

## **CHAPTER 38-16**

### **SURFACE MINING REPORTS**

**38-16-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Affected land" means the area of land from which overburden is removed as the result of a surface mining operation or upon which overburden or refuse is deposited as the result of a surface mining operation, or both.
2. "Committee" means the state soil conservation committee.
3. "Landowner" means the owner of land affected by a surface mining operation.
4. "Mineral" includes cement rock, clay, gravel, limestone, manganese, molybdenum, peat, potash, pumicite, salt, sand, scoria, sodium sulfate, stone, zeolite, or other minerals, but does not include coal.
5. "Overburden" means all of the earth and other materials which lie above natural deposits of minerals, and also means such earth and other materials disturbed from their natural state in a surface mining operation.
6. "Person" means any individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of the state or any subdivision thereof.
7. "Reclamation" means the reconditioning of the area of land affected by a surface mining operation to make the area suitable for productive use, including, but not limited to, forestry, agriculture, grazing, wildlife, recreation, residential, and industrial sites.
8. "Surface mining operation" relates to the mining of minerals by removing the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed which will, within one calendar year, result in the removal of ten thousand cubic yards [7645.55 cubic meters] or more of product, including overburden, or affect one-half acre [.20 hectare] or more.

**38-16-01.1. Gravel and sand surface mining operations - Reclamation - Civil action - Penalty.** Any surface mining operator conducting a gravel or sand surface mining operation on land in this state owned by another person, upon completion or abandonment of the surface mining operation, shall reclaim the affected land. Each surface mining operator shall negotiate with the landowner a written agreement providing for the reclamation of the affected land. Unless the affected land is to be used for other purposes as agreed upon between the surface mining operator and the landowner, the reclamation agreement must, at a minimum, provide for restoration by the surface mining operator of the affected land as nearly as possible to the agreed contour and usability; indicate the amount of topsoil and subsoil to be saved, segregated, and respread; and indicate the party responsible for compaction of backfill, soil testing, fertilization, revegetation, weed control, rock disposal, and replacement or establishment of conservation practices. The reclamation must be within a time period agreed upon between the parties, but within one year after the final cessation of surface mining operations. A landowner may bring a claim for relief in any appropriate district court against the surface mining operator who has failed to reclaim properly affected land pursuant to a reclamation agreement under this section. In an action under this section, a surface mining operator is liable for damage in an amount necessary to reclaim the land. Any person who violates any provision of this section is guilty of a class B misdemeanor.

**38-16-02. Surface mining operation - Report to committee required.** Except as provided for in section 38-16-06, no person may conduct a surface mining operation without

complying with the reporting requirements of this chapter. Any person conducting a number of operations, each of which, within one calendar year, results in the removal of less than ten thousand cubic yards [7645.55 cubic meters] of earthen material or product, including overburden, or affects less than one-half acre [.20 hectare], but which, in the aggregate, result in the removal of ten thousand cubic yards [7645.55 cubic meters] or more of earthen material or product, including overburden, within one calendar year, or affect one-half acre [.20 hectare] or more within one calendar year, is subject to the provisions of this chapter.

**38-16-03. Annual report to committee - When filed - Contents.** Any person conducting a surface mining operation shall file with the committee a report on each surface mining operation conducted during the calendar year. The report must be filed on or before December thirty-first of each year in which the surface mining operation is conducted. The annual report must be on a form provided by the committee which must, in addition to any pertinent data required by the committee, include:

1. The name and address of the landowner and of the person conducting the surface mining operation, and, if any of these are corporations, limited liability companies, or other business entities, the names and addresses of their principal officers or managers and resident agent for service of process.
2. The location of the surface mining operation by section, township, range, and county.
3. The date the surface mining operation was commenced.
4. The minerals mined by the surface mining operation.
5. A description of the surface mining operation.
6. The maximum depth of the surface mining operation.
7. The number of acres [hectares] affected by the surface mining operation for the calendar year covered by the report.
8. An estimate of the number of acres [hectares] to be affected by the surface mining operation during the calendar year next succeeding the report.
9. The cubic yardage [cubic meters] of mineral mined and overburden disturbed by the surface mining operation for the calendar year covered by the report.
10. An estimate of the cubic yardage [cubic meters] of mineral to be mined and overburden to be disturbed by the surface mining operation during the calendar year next succeeding the report.
11. A map of the affected land if more than ten acres [4.05 hectares] have been disturbed by the surface mining operation, or, regardless of the amount of land to be disturbed, if the committee finds that conditions warrant it and so requests a map. The map must show the boundaries of the affected land, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the affected land, and the location of access roads built in conjunction with the surface mining operation.
12. The location of any segment of the affected land that will not be further disturbed by the surface mining operation.
13. The date of completion or abandonment of the surface mining operation, if completed or abandoned.

14. The date of beginning, extent, and current status of any reclamation activities performed during the period covered by the annual report or planned to be performed after completion or abandonment of the surface mining operation or any segment of the surface mining operation. The description of reclamation activities must indicate which parts of the affected land are intended to be reclaimed for forest, pasture, crop, horticultural, homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife, and must show the same by appropriate designation on a reclamation map.

**38-16-04. Powers of the committee.** The committee has the power to:

1. Exercise general supervision and administration and enforcement of this chapter.
2. Encourage and conduct training, research, experiments, and demonstrations, and to collect and disseminate information relating to surface mining operations and reclamation of lands and waters affected by surface mining operations.
3. Make, amend, and rescind, from time to time, such rules and regulations, in the manner prescribed by chapter 28-32, as may be appropriate to effectuate the purposes and provisions of this chapter.
4. Make investigations or inspections which may be deemed necessary to ensure compliance with any provisions of this chapter.
5. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof for any purposes relating to the reclamation of any affected lands.

**38-16-05. Committee to transmit annual report to local soil conservation districts.**

The committee shall prepare and transmit to local soil conservation districts, on or before June thirtieth of each year, a report giving information about surface mining operations and reclamation activities conducted in the soil conservation districts during the preceding calendar year.

**38-16-06. Surface mining operations exempt from reporting requirements.** The reporting requirements of this chapter do not apply to a surface mining operation which is subject to a requirement by a department or agency of the state that the person conducting the surface mining operation obtain a written release from the landowner approving the condition of the affected land upon completion or abandonment of the surface mining operation. Nothing in this chapter may be construed to be applicable to a surface mining operation which is regulated under the provisions of chapter 38-14.1.