reclamation standards shall apply to all operations, exploration activities and reclamation operations covered by the Act and these Regulations and shall require the operator at a minimum to:

(1) Conduct operations in a manner consistent with prudent mining practice, so as to maximize the utilization and conservation of the resource being recovered; and, in keeping with the intent of maximizing the value of mined land, stockpiles of commercially valuable material may remain, if they are ecologically stable;

(2) Restore the affected area so that it may be used for a useful, productive and beneficial purpose, including an agricultural, grazing, commercial, residential or recreational purpose, including lakes, ponds, wetlands, wildlife habitat, or other natural or forested areas;

(3) Conduct water drainage and silt control for the affected area to strictly control soil erosion, damage to adjacent lands and pollution of waters of the state, both during and following the mining operations. Before, during and for a reasonable period after mining, all drainways for the affected area shall be protected with silt traps or dams of approved design as directed by law. The operator may impound water to provide wetlands, lakes or ponds of approved design for wildlife, recreational or water supply purposes, if it is a part of the approved reclamation plan;

(4) Remove or cover all metal, lumber and other refuse, except vegetation, resulting from the operation;

(5) Regrade the area to the nearest approximate original contour or rolling topography, and eliminate all highwalls and spoil piles, except as provided in an approved reclamation plan. Lakes, ponds or wetlands may be constructed, if part of an approved reclamation plan;

(6) Stabilize and protect all affected areas sufficiently to control erosion and attendant air and water pollution;

(7) Remove the topsoil, if any, from the affected area in a separate layer, and place it on any authorized lieu lands to be reclaimed or replace it on the backfill area. If not utilized immediately, the topsoil shall be segregated in a separate pile from other spoil. If the topsoil is not replaced on a backfill area of authorized lieu lands within a time short enough to avoid deterioration, the topsoil shall be protected by a successful cover of plants or by other means approved by the Permit Board. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation and if other strata can be shown to be as suitable for vegetation requirements, then the operator may petition the Permit Board for permission to be exempt from the requirements for the removal, segregation and preservation of topsoil and to remove, segregate and preserve in a like manner other strata which are best able to support vegetation or to mix strata, if that mixing can be shown to be equally suitable for revegetation requirements;

(8) Replace, if required, available topsoil or the best available subsoil on top of the land to be reclaimed or on top of authorized lieu lands being reclaimed;

(9) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by:

(A) Avoiding acid or other toxic mine drainage by using measures such as, but not limited to:

(ii) Preventing or removing water from contact with toxic-material producing deposits;

(ii) Treating drainage to reduce toxic material content; and

(iii) Casing, sealing or otherwise managing boreholes, shafts and wells to keep acid or other toxic material drainage from entering ground and surface waters;

(B) Conducting operations to prevent unreasonable additional levels of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions;

(C) Removing temporary or large siltation structures from drainways, consistent with good water conservation practices, after disturbed areas are revegetated and stabilized;

(D) Performing any other actions as may be required by the Commission or Permit Board to ensure compliance with the Act or these Regulations;

(10) Stabilize any waste piles;

(11) Incorporate current engineering practices for the design and construction of water retention structures for the disposal of mine wastes, processing wastes or other liquid or solid wastes which, at a minimum, shall be compatible with the requirements of applicable state and federal laws and regulations, insure that leachate will not pollute surface or ground water, and locate water retention structures so as not to endanger public health and safety should failure occur;

(12) Insure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface waters or combustion;

(13) Insure that construction, maintenance and postmining conditions of access roads into and across the permit area will minimize erosion and siltation, pollution of air and water, damage to fish or wildlife or their habitat, or public or private property. The Permit Board may authorize the retention after mining of certain access roads if compatible with the approved reclamation plan;

(14) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to a channel where the construction would seriously alter the normal flow of water;

(15) Revegetate the affected area with plants, approved by the Department, to attain a useful, productive and beneficial purpose, including an agricultural, grazing, industrial, commercial, residential or recreational purpose, including lakes, ponds, wetlands, wildlife habitat or other natural or forested areas;

(16) Assume responsibility for successful revegetation for a period of two (2) years beyond the date of initial bond release on any bond or deposit held by the Department;

(17) Assure with respect to permanent impoundments of water as part of the approved reclamation plan that:

> **(A)** The size of the impoundment and the availability of water are adequate for its intended purpose;
>
> **(B)** The impoundment dam construction will meet the requirements of applicable state and federal laws;
>
> **(C)** The quality of impounded water will be suitable on a permanent basis for its intended use and the discharges from the impoundment will not degrade the water quality in the receiving stream;
>
> **(D)** Final grading will provide adequate safety and access for anticipated water users;

(E) Water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners; and

(18) Protect off-site areas from slides or damage occurring during the surface mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area.

(b) Reclamation is intended to cause the affected area to be restored to a useful, productive and beneficial purpose. A method of reclamation other than that provided in this section may be approved by the Permit Board if the Permit Board determines that the method of reclamation required by this section is not practical and that the alternative method will provide for the affected area to be restored to a useful, productive and beneficial purpose.

(c) Each operator, except as authorized by the Permit Board, shall perform reclamation work concurrently with the conduct of the mining operation where practical. The fact that an operator will likely redisturb an area shall be cause for the Permit Board to grant an exception from the requirement of concurrent reclamation.

(d) The operator and, in case of bond forfeiture, the Department or its designee, shall have the continuing right to enter and inspect the affected area in the reclamation plan and to perform any reclamation measures required properly to complete the reclamation plan.

(e)

(1) If the Commission finds that (i) reclamation of the affected area is not proceeding in accordance with the reclamation plan and that the operator has failed within thirty (30) days after notice to commence corrective action or (ii) revegetation has not been properly completed in conformance with the reclamation plan within two (2) years or longer, if required by the Commission, after termination of mining operations or upon revocation of the permit, or if the Permit Board revokes a permit, the Commission may initiate proceedings against the bond or deposit filed by the operator. The proceedings shall not be commenced with respect to a surety bond until the surety has been given sixty (60) days to commence and a reasonable opportunity to begin and complete corrective action.

(2) A forfeiture proceeding against any performance bond or deposit shall be commenced and conducted according to Miss. Code Ann. §§

49-17-31 through 49-17-41.

(3) If the Commission orders forfeiture of any performance bond or deposit, the entire sum of the performance bond or deposit shall be forfeited to the Department. The funds from the forfeited performance bond or deposit shall be placed in the appropriate account in the fund and used to pay for reclamation of the permit area and remediation of any off-site damages resulting from the operation. Any surplus performance bond or deposit funds shall be refunded to the operator or corporate surety.

(4) Forfeiture proceedings shall be before the Commission and an order of the Commission under this subsection is a final order. If the Commission determines that forfeiture of the performance bond or deposit should be ordered, the Department shall have the immediate right to all funds of any performance bond or deposit, subject only to review and appeals allowed under Miss. Code Ann. § 49-17-41.

(5) If the operator cannot be located, the Department shall send notice of the forfeiture proceeding, certified mail, return receipt requested, to the operator's last known address. The Department shall also publish notice of the forfeiture proceeding by publication once weekly for three (3) consecutive weeks in a newspaper having general circulation in the State of Mississippi and in a newspaper of general circulation in the county in which the operation is located. Any formal hearing on the bond forfeiture shall be set at least thirty (30) days after the last notice publication.

(6) If the performance bond or deposit is insufficient to cover the costs of reclamation of the permit area in accordance with the approved reclamation plan or remediation of any off-site damages, the Commission may initiate a civil action to recover the deficiency amount in the county in which the surface mining operation is located.

(7) If the Commission initiates a civil action under subsection (6) of this section, the Commission shall be entitled to any sums necessary to complete reclamation of the permit area in accordance with the approved reclamation plan and remediate any off-site damages resulting from that operation.

(f) If a landowner, upon termination or expiration of a lease, refuses to allow the operator to enter onto the property designated as the affected area to

conduct or complete reclamation in accordance with the approved reclamation plan, or if the landowner interferes with or authorizes a third party to disturb or interfere with reclamation in accordance with the approved reclamation plan, the landowner shall assume the permit and shall file a reclamation plan and post a performance bond as required under these Regulations and the Act.

Section 703. CONCURRENT RECLAMATION

Each operator, except as authorized by the Permit Board, shall perform reclamation work concurrently with the conduct of the mining operation where practical. The fact that an operator will likely redisturb an area shall be cause for the Permit Board to grant an exception from the requirements of concurrent reclamation.

Section 704. RIGHT OF THE OPERATOR AND THE DEPARTMENT TO COMPLETE RECLAMATION

The operator and, in case of bond forfeiture, the Department, shall have the continuing right to enter the affected area included in the reclamation plan and to perform thereon the reclamation measures required properly to complete the reclamation plan.

CHAPTER 8

Violations and Penalties

Section 800. NOTIFICATION OF VIOLATIONS

(a) Each Department field inspector, on detection of each violation of any requirement of the Act, permit, or these Regulations, shall inform the operation supervisor orally at the time of the inspection and subsequently in writing and shall report in writing any such violation to the Commission.

(b) Any operator found by the Department to be in noncompliance with any of the filing, reporting, notification, mining, or reclaiming provisions of the Act, the permit or these Regulations shall be notified in writing by the Department.

Section 801. VIOLATIONS AND PENALTIES

(a) Any person who violates, or fails or refuses to comply with any rule or regulation or written order of the Commission or any condition of a permit or coverage under a general permit may be subject to a civil penalty to be assessed and levied by the Commission after notice and opportunity for a formal hearing. In addition to assessing civil penalties, the Commission may submit a written statement to the Permit Board recommending that the Permit Board revoke the permit for any operation which is subject to the maximum penalty of Twenty-five Thousand Dollars ($25,000.00). Appeals of any action or decision of the Commission may be taken as provided in Miss. Code Ann. § 49-17-41.

(b) Any civil penalty assessed against a permitted, covered or exempt operation and levied by the Commission shall not exceed Five Hundred Dollars ($500.00) for the first violation; for subsequent violations committed within three (3) years of the first violation the maximum penalties are: Two Thousand Five Hundred Dollars ($2,500.00) for the second violation, Five Thousand Dollars ($5,000.00) for the third violation and Twenty-five Thousand Dollars ($25,000.00) for the fourth and subsequent violations by the same operator. Multiple violations at a site during one (1) day shall not be cumulative. A separate penalty shall not be assessed for each violation and only one (1) penalty may be assessed for all violations occurring at a site during one (1) day. Each day of a continuing violation shall be a separate violation until corrective action is taken or the operator after notice of the violation is diligently pursuing efforts to achieve compliance in a timely manner. In assessing a penalty under this subsection, the Commission shall not consider offenses occurring before July 1, 2002. In addition to a civil penalty, the Commission may order an operator of a permitted, covered or exempt operation to reclaim the affected area.

(c) Any civil penalty assessed against an operator for mining without a permit and levied by the Commission shall not exceed Five Thousand Dollars ($5,000.00) for the first violation, Ten Thousand Dollars ($10,000.00) for the second violation and Twenty-five Thousand Dollars ($25,000.00) for the third and subsequent violations by an operator. In assessing a penalty under this subsection, the Commission shall not consider violations occurring before July 1, 2002.

(d) In determining the amount of penalty, the Commission shall consider at a minimum:

(1) The willfulness of the violation;

(2) Any damage to air, water, land or other natural resources of the state or their uses;

(3) Costs of restoration and abatement;

(4) Economic benefit as a result of noncompliance;

(5) The seriousness of the violation, including any harm to the environment and any hazard to the health, safety and welfare of the public; and

(6) Past performance history.

(e) The Commission may institute and maintain a civil action for relief, including a permanent or temporary injunction or any other appropriate order, in the chancery court of the county in which the majority of the surface mining operation is located. The chancery court shall have jurisdiction to provide relief as may be appropriate. Any relief granted by the court to enforce a written order of the Commission shall continue in effect until the completion of all proceedings for review of that order under this chapter, unless the chancery court granting the relief sets it aside or modifies it before that time.

(f) Liability for the costs of cleanup, removal, remediation or abatement of any pollution, hazardous waste or solid waste shall be limited as provided in Miss. Code Ann. § 49-17-42 and rules adopted under that section.

(g) Any violation of the act and the Mississippi Air and Water Pollution Control Law or the Solid Wastes Disposal Law of 1974 shall be assessed a civil penalty under only one (1) of these laws.

(h) Any person who knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under the Act or these Regulations is guilty of a misdemeanor and upon conviction, may be subject to a fine of not more than Five Thousand Dollars ($5,000.00).

(i) Any person who knowingly violates, or fails or refuses to comply with this chapter, any rule or regulation or written order of the Commission adopted or issued under this chapter, or any condition of a permit issued under this chapter, is guilty of a misdemeanor and, upon conviction, may be subject to a fine of not more than Five Thousand Dollars ($5,000.00).

Section 802. CEASE AND DESIST AUTHORITY

The Commission shall order the immediate cessation of any ongoing surface mining operation being conducted with or without a permit or coverage under a general permit if it finds that the operation endangers the health or safety of the public or creates imminent and significant environmental harm.

CHAPTER 9

Enforcement, Hearings, and Appeals

Section 900. ENFORCEMENT AND APPEALS

(a) When an employee of the Department files a report alleging a violation or when any person files a complaint with the Commission alleging that any other person is in violation of any rule and regulation, or any condition of a permit, the Commission shall notify the alleged violator and conduct an investigation of the complaint. Upon finding a basis for the complaint, the Commission shall cause written notice of the complaint, specifying the section of law, rule, regulation or permit alleged to be violated and the facts of the alleged violations, to be served upon that person. The Commission may require the person to appear before the Commission at a time and place specified in the notice to answer the charges. The time of appearance before the Commission shall be not less than twenty (20) days from the date of the mailing or service of the complaint, whichever is earlier. If the Commission finds no basis for the complaint, the Commission shall dismiss the complaint.
(b) The Commission shall afford an opportunity for a formal hearing to the alleged violator at the time and place specified in the notice or at another time or place agreed to in writing by both the Department and the alleged violator, and approved by the Commission. On the basis of the evidence produced at the formal hearing, the Commission may enter an order which in its opinion will best further the purposes of this chapter and shall give written notice of that order to the alleged violator and to any other persons which appeared at the formal hearing or made written request for notice of the order. The Commission may assess penalties as provided by law. Any formal hearing shall be of record.
(c) Except as otherwise expressly provided, any notice or other instrument issued by or under authority of the Commission may be served on any affected person personally or by publication, and proof of that service may be made in the same manner as in case of service of a summons in a civil action. The proof of service shall be filed in the office of the Commission. Service

may also be made by mailing a copy of the notice, order, or other instrument by certified mail, directed to the person affected at the person's last known post office address as shown by the files or records of the Commission. Proof of service may be made by the affidavit of the person who did the mailing and shall be filed in the office of the Commission.
(d) Any person who participated as a party in the formal hearing may appeal a decision of the Commission under this section as provided in Miss. Code Ann. § 49-17-41.

Section 901. PLACE AND NATURE OF HEARINGS

(a) Unless otherwise expressly provided in these Regulations or the Act, any interested party aggrieved by any action of the Permit Board may request a formal hearing before the Permit Board as provided in Miss. Code Ann. § 49-17-29. Any person aggrieved by any action of the Commission may request a formal hearing before the Commission as provided in Miss. Code Ann. § 49-17-41.

(b) Any public hearing of the Permit Board provided for under these Regulations or the Act shall be deemed to be the same hearing as otherwise afforded to any interested party by the Permit Board under Miss. Code Ann. § 49-17-29. Any formal hearing of the Permit Board shall be deemed to be the same hearing as otherwise afforded to any interested party by the Permit Board under Miss. Code Ann. § 49-17-29.

(c) Any public hearing of the Commission provided for under these Regulations or the Act shall be deemed to be the same hearing as afforded under Miss. Code Ann. § 49-17-35. Any formal hearing of the Commission provided for under these Regulations or the Act shall be deemed to be the same hearing as afforded under Miss. Code Ann. § 49-17- 41.

(d)

(1) In conducting any formal hearing under these Regulations or the Act, the Permit Board shall have the same authority to subpoena witnesses, administer oaths, examine witnesses under oath and conduct the hearing as provided in Miss. Code Ann. § 49-17-29.
(2) In conducting any formal hearing under these Regulations or the Act, the Commission shall have the same authority to subpoena witnesses, administer oaths, examine witnesses under oath and conduct the hearing as provided in Miss. Code Ann. § 49-17-41.

Section 902. APPEALS OF FINAL DECISIONS

Any person who participated as a party in a formal hearing before the Permit Board may appeal from a final decision of the Permit Board as provided in Miss. Code Ann. § 49-17-29. Any person who participated as a party in a formal hearing before the Commission may appeal from a final decision of the Commission as provided in Miss. Code Ann. § 49-17-41.

CHAPTER 10

Effective Date

These revisions to the Mississippi Surface Mining and Reclamation Rules and Regulations were adopted by the Mississippi Commission on Environmental Quality on December 10, 2009, and shall become effective on February 3, 2010.