

CHAPTER 181
STRIP MINING

Section

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Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

" **§181-1 Definitions.** Whenever used in this chapter, unless a different meaning is plainly required by the context:

"Board" means the board of land and natural resources.

"Mineral" or "minerals" means any or all of the oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits whether solid, gaseous, or liquid, in, on, or under any land; but does not include sand, rock, gravel, and other materials suitable for use and used in road construction.

"Operator" means an individual, firm, or corporation engaged in strip mining operations.

"Pit" means a tract of land of which the surface soil has been removed or is being removed or is proposed to be removed for mining.

"Strip mining" means mining of mineral by uncovering therefrom the surface soil above mineral deposits and mining directly from the mineral exposed for the purpose of carrying on a business of mining or selling mineral removed by the process.

Definitions and rules of construction stated in chapter 1 apply. [L 1957, c 161, §2; am L 1959, c 20, §1; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; Supp, §98C-2; HRS §181-1]

Cross References

General authority, see §26-15.

" **§181-2 Powers of board.** (a) The board of land and natural resources shall grant upon application therefor being made under section 181-4 a permit to strip mine, and may modify, suspend, revoke, or cancel the permit for cause as set forth in subsection (b) of section 181-4. The board shall also have full power and authority to carry out and administer this chapter and may designate one or more agents to act in its stead.

(b) The board on its own motion whenever it has reason to believe cause therefor exists may, and upon the sworn complaint in writing of any person setting forth facts which, if proved, would constitute grounds for refusal, suspension, revocation, or cancellation of a permit, shall investigate the acts or omissions of any person holding or claiming to hold a permit

under this chapter or any acts or omissions of any person constituting a violation of this chapter.

(c) The board may enter upon the lands of any operator at any time for the purpose of inspection to determine whether this chapter has been complied with. For such purpose the board shall have access to all parts of the land upon which the pit is located and may use any right-of-way or easement available to the operator over any adjoining land.

(d) This chapter shall apply to the public lands of the State to the extent that they are not inconsistent with the laws of Hawaii relating to public lands. Nothing contained in this chapter shall be construed to limit, restrict, or otherwise affect the powers of the board over the public lands of the State as provided by the laws of Hawaii relating to public lands.

(e) Notwithstanding any act relating to forest reserves and water reserves, this chapter shall apply to mineral lands in such reserves. No act hereafter approved shall be deemed to repeal any provision of this chapter unless so specifically provided. [L 1957, c 161, §3; am L 1959, c 20, §2; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; Supp, §98C-3; HRS §181-2]

Cross References

Public lands, see chapter 171.

" **§181-3 Prohibitions.** (a) It shall be unlawful for any person to engage in strip mining without first obtaining from the board of land and natural resources a permit so to do, in the form hereinafter provided.

(b) It shall be unlawful for any operator to cause or permit any poisonous or noxious matter to be discharged into any stream or shore water in such manner as to constitute a public nuisance. [L 1957, c 161, §4; am L 1959, c 20, §3; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; Supp, §98C-4; HRS §181-3]

" **§181-4 Application for permit; fee.** (a) Any operator desiring to engage in strip mining shall make written application to the board of land and natural resources for a permit. Application for the permit shall be made upon the form furnished by the board, which form shall require a description of the pit with such particularity as the board may require, the approximate number of acres of mineral land that will be mined annually, the approximate date upon which mining operations shall commence and such other information as the board may require. The application shall be accompanied by an annual fee determined by the number of acres to be stripped in one year, as follows:

Less than ten acres.....\$100

Ten to twenty-four acres.....	200
Twenty-five to forty-nine acres.....	300
Fifty to ninety-nine acres.....	400
One hundred acres.....	500

The application together with the proper fee shall also be accompanied by a bond meeting the requirements of section 181-5.

Upon receipt of the application, fee, and bond, the board shall issue a permit to the applicant which, upon the applicant's filing the plan required by subsection (a) of section 181-6 shall entitle the applicant for a period of one year next following to engage in strip mining of the land identified in the application in the manner and subject to the provisions set forth in the plan. The board shall refuse to issue a permit if the application is not in proper form or is not accompanied by the correct amount of the fee or if the bond does not meet the requirements of section 181-5.

(b) Each permit shall be renewed each year by the board upon receipt by it of the required annual fee and the filing of the bond required by section 181-5. The permit, whether originally issued or renewed, shall remain in effect until terminated through lapse of time, or suspended, revoked, or canceled by the board following a hearing as provided in subsection (b) of section 181-7, for failure of the operator to comply with the terms thereof or the requirements of this chapter. [L 1957, c 161, §5; am L 1959, c 20, §4; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; Supp, §98C-5; HRS §181-4; gen ch 1985]

" **§181-5 Bond.** Contemporaneously with and as a condition precedent to the issuance of the permit, the operator shall file with the board of land and natural resources and thereafter shall keep in full force and effect until the operator shall be released therefrom as hereinafter provided, a bond payable to the State, conditioned that the operator shall faithfully and fully perform all duties and requirements to be performed and observed by the operator as provided in the permit and by this chapter. The bond shall be signed by the operator as principal and by a surety company authorized to do business in the State. The penalty of the bond shall be in an amount fixed by the board based on the reasonable cost of restoring and rehabilitating the land covered by the permit but not to exceed \$300 an acre of land proposed thereafter by the operator to be subjected to strip mining for the ensuing year. The penalty of the bond shall from time to time be increased or reduced by the board pro tanto in accordance with the number of acres added to the land for strip mining operations or in accordance with the number of acres to which the bond is no longer operative because of the

operator's withdrawal of acreage or by reason of the operator's performance of the operator's obligations subsequent to the issuance of the permit.

Any operator may execute the bond without surety if the operator deposits with the board cash in the amount of the bond fixed by the board as provided in this section covering the land proposed by the operator to be stripped in the ensuing year and the permit issued shall therefor be limited to the number of acres for which the deposit is made or may be increased later by the board on receipt by it of additional deposits. The deposits shall be retained by the board as a guaranty by the operator for the faithful performance of the operator's bond. Should the operator fail to carry out the requirements set forth in section 181-6 or to carry out the plan of reclamation, the board may cause them to be carried out and may use the funds deposited or may proceed against the bond to pay therefor. The board shall release any bond and shall repay any deposits no longer necessary to be maintained for the purposes of this chapter, upon showing by the operator that this chapter has been complied with. [L 1957, c 161, §6; am L 1959, c 20, §5; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; Supp, §98C-6; HRS §181-5; gen ch 1985]

" **§181-6 Reclamation.** (a) Prior to the commencement of any strip mining the operator shall submit to the board of land and natural resources a plan, which must be approved in writing, or approved as amended, which plan shall include, inter alia, a contour basis for the mining operations, the depth to which and the direction in which the operations are proposed to be conducted, the proposed disposition of boulders and tailings, and provisions for the stripping, storage, and, if required, the replacement of the topsoil. The operator shall have the right of appeal as provided by section 181-8 for any decision, order, or action of the board in respect of such plan.

(b) As soon as practicable following the completion or abandonment of strip mining of any pit or of such portion thereof as may be specified in the plan, the operator shall submit to the board a proposal for the reclamation thereof. A pit shall be deemed abandoned if mining operations with respect thereto shall not have been resumed on a substantial scale following six months cessation of operations. The proposal shall require the operator to:

- (1) Strike off peaks and ridges and fill in deep depressions created or left by the mining operations and grade the surface of the pit to contour which will minimize erosion and be suitable for planting as provided in this section.

- (2) Dispose of all debris, rubble, and tailings in such manner as to enhance the contour of the pit or to provide erosion and drainage control in adjacent areas.
- (3) Provide such drains, ditches, and outlets as may be necessary to prevent the accumulation of water in the pit and to remove water from the pit in such a way as to minimize erosion of the pit and the surrounding land.
- (4) Utilize the overburden removed from the surface of the pit in such manner as best to recondition or reclaim the mined area, or the area where the tailings have been disposed, if in an area other than the pit.
- (5) Provide a reasonable means of access to the pit.
- (6) Revegetate or rehabilitate the pit, which shall include, inter alia, provisions for:
 - (A) Replacing the topsoil, if required;
 - (B) Liming, if mining produces deleterious changes in soil acidity from the original soil condition of the area, or if needed for the establishment of satisfactory fertility under subparagraph (C) hereafter;
 - (C) Applying fertilizer to reestablish satisfactory fertility and crop production in soils of areas cultivated to agricultural crops prior to the inception of mining, and, in areas used for grazing or forest prior to the inception of mining, fertilizer to provide a grass forage cover suitable for an annual carrying capacity of not less than one head of cattle for each three acres;
 - (D) Planting in all instances a cover crop of good pasture grass to stabilize the exposed surface and to minimize erosion, unless immediate crop production shall be affected, or unless relieved therefrom by the board in writing. In pits intended for restoration to forest, rehabilitation shall include a quick cover crop followed by forest plantings, respecting which the board shall advise on types, availability, and spacing of species to be planted;
 - (E) Achieving, where possible, as a minimum goal of restoration, comparable fertility and use of land to that existing prior to strip mining.

If in the judgment of the board the aforesaid proposal is reasonable and meets the requirements of this section, the board shall approve the proposal; if not, it shall notify the operator

of the reasons for its disapproval in writing. The operator shall thereupon submit an amended proposal. If the board disapproves of the amended proposal, the operator may appeal the action to the circuit environmental court in accordance with section 181-8; otherwise, the operator shall submit another amended proposal until approval is obtained. Upon approval being obtained, or the issuance of an order in the event of an appeal, the operator shall commence work under the reclamation proposal and shall prosecute the work required thereunder with reasonable diligence and effect reclamation within a period of two years next following the approval or issuance of the order, unless the time is extended by the board. The operator shall notify the board upon completion of reclamation, whereupon an inspection shall be made of the pit by the board and a determination made of the satisfactory performance by the operator of the proposal. In the event that the proposal and this chapter has been complied with, the board shall take such action as is required under sections 181-5 and 181-7. In the event that the performance shall not be satisfactory, the board shall serve upon the operator written directions for additional performance, and unless an appeal is taken therefrom under section 181-8, the operator shall forthwith comply with the directions.

(c) At the completion of each year, and at the time the operator makes application to the board for a renewal of the operator's permit under section 181-4, the operator shall submit in duplicate to the board a map in a form approved by the board, setting forth such description as will identify the land from which the operator removed any mineral by strip mining during the preceding permit year, with a legend upon the map showing the number of acres affected and the extent that the topography has been disturbed by the mining. The accuracy of the map may be checked by the board and if found to be erroneous, it shall be corrected by the operator prior to the issuance of a renewal permit. [L 1957, c 161, §7; am L 1959, c 20, §6; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; Supp, §98C-7; HRS §181-6; gen ch 1985; am L 2014, c 218, §8]

" **§181-7 Termination, revocation of permit; release.** (a) Any unexpired permit shall be effective only so long as the operator possesses the legal right and power by legal estate owned to strip mine from the land described in the permit. All authority of the board of land and natural resources to enforce the requirements prescribed in section 181-6 shall terminate within ten years after the end of the permit year in which strip mining was completed or abandoned upon the land unless before the end of the period he has served upon the operator written

directions to comply therewith. The board shall release from the effect of this chapter, either by reason of compliance or limitation of time, all or any part of the land affected by this chapter by filing in the bureau of conveyances of the State, or in the office of the assistant registrar of the land court, or both, as appropriate, a written release in form prepared by the board.

(b) No permit shall be refused, modified, suspended, canceled, or revoked by the board until after a hearing on written charges has been had before the board after not less than ten days' written notice, fixing date and place of the hearing, has been given to the operator. [L 1957, c 161, §8; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; Supp, §98C-8; HRS §181-7; am L 1998, c 219, §4]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

Cross References

Administrative hearings generally, see chapter 91.

" **§181-8 Appeal.** Any operator aggrieved by any decision, order, or action of the board of land and natural resources refusing, modifying, suspending, canceling, or revoking a permit or disapproving an amended plan of reclamation may appeal from such decision, order, or action to the circuit environmental court of the circuit in which is located any part of the land described in the permit. The appeal shall be governed by the provisions of rule 72 of the Hawaii rules of civil procedure and chapter 91. The appellant shall file a bond with the clerk of the circuit environmental court to which the appeal is taken, in such amount and with such surety or sureties as the clerk may fix and prescribe, conditioned to pay all costs if the appeal be decided adversely to the appellant. On motion of the board the environmental court may require the penalty of the bond to be increased to such amount and to be so conditioned that the operator filing the appeal shall be bound to perform all requirements of this chapter. The environmental court shall have the power to reverse, affirm, or modify in whole or part, the decision, order, or action appealed from. [L 1957, c 161, §9; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; am L 1965, c 96, §80; Supp, §98C-9; HRS §181-8; am L 2014, c 218, §8]

" **§181-9 Penalty; injunction.** Any person violating section 181-3(a) shall forfeit to the State not more than \$5,000 for every violation, to be recovered by action brought in the name of the State by the board of land and natural resources. Any person violating section 181-3(a) or this chapter or any permit issued pursuant thereto may be enjoined by the circuit environmental court from continuing the violation. The penalty and remedy provided by this section shall be in addition to any criminal or civil penalty provided by any other law. [L 1957, c 161, §10; am L 1959, c 20, §7; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; Supp, §98C-10; HRS §181-9; am L 2014, c 218, §8]

" **§181-10 Funds.** All fees and fines collected under this chapter and all moneys forfeited under any bond or deposit shall be paid into the treasury of the State as general realizations. [L 1957, c 161, §11; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; Supp, §98C-11; HRS §181-10; am L 1993, c 280, §50]