

Introduced: 2/12/82
Referred: Resources and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 762

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to surface coal mining and the
7 surface effects of underground coal mining; and
8 providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. FINDINGS AND DECLARATION OF PURPOSE. (a) The legislature
11 finds and declares that

12 (1) the Congress of the United States has enacted the Surface
13 Mining Control and Reclamation Act of 1977, which provides for the esta-
14 blishment of a nationwide program to regulate surface coal mining and
15 reclamation and which vests exclusive authority in the Department of the
16 Interior over the regulation of surface coal mining and reclamation within
17 the United States;

18 (2) section 101 of the Surface Mining Control and Reclamation
19 Act of 1977 contains the finding by Congress that because of the diversity
20 in terrain, climate, biology, chemistry, and other physical conditions in
21 areas subject to mining operations, primary governmental responsibility for
22 developing, authorizing, issuing and enforcing regulations for surface coal
23 mining and reclamation operations subject to that Act should rest with the
24 states;

25 (3) section 503 of the Surface Mining Control and Reclamation
26 Act of 1977 provides that each state may assume and retain exclusive
27 jurisdiction over the regulation of surface coal mining and reclamation
28 operations within the state by obtaining approval of a state program of
29 regulation which demonstrates that the state has the capability of carrying

1 out the provisions and meeting the purposes of the Surface Mining Control
2 and Reclamation Act of 1977;

3 (4) section 503 of the Surface Mining Control and Reclamation
4 Act of 1977 provides that a state wishing to assume exclusive jurisdiction
5 over the regulation of surface coal mining and reclamation operations
6 within the state must have a state law that provides for the regulation of
7 surface coal mining and reclamation operations in accordance with the
8 requirements of the Surface Mining Control and Reclamation Act of 1977; and

9 (5) because of unique environmental conditions which the state
10 is best equipped to understand, the state intends to assume exclusive
11 jurisdiction over the regulation of surface coal mining and reclamation
12 operations with the state under the Surface Mining Control and Reclamation
13 Act of 1977.

14 (b) The purposes of this Act are

15 (1) to prevent the adverse effects to society and the environ-
16 ment resulting from unregulated surface coal mining operations as defined
17 in AS 41.45, enacted in sec. 2 of this Act and the regulations adopted
18 under it;

19 (2) to assure that the rights of surface land owners and other
20 persons with an interest in the land are protected from unregulated surface
21 coal mining operations;

22 (3) to assure that surface coal mining operations are conducted
23 in a manner that will prevent unreasonable degradation of land and water
24 resources;

25 (4) to assure that surface coal mining operations are not
26 conducted where reclamation required by AS 41.45, enacted in sec. 2 of this
27 Act, and the regulations adopted under it is not feasible.

28 (5) to assure that reclamation of land on which surface coal
29 mining takes place is accomplished as contemporaneously as practicable with

1 the surface coal mining, recognizing that the responsible extraction of
2 coal by responsible mining operators is an essential and beneficial eco-
3 nomic activity;

4 (6) to assure that appropriate procedures are provided for
5 public participation in the development, revision and enforcement of
6 regulations, standards, and reclamation plans or programs established under
7 AS 41.45, enacted in sec. 2 of this Act;

8 (7) to assure that the coal supply essential to the nation's
9 energy requirements and to their economic and social well-being is pro-
10 vided, and to strike a balance between protection of the environment and
11 other uses of the land and the need for coal as an essential source of
12 energy; and

13 (8) to promote the reclamation of areas which were mined and
14 left without adequate reclamation before the enactment of the Surface
15 Mining Control and Reclamation Act of 1977, and which substantially degrade
16 the quality of the environment, prevent the beneficial use of, or cause
17 damage to land or water resources, or endanger the health or safety of the
18 public.

19 * Sec. 2. AS 41 is amended by adding a new chapter to read:

20 CHAPTER 45. ALASKA SURFACE COAL MINING CONTROL AND RECLAMATION ACT.

21 Sec. 41.45.020. JURISDICTION. The commissioner has exclusive
22 jurisdiction over surface coal mining and reclamation operations in
23 the state.

24 Sec. 41.45.030. GENERAL DUTIES. To accomplish the purposes of
25 this chapter, the commissioner shall

26 (1) in accordance with the Administrative Procedure Act
27 (AS 44.62), adopt, amend, and enforce regulations pertaining to
28 surface coal mining and reclamation operations;

29 (2) issue permits;

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(3) conduct hearings and conferences;

(4) issue orders requiring an operator to take the actions necessary to comply with this chapter and the regulations adopted under this chapter;

(5) issue orders modifying previous orders;

(6) after opportunity for a due process hearing, issue a final order revoking the permit of an operator who has failed to comply with an order of the commissioner to take action required by this chapter or regulations adopted under this chapter;

(7) order the immediate cessation of a surface coal mining and reclamation operation or part of such an operation if the commissioner finds that the operation or part of the operation creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and, to the extent reasonably necessary to eliminate or alleviate those conditions, take other action or make changes in a permit, as provided in this chapter;

(8) hire employees subject to the conflict of interest provisions of this chapter, and hire and authorize the hiring of private contractors to assist in carrying out the requirements of this chapter;

(9) enter and inspect a surface coal mining operation which is subject to the provisions of this chapter to assure that the operation is in compliance with this chapter;

(10) conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations;

(11) prepare reports and require permittees to prepare reports;

1 (12) accept, receive, and administer grants, gifts, or other
2 money made available for the purposes of this chapter regardless of
3 the source of the grants, gifts, or money;

4 (13) take the steps necessary to allow the state to partici-
5 pate to the fullest extent practicable in the abandoned mine land
6 program provided in Title IV of the Surface Mining Control and
7 Reclamation Act of 1977, including engaging in any work and adopting,
8 amending and enforcing regulations;

9 (14) take the actions necessary to establish and maintain
10 exclusive jurisdiction over surface coal mining and reclamation
11 operations in the state under the provisions of the Surface Mining
12 Control and Reclamation Act of 1977, including making recommendations
13 for legislation to clarify or amend this chapter to conform with the
14 terms of the Surface Mining Control and Reclamation Act of 1977;

15 (15) contract with state agencies to obtain the professional
16 and technical services necessary to carry out the provisions of this
17 chapter;

18 (16) coordinate the review and issuance of permits for
19 surface coal mining and reclamation operations with other federal or
20 state permit processes applicable to those operations;

21 (17) enter into cooperative agreements with the Secretary of
22 the United States Department of the Interior for the regulation of
23 surface coal mining operations on federal land in accordance with the
24 Surface Mining Control and Reclamation Act of 1977; and

25 (18) perform other duties required by this chapter.

26 Sec. 41.45.040. PROVISIONS OF REGULATIONS AND PERMITS. The
27 provisions of a regulation adopted or a permit issued by the commis-
28 sioner may vary for particular conditions, types of coal being
29 extracted, or areas of the state if the provisions are consistent with

1 the purposes of this chapter.

2 Sec. 41.45.050. CONFLICT OF INTEREST. An employee of the
3 department performing a function or duty under this chapter may not
4 have a direct or indirect financial interest in an underground or
5 surface coal mining operation. A person who knowingly violates this
6 section is guilty of a class A misdemeanor.

7 Sec. 41.45.060. PERMITS. (a) Beginning eight months after the
8 date the Alaska program is approved under 30 U.S.C. 1253, as amended,
9 a person may not conduct a surface coal mining and reclamation opera-
10 tion in the state without a permit for that operation. To receive a
11 permit, a person must apply to the commissioner. The commissioner
12 shall process applications in accordance with this chapter and regula-
13 tions adopted under it.

14 (b) In the event of disapproval of the Alaska surface mining
15 control and reclamation program by the secretary of the United States
16 Department of the Interior, and before promulgation of a federal
17 program for Alaska, existing surface coal mining operations which
18 comply with 30 U.S.C. 1252 may continue. Permits which lapse during
19 this period shall continue in full force and effect until promulgation
20 of a federal program.

21 Sec. 41.45.070. TERM OF PERMIT. (a) Permits issued shall be
22 for a term of five years. However, the commissioner may grant a
23 permit for a longer term if the application is complete for that
24 longer term and the applicant demonstrates that the term is necessary
25 to allow the applicant to obtain financing for equipment or for the
26 opening of the operation.

27 (b) A permit terminates if a permittee does not begin surface
28 coal mining operations under the permit within three years after the
29 permit is issued. The commissioner may grant reasonable extensions of

1 time if the permittee shows that the extensions are necessary (1)
2 because of litigation which precludes the commencement of the opera-
3 tion or threatens substantial economic loss to the permittee; or (2)
4 for reasons beyond the control and without the fault or negligence of
5 the permittee. With respect to coal to be mined for use in a syn-
6 thetic fuel facility or specific major electric generating facility,
7 the permittee is considered to have begun surface mining operations at
8 the time that the construction of the synthetic fuel or generating
9 facility is begun.

10 Sec. 41.45.060. RENEWAL OF PERMIT. (a) A permit issued under
11 this chapter shall carry with it the right of successive renewal upon
12 expiration for areas within the boundaries of the existing permit.
13 Subject to (c) of this section, if the permittee applies for renewal
14 of the permit, the commissioner shall renew the permit (provided that
15 on application for renewal, the burden shall be on the opponent of
16 renewal) after public notice is given in the manner provided in
17 AS 41.45.130 unless the commissioner finds, in writing, that

18 (1) the terms and conditions of the permit have not been
19 satisfactorily met, and the permittee has not demonstrated, to the
20 satisfaction of the commissioner, that the permittee is meeting and
21 will continue to meet a schedule agreed to by the permittee and the
22 commissioner for correcting a permit violation, consistent with
23 AS 41.45.240;

24 (2) the surface coal mining and reclamation operation of
25 the permittee is not in compliance with the environmental protection
26 standards of this chapter and regulations adopted under it;

27 (3) the requested renewal substantially jeopardizes the
28 permittee's continuing responsibility on existing permit areas;

29 (4) the permittee has not provided sufficient evidence that

1 the performance bond under AS 41.45.160 in effect for the operation
2 will continue for the renewal period requested in the application, and
3 that any additional bond required by the commissioner under
4 AS 41.45.160 will be obtained; or

5 (5) information required by the commissioner in accordance
6 with this chapter has not been provided by the permittee.

7 (b) The commissioner shall provide notice to the appropriate
8 public authorities as provided in AS 38.05.345 before approving a
9 permit renewal.

10 (c) If an application for renewal of a permit includes a pro-
11 posal to extend the permittee's surface coal mining operations to
12 include new land areas beyond the boundaries authorized in the permit,
13 the commissioner shall review the part of the application which
14 addresses the new land areas under the standards established in
15 AS 41.45.180. However, if the land surface coal mining operations
16 authorized by a permit are not subject to the standards contained in
17 AS 41.45.180(c)(5)(A) and (B), the part of the application for renewal
18 which addresses new land areas previously identified in the reclama-
19 tion plan submitted under AS 41.45.110 is not subject to the standards
20 contained in AS 41.45.180(c)(5)(A) and (B).

21 (d) A permit may be renewed for an additional term of five
22 years. The commissioner must receive the application for a permit
23 renewal at least 120 days before the expiration of the permit.

24 (e) If a renewal application is received by the commissioner at
25 least 120 days before the expiration date of the permit, and if the
26 permittee has complied with AS 41.45.160, the permittee may continue
27 surface coal mining operations under the permit after the expiration
28 date of the permit until a final administrative decision on renewal is
29 made.

1 Sec. 41.45.090. APPLICATION FEE. An application for a new
2 permit, permit renewal, or transfer of a permit must be accompanied by
3 an application fee determined by the commissioner in accordance with a
4 published fee schedule. The application fee may not exceed the
5 actual or anticipated costs of reviewing the application.

6 Sec. 41.45.100. PUBLIC INFORMATION AND INSPECTION. (a) An
7 applicant for a permit shall file a copy of the application for public
8 inspection at a location designated by the commissioner near the area
9 of the proposed surface coal mining operation. The applicant may
10 exclude from the copy filed under this subsection information which is
11 confidential under (c) of this section.

12 (b) Copies of records, permits, inspection materials, or other
13 information obtained under this chapter by the commissioner relating
14 to a surface coal mining and reclamation operation, other than infor-
15 mation which is confidential under (c) of this section, shall be made
16 immediately and conveniently available to the public at the district
17 office of the department closest to the location of the surface coal
18 mining and reclamation operation.

19 (c) Information

20 (1) gathered from the proposed permit area included in the
21 application for a permit and pertaining to coal seams, test borings,
22 core samplings, or soil samples shall be made available to any person
23 with an interest which is or may be adversely affected; provided that
24 information which relates only to the analysis of the chemical and
25 physical properties of the coal, other than information regarding the
26 mineral or elemental content which is potentially toxic in the
27 environment, shall be kept confidential and not made a matter of
28 public record;

29 (2) in the applicant's reclamation plan relating to the

1 competitive rights of the applicant, including but not limited to
2 trade secrets, commercial or financial information, and geologic
3 information specifically identified as confidential by the applicant
4 and determined by the commissioner to be not essential for public
5 review shall be kept confidential and not be disclosed by any employee
6 or agent of the department.

7 Sec. 41.45.110. CONTENTS OF APPLICATION. The commissioner shall
8 adopt regulations relating to the contents of an application for a
9 permit under this chapter, including a reclamation plan and liability
10 insurance, consistent with the requirements of 30 U.S.C. 1257 (b) and
11 30 U.S.C. 1258, as amended. Such regulations shall take into account
12 the unique mining and environmental conditions of Alaska.

13 Sec. 41.45.120. SMALL OPERATOR ASSISTANCE. If the commissioner
14 finds that the probable total annual production of all of the surface
15 coal mining operations of an applicant, or, if the applicant is a
16 subsidiary of another corporation, of the applicant's parent corpora-
17 tion and its subsidiaries, will not exceed 100,000 tons, upon the
18 written request of the applicant, the commissioner shall engage at no
19 cost to the applicant, the services of a public or private laboratory
20 to prepare the determination of probable hydrologic consequences of an
21 applicant's proposed operation and the statement of test boring or
22 core samplings if these are required by regulations adopted under
23 AS 41.45.110.

24 Sec. 41.45.130. PUBLIC NOTICE OF APPLICATION. At the time an
25 applicant submits an application for a permit or for a revision of a
26 permit, the applicant shall give notice in the manner set out in
27 AS 38.05.345(b) and (c) except as may be provided otherwise by regu-
28 lations adopted under this chapter.

29 Sec. 41.45.140. OBJECTION TO APPLICATION; INFORMAL CONFERENCE.

1 (a) A person who is or may be adversely affected by the issuance or
2 revision of a permit or the officer or head of a federal, state or
3 municipal agency may file written comments and a written objection to
4 an application for a permit or for revision of a permit with the
5 commissioner within thirty days after the last publication of the
6 notice required in AS 41.45.130 and may include with the objection a
7 request for an informal conference.

8 (b) The commissioner shall immediately provide a copy of any
9 comments or objections filed under (a) of this section to the appli-
10 cant and shall make them available to the public. If an informal
11 conference is requested under (a) of this section, the commissioner
12 shall hold an informal conference in the locality of the operations
13 proposed in the application. Notice requirements and procedures for
14 informal conferences shall be set out in regulations adopted
15 hereunder.

16 (c) The commissioner shall notify the applicant, any person who
17 filed an objection under (a) of this section, and any participant in
18 an informal conference held under (b) of this section, in writing of
19 the decision to grant, condition, require modification of, or deny the
20 permit or revision, and if the decision is not to grant the permit or
21 revision, of the specific reasons for the decision. The commissioner
22 shall provide notification of the decision within 60 days after an
23 informal conference, or if there has not been an informal conference,
24 within the time established in AS 41.45.180.

25 (d) If the application is approved, the permit shall be issued
26 upon filing of the performance bond required by AS 41.45.160.

27 Sec. 41.45.150. HEARINGS. (a) Within 30 days after an appli-
28 cant is notified under AS 41.45.140(c) or (d) of the commissioner's
29 decision concerning the application, the applicant or a person who is

1 or may be adversely affected by the decision may request a hearing to
2 review the reasons for the decision. The commissioner shall hold the
3 hearing within 30 days after the request and shall notify the inter-
4 ested parties of the hearing at the time the applicant is so notified.
5 The Administrative Procedure Act (AS 44.62) applies to a hearing under
6 this section except as may be provided by regulations adopted under
7 this chapter.

8 (b) If a hearing is requested under (a) of this section, the
9 commissioner may, under conditions he prescribes, grant appropriate
10 temporary relief pending his final decision if

11 (1) the parties to the hearing have been notified and given
12 an opportunity to be heard on a request for temporary relief;

13 (2) the party requesting the temporary relief shows that
14 there is a substantial likelihood that he will prevail in the final
15 decision of the hearing; and

16 (3) the temporary relief will not adversely affect the
17 public health or safety or cause significant imminent harm to land,
18 air, or water resources.

19 (c) The person presiding at the hearing may administer oaths,
20 subpoena witnesses, subpoena written or printed materials, compel the
21 attendance of witnesses or the production of the materials, and take
22 evidence including but not limited to evidence derived from site
23 inspections of the land which will be affected by the permit or
24 revision and other surface coal mining operations conducted by the
25 applicant in the general vicinity of the operation proposed in the
26 application. On the motion of a party or by order of the commis-
27 sioner, a verbatim record of a hearing required by this chapter
28 shall be made and a transcript made available.

29 **Sec. 41.45.160. PERFORMANCE BOND.** (a) Except as provided in

1 (c) of this section, after an application for a permit has been
2 approved and before the permit may be issued, the applicant must file
3 with the commissioner, on a form prescribed and furnished by the
4 commissioner, a performance bond payable to the State of Alaska and
5 conditioned on faithful performance of the requirements of this
6 chapter and the permit. The bond must cover the area of land within
7 the permit area on which the applicant will initiate and conduct
8 surface coal mining and reclamation operations within the initial term
9 of the permit. As succeeding increments of surface coal mining and
10 reclamation operations are initiated and conducted within the permit
11 area, the permittee shall provide an additional bond or bonds to cover
12 those increments in accordance with this section. The amount of the
13 bond required for an area within the permit area shall be determined
14 by the commissioner and shall reflect the probable difficulty of the
15 reclamation considering the topography, geology, hydrology, revegeta-
16 tion potential, and similar factors relating to the area. The amount
17 of the bond must be sufficient to assure the completion of the recla-
18 mation plan by the commissioner in the event of forfeiture and, for
19 the entire permit area, may not be less than \$10,000.

20 (b) Liability under the bond must exist for the duration of the
21 surface coal mining and reclamation operation and for the period of
22 time of the permittee's responsibility under the performance standards
23 established by regulation under AS 41.45.210. The bond must be
24 executed by the applicant and, except as provided in (d) of this
25 section, a corporate surety licensed to do business in the state.

26 (c) An applicant may deposit with the commissioner cash, negoti-
27 able bonds of the United States or of the state, or negotiable certi-
28 ficates of deposit of a bank organized or transacting business in the
29 United States to satisfy the requirements of (a) of this section if

1 (1) the value of the deposit is equal to or greater than
2 the amount of the bond required under (a) of this section;

3 (2) liability under the deposit is for a period of time
4 described in (b) of this section; and

5 (3) the deposit is made under the terms which, under (a) of
6 this section, would apply to a performance bond.

7 (d) The commissioner may accept a bond executed by the applicant
8 without separate surety if the applicant demonstrates to the satisfac-
9 tion of the commissioner that the applicant has sufficient financial
10 means for the purposes of the bond. The commissioner shall adopt
11 regulations to implement this section.

12 (e) The commissioner shall maintain a deposit under (c) of this
13 section in a separate escrow account and shall annually pay the
14 interest accruing on the deposit to the permittee.

15 (f) The commissioner shall adjust the amount required under (a),
16 (c), or (d) of this section and the terms of the acceptance of that
17 amount if the commissioner determines there is good cause, including
18 changes in affected land areas or in the probable cost of future
19 reclamation, for the adjustment.

20 Sec. 41.45.170. REQUEST AND RELEASE OF PERFORMANCE BONDS OR
21 DEPOSITS. (a) A permittee may file a request with the commissioner
22 for the release of all or part of the permittee's performance bond or
23 deposit. The permittee shall give notice in the manner set out in
24 AS 38.05.345(b) and (c) except as provided otherwise by regulations
25 adopted under this chapter.

26 (b) Within 30 days after receipt of a request under (a) of this
27 section or such longer period as field conditions require, the commis-
28 sioner shall inspect and prepare an evaluation of the reclamation work
29 involved. In preparing the evaluation, the commissioner shall con-

1 sider the degree of difficulty to complete the reclamation, whether
2 pollution of surface or subsurface water is occurring, the probability
3 of continuance of the pollution, and the estimated cost of abating the
4 pollution. Within 60 days after receipt of the request, or if a
5 hearing relating to the request is conducted under (g) of this sec-
6 tion, within 30 days after the hearing, whichever is later, the
7 commissioner shall notify the permittee, in writing, of the decision
8 to release or not to release all or part of the performance bond or
9 deposit.

10 (c) The commissioner shall release all or part of the bond or
11 deposit in accordance with the following schedule if he is satisfied
12 that the reclamation or part of the reclamation covered by the bond or
13 deposit has been accomplished as required by this chapter:

14 (1) if the permittee completes the backfilling, regrading,
15 and drainage control of a permit area or part of a permit area in
16 accordance with the reclamation plan, the commissioner shall release
17 60 percent of the bond or deposit covering the permit area or part of
18 the permit area;

19 (2) after successful revegetation has been established on
20 the permit area or part of the permit area regraded in accordance with
21 the reclamation plan, the commissioner shall release an amount such
22 that the commissioner shall retain the amount of the bond or deposit
23 covering the revegetated area which would be necessary for a third
24 party to reestablish revegetation and for the period specified for
25 permittee responsibility in the performance standards established by
26 regulation under AS 41.45.210;

27 (3) if the permittee has successfully completed the surface
28 coal mining and reclamation activities required by this chapter and
29 the terms of the permit, the commissioner shall release the remaining

1 portion of the bond after expiration of the period of time of the
2 permittee's responsibility under the performance standards established
3 by regulation under AS 41.45.210; however, no bond or deposit shall be
4 fully released until all reclamation requirements are fully met.

5 (d) The commissioner may not release all or part of a bond or
6 deposit under (c)(2) of this section if

7 (1) the permit area or part of a permit area covered by the
8 bond or deposit is in violation of the performance standards estab-
9 lished by regulation under AS 41.45.210; or

10 (2) a silt dam is to be retained as a permanent water
11 impoundment under the performance standards established by regulation
12 under AS 41.45.210 and the permittee has not, in the determination of
13 the commissioner, made adequate provisions for the sound future
14 maintenance of the silt dam.

15 (e) If the commissioner disapproves a request filed under (a) of
16 this section, he shall notify the permittee of the decision in writ-
17 ing. The notice must include the reasons for the disapproval, a
18 description of the actions necessary to secure the release, and
19 notification of the permittee's right to a hearing under (g) of this
20 section.

21 (f) If a request is filed with the commissioner under (a) of
22 this section, the commissioner shall notify the appropriate municipi-
23 pality, if any, at least 30 days before the release of all or part of
24 the bond or deposit.

25 (g) A person with a valid legal interest that might be adversely
26 affected by release of a bond or deposit under this section or the
27 responsible office or head of a federal, state, or municipal agency
28 which has jurisdiction over a special expertise with respect to an
29 environmental, social, or economic impact involved in the permittee's

1 operation or which has authority to develop and enforce environmental
2 standards with respect to the permittee's operation, may, within 30
3 days after the last publication of notice required by (a) of this
4 section, file written objections to the request with the commissioner,
5 and may, in addition, request a hearing. A permittee whose request is
6 disapproved may request a hearing within 30 days after receipt of
7 written notification of the disapproval under (e) of this section. If
8 a hearing is requested, the commissioner shall inform the interested
9 parties of the time and place of the hearing and shall hold the
10 hearing within 30 days after the request for the hearing. The commis-
11 sioner shall publish the date, time, and location of the hearing in a
12 newspaper of general circulation in the locality for two consecutive
13 weeks. The commissioner shall conduct the public hearing and an
14 appeal, if any, in accordance with the Administrative Procedure Act
15 (AS 44.62) or under regulations adopted by the commissioner.

16 Sec. 41.45.180. APPLICATION APPROVAL OR DENIAL. (a) On the
17 basis of a complete application for a permit or for revision or
18 renewal of a permit, the commissioner shall grant, condition, require
19 modification of, or deny the application and, within 120 days, notify
20 the applicant in writing of his action. The applicant has the burden
21 of establishing that the application is in compliance with the
22 requirements of this chapter and the regulations adopted under it.
23 Within 10 days after approving an application, the commissioner shall
24 record in the recording district in which the permit area is located
25 notice that a permit has been issued. The notice must describe the
26 location of the permit area and state where a copy of the permit may
27 be obtained.

28 (b) If the commissioner requests modification of an application
29 he shall state in writing which parts need modification and in what

1 manner and which parts of the application meet approval. The appli-
2 cant will then need only to correct the deficient portion and resubmit
3 the application. However, at any time, the commissioner may require
4 additional information from the applicant if the requirement is based
5 upon good cause and a written finding that the additional information
6 is necessary for the commissioner to determine whether or not the
7 proposed operation will meet the requirements of this chapter and the
8 regulations adopted under it. After receipt of the information
9 requested, the commissioner will have 60 days to approve, condition,
10 or deny the permit as described in (a) of this section.

11 (c) The commissioner may not approve an application for a permit
12 or for revision of a permit unless the application demonstrates and
13 the commissioner finds, in writing and on the basis of information
14 included in the application or information which is otherwise avail-
15 able to the commissioner and which the commissioner documents in the
16 approval and makes available to the applicant, that

17 (1) the application is accurate and complete and that it
18 complies with the requirements of this chapter and regulations adopted
19 under this chapter;

20 (2) the applicant has demonstrated that reclamation as
21 required by this chapter and regulations adopted under it can be
22 accomplished under the reclamation plan contained in the application;

23 (3) an assessment of the probable cumulative impact of all
24 anticipated surface coal mining in the area on the hydrologic balance
25 has been made by the commissioner, and that the proposed operation has
26 been designed to prevent material damage to the hydrologic balance
27 outside the permit area;

28 (4) the area proposed to be mined is not included within an
29 area which

1 (A) is designated as unsuitable for surface coal
2 mining under AS 41.45.270; or

3 (B) is being considered by the commissioner for
4 designation in an administrative proceeding commenced under
5 AS 41.45.270, unless the applicant demonstrates that before
6 January 1, 1977 the applicant made substantial legal and finan-
7 cial commitments in relation to the proposed operation for which
8 he is applying for a permit;

9 (5) the proposed surface coal mining operation will not

10 (A) interrupt, discontinue, or preclude farming on an
11 alluvial valley which is irrigated or naturally subirrigated,
12 excluding undeveloped range land that is not significant to
13 farming on the alluvial valley floor and land on which the
14 commissioner finds that the farming that will be interrupted,
15 discontinued, or precluded is so small as to have negligible
16 impact on the farm's agricultural production; or

17 (B) materially damage the quantity or quality of water
18 in surface or underground water systems which supply an alluvial
19 valley floor; and

20 (6) if the ownership of the coal in the permit area has
21 been severed from the private surface estate, the applicant has
22 submitted to the commissioner

23 (A) the written consent of the surface owner to the
24 extraction of the coal by surface mining methods;

25 (B) a conveyance that expressly grants or reserves the
26 right to extract the coal by surface mining methods; or

27 (C) a determination of a court that the applicant is
28 authorized to extract coal by surface mining methods in the
29 permit area, provided that nothing in this chapter may be con-

1 strued to authorize the commissioner to adjudicate property
2 rights disputes.

3 (d) The provisions of (c)(5) of this section do not apply to a
4 surface coal mining operation which, in the year preceding August 3,
5 1977, produced coal in commercial quantities and was located within or
6 adjacent to an alluvial valley floor.

7 (e) An applicant shall file with his application a list of all
8 cited violations of this chapter and all cited violations of a law,
9 rule, or regulation of the United States, the state, or a commissioner
10 or agency in the United States pertaining to air or water environ-
11 mental protection received by the applicant in connection with a
12 surface coal mining operation within the United States during the
13 three-year period before the date of filing the application. The list
14 must indicate the final resolution, if any, of the violations. If the
15 list or other information available to the commissioner indicates that
16 a surface coal mining operation owned or controlled by the applicant
17 is currently in violation of this chapter or of a law, rule, or
18 regulation described in this subsection, the commissioner may not
19 approve the application until the applicant submits proof that (1) the
20 violation has been corrected or is in the process of being corrected
21 to the satisfaction of the commissioner if the violation is of this
22 chapter or to the satisfaction of the agency which is responsible for
23 the enforcement of the law, rule, or regulation if the violation is
24 not of this chapter; or (2) the applicant is involved in an administra-
25 tive or judicial proceeding to determine whether the applicant has
26 committed the violation.

27 (f) The commissioner may not approve an application under this
28 section if he finds, after providing the applicant with an opportunity
29 for a hearing in accordance with the procedures established in

1 AS 41.45.150, that the applicant, or the operator specified in the
2 application, controls or has controlled mining operations with a
3 demonstrated pattern of willful violations of this chapter of such
4 nature and duration and with such resulting irreparable damage to the
5 environment as to indicate an intent not to comply with this chapter.

6 Sec. 41.45.190. REVISION AND TRANSFER OF PERMIT. (a) During
7 the term of a permit, the permittee may submit to the commissioner an
8 application for revision of the permit, with necessary revisions to
9 the permittee's reclamation plan.

10 (b) The commissioner may not approve an application for revision
11 of a permit unless he finds that reclamation required by this chapter
12 and the regulations adopted under it can be accomplished under the
13 necessary revisions to the reclamation plan. The commissioner shall
14 establish guidelines for a determination of the scale or extent of a
15 request for which all permit application requirements and procedures,
16 including notice and hearing, shall apply. A revision which, in the
17 department's determination, requires significant revisions to the
18 applicant's reclamation plan must, at a minimum, be subject to a
19 notice and hearing requirement.

20 (c) A permittee may not apply under this section for an exten-
21 sion of the permittee's permit area, except by incidental boundary
22 revision.

23 (d) A permittee may not transfer, assign, or sell a permit or
24 the rights granted under a permit without the written approval of the
25 commissioner. A successor in interest to a permittee may continue the
26 surface coal mining and reclamation operation of the permittee until
27 the successor's transfer application is granted or denied if the
28 successor (1) applies for a new permit within 30 days of succeeding to
29 that interest; and (2) is able to obtain the same bond coverage as the

1 permittee.

2 (e) After the commissioner issues a permit, the commissioner
3 shall, within a time limit established by regulation, review the
4 permit and may, for good cause, require reasonable revisions of the
5 permit during the term of the permit. A revision under this subsec-
6 tion must be based on a written finding of the commissioner relating
7 to the need for the revision and is subject to notice and hearing
8 requirements established by the commissioner by regulation.

9 Sec. 41.45.200. COAL EXPLORATION PERMITS. (a) A person may
10 conduct coal exploration activities which substantially disturb the
11 natural land surface only in accordance with regulations adopted by
12 the commissioner. Before conducting the coal exploration activities,
13 the person must file with the commissioner a notice of intent to
14 explore which includes a description of the exploration area and the
15 period of proposed exploration.

16 (b) The regulations adopted by the commissioner under (a) of
17 this section must include provisions for reclamation, in accordance
18 with the performance standards established by regulation under
19 AS 41.45.210, of lands disturbed by the coal exploration activities,
20 including reclamation of excavations, roads, and drill holes, and the
21 removal of facilities and equipment.

22 (c) The commissioner shall keep information submitted to him
23 under this section confidential upon request of the person submitting
24 the information if the information (1) is a trade secret or relates to
25 a trade secret; or (2) is a privileged competitive right of the
26 applicant for the coal exploration permit.

27 (d) A person who conducts a coal exploration activity that
28 substantially disturbs the natural land surface in violation of the
29 requirements of this section or regulations adopted under this section

1 shall be subject to the provisions of AS 41.45.240.

2 (e) A person may not remove more than 250 tons of coal under a
3 coal exploration permit without the specific written approval of the
4 commissioner.

5 Sec. 41.45.210. PERFORMANCE STANDARDS. Within 120 days after
6 the effective date of this chapter, the commissioner shall propose
7 regulations consistent with the environmental performance standards of
8 the Surface Mining Control and Reclamation Act of 1977 and the regula-
9 tions promulgated under that Act for both surface coal mining and
10 reclamation operations and surface effects of underground mining with
11 appropriate adjustments to the special physical, hydrological, bio-
12 logical and climatic conditions in Alaska. All permits issued under
13 this chapter shall require that surface coal mining and reclamation
14 operations and coal exploration activities must comply with those
15 environmental performance standards.

16 Sec. 41.45.220. SURFACE EFFECTS OF UNDERGROUND COAL MINING. (a)
17 The provisions of this chapter, including but not limited to the
18 provisions relating to permit application, reclamation plan, perfor-
19 mance bond and administrative or judicial review, also apply as
20 necessary in recognition of the inherent difference in the regulation
21 of the surface effects of underground coal mining established in
22 30 U.S.C. 1266, as amended.

23 (b) In order to protect the stability of the land, the commis-
24 sioner shall suspend underground coal mining under cities, towns, and
25 communities and adjacent to industrial or commercial buildings, major
26 impoundments, or permanent streams, if he finds imminent danger to
27 inhabitants of the cities, towns and communities.

28 Sec. 41.45.230. INSPECTIONS AND MONITORING. (a) The commis-
29 sioner shall provide for an inspection of a surface coal mining and

1 reclamation operation to be made as necessary to evaluate the adminis-
2 tration of this chapter, and, for that purpose, an authorized
3 representative of the commissioner may enter into the surface coal
4 mining and reclamation operation. The commissioner shall, to the
5 extent possible, coordinate his inspection and monitoring activities
6 with other agencies having such responsibilities with regard to the
7 operation.

8 (b) In administering and enforcing this chapter, or determining
9 whether a person is in violation of this chapter

10 (1) the commissioner may require a permittee to

11 (A) establish and maintain in the state appropriate
12 records;

13 (B) make monthly reports to the commissioner;

14 (C) install, use, and maintain necessary monitoring
15 equipment or methods;

16 (D) evaluate results in accordance with the methods,
17 at the locations and intervals and in the manner the commissioner
18 prescribes; and

19 (E) provide other information relating to the permit-
20 tee's operations as the commissioner considers reasonable and
21 necessary;

22 (2) for a surface coal mining and reclamation operation
23 which removes or disturbs strata which serve as aquifers which
24 significantly insure the hydrologic balance of water use either on or
25 off the site of the operation, the commissioner may specify

26 (A) monitoring sites for the use of equipment and
27 methods under (1)(C) of this subsection to record

28 (i) the quantity and quality of surface drainage
29 above and below the site of the operation as well as in the

1 area potentially affected by the operation;

2 (ii) level, amount, and samples of ground water
3 and aquifers which are potentially affected by the opera-
4 tion, and ground water and aquifers which are directly below
5 the deepest coal seam to be mined under the operation; and

6 (iii) precipitation at the site of the operation;

7 and

8 (B) the records of well logs and borehole information
9 which a permittee must maintain.

10 (3) the authorized representatives of the commissioner,
11 without advance notice and upon presentation of appropriate creden-
12 tials, may enter into an operation or into premises in which records
13 required to be maintained under this section are located and may at
14 reasonable times, and without delay, have access to and copy the
15 records and inspect monitoring equipment or an operating method
16 required under this chapter.

17 (c) Inspection by the commissioner under (b)(3) of this section
18 must

19 (1) occur on an irregular basis averaging not less than one
20 partial inspection per month and one complete inspection per calendar
21 quarter;

22 (2) occur without prior notice to the permittee or his
23 agents, except as provided in (e) of this section.

24 (d) After conducting an inspection under (b)(3) of this section,
25 an inspector shall file with the commissioner, and the commissioner
26 shall maintain, an inspection report adequate to assist the
27 commissioner in enforcing the requirements of this chapter and
28 carrying out the terms and purposes of this chapter.

29 (e) A representative of the permittee who is at the site of the

1 operation at the time an inspection under (b)(3) of this section
2 begins may accompany the inspector during the inspection. The in-
3 spector must notify the representative of the permittee of his right
4 under this subsection before beginning the inspection.

5 (f) A permittee shall conspicuously maintain at the entrances to
6 his operation a clearly visible sign which states the name, business
7 address, and phone number of the permittee and the permit number of
8 the operation.

9 (g) An inspector, upon detection of a violation of this chapter,
10 shall immediately report the violation to the operator and to the
11 commissioner in writing.

12 (h) A person who is or may be adversely affected by a surface
13 coal mining operation may notify the commissioner, in writing, of a
14 violation of this chapter which the person has reason to believe
15 exists at the site of the surface coal mining operation. The commis-
16 sioner shall, by regulation, establish procedures for review of a
17 refusal by a representative of the commissioner to issue a notice of
18 violation or cessation order with respect to the alleged violation.
19 The commissioner shall furnish a person requesting the review with a
20 written statement of his findings and reasons for the findings.

21 (i) The commissioner shall, by regulation, establish procedures
22 to ensure that adequate and complete inspections are made under this
23 section. Any person who is or may be adversely affected by a surface
24 coal mining operation may notify the commissioner of a failure to make
25 an adequate or complete inspection under this section. If the commis-
26 sioner receives notification from a person under this subsection, the
27 commissioner shall investigate the inspection and shall furnish the
28 person with a written determination and the reasons for the
29 determination.

1 Sec. 41.45.240. ENFORCEMENT. (a) If, on the basis of an
2 inspection under AS 41.45.230, the commissioner determines that a
3 person or a person's operation is in violation of this chapter or a
4 term of a permit and that the violation creates an imminent danger to
5 the health or safety of the public or is causing or can reasonably be
6 expected to cause significant, imminent, environmental harm to land,
7 air, or water resources, the commissioner shall immediately issue a
8 notice of violation and order a cessation of the person's surface coal
9 mining operation or the portion of the operation relating to the
10 violation. Except as provided in (h) of this section, the cessation
11 order shall remain in effect until the commissioner determines that
12 the violation has been abated, or until modified, vacated, or termi-
13 nated under (d), (h), or (j) of this section. If the commissioner
14 finds that the ordered cessation of the operation, or a portion of the
15 operation, will not completely abate the imminent danger to the health
16 or safety of the public or the significant, imminent environmental
17 harm to land, air, or water resources, the commissioner shall, in
18 addition to the cessation order, impose affirmative obligations on the
19 operator to take the steps he considers necessary to abate the immi-
20 nent danger or significant environmental harm.

21 (b) If, on the basis of an inspection, the commissioner deter-
22 mines that a person or a person's operation is in violation of this
23 chapter or a term of a permit and that the violation does not create
24 an imminent danger to the health or safety of the public and is not
25 causing and cannot reasonably be expected to cause significant,
26 imminent, environmental harm to land, air, or water resources, the
27 commissioner shall issue a notice of violation to the permittee
28 setting a reasonable time, which may not exceed 90 days from the date
29 the notice is issued, for the abatement of the violation. However,

1 the commissioner may, for good cause, extend the time for the abate-
2 ment of the violation. If, at the end of the time allowed for abate-
3 ment of the violation, the commissioner finds, in writing, that the
4 violation has not been abated, the commissioner shall order a cessa-
5 tion of the person's surface coal mining operation or the portion of
6 the operation relating to the violation. The cessation order shall
7 remain in effect until the commissioner determines that the violation
8 has been abated or until it is modified, vacated, or terminated under
9 (d), (h), or (j) of this section. In the order of cessation issued
10 under this section, the commissioner shall determine the steps neces-
11 sary to abate the violation in the most expeditious manner possible
12 and shall include the necessary measures in the order.

13 (c) A person who is or may be adversely affected by a notice of
14 violation or order of cessation issued under (a) or (b) of this
15 section, or by a modification, vacation, or termination of the notice
16 or order, may apply to the commissioner for review of the notice or
17 order within 60 days after receipt of the notice or order by the
18 operator or permittee or within 60 days after the modification,
19 vacation, or termination of the notice or order. On receipt of the
20 application, the commissioner shall provide for an investigation and
21 an investigation report, as he considers appropriate. At the request
22 of the applicant or another person who is or may be adversely affec-
23 ted, the commissioner shall provide for a public hearing to enable the
24 applicant to present information relating to the notice or order or
25 the modification, vacation, or termination of the notice or order.
26 The filing of an application for review under this subsection may not
27 operate as a stay of the order or notice. The commissioner shall give
28 the applicant and other interested persons written notice of the time
29 and place of the hearing at least five days before the hearing.

1 Unless regulations adopted by the commissioner provide otherwise, a
2 hearing under this subsection is subject to the Administrative Proce-
3 dure Act (AS 44.62).

4 (d) After completion of the investigation under (c) of this
5 section, the commissioner shall issue a written decision and shall
6 incorporate in the written decision findings of fact and an order
7 vacating, affirming, modifying, or terminating the notice or order.
8 If the application for review under (c) of this section relates to an
9 order for cessation issued under (a) or (b) of this section, the
10 commissioner shall issue the written decision within 30 days after the
11 receipt of the application for review unless he grants the applicant's
12 request for temporary relief under (e) of this section.

13 (e) Pending the completion of an investigation and hearing under
14 (c) of this section, the applicant may file with the commissioner a
15 written request for temporary relief from the notice or order. The
16 applicant must include with the written request a detailed statement
17 of the reasons in support of the temporary relief. The commissioner
18 shall issue an order granting or denying the temporary relief expedi-
19 tiously. If the applicant requests temporary relief from an order
20 issued under (a) or (b) of this section for cessation of an operation,
21 the commissioner shall issue an order granting or denying the tempor-
22 ary relief within five days after he receives the written request.
23 The commissioner may grant the temporary relief under this subsection

24 (1) only after he holds a hearing in the locality of the
25 permit area on the request for temporary relief in which the parties
26 have an opportunity to be heard;

27 (2) if the applicant shows that there is substantial
28 likelihood that the findings of the commissioner under (d) of this
29 section will be favorable to the applicant; and

1 (3) if the temporary relief will not adversely affect the
2 health or safety of the public or cause significant, imminent, envi-
3 ronmental harm to land, air, or water resources.

4 (f) If, on the basis of an inspection, the commissioner has
5 reason to believe that a pattern of violations of this chapter or of a
6 term of a permit exists or has existed, and if he finds that such
7 violations are caused by the unwarranted failure of the permittee to
8 comply with such requirements or that the violations were willfully
9 caused by the permittee, the commissioner shall issue a notice of
10 violation and an order to the permittee to show cause why the permit
11 should not be suspended or revoked. If the permittee fails to show
12 cause why the permit should not be suspended or revoked, the commis-
13 sioner shall promptly suspend or revoke the permit.

14 (g) After issuing, under (f) of this section, an order to show
15 cause why a permit should not be suspended or revoked, the commis-
16 sioner shall notify the permittee that he may request a hearing. If
17 the permittee requests a hearing, the commissioner shall inform the
18 permittee and other interested persons of the time, place, and date of
19 the hearing. Any such hearing shall be of record and subject to the
20 provisions of the Administrative Procedure Act (AS 44.62). Within 60
21 days following the public hearing, the commissioner shall issue and
22 furnish to the permittee and all other parties to the hearing a
23 written decision, and the reasons for it, concerning the suspension or
24 revocation of the permit. If the commissioner revokes the permit, the
25 permittee shall immediately cease the surface coal mining operation on
26 the permit area and shall complete the reclamation of the permit area
27 within the time specified by the commissioner. If the permittee fails
28 to complete the reclamation, the commissioner shall declare the
29 performance bonds for the operation forfeited.

1 (h) A notice or order issued under this section shall state with
2 reasonable specificity the nature of the violation, the abatement
3 required, the period of time established for abatement, and a reason-
4 able description of the portion of the operation to which the notice
5 or order applies. Each notice or order issued under this section
6 shall be given promptly to the alleged violator at the mine site
7 unless he has appointed an agent, in which case the agent may be
8 served. A notice or order issued under this section may be modified,
9 vacated, or terminated by the commissioner. A cessation order issued
10 under (a) or (b) of this section expires not more than 30 days after
11 the alleged violator receives actual notice of the order unless an
12 informal conference is held or unless the right to such a conference
13 is waived by the alleged violator within five days of the conference.
14 The holding of a conference or the waiver of it does not prejudice any
15 other rights to administrative judicial review provided under this
16 chapter.

17 (i) Whenever an order is issued under this section the commis-
18 sioner shall hold the informal conference at a location which allows
19 the permit area to be viewed during the conference. The commissioner
20 shall issue a written order affirming, modifying, vacating or
21 terminating the cessation order, or as a result of an administrative
22 proceeding under this chapter, then at the request of a person, a sum
23 equal to the aggregate amount of all costs and expenses, including
24 attorney fees, as determined by the commissioner to have been
25 reasonably incurred by that person for or in connection with his
26 participation in that proceedings, may be assessed against any party
27 as the commissioner deems proper.

28 (j) The commissioner may request the attorney general to insti-
29 tute a civil action for relief, including a permanent or temporary

1 injunction, restraining order, or other appropriate order, if a person

2 (1) violates an order or notice issued by the commissioner
3 under this chapter;

4 (2) interferes with the commissioner in carrying out the
5 provisions of this chapter;

6 (3) unlawfully refuses to admit the commissioner into the
7 person's operation;

8 (4) unlawfully refuses to permit inspection of the person's
9 operation by the commissioner;

10 (5) fails to furnish information or a report requested by
11 the commissioner under regulations adopted under this chapter; or

12 (6) refuses to permit access to or copying of records by
13 the commissioner which the commissioner determines are reasonably
14 necessary to carry out the provisions of this chapter.

15 (k) An action under (j) of this section shall be brought in the
16 superior court in the judicial district in which the greater portion
17 of the person's operation is located or in the judicial district where
18 the operator's principal office is located. The superior court has
19 jurisdiction to grant appropriate relief under (j) of this section.
20 Relief granted by a superior court for a situation described in (j)(1)
21 of this section continues in effect until the completion of proceed-
22 ings for review of the notice or order under this section unless
23 before that time the superior court modifies or sets aside the notice
24 or order.

25 (1) In the case of a judicial proceeding to review an order or
26 decision issued by the commissioner under this chapter, the court may,
27 under such conditions as it may prescribe, grant the temporary relief
28 it considers appropriate pending final determination of the
29 proceedings if

1 (1) all parties to the proceedings have been notified and
2 given an opportunity to be heard on a request for temporary relief;

3 (2) the person requesting the relief shows that there is a
4 substantial likelihood that he will prevail on the merits of the final
5 determination of the proceeding; and

6 (3) the relief will not adversely affect the public health
7 or safety or cause significant imminent environmental harm to land,
8 air, or water resources.

9 (m) The commencement of a judicial proceeding to review any
10 order or decision of the commissioner shall not, unless specifically
11 ordered by the court, operate as a stay of the action, order, or
12 decision of the commissioner.

13 (n) The fact that action of the commissioner is subject to
14 judicial review in accordance with other provisions of state law shall
15 not be construed to limit the operation of the rights established in
16 AS 41.45.390 except as provided in that section.

17 Sec. 41.45.250. PENALTIES. (a) The commissioner may assess a
18 civil penalty against a person if the person or the person's operation
19 violates a condition of a permit or a provision of this chapter. If,
20 as a result of the violation the commissioner issues a cessation order
21 under AS 41.45.240, the commissioner shall assess a civil penalty.
22 The civil penalty may not exceed \$5,000 for a violation. The commis-
23 sioner may consider each day of a continuing violation as a separate
24 violation for the purposes of this subsection. In determining whether
25 to assess and the amount of a civil penalty, the commissioner shall
26 consider the person's history of previous violations at the site of
27 the operation, the seriousness of the violation, including the
28 irreparable harm done to the environment and the hazard created to the
29 health or safety of the public, the person's negligence, and the good

1 faith of the person in attempting to achieve rapid compliance after
2 receiving notification of the violation.

3 (b) Within 30 days after issuing a notice or order under
4 AS 41.45.240 to a person, the commissioner shall inform the person of
5 the amount of the penalty. The person charged with the penalty shall
6 then have 30 days to pay the penalty in full or to contest either the
7 amount of the penalty or the fact of the violation.

8 (c) The commissioner shall assess a civil penalty under (a) of
9 this section only after the person charged with a violation has been
10 given an opportunity for a public hearing. If a public hearing has
11 been held, the commissioner shall make findings of fact and shall
12 issue a written decision relating to the occurrence of the violation
13 and the amount of the civil penalty which is warranted. The written
14 decision may order the person to pay the penalty. If appropriate, the
15 commissioner shall consolidate a hearing under this section with other
16 proceedings under AS 41.45.240. A hearing under this subsection shall
17 be recorded and is subject to the procedures of the Administrative
18 Procedure Act (AS 44.62) or AS 41.45.150. If the person does not
19 request a public hearing, the commissioner may assess the civil
20 penalty and order its payment only after he has determined that the
21 person committed the violation and has determined the amount of the
22 penalty which is warranted.

23 (d) A civil penalty owed under this section may be recovered in
24 a civil action brought by the attorney general at the request of the
25 commissioner.

26 (e) A person who willfully and knowingly violates a condition of
27 a permit, an order issued under AS 41.45.240, or an order incorporated
28 in a final decision of the authority under this chapter, except an
29 order incorporated in a decision issued under (c) of this section is

1 guilty of a class C felony.

2 (f) If a corporation violates a condition of a permit, an order
3 issued under AS 41.45.240, or an order incorporated in a final deci-
4 sion issued by the commissioner under this chapter, except an order
5 incorporated in a decision issued under (c) of this section, a direc-
6 tor, officer, or agent of the corporation who willfully and knowingly
7 authorized, ordered, or carried out the violation is subject to a
8 civil penalty under (a) of the section and is guilty of a class C
9 felony.

10 (g) A person who knowingly makes a false statement, represen-
11 tation, or certification, or knowingly fails to make a required
12 statement, representation, or certification in an application, record,
13 report, plan, or other document filed or required to be maintained
14 under this chapter is guilty of a class C felony.

15 (h) A person who fails to correct a violation for which a notice
16 of violation or a cessation order has been issued under AS 41.45.240
17 within the period permitted for its correction or subsequent extension
18 shall be assessed a civil penalty of \$750 for each day during which
19 such failure or violation continues. That period shall not end until
20 the entry of a final order by the commissioner in the case of a review
21 proceeding initiated by the alleged violator where the commissioner
22 orders, after an expedited hearing, the suspension of the abatement
23 requirements of the notice or order after determining that the alleged
24 violator will suffer irreparable loss or damage from the application
25 of those requirements, or until the entry of an order of the court in
26 the case of a review proceeding under AS 41.45.260 initiated by the
27 alleged violator where the court orders the suspension of the
28 abatement requirements of the notice or order.

29 (i) Any person who, except as permitted by law, willfully

1 resists, prevents, impedes, or interferes with the commissioner in the
2 performance of duties under this chapter is guilty of a class C
3 felony.

4 Sec. 41.45.260. ADMINISTRATIVE PROCEDURE ACT. Unless otherwise
5 provided, the Administrative Procedure Act (AS 44.62) applies to this
6 chapter.

7 Sec. 41.45.270. AREAS UNSUITABLE FOR SURFACE COAL MINING. (a)
8 The commissioner shall use competent and scientifically sound data and
9 information in order to make objective decisions as to which lands are
10 unsuitable for all or certain types of surface coal operations. The
11 decisions shall

12 (1) reflect the planning activities of federal and state
13 governments, municipalities, and native corporations and villages; and

14 (2) utilize a data base and inventory system which will
15 permit the evaluation of areas of the state to support and permit
16 reclamation of surface coal mining operations.

17 (b) A person or municipality having an interest which is or may
18 be adversely affected shall have the right to file a petition with the
19 commissioner to have an area designated as unsuitable for mining or to
20 terminate a designation under this section. The petition shall
21 contain allegations of facts with supporting evidence which would tend
22 to establish the allegations. Within a time period after receipt of
23 the petition the commissioner shall hold a public hearing in the
24 locality of the area, under regulations adopted by the commissioner.
25 That time period shall be from three to seven months in length unless
26 an extension is required to include a field season. After the filing
27 of the petition and before the hearing, other persons may intervene by
28 filing allegations of fact with supporting evidence. Within 60 days
29 after the hearing the commissioner shall issue and furnish to the

1 petitioner and intervenors a written decision regarding the petition
2 and the reasons for his decision. The commissioner may cancel the
3 hearing if the petitioners and intervenors all agree to the
4 cancellation.

5 (c) Upon receipt of a petition under (b) of this section, the
6 commissioner

7 (1) shall designate an area as unsuitable for all or
8 certain types of surface coal mining operations if the commissioner
9 determines that reclamation in accordance with this chapter and
10 regulations adopted under it is not technologically feasible in the
11 area;

12 (2) may designate an area as unsuitable for all or certain
13 types of surface coal mining operations if the commissioner determines
14 that the operations in the area will

15 (A) be incompatible with existing state or local land
16 use programs;

17 (B) affect fragile or historic land in which the
18 operations could result in significant damage to important
19 historic, cultural, scientific and aesthetic values and natural
20 systems;

21 (C) affect renewable resource lands in which the
22 operations could result in a substantial loss or reduction of
23 long-range productivity of water supply or food or fiber pro-
24 ducts, the land to include aquifer recharge areas; or

25 (D) affect natural hazard land in which the operations
26 could substantially endanger life and property, the land to
27 include areas subject to frequent flooding and areas of unstable
28 geology;

29 (3) shall, subject to valid existing rights, not permit

1 surface coal mining operations except those which existed on August 3,
2 1977

3 (A) on any lands within the boundaries of units of the
4 National Park System, the National Wildlife Refuge Systems, the
5 National System of Trails, the National Wilderness Preservation
6 System, the Wild and Scenic Rivers System, including study rivers
7 designated under section 5(a) of the Wild and Scenic Rivers Act
8 and National Recreation Areas designated by Act of Congress;

9 (B) which will adversely affect any publicly owned
10 park or places included in the National Register of Historic
11 Sites unless approved jointly by the commissioner and the
12 federal, state, or local agency which has jurisdiction over the
13 park or the historic site;

14 (C) within 100 feet of the outside right-of-way line
15 of any public road, except where mine access roads or haulage
16 roads join the right-of-way line and except that the commissioner
17 may permit roads to be relocated or the area affected to lie
18 within 100 feet of a road, if after public notice and opportunity
19 for public hearing on the locality a written finding is made that
20 the interests of the public and the landowners affected by it
21 will be protected; or

22 (D) within 300 feet from any occupied dwelling, unless
23 waived by the owner of the dwelling, nor within 300 feet of any
24 public building, school, church, community, or institutional
25 building, public park, or within 100 feet of a cemetery.

26 (d) Before designating an area as unsuitable under this section,
27 the commissioner shall prepare a detailed statement of the potential
28 coal resources of the area, the demand for coal resources, and the
29 impact of the designation on the environment, the economy, and the

1 supply of coal.

2 (e) Determinations of unsuitability of land for surface coal
3 mining shall consider present and future land use planning and
4 regulation processes at the federal, state and local levels.

5 (f) This section does not apply to land on which a surface coal
6 mining operation was conducted on or before August 3, 1977 or under a
7 permit issued under this chapter before the determination of
8 unsuitability. This section does not apply to an area if a person had
9 made substantial legal or financial commitments for an operation or
10 proposed operation in that area before January 4, 1977.

11 (g) A designation of unsuitability under this section shall not
12 prevent coal exploration of any designated area.

13 (h) The commissioner shall adopt regulations to implement this
14 section.

15 Sec. 41.45.280. ABANDONED MINE RECLAMATION FUND. The commis-
16 sioner may take the actions necessary to ensure Alaska's participation
17 to the fullest extent practicable in the Abandoned Mine Reclamation
18 Fund created in 30 U.S.C. 1231 and to function as the state's agency
19 for that participation. In conformance with the Surface Mining
20 Control and Reclamation Act of 1977, the commissioner shall

21 (1) by regulation, establish priorities which must meet the
22 terms of the Surface Mining Control and Reclamation Act of 1977, for
23 the expenditure of money received by the commissioner from the Aban-
24 doned Mine Reclamation Fund;

25 (2) designate land and water eligible for reclamation or
26 abatement with money received by the commissioner from the Abandoned
27 Mine Reclamation Fund;

28 (3) submit reclamation plans, annual projects, and applica-
29 tions to the appropriate authorities under the terms of the Surface

1 Mining Control and Reclamation Act of 1977; and

2 (4) administer money received by the state for abandoned
3 mine reclamation or related purposes from the Abandoned Mine Reclama-
4 tion Fund.

5 Sec. 41.45.290. ELIGIBLE LAND AND WATER. Land and water
6 eligible for reclamation or drainage abatement expenditures under this
7 chapter are those which were mined for coal or which were affected by
8 such mining, wastebanks, coal processing, or other coal mining
9 processes, and abandoned or left in an inadequate reclamation status
10 before August 3, 1977 and for which there is no continuing reclamation
11 responsibility under state or federal law.

12 Sec. 41.45.300. ENTRY ONTO ABANDONED MINE AREA. (a) The
13 commissioner may enter on real property which has been adversely
14 affected by past surface coal mining practices and on other real
15 property necessary for access to the adversely affected real property
16 to restore or reclaim the real property or to abate, control, or
17 prevent the adverse effects. The money expended for and the benefits
18 accruing to the real property from work performed under this subsec-
19 tion is chargeable against the real property and mitigates or offsets
20 a claim in or an action brought by an owner of an interest in the real
21 property for damages resulting from the entry. This subsection does
22 not create new rights of action or eliminate existing immunities.

23 (b) The commissioner may enter on real property for the purposes
24 of conducting studies or exploratory work to determine the existence
25 of adverse effects from past surface coal mining practices and to
26 determine the feasibility of restoring or reclaiming the real property
27 or abating, controlling, or preventing the adverse effects of past
28 coal mining practices.

29 (c) The commissioner may enter on real property under (a) or (b)

1 of this section only after

2 (1) giving notice of the entry by mailing it to the owners
3 if they are known, or, if not known, by posting notice on the premises
4 and advertising once a week for four consecutive weeks in a newspaper
5 of general circulation in the area in which the land is located;

6 (2) making written findings that

7 (A) the land or water resources have been adversely
8 affected by past coal mining practices; and

9 (B) the adverse effects are at a stage where in the
10 public interest, action to restore, reclaim, abate, control, or
11 prevent the adverse effects of past coal mining practices should
12 be taken; and

13 (C) the owners of the land or water resources where
14 entry must be made to restore, reclaim, abate, control, or
15 prevent the adverse effects of past coal mining practices are not
16 known or readily available, or will not give permission for the
17 entry.

18 Sec. 41.45.310. ACQUISITION OF ABANDONED MINE AREAS. (a) The
19 commissioner may, by purchase, donation, or condemnation in accordance
20 with AS 09.55.240 -- 09.55.460, acquire real property which has been
21 adversely affected by past surface coal mining practices if the
22 commissioner determines that

23 (1) acquisition of the real property is necessary to the
24 successful reclamation of the real property and is in the public
25 interest;

26 (2) the real property, after its restoration or reclamation
27 or after the abatement, control, or prevention of the adverse effects,
28 will serve recreational, historic, conservation or reclamation pur-
29 poses or will provide open space benefits; and

1 (3) either permanent facilities will be constructed on the
2 real property for the restoration or reclamation of the real property
3 or for the abatement, control, or prevention of the adverse effects;
4 or, if the real property includes a coal refuse disposal site, the
5 acquisition of the coal refuse disposal site and the coal refuse on
6 the site will serve the purposes of this section; or public ownership
7 is desirable to meet emergency situations created by the adverse
8 effects and to prevent recurrences of the adverse effects.

9 (b) Title to real property acquired under this section is in the
10 state. If the commissioner acquires the real property by purchase or
11 condemnation, he shall pay the fair market value of the real property
12 as adversely affected by past coal mining practices.

13 (c) If real property acquired under this section is suitable for
14 industrial, commercial, residential, or recreational development, the
15 commissioner may sell the real property by competitive bidding, at not
16 less than the fair market value of the real property. The commis-
17 sioner shall adopt regulations relating to the sale of real property
18 under this subsection which will ensure that the use of the real
19 property is consistent with state and local land use plans, if any.
20 If money received by the commissioner from the federal government is
21 involved in the acquisition of the real property, the commissioner may
22 sell the real property only if the sale is authorized by the secretary
23 of the United States Department of the Interior. If a person requests
24 it, the commissioner shall hold a hearing in the area in which the
25 real property is located to consider the use or disposition of the
26 real property after its restoration or reclamation or after the
27 abatement, control, or prevention of adverse effects. The commis-
28 sioner shall hold the hearing at a time which will afford local
29 residents and representatives of municipal government in the area the

1 maximum opportunity to participate in the hearing. The commissioner
2 must publish notice of the hearing in a newspaper of general circula-
3 tion in the area in which the real property is located at least 10
4 days before holding the hearing.

5 Sec. 41.45.320. LIENS ON ABANDONED MINE AREAS. (a) Within six
6 months after the completion of a project under AS 45.41.300 to restore
7 or reclaim privately-owned real property or to abate, control, or
8 prevent the adverse effects of past surface coal mining practice on
9 privately-owned real property, the commissioner shall itemize the
10 money spent on the project. If the project results or will result in
11 a significant increase in the real property's fair market value, the
12 commissioner may file a statement of the money spent in the recording
13 office in the area in which the real property is located with a
14 notarized appraisal by a licensed appraiser of the fair market value
15 of the real property before the project began. The statement consti-
16 tutes a lien on the real property as of the date of the expenditure
17 which is second only to the lien of property taxes. The lien may not
18 exceed the amount determined by either of two appraisals to be the
19 increase in the fair market value of the real property as a result of
20 the project. A lien may not be filed under this subsection against
21 real property of a person who owned the surface before May 2, 1977,
22 and who did not consent to, participate in or exercise control over
23 the surface coal mining operation which necessitated the project.

24 (b) A person affected by a lien under (a) of this section may
25 petition the commissioner within 60 days after the recording of the
26 lien for a hearing concerning the amount of the lien.

27 Sec. 42.45.330. FILLING VOIDS AND SEALING TUNNELS. The commis-
28 sioner may authorize the filling of voids, sealing open and abandoned
29 tunnels, shafts, and entryways resulting from any previous mining

1 operation and reclaim surface impacts of underground and surface mines
2 to the extent authorized by the secretary of the United States Depart-
3 ment of the Interior.

4 Sec. 41.45.340. EMERGENCY POWERS IN ABANDONED MINE AREAS. (a)
5 In emergency situations the commissioner may use money available to
6 the state in the Abandoned Mine Reclamation Fund for the purposes of
7 AS 41.45.300(a) if the commissioner finds that

8 (1) an emergency exists which constitutes a danger to the
9 public health, safety, or general welfare; and

10 (2) no other person or agency will act expeditiously for
11 those purposes.

12 (b) If the commissioner makes the findings described in (a) of
13 this section, the commissioner may enter on real property under
14 AS 41.45.300(a) or (b) without giving the notice or making the
15 findings required by AS 41.45.300(c). An entry onto real property
16 under this section may not be considered a condemnation of property or
17 a trespass.

18 Sec. 41.45.350. MISCELLANEOUS POWERS REGARDING ABANDONED MINE
19 LANDS. (a) The commissioner may request the attorney general, who is
20 authorized under this section to initiate, in addition to any other
21 remedies provided for in this chapter, an action in equity for an
22 injunction to restrain any interference with the exercise of the right
23 to enter or to conduct the work described in AS 41.45.280 --
24 AS 41.45.350.

25 (b) The state shall have the power and authority to construct
26 and operate plants for the control and treatment of water pollution
27 resulting from mine drainage, including major interceptors and other
28 appurtenant facilities, so long as such control and treatment complies
29 with the Federal Water Pollution Control Act (33 U.S.C. 1151, et seq.

1 as amended.).

2 Sec. 41.45.360. MINING BY GOVERNMENTAL AGENCIES OR ON GOVERNMENT
3 LAND. An instrumentality of the federal or state government or of a
4 municipal government, including a publicly-owned utility or corpora-
5 tion, which proposes to engage in a surface coal mining operation
6 which is subject to this chapter must comply with this chapter.

7 Sec. 41.45.370. EXEMPTIONS. The provisions of this chapter do
8 not apply to

9 (1) the extraction of coal by a landowner or lessee for his
10 own noncommercial use from the land owned or leased by it;

11 (2) the extraction of coal for commercial purposes if the
12 surface coal mining operation affects two acres or less; or

13 (3) the extraction of coal as an incidental part of highway
14 or other construction financed in whole or in part as specified by
15 regulation, by the federal or state government or by a municipal
16 government.

17 Sec. 41.45.380. EXPERIMENTAL PRACTICES. In order to encourage
18 advances in mining and reclamation practices, and to allow post-mining
19 land use for industrial, commercial, residential, recreational, or
20 public purposes, the commissioner may, with the approval of the
21 secretary of the United States Department of the Interior, authorize
22 departures in individual cases on an experimental basis from the
23 environmental performance standards established under AS 41.45.210.
24 The commissioner may authorize these departures if

25 (1) the experimental practices are, during and after the
26 surface coal mining operation, potentially more protective of the
27 environment than, or at least as protective of the environment, as
28 those required by this chapter and regulations adopted under it;

29 (2) the surface coal mining operation for which the

1 departure is authorized is not larger than necessary to determine the
2 effectiveness and economic feasibility of the experimental practices;
3 and

4 (3) the experimental practices do not reduce the protection
5 afforded public health and safety below that provided by law or
6 regulation.

7 Sec. 41.45.390. WATER RIGHTS AND REPLACEMENT. (a) Nothing in
8 this chapter may be construed to affect the right of a person to
9 protect his interest in water resources affected by a surface coal
10 mining operation.

11 (b) An operator shall replace the water supply of an owner of
12 interest in real property who obtains all or part of his supply of
13 water for domestic, agricultural, industrial, or other beneficial use
14 from an underground or surface source, if the supply has been affected
15 by contamination, diminution, or interruption, proximately resulting
16 from the operator's surface coal mining operation.

17 Sec. 41.45.400. CERTIFICATION OF BLASTERS. The commissioner
18 shall adopt regulations requiring the training, examination, and
19 certification of persons engaging in or directly responsible for
20 blasting or the use of explosives in surface coal mining operations.

21 Sec. 41.45.410. CIVIL ACTIONS. (a) Except as provided in (b)
22 of this section, a person who is or may be adversely affected by a
23 failure to comply with this chapter may commence a civil action in the
24 superior court on the person's own behalf and compel compliance with
25 this chapter against

26 (1) the commissioner, if the commissioner has failed to
27 perform a nondiscretionary act or duty;

28 (2) an instrumentality or agency of the state which is in
29 violation of this chapter or a regulation adopted, or an order or

1 permit issued, under this chapter; or

2 (3) a person who is in violation of a regulation adopted or
3 an order or permit issued under this chapter.

4 (b) A person may not commence an action under (a)(1) of this
5 section until 60 days after the person has given notice in writing of
6 the person's intent to commence the action to the commissioner, in the
7 manner prescribed by regulations of the commissioner, except that an
8 action may be brought immediately after the notice if the commission-
9 er's failure to perform constitutes an imminent threat to the health
10 or safety of the person or would immediately affect a legal interest
11 of the person.

12 (c) A person may not commence an action under (a)(2) or (a)(3)
13 of this section

14 (1) until 60 days after the plaintiff has given notice in
15 writing of the violation to the commissioner and to the agency,
16 instrumentality, or alleged violator;

17 (2) if the state has commenced and is diligently prose-
18 cuting a civil action in a court of the United States or of this state
19 to require compliance with the provisions of this chapter or a regula-
20 tion adopted or an order or permit issued under this chapter; in any
21 such action, any person may intervene as a matter of right.

22 (d) A person may commence an action under this section only in
23 the judicial district in which the surface coal mining operation is
24 located. In an action under this section, the commissioner may
25 intervene as a matter of right.

26 (f) Nothing in this section shall restrict any right which any
27 person or class of persons may have under any statute or common law to
28 seek enforcement of any of the provisions of this chapter and the
29 regulations adopted under it, or to seek any other relief, including

1 relief against the commissioner.

2 (g) A person who is injured in his person or property by the
3 violation by a permittee of a regulation adopted or an order or permit
4 issued under this chapter may bring an action for damages, including
5 reasonable attorney fees and expert witness fees, only in the judicial
6 district in which the permittee's operation is located. Nothing in
7 this subsection affects the rights established by or limits imposed
8 under AS 23.30.

9 Sec. 41.45.420. INCONSISTENCIES WITH FEDERAL ACT. (a) A
10 provision of this chapter which is inconsistent with the provisions of
11 the Surface Mining Control and Reclamation Act of 1977 as determined
12 by the secretary of the United States Department of the Interior under
13 30 U.S.C. 1255(b) is, from the date of the secretary's determination,
14 invalid.

15 (b) If a provision of the Surface Mining Control and Reclamation
16 Act of 1977 or of the regulations promulgated under that Act by the
17 secretary of the United States Department of the Interior are deleted,
18 amended, set aside, enjoined, or declared invalid by Congress, the
19 secretary, or in a final, unappealable judgment of a court of compe-
20 tent jurisdiction, then the commissioner shall review the changes made
21 and make an appropriate recommendation as to whether changes in this
22 chapter or the regulations adopted under it should be made.

23 Sec. 41.45.430. RELATIONSHIP TO OTHER LAWS. (a) Nothing in
24 this chapter abrogates or modifies the power of a state agency with
25 regard to the issuance and administration of coal leases and
26 exploration permits, except as specifically stated in this chapter and
27 regulations adopted under it.

28 (b) Surface coal mining operations for coal which has been or
29 is after this conveyed out of federal ownership must meet the

1 requirements of this chapter.

2 Sec. 41.45.440. DEFINITIONS. In this chapter

3 (1) "alluvial valley floors" means the unconsolidated
4 stream-laid deposits holding streams where water availability is
5 sufficient for subirrigation or flood irrigation agricultural acti-
6 vities but does not include upland areas which are generally overlain
7 by a thin veneer of colluvial deposits composed chiefly of debris from
8 sheet erosion, deposits by unconcentrated runoff or slope wash,
9 together with talus, other mass movement accumulation and windblown
10 deposits;

11 (2) "applicant" means a person or other entity seeking a
12 permit from the commissioner to conduct surface coal mining or under-
13 ground mining activities under this chapter;

14 (3) "coal" means all forms of coal, including lignite;

15 (4) "commissioner" means the Alaska Department of Natural
16 Resources, acting by the commissioner or his authorized representa-
17 tives or agents;

18 (5) "department" means the Alaska Department of Natural
19 Resources;

20 (6) "imminent danger to the health and safety of the
21 public" means the existence of any condition or practice, or any
22 violation of a permit or other requirement of this chapter in a
23 surface coal mining and reclamation operation, which could reasonably
24 be expected to cause substantial physical harm to persons outside the
25 permit area before the condition, practice, or violation can be
26 abated; a reasonable expectation of substantial injury before
27 abatement exists if a rational person, subjected to the same
28 conditions or practices giving rise to the peril, would not expose
29 himself to the danger during the time necessary for abatement;

1 (7) "operation" means a surface coal mining operation or a
2 surface coal mining and reclamation operation;

3 (8) "operator" means any person engaged in coal mining who
4 removes or intends to remove more than 250 tons of coal from the earth
5 by coal mining within 12 consecutive calendar months in any one
6 location;

7 (9) "other minerals" means clay, stone, sand, gravel,
8 metalliferous and non-metalliferous ores, and other solid materials or
9 substances of commercial value excavated in solid form from natural
10 deposits on or in the earth, exclusive of coal, and those minerals
11 that occur naturally in liquid or gaseous form;

12 (10) "permit" means a permit to conduct a surface coal
13 mining and reclamation operation issued by the commissioner under the
14 terms of this chapter;

15 (11) "permit area" means the area of land indicated on the
16 approved maps submitted by the operator with his application which
17 shall be covered by the operator's bond as required by AS 41.45.160
18 and shall be readily identifiable by appropriate markers on the site;

19 (12) "permittee" means a person holding a permit to conduct
20 a surface coal mining and reclamation operation or underground mining
21 activities under this chapter;

22 (13) "person" means an individual, partnership, association,
23 society, joint-stock company, firm, company, corporation or other
24 business organization;

25 (14) "reclamation plan" means a plan for the reclamation of
26 an applicant's proposed surface coal mining operation submitted by the
27 applicant under regulations adopted under AS 41.45.110;

28 (15) "significant imminent environmental harm to land, air
29 or water resources" means a condition, practice, or violation which is

1 causing or can be expected to cause an appreciable, irreparable
2 adverse impact to land, air, or water resources including, but not
3 limited to, plant and animal life;

4 (16) "surface coal mining and reclamation operation" means a
5 surface coal mining operation and the activities necessary and inci-
6 dental to the reclamation of that operation after August 3, 1977;

7 (17) "surface coal mining operations" means

8 (A) an activity

9 (i) conducted on the surface of land in con-
10 nection with a surface coal mine or, to the extent that the
11 activity affects the surface of land, conducted in connec-
12 tion with an underground coal mine;

13 (ii) the products of which enter commerce or the
14 operation of which directly or indirectly affects interstate
15 commerce;

16 (iii) which may include contour, strip, auger,
17 mountain top removal, boxcut, open pit, and area mining; the
18 use of explosives and blasting; on-site distillation or
19 retorting, leaching, or other chemical or physical pro-
20 cessing of coal; and loading of coal for interstate commerce
21 at or near the mine site;

22 (iv) other than an activity relating to the
23 extraction of coal incidental to the extraction of other
24 minerals under which the coal extracted does not exceed 16
25 and 2/3 percent of the total tonnage of coal and other
26 minerals removed annually for purposes of commercial use or
27 sale and other than a coal exploration activity subject to
28 this chapter; and

29 (B) the areas on which an activity described in (A) of

1 this paragraph occurs or where the activity disturbs the natural
2 land surface, including adjacent land, the use of which is
3 incidental to the activity; land affected by the construction of
4 new roads or the improvement or use of existing roads to gain
5 access to the site of the activity and for haulage; and excava-
6 tion, workings, impoundments, dams, ventilation shafts, entry
7 ways, refuse banks, dumps, stockpiles, overburden piles, spoil
8 banks, culm banks, tailings, holes or depressions, repair areas,
9 storage areas, processing areas, shipping areas, and other areas
10 upon which are situated structures, facilities, or other property
11 or materials on the surface resulting from or incidental to the
12 activity;

13 (18) "Surface Mining Control and Reclamation Act of 1977"
14 means P.L. 95-87, 91 Stat. 447-532, 30 U.S.C. secs. 1201-1328, as
15 amended;

16 (19) "unwarranted failure to comply" means the failure of a
17 permittee to prevent or abate a violation of his permit or of this
18 chapter because of indifference, lack of diligence, or lack of
19 reasonable care.

20 Sec. 41.45.450. INVALID PROVISIONS. If any provision of this
21 chapter or the applicability of it to any person or circumstances is
22 held invalid, the remainder of this Act and the application of that
23 provision to other persons or circumstances shall not be affected.

24 Sec. 41.45.460. SHORT TITLE. This chapter may be cited as the
25 Alaska Surface Coal Mining Control and Reclamation Act.

26 * Sec. 3. INITIAL APPLICATIONS FOR SURFACE COAL MINING PERMITS. Not
27 later than two months after the date of approval by the federal government
28 of the state program for the regulation of surface coal mining under the
29 terms of the Surface Mining Control and Reclamation Act of 1977, regardless

1 of litigation contesting that approval or the implementation of the state
2 program, an operator of a surface coal mine who plans to operate that mine
3 more than eight months after the approval of the state program must apply
4 for a permit under AS 41.45.060(a) for the operation of the surface coal
5 mine. The Alaska Department of Natural Resources shall process an applica-
6 tion received under this section and shall grant or deny the permit within
7 eight months after the date of the approval of the state program.

8 * Sec. 4. RESERVATION CLAUSE. Passage of this Act may not be consi-
9 dered an admission by the State of Alaska of the legality or constitution-
10 ality of the Surface Mining Control and Reclamation Act of 1977, P.L.
11 95-87, 91 Stat. 447-532, 30 U.S.C. 1201-1328, as amended, and may not be
12 construed to limit, waive, or otherwise affect the right of the State of
13 Alaska, or its agencies, from contesting the constitutional or statutory
14 validity of all or part of a regulation promulgated under the Surface
15 Mining Control and Reclamation Act of 1977.

16 * Sec. 5. This Act takes effect upon approval of the state program for
17 the regulation of surface coal mining by the secretary of the United States
18 Department of the Interior under the Surface Mining Control and Reclamation
19 Act of 1977, P.L. 95-87, 91 Stat. 447-532, 30 U.S.C. 1201-1328, as amended.
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