

Permit Number 0002-MN-AG2

**AUTHORIZATION TO MINE MATERIALS OUTSIDE OF A STREAM CHANNEL ON  
TWENTY ACRES OR LESS UNDER THE ARKANSAS OPEN-CUT LAND  
RECLAMATION ACT.**

In accordance with the provisions of the Arkansas Open-Cut Land Reclamation Act (Arkansas Code Annotated § 15-57-301 *et seq.*) and Commission Rule 15, operators wanting to mine materials outside of a stream channel from an area of twenty (20) acres or less in size located in the State of Arkansas are authorized to conduct open-cut mining operations following the conditions set forth in Parts I through VIII herein.

This permit shall become effective on January 15, 2024.

This permit shall expire on January 14, 2029.

Operators who are not already covered by an individual permit or are otherwise exempted by the Act and fail to submit a complete written Notice of Intent as required to the Department to be covered by this general permit will be considered to be in violation of the Act and Commission Rule 15 and therefore subject to possible enforcement action by the Department.

Signed this 18th day of September, 2023.



Kevin White  
Mining Program Manager

## **General Permit 0002-MN-AG2**

### **Part I - Permit History**

The initial permit was issued on January 15, 2014.

The general permit was renewed on March 6, 2018 and became effective on January 15, 2019. The renewal added a new Part concerning permit history. The original Part numbers have been changed to reflect the addition of the new Part. Changes to the Departmental organization required changes to references to various Offices within the Department. In Part IV concerning the Notice of Intent Requirements, the deadlines for notification were extended from ten (10) working days to thirty (30) calendar days for submission of the NOI prior to the anticipated commencement of mining operations to be more consistent with other Commission rules. Also in Part IV, other clarifications were added involving operating a mine under the general permit before coverage approval, which bond instrument can be used with the general permit, and requirements for the mining and reclamation plans. In Part IV, changes were made to Section F on "Continuance of the Expired General Permit" due to changes to state law. Updates to the Department's website required changes to website link information in Part V.

The general permit was renewed again on July 1, 2023, and will become effective on January 15, 2024. The renewal added references to Commission Rule 15; Arkansas Open-Cut Mining and Land Reclamation. The General Assembly, by Act 315 of 2019, required all state agencies to replace any reference to "regulation" with the reference to "rule" in regard to Commission rules. References to ADEQ have been changed to DEQ to reflect transformational changes required by Act 910 of 2019, as well as to the definitions of Division, Department, and Director. Contact information, including the office addresses, phone number, and website, were updated in Parts IV and V.

## Part II - Definitions

Definitions as used in this General Permit unless the context otherwise requires:

**Act** means the Arkansas Open-Cut Land Reclamation Act;

**Affected Land** means the area of land where open-cut mining has been or is taking place or upon which spoil has been deposited, or any other surface disturbance including haul roads, processing and loading facilities, or appurtenances related to the mining operations on or after July 1, 1977; until the land is reclaimed;

**Best Management Practices** means a practice or combination of practices that have been determined to be an effective and practicable means of controlling nonpoint source pollutants from being discharged into Waters of the State;

**Commercial Purposes** means the sale of material from an open-cut mine as either a cash transaction, part of a contractual agreement involving payment for materials provided, or use in another process to create a product with value;

**Commission** means the Arkansas Pollution Control and Ecology Commission, or such commission or other entity as may lawfully succeed to the powers and duties of the Commission;

**Contemporaneous Reclamation** means that reclamation efforts, including but not limited to, backfilling, grading, topsoil replacement and revegetation of all land disturbed by open-cut mining activities shall occur as contemporaneously as practicable;

**Department** means the state of Arkansas Department of Energy and Environment;

**Division** means the Division of Environmental Quality (DEQ) within the Department of Energy & Environment or such Division or other entity which may lawfully succeed to the powers and duties of the Division;

**Director** means the executive head and active administrator of the Division or his or her delegated person who performs the functions and duties of the Director;

**Material** means any commodity or natural deposit mined or treated as spoil during open-cut mining operations;

**Open-cut mining** means the surface extraction of clay, bauxite, sand, gravel, soil, shale or other materials for commercial purposes;

**Operator** means any person engaged in or controlling an open-cut mining operation;

**Ordinary High Water Mark** means that line delimiting the bed from the bank and is found by ascertaining where the presence and actions of water are so usual and long, continuing in ordinary years, as to mark upon the soil of the bed a character distinct from that of the banks, with respect to



vegetation and the nature of the soil;

**Permit Area** means a contiguous (sharing a boundary or edge; adjacent; touching) area owned by a single person or multiple persons upon which open-cut mining operations occur where the amount of affected land will be twenty (20) acres or less;

**Person** means any individual, partnership, firm, company, public or private corporation, cooperative, association, joint-stock company, trust, estate, political subdivision or any agency, board, department or bureau of the state or any other legal entity whatever which is recognized by law as the subject of rights and duties;

**Pit** means a tract of land where open-cut mining is taking place;

**Reclamation for productive use** means conditioning areas affected by open-cut mining to make them suitable for any uses or purposes consistent with those enumerated in the declaration of policy;

**Right-of-way** means the portion of land over or under which certain facilities, including, but not limited to roadways, pipelines or power lines, are built;

**Soil** means the unconsolidated mineral or organic material on the immediate surface of the earth that serves as a natural medium for the growth of plants, generally free of boulders, cobbles or other floating rock;

**Spoil** means all waste material and debris connected with open-cut mining and with the mechanical removal, cleaning, and preparation of materials at the mine site;

**Watershed** means an area of land that surface water drains into a central system, such as a lake, river, or an ocean.

### **Part III - Coverage under this Permit**

A. Permit Coverage Area. This permit coverage includes all areas outside of stream channels within the State of Arkansas.

B. Eligibility.

1. General. This permit shall authorize any open-cut mining operation outside of a stream channel that follows the standard conditions in Part VI of this permit and that will result in the disturbance of twenty (20) acres or less.

2. Limitations on Coverage.

- (a) This permit shall not cover in-stream mining operations or open-cut mining operations where the permit area will exceed the maximum twenty (20) acres during the life of the mine.
- (b) This permit shall not cover mining operations that are located within the watershed of any waterbody or waterway designated as an Extraordinary Resource Water (ERW) or a Natural and Scenic Waterway (NSW) in the Commission's Rule No. 2. For the purposes of this permit, the watershed of an ERW or a NSW will be identified by the United States Geological Survey's twelve (12) digit Hydrological Unit Code (HUC).

C. Requiring an Individual Permit. The Director may require any operator seeking to be authorized by this permit to apply for and obtain an individual permit only if the operator has been notified in writing by the Department that an individual permit is required. This notice shall include a brief statement of the reasons for this decision, the individual permit application materials, a statement setting a deadline for the operator to file the application and, if applicable, a statement that coverage under this general permit shall automatically terminate on the effective date of the individual permit. The Director may grant additional time to submit the application upon request of the applicant. However, coverage under this permit will be terminated, if an operator fails to submit the individual permit application by the date specified in the notice.

D. Authorization.

- 1. An operator of an open-cut mine of twenty (20) acres or less outside of a stream channel must submit a Notice of Intent (NOI) in accordance with the requirements of Part IV of this permit for lawful coverage.

## **Part IV - Notice of Intent Requirements**

- A. Deadlines for Notification. An operator shall submit a NOI in accordance with the requirements of this Part at least thirty (30) calendar days prior to the anticipated commencement of an open-cut mining operation authorized by this general permit. Mining Operations will not start until the coverage for this general permit has been approved.
- B. Failure to Notify. An operator who fails to notify the Department for intent to be covered by this general permit and has commenced open-cut mining operations without a permit is in violation of Ark. Code Ann. § 15-57-304(a)(2).
- C. Contents of the Notice of Intent.
1. The Notice of Intent form used must be the form obtained from the Department.
  2. Additional documents and other information required to be submitted with the NOI form:
    - (a) A vicinity map that must be a full sized 7.5 minute topographic quadrangle map as prepared by the United States Geological Survey with the mine site location marked.
    - (b) Proof of right to mine through one of the following forms of acceptable documentation:
      - (1) A copy of the lease agreement with the landowner. The agreement must contain a legal description of the land to be permitted and signed by the applicant and the landowner.
      - (2) A copy of the deed with legal description showing that the applicant owns the property to be permitted.
      - (3) Other form of landowner approval which must contain a legal description of the land to be permitted.
    - (c) Written mining plan stating in general terms how mining is going to be conducted on the site including information on the number of acres to be affected and the anticipated depth of the pit. The written mining plan must include:
      - (1) Provisions to prevent unpermitted releases of water from the site, which provisions are to be identified on the site map and described in the mine plan narrative;
      - (2) A description of the functions of any ponds used as part of the process (i.e., decant ponds) and depiction on the site map;



- (3) Methods used to restrict access to and warn the public of the dangers inherent in a mining operation such as fencing, natural or man-made barriers and warning signs;
  - (4) A description of plan to preserve topsoil for redistribution during reclamation, unless the Director approves otherwise;
  - (5) Information on the thickness of the topsoil, overburden, and the resource material to be mined; and
  - (6) A description of plans for contemporaneous reclamation as required by the Department. For sand and gravel open-cut mining operations, a detailed description of the proposed incremental mining that will be conducted which incorporates contemporaneous reclamation.
- (d) Written reclamation plan stating what the condition of the site will be after mining and reclamation including, but not limited to, the following:
- (1) If the original slope of the affected land was less steep than one (1) vertical to three (3) horizontal (1:3), then no final slope shall be steeper than 1:3. If a pond is to be left, the banks must be graded at 1:3 to a point below the water surface at the annual low water level that will allow safe ingress and egress. Beyond this point the normal angle of repose for the material being used may be acceptable, provided it will provide adequate lateral support for the 1:3 slope preceding it;
  - (2) If the original slope of the affected land was steeper than one (1) vertical to three (3) horizontal (1:3), the Department may approve a final slope steeper than 1:3;
  - (3) If the material in which excavation is occurring is unconsolidated, in that it is lacking sufficient hardness or ability to resist weathering and inhibit erosion or sloughing, the Department may approve a final slope of approximate original contour, provided the operator can assure the integrity of this slope;
  - (4) If the material in which excavation is occurring is consolidated, in that it is of sufficient hardness or ability to resist weathering and inhibit erosion or sloughing, the Department may approve a slope deviation involving terracing, provided the reclamation plan meets the criteria as follows:
    - (i) Final slope of a reclaimed highwall must be approved by the Department as part of the written reclamation plan;

- (ii) The top of excavation is to be fenced;
  - (iii) The uppermost terrace to be no more than ten feet (10') below top of excavation;
  - (iv) The remainder of a highwall must be terraced with no terrace face greater than twenty feet (20') in height;
  - (v) The terrace widths are no less than ten feet (10'); and
  - (vi) Each terrace is to be revegetated with trees or other approved vegetative cover.
- (5) A list of the varieties and applicable seeding rate that will be used must be included with the reclamation plan. The applicant shall obtain recommendations on plant varieties and seeding rates based on the intended use of the land from state and federal agricultural or forestry agencies;
- (e) Initial NOI application fee of \$200.00 or renewal NOI fee of \$100.00.
- (f) Bond amount per acre: \$15,000.00. Total bond: Number of acres to be affected times \$15,000.00 (Acres x \$15,000.00).
- (g) Reclamation bond instrument in the total amount of bond by one of the following:
- (1) Cash;
  - (2) A collateral bond with supporting collateral consisting of irrevocable letters of credit or certificates of deposit in favor of the Department;
  - (3) A surety bond
- (h) Disclosure Statement

D. Where to Submit.

A NOI for coverage under this permit must be submitted to the Department using the following address:

Arkansas Department of Energy & Environment  
Division of Energy and Mineral Resources  
5301 Northshore Drive  
North Little Rock, AR 72118



E. Additional Notification. A copy of the permit certificate and the NOI form must be available at the mine site during normal business hours.

F. Continuance of the Expired General Permit.

1. If the general permit expires before the final decision to renew or not renew the general permit, the terms and conditions of the general permit shall remain in effect, and all persons who obtained coverage under the general permit before its expiration shall retain coverage under the general permit until there has been a final decision on the general permit.
2. In the event the Department makes a decision to not renew the general permit, existing coverage under the general permit shall continue under the terms of the expired permit until a final decision is reached for an individual open-cut mining permit.

G. Reaffirmation of Permit Coverage. Upon renewal of this general permit, the operator is required to submit a new NOI in accordance with this Part within thirty (30) calendar days after the new effective date of the general permit to continue coverage.

H. Notice of Termination Request and Bond Release (NOTRBR). When a site covered by this general permit has been reclaimed in accordance with the reclamation plan, the operator shall submit a NOTRBR to the Department. The Department shall inspect the site to verify completion of the reclamation to meet any pertinent conditions listed in Parts V and VI of this permit. If reclamation is satisfactory, the Department will issue a termination of permit coverage and bond release letter. If reclamation is not satisfactory, the Department will recommend actions to correct deficiencies before permit coverage is terminated and the bond released. Failure to adequately reclaim the site after more than one hundred eighty (180) calendar days from receipt of the Department's recommended actions will result in an enforcement action to insure that the site is reclaimed. The operator will be responsible for annual reports and annual fees until the permit coverage is terminated by the Department.

## **Part V - Special Conditions and Management Practices**

- A. Prior to engaging in open-cut mining, it is the responsibility of the operator to obtain all necessary water permits for the control of stormwater and air permits for emissions associated with certain proposed mining operations from the Office of Water Quality and the Office of Air Quality at the following address, telephone number, or website:

Arkansas Department of Energy & Environment  
Division of Energy and Mineral Resources  
5301 Northshore Drive  
North Little Rock, AR 72118  
Telephone: (501) 682-0744

- B. For forms and other information, please refer to the Arkansas Department of Energy & Environment website:

<https://ee.arkansas.gov/>

## **Part VI - Standard Permit Conditions**

- A. The perimeter of the permit area must be clearly marked on the ground at all times using metal posts or stakes projecting thirty-six (36) inches above ground and painted Hunter Orange or like color. These markers must remain in place until the operator has reclaimed the site and obtained release from reclamation liability from the Department.
- B. The operator shall protect the public from the dangers inherent in an open-cut mining operation by restricting access to the mine site and posting adequate warning signs.
- C. The operator shall preserve any topsoil for redistribution during reclamation unless otherwise approved by the Director.
- D. All affected land shall be graded to a rolling or terraced topography with adequate drainage to insure that no unplanned ponds of water develop on the site. No final slope shall be steeper than one (1) vertical to three (3) horizontal unless otherwise approved by the Department.
- E. If a pond is to be left as part of the reclamation plan, the operator must maintain a pH factor of six (6) to nine (9) in the pond. Pond banks must be graded to one (1) vertical to three (3) horizontal to a point below the water surface at annual low water level that will allow safe ingress and egress.
- F. If the permit area is near a waterway, an undisturbed buffer zone of one hundred (100) feet must be maintained between the permit boundary and the ordinary high water mark of the waterway.
- G. An undisturbed buffer zone of fifty (50) feet must be maintained from any adjacent property line or right-of-way until reclamation begins. The operator may create the final slope during reclamation starting ten (10) feet from the property line or right-of-way.
- H. All mine spoil generated by the operator shall be disposed of in a manner approved by the Department.
- I. For sand and gravel operations that will be conducting incremental mining operations, the operator shall perform contemporaneous reclamation of the mine site in accordance with the operator's incremental mining plan approved by the Department.
- J. No later than June 1 of each year of the permit term, the operator shall submit to the Department, an annual report containing information on the number of affected acres that are at the site and the number of tons of material mined during the previous twelve (12) months.
- K. No later than June 1 of each year of the permit term the operator shall submit to the Department, an annual fee, based on the number of acres affected at the site times ten dollars (\$10.00) per acre.



L. Mine and permit identification sign:

1. An identification sign shall be displayed at the main entrance to the site and at each point of access to the permit area from public roads;
2. The sign shall show permit number and the name, business address, and telephone number of the operator; and
3. The sign shall be maintained until a letter terminating permit coverage and approving bond release is issued by the Department.

## **Part VII - Retention of Records**

A. The operator shall retain records of all data used to complete the NOI and annual reports for a period of three (3) years after receiving the permit coverage termination and bond release letter from the Department.

### **Part VIII - Re-opener Clause**

- A. If there is documented evidence by the Department indicating potential or realized impacts to the environment associated with mining activity at a site covered by this permit, the operator may be required to obtain an individual permit in accordance with Part III.C. of this permit.
- B. The Department may at any time initiate the procedure to modify a part of this general permit based on information collected on the effectiveness of this permit to protect the environment.



SURFACE MINING AND RECLAMATION DIVISION  
GENERAL PERMIT NUMBER 0002-MN-AG2 RENEWAL

RESPONSIVE SUMMARY

## **Statement of Basis**

### **Open-Cut Mining General Permit 0002-MN-AG2**

In Part III and IV of Open-Cut Mining General Permit 002-MN-AG2, Conditions listed are requirements for permitting found in Chapter 3 of Commission Rule 15.

In Part V of Open-Cut Mining General Permit 002-MN-AG2, the Special Conditions listed are legal requirements for mining operations to have the appropriate water permits for the control of stormwater and air permits for emissions associated with certain proposed mining operations.

In Part VI of Open-Cut Mining General Permit 0002-MN-AG2, the Standard Permit Conditions listed are the appropriate standard conditions found in Reg.15.402 for an individual open-cut mining permit.