

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 13

OPEN CUT LAND RECLAMATION

S.W.S.T. 11.0

Amendment

New Adoption

Judicial Approved

02-06-82

Council Adopted

05-04-82

13-01-01 CITATION

This Act may be known and cited as "The Open Cut Land Reclamation Act."

13-02-01 DECLARATION OF POLICY

It is hereby declared to be the policy of this Tribe to provide, for the reclamation and conservation of land subjected to surface disturbance by open cut mining and thereby to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to establish agricultural, recreational, home and industrial sites, to protect and perpetuate the taxable value of property, and to protect and promote the health, safety, and general welfare of the people of this Tribe.

13-03-01 DEFINITIONS

Whenever used or referred to in this Act, or in rules and regulations promulgated hereunder unless another meaning clearly appears from the context.

13-03-02 Overburden - means all of the earth and other material which lie above natural deposits of coal, clay, stone, sand, gravel, or other minerals, and also means, such earth and other materials disturbed from their natural state in the process of open cut mining, or from mining from exposed natural deposits.

13-03-03 Open Cut Mining - means the mining of coal, clay, stone, sand, gravel, or other minerals by removing the overburden lying above natural deposits thereof and mining directly from the natural deposits thereby exposed.

13-03-04 Operator - means any person, firm, or corporation engaged in and controlling an open cut mining operation.

13-03-05 Pit - means a tract of land, from which overburden has been or is being removed, for the purpose of open cut mining.

13-03-06 Affected Land - means the area of land from which overburden shall have been removed, or upon which the overburden or refuse has been deposited or both after the effective date of this has been deposited or both after the effective date of this act.

13-03-07 Refuse - means all waste material directly connected with open cut mining.

- 13-03-08 Ridge - means a lengthened elevation of overburden created in the open cut mining process.
- 13-03-09 Peak - means a projecting point of overburden created in the open cut mining process.
- 13-03-10 Commissioner - means the Commissioner of Tribal lands of the Sisseton-Wahpeton Sioux Tribe.

13-04-01 **COMPLIANCE GENERALLY - EXCEPTIONS**

From and after the effective date of this Act, no mining operation or operations by which solid minerals are presently being extracted or are intended to be extracted from the earth by means of surface opening shall be commenced, conducted, or carried on or abandoned or closed save in accordance with and in conformity to the requirements hereof. Provided nevertheless; it is being recognized that measures taken hereunder are performed in the public interest and constitute an expense to the operator, and while this Act shall apply to all mining operations being conducted at the time of or commenced after the effective date hereof no operator shall be compelled to perform at his own expense measures required hereunder with respect to operations that were completed or substantially completed prior to the date hereof.

- 13-04-02 Provided however, that all pits and quarries opened after the effective date of this Act, which are under the supervision and control of any government agency whose regulations are equal to or greater than those imposed by Section 13-06-01 of this Act, are not subject to the further provisions of this Act.

13-05-01 **PERMIT - BOND GENERALLY - FEE**

Any operator desiring to engage in a new open cut mining shall make written application to the Commissioner for a permit. Application for such permit shall be made upon a form furnished by the Commissioner, which form shall contain the following:

1. The name of the operator and, if other than the owner, the name and address of the owner.
2. The mineral to be extracted and the type of operation to be conducted.
3. The volume of earth to be removed, as accurately as the same may then be estimated, and the volume which has been previously removed, if any.
4. The location of the operation by legal subdivision, section, township, range, and county.
5. The date when such operation was commenced or, as to new operations.

6. The name and address of the person or persons to whom any notice under the provisions of this Act shall be sent; and
7. A statement that the applicant has the right and power by legal estate owned to mine by open cut mining the lands so described and such application shall be accompanied by:
 - a. A bond or security meeting the requirements of Sections 13-08-01 to 13-08-06 of this Act; and
 - b. A fee of fifty dollars (\$50.00). Upon receipt of such application, bond or security and fee due from the operator, the commissioner shall issue a permit to the applicant which shall entitle him to engage thereafter in new open cut mining on the land therein described.

13-05-02 An operator desiring to have his permit amended to cover additional contiguous or nearby land may file an amended application with the commissioner. Upon receipt of the amended application, and such additional bond as may be required under the provisions of this Act, the commissioner shall issue an amendment to the original permit covering the additional land described in the amended application, without the payment of any additional fee.

16-05-03 An operator may withdraw any land covered by a permit, excepting affected land, by notifying the commissioner thereof, in which case the penalty of the bond or security filed by such operator pursuant to the provisions of this Act shall be reduced proportionately.

13-06-01 **DUTIES OF OPERATOR**

Every operator to whom a permit is issued pursuant to the provisions of this Act may engage in open cut mining upon the lands described in the permit upon the performance of and subject to the following requirements with respect to such lands:

1. Grading shall be carried on to reduce peaks and ridges to a rolling topography;
2. The operator shall construct earth dams in final cuts of all operations where a lake may be formed, if it is necessary to construct a dam in order to impound water or other liquids issuing from a mining operation where such effluent is harmful to or destructive of plant, animal, or human life; provided further, that the formation of said lakes will not interfere with underground or other mining operations, or damage adjoining property, and is done in compliance with laws, rules, and regulations administered by the office of the State Engineer;

3. The operator shall cover, if practical, in the discretion of the commissioner, the exposed face of a mineral seam, where acid-forming or combustible materials are present, to a depth of not less than two (2) feet or more as may be required by the commissioner, with earth or spoil materials;
4. Where practicable, reasonable effort must be made to encourage the revegetation of lands disturbed by mining operations. The commissioner shall recommend seeding practices adapted to the soil and climatic conditions; and
5. The operator shall submit to the commissioner no later than September 1st of each year during which mining operations are conducted, a map in a form approved by the commissioner, showing the location of the pit or pits by section, township, range, and county, with such other description as will identify the land upon which the operator has conducted open cut mining during the year ended on said date and has completed mining operations therein, with a legend upon such map showing the number of acres of affected land. The operator shall also submit with such map a report stating in detail all steps taken by the operator to effect land reclamation on the affected land.

13-07-01 ENTRY UPON LANDS FOR INSPECTION

The commissioner, or his accredited representatives, may enter upon the lands of the operator at all reasonable times for the purpose of inspection, to determine whether the provisions of this Act are being complied with.

13-08-01 BOND OF OPERATOR - SUBSTITUTION OF SURETY - VIOLATIONS; COMMISSIONER MAY RECLAIM LAND - NOTICE OF COMPLIANCE - REDUCING PENALTY OF BOND

Any bond herein provided to be filed with the commissioner by an operator shall be in such form as the commissioner prescribes, payable to the Sisseton-Wahpeton Sioux Tribe conditioned that the operator shall faithfully perform all requirements of this Act and comply with all rules of the commissioner which are made in accordance with provisions of this Act. Such bond shall be signed by the operator as principal, and by a good and sufficient corporation surety, licensed to do business on the Reservation, as surety. The penalty of such bond shall be in amount equal to the cost of restoration required by this Act as determined by the commissioner. In lieu of such bond, the operator may deposit cash and government securities or a bond with property sureties with the commissioner in an amount equal to that of the required bond on conditions as above prescribed; in the discretion of the commissioner, surety bond requirements may be fulfilled by the operator posting a bond with land and improvements and facilities thereon as

security, in which event no surety shall be required from time to time as provided by this Act. Such bond or security shall remain in effect until the mined acreage have been reclaimed, as provided under the permit, and approved and released by the commissioner, and shall from time to time cover only actual mined acreage and may be increased or reduced to cover only such acreage as remained unrestored.

13-08-02 A bond filed as above prescribed shall not be cancelled by the surety except after not less than ninety (90) days notice to the commissioner, and upon the commissioner's written consent thereto, which shall be forthwith given if the conditions of the bond have been performed.

13-08-03 If the license to do business on the Reservation of any surety upon a bond filed with the commissioner pursuant to this Act shall be suspended or revoked, the operator, within thirty (30) days after receiving notice thereof from the commissioner, shall substitute for such surety a good and sufficient corporate surety licensed to do business on the Reservation. Upon failure of the operator to make substitution of surety as herein provided, the commissioner shall have the right to suspend the permit of the operator to conduct operations upon the land described in such permit until such substitution is made.

13-08-04 The Commissioner shall give written notice to the operator of any violation of this Act or noncompliance with any of the rules and regulations promulgated by the commissioner hereunder, and if corrective measures approved by the commissioner, are not commenced within ninety (90) days the commissioner may proceed as provided in Section 13-11-01 of this Act to request forfeiture of the bond. Such forfeiture shall fully satisfy all obligations of the operator to reclaim the affected land under the provisions of this Act.

13-08-05 The commissioner shall have the power to reclaim, in keeping with the provisions of this Act, any affected land with respect to which a bond has been forfeited.

13-08-06 Whenever an operator shall have completed all requirements under the provisions of this Act as to any affected land, he shall notify the commissioner thereof. If the commissioner shall release the operator from further obligations regarding such affected land, the penalty of the bond shall be reduced proportionately.

13-09-01 **DEPOSIT OF FEES AND FORFEITURES**

All fees and forfeitures collected under the provisions of this Act shall be deposited with the Tribal Treasurer in a special fund for reclamation purposes.

13-10-01 ADMINISTRATION AND ENFORCEMENT OF ACT

This act shall be administered by the Commissioner of Tribal Lands of the Sisseton-Wahpeton Sioux Tribe who shall have power to appoint such subordinates as he may deem necessary, at salaries to be determined by the Personnel Committee of the Sisseton-Wahpeton Sioux Tribe, and who shall be paid monthly by the Tribal Treasurer on the warrant of the Tribal Auditor. It shall be the duty of said commissioner to administer all of the provisions of this Act and to secure enforcement of the same.

13-11-01 BOND FORFEITURE PROCEEDINGS

The Tribal Chairman, upon request of the commissioner, shall institute proceedings to have the bond of the operator forfeited for violation by said operator of any of the provisions of this Act. Before making such request of the Tribal Chairman, the commissioner shall notify the operator in writing of the alleged violation or noncompliance, and shall afford the operator the right to appear before the commissioner at a hearing to be held not less than thirty (30) days after receipt of such notice by the operator. At the hearing, the operator may present for the consideration of the commissioner, statements, documents, and other information with respect to the alleged violation. After the conclusion of the hearings, the commissioner shall either withdraw the notice of violation or shall request the Tribal Chairman to institute proceedings to have the bond of the operator forfeited as to the land involved.

13-12-01 RULES AND REGULATIONS

The commissioner shall adopt and promulgate reasonable rules and regulations respecting the administration of this Act and covering requirements for land reclamation for each category of material mined for all mining operations carried on within the jurisdiction of the Tribe, and in doing so shall comply with the Administrative Procedures Act of the Sisseton-Wahpeton Sioux Tribe.

13-13-01 PENALTY

Any person required by this Act to have a permit who engaged in new open cut mining without previously securing a permit to do so as prescribed by this Act is guilty of a misdemeanor, and on conviction thereof shall be fined not more than five hundred dollars (\$500.00). Each day of operation without the permit required by this Act shall be deemed a separate violation.

13-14-01 SEVERABILITY

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

W.S.T. CODE
Amendment
New Adoption
Official Approved
2-24-88
Council Adopted
12-21-88