

8-7-1016. No effect on other legal duties.

The provision of information to a public employee pursuant to the provisions of this subchapter shall not be construed to affect the liability of a public employer with regard to the health and safety of an employee or other persons exposed to hazardous chemicals, nor shall it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease as required under any other provision of law. The provision of information to an employee shall not affect any other duty or responsibility of a chemical manufacturer or distributor to warn ultimate users of a hazardous chemical under any other provision of law.

L. BLASTING

20-27-1101. Penalty.

Any person who knowingly violates any provision of this subchapter or any regulation or order adopted pursuant to this subchapter shall be guilty of a Class B misdemeanor.

20-27-1102. Rules and regulations - Enforcement - Administration.

(a) The Director of the Arkansas Department of Labor shall promulgate regulations to establish minimum standards for the qualifications of those individuals performing blasting in Arkansas.

(b) The Director of the Department of Labor shall implement, enforce, and administer the provisions of this subchapter and the regulations adopted pursuant thereto.

(c) Regulations under this section shall be adopted pursuant to the Arkansas Administrative Procedure Act, §25-15-101 et. seq.

(d) The Director of the Department of Labor is authorized to establish by regulation fees for certifying individuals as qualified to perform blasting in Arkansas. Such fees shall not exceed the sum of thirty dollars (\$30.00) per applicant.

20-27-1103. Exemptions.

The provisions of this subchapter shall not apply to the following:

(1) Blasting conducted at a surface coal mine regulated by the Arkansas Department of Environmental Quality pursuant to the Arkansas Surface Coal Mining and Reclamation Act of 1979, §15-58-101 et seq.; and

(2) Blasting conducted during seismic operations regulated by the Oil and Gas Commission pursuant to §15-71-114.

20-27-1301. Title

This subchapter may be called the "Arkansas Quarry and Open Pit Mine Blasting Control Act".

20-27-1302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Blasting" means the use of explosives or a blasting agent;

(2) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, that is intended for blasting if the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined;

(3) "Contractor" means any person conducting blasting at a quarry or open pit mine other than the owner or operator and its employees;

(4) "Department" means the Department of Labor;

(5) "Director" means the Director of the Department of Labor;

(6) "Explosives" means any substance classified as an explosive by either state or federal law;

(7) "Mine" means any quarry or open pit;

(8) "Operator" means any person conducting surface mining operations at a quarry or open pit;

(9) "Owner" means the actual owner of the mine;

(10) "Person" means any individual, partnership, corporation, business, or other entity; and

(11) "Quarry" or "open pit mine" means any open excavation, prospect opening, pit, bank, or open-cut workings

for the surface extraction of minerals, stone, or other product for commercial use, excluding coal.

20-27-1303. Blasting standards.

(a) Blasting shall be conducted to prevent injury to persons, damage to public or private property, adverse impact on any underground mine, and change in the course, channel, or availability of surface or ground water outside the mine's perimeter.

(b)(1) In blasting operations, airblast, shall not exceed the maximum limits set forth in 30 C.F.R. 816.67(b), at the location of any structure, residence, public building, school, church or commercial or institutional building outside the perimeter of a mine and owned or leased by a person other than the mine owner and operator.

(2)(A) If necessary to prevent damage, the director may require lower maximum allowable airblast levels than those specified in subdivision (b)(1) of this section for use in the vicinity of a specific blasting operation.

(B) Such action shall only be taken following consultation with whatever expert or experts the director deems appropriate.

(3)(A) The director may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(B) The measuring system shall have an upper-end flat frequency response of at least two hundred hertz (200 Hz). The measuring system shall also have a low-end frequency response of two hertz (2 Hz) and be within minus three decibels (-3dB) at two hertz (2 Hz).

(c)(1) Flyrock from blasting operations, traveling in the air or along the ground, should not be cast from the mine site.

(2) In the event that flyrock is cast from the mine site, the owner or operator and contractor shall be liable and responsible for any damages including clean up and removal of the flyrock.

(d)(1)(A) In blasting operations, ground vibration shall not exceed the maximum limits established in accordance with either the maximum peak particle velocity limits contained in 30 C.F.R. 816.67(d)(2), or the scaled-distance equation

established at 30 C.F.R. 816. 67(d)(3), at the location of any structure, residence, public building, school, church, or commercial or institutional building outside the perimeter of a mine and owned or leased by a person other than the mine owner or operator.

(B) If a seismographic record for a blast exists or is required, the maximum limit for ground vibration shall be the peak particle velocity limits contained in 30 C.F.R. 816.67(d)(2), at any structure, residence, public building, school, church, or commercial or institutional building.

(2)(A) If necessary to prevent damage, the director may require lower maximum allowable ground vibration levels than those specified in subdivision (d)(1) of this section for use in the vicinity of a specific blasting operation.

(B) Such action shall only be taken following consultation with whatever expert or experts the director deems appropriate.

(3) The director may require an owner or operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e)(1) The maximum limits for airblast and ground vibration as specified in subdivisions (b)(1) and (d)(1) of this section shall be construed as the threshold below which blasting damage is unlikely to occur. The director, however, shall have the authority to promulgate regulations requiring more or less restrictive limits, as appropriate.

(2) Such action shall only be taken following consultation with whatever expert or experts the director deems appropriate.

(f)(1) In the event that a pit or quarry is closer than three hundred feet (300') from any public highway, road, or street, no blasting shall be conducted without the prior written approval of the director.

(2) Notwithstanding the provisions of subdivision (f)(1) of this section, any quarry or pit in existence on July 1, 1995, shall be allowed to continue operations without obtaining the written approval of the director.

(g)(1) All blasting operations shall be conducted between sunrise and sunset, unless extraordinary circumstances arise which would necessitate conducting a blast outside these hours.

(2) Such circumstances shall be documented in the blast records required by §20-27-1304.

(h)(1) Prior to the firing of a blast, the owner or operator or contractor shall follow a definite plan of warning signals that can be clearly seen or heard by anyone in the blasting area.

(2) The owner or operator shall inform all employees at the operation as to the established procedure.

20-27-1304. Notice of blasting operations.

(a)(1) Any owner or operator and contractor conducting blasting operations in this state on July 1, 1995, shall notify the director of each site or location on which blasting operations are conducted.

(2) Such notice shall be filed with the department no later than October 1, 1995.

~~—~~ (b) Any owner or operator and contractor which, after July 1, 1995, begins blasting at a new site or location, or at a site on which no blasting has occurred for a period of six (6) consecutive months, shall notify the director of its operation at least twenty-four (24) hours in advance of the initial blast.

(c) The notice required by subsections (a) and (b) of this section shall be on a form approved by the director and shall include, but not be limited to, the following information:

(1) The name, address, and telephone number of the mine owner or operator;

(2) The name, address, and telephone number of the operator or contractor performing the blast;

(3) The location of the quarry site or open pit mine; and

(4) The location where the records of the blasting operations are to be maintained.

(d) All owners and operators and contractors shall notify the director in writing of any change of address or location.

20-27-1305. Recordkeeping.

(a)(1) The owner or operator shall retain a record of all blasts for at least three (3) years.

(2) Upon request, copies of these records shall be made available to the department for inspection.

(3) Such records shall contain the following data:

(A) The name of the operator or contractor conducting the blast;

(B) The location, date, and time of the blast;

(C) The name and signature and the state certification number of the blaster conducting the blast;

(D) The identification and direction and distance, in feet, from the nearest blast hole to the nearest structure, residence, public building, school, church, or commercial or institutional building outside the perimeter of the mine which is owned or leased by a person other than the mine owner or operator;

(E) The weather conditions, including those which may cause possible adverse blasting effects;

(F) The type of material blasted;

(G) The sketches of the blast pattern, including number of holes, burden, spacing, decks, and delay pattern;

(H) The diameter and depth of the holes;

(I) The types of explosives used;

(J) The total weight of explosives used per hole;

(K) The maximum weight of explosives detonated in an eight millisecond (8 mlsec.) period;

(L) The initiation system;

(M) The type and length of stemming;

(N) The mats or other protection used;

(O) The seismographic and airblast records, if required, which shall include:

(i) The type of instrument, the sensitivity, and the calibration signal or certification of annual calibration;

(ii) The exact location of the instrument and the date, time, and distance from the blast;

(iii) The name of the person and firm who set up the instrument;

(iv) The name of the person and firm taking the reading;

(v) The name of the person and firm analyzing the seismographic record; and

(vi) The vibration and/or airblast level recorded;

(P) The reasons and conditions for each unscheduled blast; and

(Q) The reasons and conditions for any blast conducted before sunrise or after sunset.

(b)(1) The records required by subsection (a) of this section shall be maintained at the mine where the blast was conducted or at the regular business location of the owner or operator.

(2) Copies of the records required by subsection (a) of this section shall be maintained by the contractor.

20-27-1306. Insurance.

(a) All owners, operators, and contractors covered by the provisions of this subchapter shall maintain a policy of insurance issued by an insurance company authorized to do business in Arkansas and insuring the owner, operator, or contractor against liability for personal injury or property damage arising out of the operation or use of the mine in the minimum amount of one million dollars (\$1,000,000) for each incident or occurrence.

(b) Proof of such coverage shall be made available to the director or his authorized representative upon request.

20-27-1307. Exemptions - Owners and operators.

(a) The provisions of this subchapter shall not apply to any mine in existence or operation on July 1, 1995, unless the mine or quarry site has been the subject of a criminal or civil proceeding resulting from its blasting operations within the three-year period prior to January 1, 1995.

(b) Notwithstanding the provisions of subsection (a) of this section, the director's authority shall not be restricted with respect to:

(1) Mines or quarries which were in existence and operation on July 1, 1995, but which change owners or operators after July 1, 1995; or

(2) New or existing mines or quarries which were not in operation on July 1, 1995.

20-27-1308. Director - Powers and duties generally.

(a) In addition to other powers and authority provided by law, the director, or his authorized representative shall have the following authority:

(1) To promulgate rules and regulations for the administration and enforcement of this subchapter after public hearing and opportunity for public comment;

(2) To establish by rule or regulation standards for the performance of blasting operations at mines after public hearing and opportunity for public comment;

(3) To investigate as to any violation of this subchapter or any rule, regulation, or order issued thereunder;

(4) To administer oaths, take or cause to be taken the depositions of witnesses, and require, by subpoena, the attendance and testimony of witnesses and the production of all records and other evidence relative to any matter under investigation or hearing;

(5) To enter and inspect, during normal business hours, any mine, any place of business of a mine owner or operator, or any place of business of any contractor engaged in blasting operations at any mine for the purpose of ascertaining compliance with the provisions of this subchapter and any rule, regulation, or order issued thereunder. This right of entry includes the right to examine, inspect, and copy any appropriate records and to question any employees;

(6) To issue cease and desist orders, as well as orders directing that affirmative measures be taken to comply with this subchapter and any rule or regulation issued thereunder;

(7) To require, at his discretion, a mine owner or operator or contractor to offer a pre-blast survey of all buildings or structures up to a radius of one-half (1/2) mile of the perimeter of the mine prior to the initiation of blasting or the continuation of blasting under such terms and conditions as may be established by order of the director;

(8) To require, at his discretion, a mine owner or operator or contractor to develop and submit a blasting plan for approval;

(9) To require, at his discretion, a mine owner or operator or contractor to monitor and measure air blasts and/or ground vibration under such terms and conditions as may be

established by order of the director, or to conduct such monitoring and measuring through his authorized representative;

(10) To issue a variance from any specific requirement of this subchapter, or any rule or regulation issued thereunder, provided that literal compliance would constitute an undue hardship and that reasonable safety of persons and property is secured;

(11) To certify to official acts;

(12) To assess civil penalties as provided in §20-27-1313; and

(13) To enforce generally the provisions of this subchapter and the rules, regulations, and orders issued thereunder.

(b) In determining whether to order a pre-blast survey or whether to order monitoring and measurement of air blasts and ground vibration, the director may consider the nature of any written complaints made against that owner or operator or contractor or any written complaints about that specific mine location, as well as the number and frequency of such complaints.

(c) In case of failure of any person to comply with any subpoena lawfully issued under this section or upon the refusal of any witness to produce evidence or to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of any circuit court or judge thereof, upon application of the department, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal therein.

20-27-1309. Hearings, orders, and notices.

(a) All hearings conducted by the director and all orders, notices, and assessments shall conform to the requirements of the Arkansas Administrative Procedure Act, §25-15-201 et seq.

(b) Service of any notice, order, or assessment may be made by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to the person at his principal place of business as last of record with the department.

(c)(1) Any administrative order issued by the director shall be final, unless within twenty (20) days after service of notice thereof, the person charged with the violation or any complainant entitled to such notice notifies the director in writing that the order is contested.

(2) A complainant entitled to notice is any person who has made a written complaint within the past three (3) years to the department regarding the blasting operations of the person charged with the violation.

(d) In the event an order is contested, a final administrative order shall be made after hearing.

(e) Any final administrative action is subject to appeal pursuant to the Arkansas Administrative Procedure Act, §25-15-201 et seq.

20-27-1310. Cooperation with the State Fire Marshal.

(a) The director shall consult the State Fire Marshal regarding the adoption of any rules or regulations.

(b) The Department of Labor and the State Fire Marshal shall cooperate and coordinate their activities in order to avoid duplication of services.

20-27-1311. Existing rules and regulations - Orders - Remedies.

(a) All existing rules and regulations of any other state agency relating to subjects embraced within this subchapter shall remain in full force and effect unless expressly repealed, amended, or superseded by the state agency affected.

(b) All orders entered, permits granted, and pending legal proceedings instituted by any person, public or private, relating to subjects embraced within this subchapter shall remain unimpaired and in full force and effect until or unless superseded by actions taken by the director under this subchapter.

(c) No existing civil or criminal remedies, public or private, for any wrongful action relating to subjects embraced by this subchapter shall be excluded or impaired by the provisions of this subchapter.

20-27-1312. Criminal penalties.

(a) Any person who violates any provision of this subchapter, or who violates any rule, regulation, or order issued thereunder, shall be guilty of a Class A misdemeanor, except as provided in subsection (b) of this section.

(b)(1) It shall be unlawful for a person to:

(A) Violate any provision of this subchapter, or any rule, regulation, or order issued thereunder, and leave the state or remove his person from the jurisdiction of this state;

(B) Purposely, knowingly, or recklessly conduct blasting in a manner prohibited by this subchapter, or any rule, regulation, or order issued thereunder, and thereby create a substantial likelihood of adversely affecting the health, safety, welfare, or property of any person, including the state or any political subdivision of the state; or

(2) A person who violates the provisions of this subsection shall be guilty of a Class D felony.

(c) Purposely or knowingly make any false statement, representation, omission, or certification in any document required to be maintained under this subchapter or to falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under this subchapter.

20-27-1313. Civil penalties.

(a)(1) Any person who violates any provision of this subchapter, or who violates any rule, regulation, or order issued thereunder, may be assessed an administrative civil penalty by the director in an amount not to exceed ten thousand dollars (\$10,000) per violation.

(2) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.

(b)(1) Assessment of a civil penalty by the director shall be made no later than three (3) years from the date of the occurrence of the violation.

(2) The director, in his discretion, may accept payment of assessed civil penalties in installments.

(A) The assessment by the director shall be final, unless, within twenty (20) days after service of notice thereof by certified mail, the person charged with the violation or any

complainant entitled to such notice notifies the director in writing that the proposed assessment is contested.

(B) In the event an assessment is contested, a final administrative determination shall be made pursuant to the Arkansas Administrative Procedure Act, §25-15-201 et seq.

(c) The amount of any assessment, when finally determined, may be recovered in a civil action brought by the director in a court of competent jurisdiction without paying costs or giving bond for costs.

(d)(1) Sums collected as reimbursement for expenses, costs, and damages to the department shall be deposited in the operating fund of the department.

(2) Sums collected as civil penalties shall be deposited into the general fund of the State Treasury.

(e) Notice of any assessment by the director shall be served on any person who has made a written complaint within the past three (3) years to the department regarding the blasting operations of the person charged with the violation.

20-27-1314. Restraint.

In addition to the civil penalty provided in §20-27-1313, the director is authorized to petition any court of competent jurisdiction, without paying costs or giving bond for costs, to:

(1)(A) Enjoin or restrain any violation of, or compel compliance with, the provisions of this subchapter and any rules, regulations, or orders issued thereunder.

(B) In situations where there is an imminent threat to public or worker safety or to property, the director may seek a temporary restraining order for the cessation of any blasting;

(2) Affirmatively order that such remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter; and

(3) Recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter.

20-27-1315. Private right of action.

Any person adversely affected by a violation of this subchapter, or any rules, regulations, or orders issued pursuant

thereto, shall have a private right of action for relief against the violator.

20-27-1316. Joint and several liability.

The owner or operator of any quarry or open pit mine where a blast is conducted and any contractor conducting the blast shall be jointly and severally liable for violations of this subchapter and any rules or regulations issued thereunder.

20-27-1317. Injunctive relief.

In addition to all other remedies provided by this subchapter, the Attorney General of this state and the prosecuting attorney of a county may apply to the chancery court or the judge in vacation of the county where the quarry or open pit mine is located for an injunction to restrain, prevent, or abate a public nuisance related to the subjects embraced by this subchapter or any violation of any provision of this subchapter or the rules, regulations or orders issued thereunder.

M. TRENCHING AND EXCAVATION ON PUBLIC PROJECTS

22-9-212. Public improvements generally - Trench or excavation safety systems.

(a) Whenever any agency of this state or of any county, municipality, or school district, or other local taxing unit or improvement district, enters into a contract covered by the provisions of §§22-9-202 - 22-9-204 for the making of repairs or alterations or the erection of buildings or for the making of any other improvements, or for the construction or improvement of highways, roads, streets, sidewalks, curbs, gutters, drainage or sewer projects, or for any other construction project in which the public work or public improvement construction project involves any trench or excavation which equals or exceeds five feet (5') in depth, the agency, county, municipality, school district, local taxing unit, or improvement district shall require:

(1) That the current edition of Occupational Safety and Health Administration Standard for Excavation and Trenches

Safety System, 29 CFR 1926, Subpart P, be specifically incorporated into the specifications for the project; and

(2) That the contract bid form include a separate pay item for trench or excavation safety systems to be included in the base bid.

(b) In the event a contractor fails to complete a separate pay item in accordance with the applicable provisions of subsection (a) of this section, the agency, county, municipality, school district, local taxing unit, or improvement district shall declare that the bid fails to comply fully with the provisions of the specifications and bid documents and will be considered invalid as a nonresponsive bid. The owners of the above-stated project shall notify the Department of Labor, Safety Division, of the award of a contract covered by this section.

N. VOLUNTARY PROGRAM FOR DRUG-FREE WORKPLACES

11-14-101. Legislative intent.

(a) It is the intent of the General Assembly to promote drug-free workplaces in order that employers in this state may be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and research their desired levels of success without experiencing the costs, delays, and tragedies associated with work-related accidents resulting from drug or alcohol abuse by employees. It is further the intent of the General Assembly that drug and alcohol abuse be discouraged and that employees who choose to engage in drug or alcohol abuse face the risk of unemployment and the forfeiture of workers' compensation benefits.

(b) If an employer implements a drug-free workplace program in accordance with this chapter which includes notice, education, and procedural requirements for testing for drugs and alcohol pursuant to rules developed by the Workers' Health and Safety Division of the Workers' Compensation Commission, the covered employer may require the employee to submit to a test for the presence of drugs or alcohol, and if a drug or alcohol is found to be present in the employee's system