

Introduced: 3/9/82
Referred: Resources and
Finance

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 843

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 surface
7 effects of underground coal mining; and providing for
8 an effective date."

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

10 * Section 1. AS 41 is amended by adding a new chapter to read:

11 CHAPTER 45. ALASKA SURFACE COAL

12 MINING CONTROL AND RECLAMATION ACT.

13 ARTICLE 1. LEGISLATIVE FINDINGS AND PURPOSE.

14 Sec. 41.45.010. FINDINGS AND DECLARATION OF PURPOSE. (a) The
15 legislature finds and declares that

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

22 (2) section 101 of the Surface Mining Control and Reclamation
23 Act of 1977 contains the finding by Congress that because of the diver-
24 sity in terrain, climate, biology, chemistry, and other physical condi-
25 tions in areas subject to mining operations, primary governmental re-
26 sponsibility for developing, authorizing, issuing and enforcing regula-
27 tions for surface coal mining and reclamation operations subject to that
28 Act should rest with the states;

29 (3) section 503 of the Surface Mining Control and Reclamation

1 Act of 1977 provides that each state may assume and retain exclusive
2 jurisdiction over the regulation of surface coal mining and reclamation
3 operations within the state by obtaining approval of a state program of
4 regulation which demonstrates that the state has the capability of car-
5 rying out the provisions and meeting the purposes of the Surface Mining
6 Control and Reclamation Act of 1977;

7 (4) section 503 of the Surface Mining Control and Reclamation
8 Act of 1977 provides that a state wishing to assume exclusive jurisdic-
9 tion over the regulation of surface coal mining and reclamation opera-
10 tions within the state must have a state law that provides for the regu-
11 lation of surface coal mining and reclamation operations in accordance
12 with the requirements of the Surface Mining Control and Reclamation Act
13 of 1977; and

14 (5) because of unique environmental conditions which the
15 state is best equipped to understand, the state intends to assume exclu-
16 sive jurisdiction over the regulation of surface coal mining and recla-
17 mation operations with the state under the Surface Mining Control and
18 Reclamation Act of 1977.

19 (b) The purposes of this Act are

20 (1) to prevent the adverse effects to society and the envi-
21 ronment resulting from unregulated surface coal mining operations as de-
22 fined in this chapter and the regulations adopted under it;

23 (2) to assure that the rights of surface land owners and oth-
24 er persons with an interest in the land are protected from unregulated
25 surface coal mining operations;

26 (3) to assure that surface coal mining operations are con-
27 ducted in a manner that will prevent unreasonable degradation of land
28 and water resources;

29 (4) to assure that surface coal mining operations are not

1 conducted where reclamation required by this chapter and the regulations
2 adopted under it is not feasible;

3 (5) to assure that reclamation of land on which surface coal
4 mining takes place is accomplished as contemporaneously as practicable
5 with the surface coal mining, recognizing that the responsible extrac-
6 tion of coal by responsible mining operators is an essential and bene-
7 ficial economic activity;

8 (6) to assure that appropriate procedures are provided for
9 public participation in the development, revision and enforcement of
10 regulations, standards, and reclamation plans or programs established
11 under this chapter;

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

17 (8) to promote the reclamation of areas which were mined and
18 left without adequate reclamation before the enactment of the Surface
19 Mining Control and Reclamation Act of 1977, and which substantially de-
20 grade the quality of the environment, prevent the beneficial use of, or
21 cause damage to land or water resources, or endanger the health or safe-
22 ty of the public.

23 ARTICLE 2. SURFACE MINING.

24 Sec. 41.45.020. JURISDICTION. The commissioner has exclusive jur-
25 isdiction over surface coal mining and reclamation operations in the
26 state.

27 Sec. 41.45.030. GENERAL POWERS. To accomplish the purposes of
28 this chapter, the commissioner may

29 (1) in accordance with the Administrative Procedure Act

1 (AS 44.62), adopt, amend, and enforce regulations pertaining to surface
2 coal mining and reclamation operations;

3 (2) issue permits;

4 (3) conduct hearings and conferences;

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

8 (5) issue orders modifying previous orders;

9 (6) after opportunity for a due process hearing, issue a fi-
10 nal order revoking the permit of an operator who has failed to comply
11 with an order of the commissioner to take action required by this chap-
12 ter or regulations adopted under this chapter;

13 (7) order the immediate cessation of all or part of a surface
14 coal mining and reclamation operation if the commissioner finds that the
15 operation or part of the operation creates an imminent danger to the
16 health or safety of the public or is causing or can reasonably be ex-
17 pected to cause significant imminent harm to land, air, or water re-
18 sources, and, to the extent reasonably necessary to eliminate or allevi-
19 ate those conditions, take other action or make changes in a permit, as
20 provided in this chapter;

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

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

27 (10) conduct, encourage, request, and participate in studies,
28 surveys, investigations, research, experiments, training, and demonstra-
29 tions;

1 (11) prepare reports and require permittees to prepare re-
2 ports;

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

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

11 (14) take the actions necessary to establish and maintain ex-
12 clusive jurisdiction over surface coal mining and reclamation operations
13 in the state under the provisions of the Surface Mining Control and Re-
14 clamation Act of 1977, including making recommendations for legislation
15 to clarify or amend this chapter to conform with the terms of the Sur-
16 face Mining Control and Reclamation Act of 1977;

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

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

23 (17) enter into cooperative agreements with the Secretary of
24 the United States Department of the Interior for the regulation of sur-
25 face coal mining operations on federal land in accordance with the Sur-
26 face Mining Control and Reclamation Act of 1977; and

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

28 Sec. 41.45.040. PROVISIONS OF REGULATIONS AND PERMITS. The provi-
29 sions of a regulation adopted or a permit issued by the commissioner may

1 vary for particular conditions, types of coal being extracted, or areas
2 of the state if the provisions are consistent with the purposes of this
3 chapter.

4 Sec. 41.45.050. CONFLICT OF INTEREST. An employee of the depart-
5 ment or a private contractor performing a function or duty under this
6 chapter may not have a direct or indirect financial interest in an un-
7 derground or surface coal mining operation. A person who knowingly vio-
8 lates this section is guilty of a class A misdemeanor.

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

15 (b) If the Alaska surface mining control and reclamation program
16 is disapproved by the secretary of the United States Department of the
17 Interior, and a federal program for Alaska is not yet promulgated, ex-
18 isting surface coal mining operations which comply with 30 U.S.C. 1252
19 may continue. Permits which lapse during this period will continue in
20 full force and effect until promulgation of a federal program.

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

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

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

9 Sec. 41.45.080. RENEWAL OF PERMIT. (a) A permit issued under
10 this chapter includes the right of successive renewal upon expiration,
11 for areas within the boundaries of the permit area. An opponent of re-
12 newal of a permit has the burden of proving that the permit should not
13 be renewed. Subject to (c) of this section, if a permittee applies for
14 renewal of the permit, the commissioner shall renew the permit after
15 public notice is given in the manner provided in AS 41.45.130 unless the
16 commissioner finds, in writing, that

17 (1) the terms and conditions of the permit have not been sa-
18 tisfactorily met, and the permittee has not demonstrated to the satis-
19 faction of the commissioner that the permittee is meeting and will con-
20 tinue to meet a schedule set by the commissioner under AS 41.45.240 (a)
21 or (b) for correcting a permit violation;

22 (2) the surface coal mining and reclamation operation of the
23 permittee is not in compliance with the environmental protection stan-
24 dards of this chapter and regulations adopted under it;

25 (3) the requested renewal substantially jeopardizes the per-
26 mittee's continuing responsibility on existing permit areas;

27 (4) the permittee has not provided sufficient evidence that
28 the performance bond under AS 41.45.160 in effect for the operation will
29 continue for the renewal period requested in the application, and that

1 any additional bond required by the commissioner under AS 41.45.160 will
2 be obtained; or

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

5 (b) The commissioner shall provide notice to the appropriate pub-
6 lic authorities as provided in AS 38.05.345 before approving a permit
7 renewal.

8 (c) If an application for renewal of a permit includes a proposal
9 to extend the permittee's surface coal mining operations to include new
10 land areas beyond the boundaries authorized in the permit, the commis-
11 sioner shall review the part of the application which addresses the new
12 land areas under the standards established in AS 41.45.180. However, if
13 the surface coal mining operations authorized by a permit are not sub-
14 ject to the standards contained in AS 41.45.180(c)(5)(A) and (B), the
15 part of the application for renewal which addresses new land areas pre-
16 viously identified in the reclamation plan submitted under AS 41.45.110
17 is not subject to the standards contained in AS 41.45.180(c)(5)(A) and
18 (B).

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

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

27 Sec. 41.45.090. APPLICATION FEE. An application for a new permit,
28 permit renewal, or transfer of a permit must be accompanied by an appli-
29 cation fee. The commissioner shall adopt regulations setting out a fee

1 schedule. The application fee may not exceed the actual or anticipated
2 costs of reviewing the application.

3 Sec. 41.45.100. PUBLIC INFORMATION AND INSPECTION. (a) An appli-
4 cant for a permit shall file a copy of the application for public in-
5 spection at a location designated by the commissioner near the area of
6 the proposed surface coal mining operation. The applicant may exclude
7 from the copy filed under this subsection information which is confiden-
8 tial under (c) of this section.

9 (b) Copies of records, permits, inspection materials, or other in-
10 formation obtained under this chapter by the commissioner relating to a
11 surface coal mining and reclamation operation, other than information
12 which is confidential under (c) of this section, must be made immediate-
13 ly and conveniently available to the public at the district office of
14 the department closest to the location of the surface coal mining and
15 reclamation operation.

16 (c) Information

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

25 (2) in the applicant's reclamation plan relating to the com-
26 petitive rights of the applicant, including but not limited to trade se-
27 crets, commercial or financial information, and geologic information
28 specifically identified as confidential by the applicant and determined
29 by the commissioner to be not essential for public review must be kept

1 confidential and not be made a matter of public record.

2 Sec. 41.45.110. CONTENTS OF APPLICATION. The commissioner shall
3 adopt regulations relating to the contents of an application for a per-
4 mit under this chapter which include a reclamation plan and liability
5 insurance consistent with the requirements of 30 U.S.C. 1257 (b) and 30
6 U.S.C. 1258, as amended. The regulations must take into account the
7 unique mining and environmental conditions of Alaska.

8 Sec. 41.45.120. SMALL OPERATOR ASSISTANCE. If the commissioner
9 finds that the probable total annual production of all of the surface
10 coal mining operations of an applicant, or if the applicant is a subsid-
11 iary of another corporation, of the applicant's parent corporation and
12 its subsidiaries, will not exceed 100,000 tons, at the written request
13 of the applicant, the commissioner shall engage at no cost to the appli-
14 cant a laboratory to prepare a determination of probable hydrologic con-
15 sequences of the applicant's proposed operation and a statement of test
16 boring or core samplings if these are required by regulations adopted
17 under AS 41.45.110.

18 Sec. 41.45.130. PUBLIC NOTICE OF APPLICATION. At the time an ap-
19 plicant submits an application for a permit or for a revision of a per-
20 mit, the applicant shall give notice in the manner set out in AS 38.05.-
21 345(b) and (c) except as may be provided otherwise by regulations
22 adopted under this chapter.

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

24 (a) A person who is or may be adversely affected by the issuance or re-
25 vision of a permit or a federal, state or municipal agency may file
26 written comments or objections to the permit or revision with the com-
27 missioner within 30 days after the last publication of the notice re-
28 quired in AS 41.45.130 and may include with the objection a request for
29 an informal conference.

1 (b) The commissioner shall immediately provide a copy of any com-
2 ments or objections filed under (a) of this section to the applicant and
3 shall make them available to the public. If an informal conference is
4 requested under (a) of this section, the commissioner shall hold an in-
5 formal conference in the locality of the operations proposed in the ap-
6 plication. Notice requirements and procedures for informal conferences
7 must be set out in regulations adopted under this chapter.

8 (c) The commissioner shall notify the applicant, any person who
9 filed a comment or objection under (a) of this section, and any partici-
10 pant in an informal conference held under (b) of this section, in writ-
11 ing of the decision to grant, condition, modify, or deny the permit or
12 revision, and if the decision is not to grant the permit or revision, of
13 the specific reasons for the decision. The commissioner shall provide
14 notification of the decision within 60 days after an informal confer-
15 ence, or if there has not been an informal conference, within the time
16 established in AS 41.45.180.

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

19 Sec. 41.45.150. HEARINGS. (a) Within 30 days after an applicant
20 is notified under AS 41.45.140(c) of the commissioner's decision con-
21 cerning the application, the applicant or a person who is or may be ad-
22 versely affected by the decision may request a hearing to review the
23 reasons for the decision. The commissioner shall hold the hearing with-
24 in 30 days after the request and shall notify the interested parties of
25 the hearing at the time the applicant is notified. The Administrative
26 Procedure Act (AS 44.62) applies to a hearing under this section except
27 as provided by regulations adopted under this chapter.

28 (b) If a hearing is requested under (a) of this section, the com-
29 missioner may, under conditions he prescribes, grant appropriate tempor-

1 ary relief pending his final decision if

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

4 (2) the party requesting the temporary relief shows that
5 there is a substantial likelihood that he will prevail in the final de-
6 cision of the hearing; and

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

10 (c) The person presiding at the hearing may administer oaths, sub-
11 poena witnesses, subpoena written or printed materials, compel the at-
12 tendance of witnesses or the production of the materials, and take evi-
13 dence including but not limited to evidence derived from site inspec-
14 tions of the land which will be affected by the permit or revision and
15 other surface coal mining operations conducted by the applicant in the
16 general vicinity of the operation proposed in the application. On the
17 motion of a party or by order of the commissioner, a verbatim record of
18 a hearing required by this chapter shall be made and a transcript made
19 available.

20 Sec. 41.45.160. PERFORMANCE BOND. (a) Except as provided in (c)
21 of this section, after an application for a permit has been approved and
22 before the permit may be issued, the applicant must file with the com-
23 missioner, on a form prescribed and furnished by the commissioner, a
24 performance bond payable to the State of Alaska and conditioned on
25 faithful performance of the requirements of this chapter and the permit.
26 The bond must cover the area of land within the permit area on which the
27 applicant will initiate and conduct surface coal mining and reclamation
28 operations within the initial term of the permit. As succeeding incre-
29 ments of surface coal mining and reclamation operations are initiated

1 and conducted within the permit area, the permittee shall provide an ad-
2 ditional bond or bonds to cover those increments in accordance with this
3 section. The amount of the bond required for an area within the permit
4 area shall be determined by the commissioner and shall reflect the prob-
5 able difficulty of the reclamation considering the topography, geology,
6 hydrology, revegetation potential, and similar factors relating to the
7 area. The amount of the bond must be sufficient to assure the comple-
8 tion of the reclamation plan by the commissioner in the event of forfei-
9 ture and, for the entire permit area, may not be less than \$10,000.

10 (b) Liability under the bond must exist for the duration of the
11 surface coal mining and reclamation operation and for the period of time
12 of the permittee's responsibility under the performance standards estab-
13 lished by regulation under AS 41.45.210. The bond must be executed by
14 the applicant and, except as provided in (d) of this section, a corpo-
15 rate surety licensed to do business in the state.

16 (c) An applicant may deposit with the commissioner cash, negoti-
17 able bonds of the United States or of the state, or negotiable certifi-
18 cates of deposit of a bank organized or transacting business in the
19 United States to satisfy the requirements of (a) of this section if

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

22 (2) liability under the deposit is for a period of time de-
23 scribed in (b) of this section; and

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

26 (d) The commissioner may accept a bond executed by the applicant
27 without separate surety if the applicant demonstrates to the satisfac-
28 tion of the commissioner that the applicant has sufficient financial
29 means for the purposes of the bond. The commissioner shall adopt regu-

1 lations to implement this section.

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

5 (f) The commissioner shall adjust the amount required under (a),
6 (c), or (d) of this section and the terms of the acceptance of that
7 amount if the commissioner determines there is good cause, including
8 changes in affected land areas or in the probable cost of future reclama-
9 tion, for the adjustment.

10 Sec. 41.45.170. REQUEST AND RELEASE OF PERFORMANCE BONDS OR DEPO-
11 SITS. (a) A permittee may file a request with the commissioner for the
12 release of all or part of the permittee's performance bond or deposit.
13 The permittee shall give notice in the manner set out in AS 38.05.345(b)
14 and (c) except as provided by regulations adopted under this chapter.

15 (b) Within 30 days after receipt of a request under (a) of this
16 section or within a longer period required by field conditions, the com-
17 missioner shall inspect and evaluate the reclamation work involved. In
18 the evaluation, the commissioner shall consider the degree of difficulty
19 to complete the reclamation, whether pollution of surface or subsurface
20 water is occurring, the probability of continuance of the pollution, and
21 the estimated cost of abating the pollution. Within 60 days after re-
22 ceipt of the request, or if a hearing relating to the request is con-
23 ducted under (g) of this section, within 30 days after the hearing,
24 whichever is later, the commissioner shall notify the permittee, in
25 writing, of the decision to release or not to release all or part of the
26 performance bond or deposit.

27 (c) The commissioner shall release all or part of the bond or de-
28 posit in accordance with the following schedule if he is satisfied that
29 the reclamation or part of the reclamation covered by the bond or depo-

1 sit has been accomplished as required by this chapter:

2 (1) if the permittee completes the backfilling, regrading,
3 and drainage control of all or part of a permit area according to the
4 reclamation plan, the commissioner shall release 60 percent of the bond
5 or deposit covering the area;

6 (2) if the permittee completes revegetation of all or part of
7 the permit area according to the reclamation plan, the commissioner
8 shall release the balance of the bond or deposit covering the revege-
9 tated area except for an amount which would be necessary to hire a third
10 party to reestablish revegetation;

11 (3) if the permittee successfully completes all of the sur-
12 face coal mining and reclamation activities required by this chapter and
13 the terms of the permit, the commissioner shall release the remaining
14 portion of the bond after expiration of the period of time of the per-
15 mittee's responsibility under the performance standards established by
16 regulation under AS 41.45.210; however, no bond or deposit shall be ful-
17 ly released until all reclamation requirements are fully met.

18 (d) The commissioner may not release all or part of a bond or de-
19 posit under (c)(2) of this section if

20 (1) the permit area or part of a permit area covered by the
21 bond or deposit is in violation of the performance standards established
22 by regulation under AS 41.45.210; or

23 (2) a silt dam is to be retained as a permanent water im-
24 poundment under the performance standards established by regulation un-
25 der AS 41.45.210 and the permittee has not, in the determination of the
26 commissioner, made adequate provisions for the sound future maintenance
27 of the silt dam.

28 (e) If the commissioner disapproves a request filed under (a) of
29 this section, he shall notify the permittee of the decision in writing.

1 The notice must include the reasons for the disapproval, a description
2 of the actions necessary to secure the release, and notification of the
3 permittee's right to a hearing under (g) of this section.

4 (f) If a request is filed with the commissioner under (a) of this
5 section, the commissioner shall notify the appropriate municipality, if
6 any, at least 30 days before the release of all or part of the bond or
7 deposit.

8 (g) A person with a valid legal interest that might be adversely
9 affected by release of a bond or deposit under this section or a feder-
10 al, state, or municipal agency which has jurisdiction over an environ-
11 mental, social, or economic impact involved in the permittee's operation
12 or which has authority to develop and enforce environmental standards
13 with respect to the permittee's operation, may, within 30 days after the
14 last publication of notice required by (a) of this section, file written
15 objections to the request with the commissioner, and may request a hear-
16 ing. A permittee whose request for release of all or part of a bond or
17 deposit is disapproved may request a hearing within 30 days after re-
18 ceipt of written notification of the disapproval under (e) of this sec-
19 tion. If a hearing is requested, the commissioner shall inform the in-
20 terested parties of the time and place of the hearing and shall hold the
21 hearing within 30 days after the request for the hearing. The commis-
22 sioner shall publish the date, time, and location of the hearing in a
23 newspaper of general circulation in the locality for two consecutive
24 weeks. The commissioner shall conduct the public hearing and any appeal
25 according to the Administrative Procedure Act (AS 44.62) except as pro-
26 vided by regulations adopted under this chapter.

27 Sec. 41.45.180. APPLICATION APPROVAL OR DENIAL. (a) Within 120
28 days after receipt of a complete application for a permit or for revi-
29 sion or renewal of a permit, the commissioner shall grant, condition,

1 modify, or deny the application and notify the applicant in writing of
2 his action. The applicant has the burden of establishing that the ap-
3 plication complies with the requirements of this chapter and the regula-
4 tions adopted under it. Within 10 days after approving an application,
5 the commissioner shall record in the recording district in which the
6 permit area is located notice that a permit has been issued. The notice
7 must describe the location of the permit area and state where a copy of
8 the permit may be obtained.

9 (b) If the commissioner requests modification of an application he
10 shall state in writing which parts need modification and in what manner,
11 and which parts of the application meet approval. The applicant will
12 then need only to correct the deficient portion and resubmit the appli-
13 cation. However the commissioner may at any time require additional in-
14 formation from the applicant if the requirement is based on good cause
15 and a written finding that the additional information is necessary for
16 the commissioner to determine whether or not the proposed operation will
17 meet the requirements of this chapter and the regulations adopted under
18 it. After receipt of the information requested, the commissioner will
19 have 60 days to approve, condition, or deny the permit as described in
20 (a) of this section.

21 (c) The commissioner may not approve an application for a permit
22 or for revision of a permit unless the application demonstrates and the
23 commissioner finds, in writing and on the basis of information included
24 in the application or information which is otherwise available to the
25 commissioner and which the commissioner documents in the approval and
26 makes available to the applicant, that

27 (1) the application is accurate and complete and that it com-
28 plies with the requirements of this chapter and regulations adopted un-
29 der this chapter;

1 (2) the applicant has demonstrated that reclamation as re-
2 quired by this chapter and regulations adopted under it can be accom-
3 plished under the reclamation plan contained in the application;

4 (3) an assessment of the probable cumulative impact of all
5 anticipated surface coal mining in the area on the hydrologic balance
6 has been made by the commissioner, and that the proposed operation has
7 been designed to prevent material damage to the hydrologic balance out-
8 side the permit area;

9 (4) the area proposed to be mined is not included within an
10 area which

11 (A) is designated as unsuitable for surface coal mining
12 under AS 41.45.260; or

13 (B) is being considered by the commissioner for designa-
14 tion in an administrative proceeding commenced under AS 41.45.260,
15 unless the applicant demonstrates that before January 1, 1977 the
16 applicant made substantial legal and financial commitments in rela-
17 tion to the proposed operation for which he is applying for a per-
18 mit;

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

20 (A) interrupt, discontinue, or preclude farming on an
21 alluvial valley which is irrigated or naturally subirrigated, ex-
22 cluding undeveloped range land that is not significant to farming
23 on the alluvial valley floor and land on which the farming that
24 will be interrupted, discontinued, or precluded is so small as to
25 have negligible impact on the farm's total agricultural production;
26 or

27 (B) materially damage the quantity or quality of water
28 in surface or underground water systems which supply an alluvial
29 valley floor; and

1 (6) if the ownership of the coal in the permit area has been
2 severed from the private surface estate, the applicant has submitted to
3 the commissioner

4 (A) the written consent of the surface owner to the ex-
5 traction of the coal by surface mining methods;

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

8 (C) a determination of a court that the applicant is au-
9 thorized to extract coal by surface mining methods in the permit
10 area, provided that nothing in this chapter may be construed to au-
11 thorize the commissioner to adjudicate property rights disputes.

12 (d) The provisions of (c)(5) of this section do not apply to a
13 surface coal mining operation which, in the 12 month period preceding
14 August 3, 1977, produced coal in commercial quantities and was located
15 within or adjacent to an alluvial valley floor.

16 (e) An applicant shall file with an application a list of all
17 cited violations of this chapter and all cited violations of a law,
18 rule, or regulation of the United States, the state, or a department or
19 agency in the United States pertaining to air or water environmental
20 protection received by the applicant in connection with a surface coal
21 mining operation within the United States during the three-year period
22 before the date of filing the application. The list must indicate the
23 final resolution, if any, of the violations. If the list or other in-
24 formation available to the commissioner indicates that a surface coal
25 mining operation owned or controlled by the applicant is currently in
26 violation of this chapter or of a law, rule, or regulation described in
27 this subsection, the commissioner may not approve the application until
28 the applicant submits proof that

29 (1) the violation has been corrected or is being corrected to

1 the satisfaction of the commissioner or to the satisfaction of the agen-
2 cy responsible for the enforcement of the law, rule, or regulation if
3 the violation is not of this chapter; or

4 (2) the applicant is involved in an administrative or judicial
5 proceeding to determine whether the applicant has committed the viola-
6 tion.

7 (f) The commissioner may not approve an application under this
8 section if he finds, after providing the applicant with an opportunity
9 for a hearing in accordance with the procedures established in AS 41.-
10 45.150, that the applicant, or the operator specified in the applica-
11 tion, controls or has controlled mining operations with a demonstrated
12 pattern of wilful violations of this chapter of such nature and duration
13 and with such resulting irreparable damage to the environment as to in-
14 dicate an intent not to comply with this chapter.

15 Sec. 41.45.190. REVISION AND TRANSFER OF PERMIT. (a) During the
16 term of a permit, the permittee may submit to the commissioner an appli-
17 cation for revision of the permit, with necessary revisions to the per-
18 mittee's reclamation plan.

19 (b) The commissioner may not approve an application for revision
20 of a permit unless he finds that reclamation required by this chapter
21 and the regulations adopted under it can be accomplished under the ne-
22 cessary revisions to the reclamation plan. The commissioner shall es-
23 tablish guidelines for determinining the extent of revision for which
24 all permit application requirements and procedures, including notice and
25 hearing, shall apply. A revision which, in the commissioner's determin-
26 ation, requires significant revisions to the applicant's reclamation
27 plan must, at a minimum, be subject to a notice and hearing requirement.

28 (c) A permittee may not apply under this section for an extension
29 of the permit area, except by incidental boundary revision.

1 (d) A permittee may not transfer, assign, or sell a permit or the
2 rights granted under a permit without the written approval of the com-
3 missioner. A successor in interest to a permittee may continue the sur-
4 face coal mining and reclamation operation of the permittee until the
5 successor's transfer application is granted or denied if the successor

6 (1) applies for a new permit within 30 days of succeeding to
7 that interest; and

8 (2) obtains the same bond coverage as the permittee.

9 (e) After the commissioner issues a permit, he shall, within a
10 time limit established by regulation, review the permit and may, for
11 good cause, require reasonable revisions of the permit during the term
12 of the permit. A revision under this subsection must be based on a
13 written finding of the commissioner relating to the need for the revi-
14 sion and is subject to notice and hearing requirements established by
15 the commissioner by regulation.

16 Sec. 41.45.200. COAL EXPLORATION PERMITS. (a) A person may con-
17 duct coal exploration activities which substantially disturb the natural
18 land surface only according to regulations adopted by the commissioner.
19 Before conducting the coal exploration activities, the person must file
20 with the commissioner a notice of intent to explore which includes a de-
21 scription of the exploration area and the period of proposed explora-
22 tion.

23 (b) The regulations adopted by the commissioner under (a) of this
24 section must include provisions for reclamation, according to the per-
25 formance standards established under AS 41.45.210, of lands disturbed by
26 the coal exploration activities, including reclamation of excavations,
27 roads, and drill holes, and the removal of facilities and equipment.

28 (c) The commissioner shall keep information submitted to him under
29 this section confidential upon request of the person submitting the in-

1 formation if the information is a

2 (1) trade secret or relates to a trade secret; or

3 (2) privileged competitive right of the applicant for the
4 coal exploration permit.

5 (d) A person who conducts a coal exploration activity that sub-
6 stantially disturbs the natural land surface in violation of the re-
7 quirements of this section or regulations adopted under this section
8 shall be subject to the provisions of AS 41.45.240.

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

12 Sec. 41.45.210. PERFORMANCE STANDARDS. Within 120 days after the
13 effective date of this chapter, the commissioner shall propose regula-
14 tions consistent with the environmental performance standards of the
15 Surface Mining Control and Reclamation Act of 1977 and the regulations
16 promulgated under that Act for both surface coal mining and reclamation
17 operations and surface effects of underground mining with appropriate
18 adjustments to the special physical, hydrological, biological and clima-
19 tic conditions in Alaska. All permits issued under this chapter must
20 require that surface coal mining and reclamation operations and coal ex-
21 ploration activities must comply with those environmental performance
22 standards.

23 Sec. 41.45.220. SURFACE EFFECTS OF UNDERGROUND COAL MINING. (a)
24 The provisions of this chapter apply to the surface effects of under-
25 ground coal mining. However, the commissioner shall consider the in-
26 herent difference between underground mining and surface mining in
27 adopting regulations under this chapter which apply to underground min-
28 ing.

29 (b) In order to protect the stability of the land, the commission-

1 er shall suspend underground coal mining under cities, towns, and com-
2 munities and adjacent to industrial or commercial buildings, major im-
3 poundments, or permanent streams, if he finds imminent danger to inhabi-
4 tants of the cities, towns and communities.

5 Sec. 41.45.230. INSPECTIONS AND MONITORING. (a) The commissioner
6 shall provide for an inspection of a surface coal mining and reclamation
7 operation to evaluate compliance with this chapter, and, for that pur-
8 pose, an authorized representative of the commissioner may enter the
9 surface coal mining and reclamation operation. The commissioner shall,
10 to the extent possible, coordinate his inspection and monitoring activi-
11 ties with other agencies having responsibilities with regard to the op-
12 eration.

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

15 (1) the commissioner may require a permittee to

16 (A) establish appropriate records and maintain them in
17 the state;

18 (B) make monthly reports to the commissioner;

19 (C) install, use, and maintain necessary monitoring
20 equipment or methods;

21 (D) evaluate results in accordance with the methods, at
22 the locations and intervals, and in the manner the commissioner
23 prescribes; and

24 (E) provide other information relating to the permit-
25 tee's operations as the commissioner considers reasonable and ne-
26 cessary;

27 (2) for a surface coal mining and reclamation operation which
28 removes or disturbs strata which serve as aquifers which significantly
29 insure the hydrologic balance of water use either on or off the site of

1 the operation, the commissioner may specify

2 (A) monitoring sites for the use of equipment and meth-
3 ods under (1)(C) of this subsection to record

4 (i) the quantity and quality of surface drainage
5 above and below the site of the operation as well as in the
6 area potentially affected by the operation;

7 (ii) level, amount, and samples of ground water and
8 aquifers which are potentially affected by the operation, and
9 ground water and aquifers which are directly below the deepest
10 coal seam to be mined under the operation; and

11 (iii) precipitation at the site of the operation; and

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

14 (3) the authorized representatives of the commissioner, with-
15 out advance notice and upon presentation of appropriate credentials, may
16 enter an operation or premises in which records required to be main-
17 tained under this section are located and may at reasonable times, and
18 without delay, have access to and copy the records and inspect monitor-
19 ing equipment or an operating method required under this chapter.

20 (c) Inspection by the commissioner under (b)(3) of this section
21 must

22 (1) occur on an irregular basis averaging not less than one
23 partial inspection per month and one complete inspection per calendar
24 quarter; and

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

27 (d) After conducting an inspection under (b)(3) of this section,
28 an inspector shall file with the commissioner, and the commissioner
29 shall maintain, an inspection report adequate to assist the commissioner

1 in enforcing the requirements of this chapter and carrying out the terms
2 and purposes of this chapter.

3 (e) A representative of the permittee who is at the site of the
4 operation at the time an inspection under (b)(3) of this section begins
5 may accompany the inspector during the inspection. The inspector must
6 notify the representative of the permittee of his right under this sub-
7 section before beginning the inspection.

8 (f) A permittee shall conspicuously maintain at the entrances to
9 his operation a clearly visible sign which states the name, business ad-
10 dress, and phone number of the permittee and the permit number of the
11 operation.

12 (g) An inspector, upon detection of a violation of this chapter,
13 shall immediately report the violation to the operator and to the com-
14 missioner in writing.

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

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

1 sioner shall investigate the inspection and shall furnish the person
2 with a written determination and the reasons for the determination.

3 Sec. 41.45.240. ENFORCEMENT. (a) If, on the basis of an inspec-
4 tion under AS 41.45.230, the commissioner determines that a person or a
5 person's operation is in violation of this chapter or a term of a permit
6 and that the violation creates an imminent danger to the health or safe-
7 ty of the public or is causing or can reasonably be expected to cause
8 significant, imminent, environmental harm to land, air, or water re-
9 sources, the commissioner shall immediately issue a notice of violation
10 and order a cessation of the person's surface coal mining operation or
11 the portion of the operation relating to the violation. The cessation
12 order remains in effect until the commissioner determines that the vio-
13 lation has been abated, or until modified, vacated, or terminated under
14 (d) or (h) of this section. If the commissioner finds that the ordered
15 cessation of the operation, or a portion of the operation, will not com-
16 pletely abate the imminent danger to the health or safety of the public
17 or the significant, imminent environmental harm to land, air, or water
18 resources, the commissioner shall, in addition to the cessation order,
19 impose affirmative obligations on the operator to take the steps he con-
20 siders necessary to abate the imminent danger or significant environ-
21 mental harm.

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

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

13 (c) A person who is or may be adversely affected by a notice of
14 violation or cessation order issued under (a) or (b) of this section, or
15 by a modification, vacation, or termination of the notice or order, may
16 apply to the commissioner for review of the notice or order within 60
17 days after receipt of the notice or order by the operator or permittee
18 or within 60 days after the modification, vacation, or termination of
19 the notice or order. On receipt of the application, the commissioner
20 shall provide for an investigation and an investigation report, as he
21 considers appropriate. At the request of the applicant or another per-
22 son who is or may be adversely affected, the commissioner shall provide
23 for a public hearing to enable the applicant to present information re-
24 lating to the notice or order or the modification, vacation, or termina-
25 tion of the notice or order. The filing of an application for review
26 under this subsection may not operate as a stay of the order or notice.
27 The commissioner shall give the applicant and other interested persons
28 written notice of the time and place of the hearing at least five days
29 before the hearing. The Administrative Procedure Act (AS 44.62) applies

1 to a hearing under this subsection except as provided by regulations
2 adopted under this chapter.

3 (d) After any review under (c) of this section, the commissioner
4 shall issue a written decision which includes findings of fact and an
5 order vacating, affirming, modifying, or terminating the notice or or-
6 der. If the application for review under (c) of this section relates to
7 a cessation order issued under (a) or (b) of this section, the commis-
8 sioner shall issue the written decision within 30 days after receipt of
9 the application for review unless he grants a request for temporary re-
10 lief under (e) of this section.

11 (e) An applicant for review under (c) of this section may file
12 with the commissioner a written request for temporary relief from a no-
13 tice or order issued under (a) or (b) of this section before completion
14 of the review of the notice or order. The written request must include
15 a detailed statement of the reasons in support of the request. The com-
16 missioner shall expeditiously issue an order granting or denying the
17 temporary relief. If the applicant requests temporary relief from a
18 cessation order issued under (a) or (b) of this section, the commission-
19 er shall issue an order granting or denying the temporary relief within
20 ten days after he receives the written request. The commissioner may
21 grant the temporary relief under this subsection only

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

25 (2) if the applicant shows that there is substantial likeli-
26 hood that the findings of the commissioner under (d) of this section
27 will be favorable to the applicant; and

28 (3) if the temporary relief will not adversely affect the
29 health or safety of the public or cause significant, imminent, environ-

1 mental harm to land, air, or water resources.

2 (f) If, on the basis of an inspection, the commissioner has reason
3 to believe that a pattern of violations of this chapter or of a term of
4 a permit exists or has existed, and if he finds that the violations are
5 caused by the unwarranted failure of the permittee to comply with the
6 requirements or that the violations were wilfully caused by the permit-
7 tee, the commissioner shall issue a notice of violation and an order to
8 the permittee to, within a specified time period, show cause why the
9 permit should not be suspended or revoked. The order to show cause must
10 include notice to the permittee that a hearing may be requested within
11 30 days.

12 (g) If the permittee requests a hearing under (f) of this section
13 the commissioner shall inform the permittee and other known interested
14 persons of the time, place, and date of the hearing. The Administrative
15 Procedure Act (AS 44.62) applies to a hearing under this subsection ex-
16 cept as provided by regulations adopted under this chapter. Within 60
17 days following the hearing or following the order to show cause if no
18 hearing is requested, the commissioner shall issue and furnish to the
19 permittee and all other parties to the hearing a written decision, or-
20 der, and the reasons for both, concerning the suspension or revocation
21 of the permit. If the commissioner suspends or revokes the permit, the
22 permittee shall immediately cease the surface coal mining operation on
23 the permit area and shall complete the reclamation of the permit area
24 within the time specified by the commissioner. If the permittee fails
25 to complete the reclamation, the commissioner shall declare the perform-
26 ance bonds for the operation forfeited.

27 (h) A notice or order issued under this section must state with
28 reasonable specificity the nature of the violation, the abatement re-
29 quired, the period of time established for abatement, and a reasonable

1 description of the portion of the operation to which the notice or order
2 applies. Each notice or order issued under this section must be given
3 promptly to the alleged violator at the mine site unless he has ap-
4 pointed an agent, in which case the agent may be served. A notice or
5 order issued under this section may be modified, vacated, or terminated
6 by the commissioner. A cessation order issued under (a) or (b) of this
7 section expires not more than 30 days after the alleged violator re-
8 ceives actual notice of the order unless an informal conference is held
9 as provided in regulations adopted under this chapter, or unless the
10 right to such a conference is waived by the alleged violator within five
11 days of the conference. The holding of a conference or the waiver of it
12 does not prejudice any other rights to administrative judicial review
13 provided under this chapter nor does it operate as a stay of a notice or
14 order.

15 (i) Whenever an order is issued under this chapter, the commis-
16 sioner may, in his discretion, assess any party for the costs and attor-
17 ney fees reasonably incurred by another party in connection with the or-
18 der.

19 (j) The commissioner may request the attorney general to institute
20 a civil action for relief, including a permanent or temporary injunc-
21 tion, restraining order, or other appropriate order, if a person

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

24 (2) interferes with the commissioner carrying out the provi-
25 sions of this chapter;

26 (3) unlawfully refuses to admit the commissioner into an op-
27 eration;

28 (4) unlawfully refuses to permit inspection of an operation
29 by the commissioner;

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

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

6 (k) An action under (j) of this section shall be brought in the
7 superior court in the judicial district in which the greater portion of
8 the operation is located or in the judicial district where the opera-
9 tor's principal office is located. The superior court has jurisdiction
10 to grant appropriate relief under (j) of this section. Relief granted
11 by a superior court for a situation described in (j)(1) of this section
12 continues in effect until the completion of proceedings for review of
13 the notice or order under this section unless before that time the su-
14 perior court modifies or sets aside the notice or order.

15 (1) In the case of a judicial proceeding to review an order or de-
16 cision issued by the commissioner under this chapter, the court may, un-
17 der conditions it may prescribe, grant the temporary relief it considers
18 appropriate pending final determination of the proceedings if

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

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

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

27 (m) The commencement of a judicial proceeding to review any order
28 or decision of the commissioner does not, unless specifically ordered by
29 the court, operate as a stay of the action, order, or decision of the

1 commissioner.

2 (n) The fact that action of the commissioner is subject to judi-
3 cial review in accordance with other provisions of state law shall not
4 be construed to limit the operation of the rights established in AS 41.-
5 45.950 except as provided in that section.

6 Sec. 41.45.250. PENALTIES. (a) The commissioner may assess a
7 civil penalty against a person if the person or the person's operation
8 violates a condition of a permit or a provision of this chapter. If, as
9 a result of the violation the commissioner issues a cessation order un-
10 der AS 41.45.240, the commissioner shall assess a civil penalty. The
11 civil penalty may not exceed \$5,000 for a violation. The commissioner
12 may consider each day of a continuing violation as a separate violation
13 for the purposes of this subsection. In determining whether to assess
14 and the amount of a civil penalty, the commissioner shall consider the
15 person's history of previous violations at the site of the operation,
16 the seriousness of the violation, including the irreparable harm done to
17 the environment and the hazard created to the health or safety of the
18 public, the person's negligence, and the good faith of the person in at-
19 tempting to achieve rapid compliance after receiving notification of the
20 violation.

21 (b) Within 30 days after issuing a notice or order under AS 41.-
22 45.240 to a person, the commissioner shall inform the person of the
23 amount of the penalty. The person notified of the penalty then has 30
24 days in which to pay the penalty in full or to contest either the amount
25 of the penalty or the fact of the violation.

26 (c) The commissioner shall assess a civil penalty under (a) of
27 this section only after the person charged with a violation has been
28 given an opportunity for a public hearing. If a public hearing is held,
29 the commissioner shall make findings of fact and shall issue a written

1 decision relating to the occurrence of the violation and the amount of
2 the civil penalty which is warranted. The written decision may order
3 the person to pay the penalty. The commissioner may consolidate a hear-
4 ing under this section with other proceedings under AS 41.45.240. The
5 Administrative Procedure Act (AS 44.62) applies to a hearing under this
6 subsection except as provided by regulations adopted under this chapter.
7 If the person notified of a penalty does not request a public hearing,
8 the commissioner may assess the penalty and order its payment only after
9 he has determined that the person committed the violation and has deter-
10 mined the amount of the penalty which is warranted.

11 (d) A civil penalty owed under this section may be recovered in a
12 civil action brought by the attorney general at the request of the com-
13 missioner.

14 (e) A person other than a corporation who wilfully and knowingly
15 violates a condition of a permit, an order issued under AS 41.45.240, or
16 an order incorporated in a final decision under this chapter, except an
17 order incorporated in a decision issued under (c) of this section is
18 guilty of a class C felony.

19 (f) If a corporation violates a condition of a permit, an order
20 issued under AS 41.45.240, or an order incorporated in a final decision
21 issued by the commissioner under this chapter, except an order incorpo-
22 rated in a decision issued under (c) of this section, a director, offi-
23 cer, or agent of the corporation who wilfully and knowingly authorized,
24 ordered, or carried out the violation is subject to a civil penalty un-
25 der (a) -- (d) of this section and is guilty of a class C felony.

26 (g) A person who knowingly makes a false statement, representa-
27 tion, or certification, or knowingly fails to make a required statement,
28 representation, or certification in an application, record, report,
29 plan, or other document filed or required to be maintained under this

1 chapter is guilty of a class C felony.

2 (h) A person who fails to correct a violation for which a notice
3 of violation or a cessation order has been issued under AS 41.45.240
4 within the period permitted for its correction or subsequent extension
5 shall be assessed a civil penalty of \$750 for each day the failure or
6 violation continues until

7 (1) the entry of a final order by the commissioner in a review
8 proceeding initiated by the alleged violator in which the commissioner
9 orders, after an expedited hearing, the suspension of the abatement re-
10 quirements of the notice or order after determining that the alleged
11 violator will suffer irreparable loss or damage from the application of
12 those requirements; or

13 (2) the entry of an order of the court in a review proceeding
14 under AS 44.62.560 -- 44.62.570 initiated by the alleged violator in
15 which the court orders the suspension of the abatement requirements of
16 the notice or order.

17 (i) A person who, except as permitted by law, wilfully resists,
18 prevents, impedes, or interferes with the commissioner in the perform-
19 ance of duties under this chapter is guilty of a class C felony.

20 Sec. 41.45.260. AREAS UNSUITABLE FOR SURFACE COAL MINING. (a)
21 The commissioner shall use competent and scientifically sound data and
22 information in order to make objective decisions as to which lands are
23 unsuitable for all or certain types of surface coal operations. The de-
24 cisions shall

25 (1) reflect the planning activities of federal, state, and
26 municipal governments; and

27 (2) utilize a data base and inventory system which will
28 permit the evaluation of areas of the state to support and permit recla-
29 mation of surface coal mining operations.

1 (b) A person or municipality having an interest which is or may be
2 adversely affected may file a petition with the commissioner to desig-
3 nate an area as unsuitable for mining or to terminate a designation un-
4 der this section. The petition must contain allegations of facts with
5 supporting evidence which would tend to establish the allegations. With-
6 in three to seven months after receipt of a petition, the commissioner
7 shall hold a public hearing in the locality of the area, under regula-
8 tions adopted by the commissioner. The commissioner may extend the time
9 within which a hearing must be held if an extension is required to in-
10 clude a field season. After the filing of a petition and before the
11 hearing, other persons may intervene by filing allegations of fact with
12 supporting evidence. Within 60 days after the hearing the commissioner
13 shall issue and furnish to the petitioner and intervenors a written de-
14 cision regarding the petition and the reasons for his decision. The
15 commissioner may cancel the hearing if the parties all agree to the can-
16 cellation.

17 (c) Upon receipt of a petition under (b) of this section, the com-
18 missioner

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

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

26 (A) be incompatible with existing state or local land
27 use programs;

28 (B) affect fragile or historic land in which the opera-
29 tions could result in significant damage to important historic,

1 cultural, scientific and aesthetic values and natural systems;

2 (C) affect aquifer recharge areas or other renewable re-
3 source land in which the operations could result in a substantial
4 loss or reduction of long-range productivity of water supply or
5 food or fiber products; or

6 (D) affect areas subject to frequent flooding and areas
7 of unstable geology, or other natural hazard land in which the op-
8 erations could substantially endanger life and property.

9 (d) Subject to valid existing rights, the commissioner shall not
10 permit surface coal mining operations except those which existed on
11 August 3, 1977

12 (1) on any land within the boundaries of a unit of the Na-
13 tional Park System, the National Wildlife Refuge Systems, the National
14 System of Trails, the National Wilderness Preservation System, the Wild
15 and Scenic Rivers System, including study rivers designated under sec-
16 tion 5(a) of the Wild and Scenic Rivers Act, and National Recreation
17 Areas designated by Act of Congress;

18 (2) which will adversely affect any publicly owned park or
19 place included in the National Register of Historic Sites unless ap-
20 proved jointly by the commissioner and the federal, state, or local
21 agency which has jurisdiction over the park or the historic site;

22 (3) within 100 feet of the outside right-of-way line of any
23 public road, except where mine access roads or haulage roads join the
24 right-of-way line, and except that the commissioner may permit roads to
25 be relocated or the area affected to lie within 100 feet of a road,
26 if after public notice and opportunity for public hearing in the local-
27 ity, a written finding is made that the interests of the public and the
28 landowners affected by it will be protected; or

29 (4) within 300 feet from any occupied dwelling, unless waived

1 by the owner of the dwelling, or within 300 feet of any public building,
2 school, church, community, or institutional building, public park, or
3 within 100 feet of a cemetery.

4 (e) Before designating an area as unsuitable under this section,
5 the commissioner shall prepare a detailed statement of the potential
6 coal resources of the area, the demand for coal resources, and the im-
7 pact of the designation on the environment, the economy, and the supply
8 of coal.

9 (f) Determinations of unsuitability of land for surface coal min-
10 ing must consider present and future land use planning and regulation
11 processes at the federal, state and local levels.

12 (g) This section does not apply to land on which a surface coal
13 mining operation was conducted on or before August 3, 1977 or under a
14 permit issued under this chapter before a determination of unsuitabil-
15 ity. This section does not apply to an area if a person had made sub-
16 stantial legal or financial commitments for an operation or proposed op-
17 eration in that area before January 4, 1977.

18 (h) A designation of unsuitability under this section does not
19 prevent coal exploration of any designated area.

20 (i) The commissioner shall adopt regulations to implement this
21 section.

22 ARTICLE 3. ABANDONED MINES.

23 Sec. 41.45.270. ABANDONED MINE RECLAMATION FUND. The commissioner
24 may take the actions necessary to ensure state participation to the
25 fullest extent practicable in the Abandoned Mine Reclamation Fund cre-
26 ated in 30 U.S.C. 1231 and to function as the state agency for that par-
27 ticipation. In conformance with the Surface Mining Control and Reclama-
28 tion Act of 1977, the commissioner shall

29 (1) by regulation, establish priorities which must meet the

1 terms of the Surface Mining Control and Reclamation Act of 1977, for the
2 expenditure of money received by the commissioner from the Abandoned
3 Mine Reclamation Fund;

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

7 (3) submit reclamation plans, annual projects, and applica-
8 tions to the appropriate authorities under the terms of the Surface Min-
9 ing Control and Reclamation Act of 1977; and

10 (4) administer money received by the state for abandoned mine
11 reclamation or related purposes from the Abandoned Mine Reclamation
12 Fund.

13 Sec. 41.45.280. ELIGIBLE LAND AND WATER. Land and water eligible
14 for reclamation or drainage abatement expenditures under this chapter
15 are those which were mined for coal or which were affected by such min-
16 ing, wastebanks, coal processing, or other coal mining processes, and
17 abandoned or left in an inadequate reclamation status before August 3,
18 1977 and for which there is no continuing reclamation responsibility un-
19 der state or federal law.

20 Sec. 41.45.290. ENTRY ONTO ABANDONED MINE AREA. (a) The commis-
21 sioner may enter real property which has been adversely affected by past
22 surface coal mining practices and other real property necessary for ac-
23 cess to adversely affected real property to restore or reclaim the real
24 property or to abate, control, or prevent the adverse effects. The
25 money expended for and the benefits accruing to the real property from
26 work performed under this subsection is chargeable against the real
27 property and mitigates or offsets a claim in or an action brought by an
28 owner of an interest in the real property for damages resulting from the
29 entry. This subsection does not create new rights of action or elimi-

1 nate existing immunities.

2 (b) The commissioner may enter real property for the purposes of
3 conducting studies or exploratory work to determine the existence of ad-
4 verse effects from past surface coal mining practices and to determine
5 the feasibility of restoring or reclaiming the real property or abating,
6 controlling, or preventing the adverse effects of past coal mining prac-
7 tices.

8 (c) The commissioner may enter real property under (a) or (b) of
9 this section only after

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

14 (2) making written findings that

15 (A) the land or water resources have been adversely af-
16 fected by past coal mining practices;

17 (B) the adverse effects are at a stage that, in the pub-
18 lic interest, action to restore, reclaim, abate, control, or pre-
19 vent the adverse effects of past coal mining practices should be
20 taken; and

21 (C) the owners of the land or water resources where en-
22 try must be made to restore, reclaim, abate, control, or prevent
23 the adverse effects of past coal mining practices are not known or
24 readily available, or will not give permission for the entry.

25 Sec. 41.45.300. ACQUISITION OF ABANDONED MINE AREAS. (a) The
26 commissioner may, by purchase, donation, or condemnation in accordance
27 with AS 09.55.240 -- 09.55.460, acquire real property which has been ad-
28 versely affected by past surface coal mining practices if the commis-
29 sioner determines that

1 (1) acquisition of the real property is necessary to the suc-
2 cessful reclamation of the real property and is in the public interest;
3 and

4 (2) the real property, after its restoration or reclamation
5 or after the abatement, control, or prevention of the adverse effects,
6 will serve recreational, historic, conservation or reclamation purposes
7 or will provide open space benefits; and

8 (3) permanent facilities will be constructed on the real
9 property for the restoration or reclamation of the real property or for
10 the abatement, control, or prevention of the adverse effects; or

11 (4) if the real property includes a coal refuse disposal
12 site, the acquisition of the coal refuse disposal site and the coal re-
13 fuse on the site will serve the purposes of this section; or

14 (5) public ownership is desirable to meet emergency situa-
15 tions created by the adverse effects and to prevent recurrences of the
16 adverse effects.

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

21 (c) If real property acquired under this section is suitable for
22 industrial, commercial, residential, or recreational development, the
23 commissioner may sell the real property by competitive bidding, at not
24 less than the fair market value of the real property. The commissioner
25 shall adopt regulations relating to the sale of real property under this
26 subsection which will ensure that the use of the real property is con-
27 sistent with any state and local land use plans. If money received by
28 the commissioner from the federal government is involved in the acquisi-
29 tion of the real property, the commissioner may sell the real property

1 only if the sale is authorized by the secretary of the United States De-
2 partment of the Interior. If a person requests it, the commissioner
3 shall hold a hearing in the area in which the real property is located
4 to consider the use or disposition of the real property after its re-
5 storation or reclamation or after the abatement, control, or prevention
6 of adverse effects. The commissioner shall hold the hearing at a time
7 which will afford local residents and representatives of municipal gov-
8 ernment in the area the maximum opportunity to participate in the hear-
9 ing. The commissioner must publish notice of the hearing in a newspaper
10 of general circulation in the area in which the real property is located
11 at least 10 days before holding the hearing.

12 Sec. 41.45.310. LIENS ON ABANDONED MINE AREAS. (a) Within six
13 months after the completion of a project under AS 45.41.290 to restore
14 or reclaim privately-owned real property or to abate, control, or pre-
15 vent the adverse effects of past surface coal mining practice on pri-
16 vately-owned real property, the commissioner shall itemize the money
17 spent on the project. If the project results or will result in a sig-
18 nificant increase in the real property's fair market value, the commis-
19 sioner may file a statement of the money spent in the recording office
20 in the area in which the real property is located with a notarized ap-
21 praisal by a licensed appraiser of the fair market value of the real
22 property before the project began. The statement constitutes a lien on
23 the real property as of the date of the expenditure which is second only
24 to the lien of property taxes. The lien may not exceed the amount de-
25 termined by either of two appraisals to be the increase in the fair mar-
26 ket value of the real property as a result of the project. A lien may
27 not be filed under this subsection against real property of a person who
28 owned the surface before May 2, 1977, and who did not consent to, parti-
29 cipate in, or exercise control over the surface coal mining operation

1 which necessitated the project.

2 (b) A person affected by a lien under (a) of this section may pe-
3 tition the commissioner within 60 days after the recording of the lien
4 for a hearing concerning the amount of the lien.

5 Sec. 41.45.320. FILLING VOIDS AND SEALING TUNNELS. The commis-
6 sioner may authorize the filling of voids, sealing open and abandoned
7 tunnels, shafts, and entryways resulting from any previous mining opera-
8 tion and reclaim surface impacts of underground and surface mines to the
9 extent authorized by the secretary of the United States Department of
10 the Interior.

11 Sec. 41.45.330. EMERGENCY POWERS IN ABANDONED MINE AREAS. (a) In
12 emergency situations the commissioner may use money available to the
13 state in the Abandoned Mine Reclamation Fund for the purposes of AS 41.-
14 45.290(a) if the commissioner finds that

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

17 (2) no other person or agency will act expeditiously for
18 those purposes.

19 (b) If the commissioner makes the findings described in (a) of
20 this section, the commissioner may enter on real property under AS 41.-
21 45.290(a) or (b) without giving the notice or making the findings re-
22 quired by AS 41.45.290(c). An entry onto real property under this sec-
23 tion may not be considered a condemnation of property or a trespass.

24 Sec. 41.45.340. MISCELLANEOUS POWERS REGARDING ABANDONED MINE
25 LANDS. (a) The commissioner may request the attorney general to initi-
26 ate, in addition to any other remedies provided for in this chapter, an
27 action in equity for an injunction to restrain any interference with the
28 exercise of the right to enter or to conduct the work described in
29 AS 41.45.270 -- AS 41.45.340.

1 (b) The state shall have the power and authority to construct and
2 operate plants for the control and treatment of water pollution result-
3 ing from mine drainage, including major interceptors and other appurten-
4 ant facilities, so long as such control and treatment complies with the
5 Federal Water Pollution Control Act (33 U.S.C. 1151, et seq. as
6 amended).

7 ARTICLE 4. GENERAL PROVISIONS.

8 Sec. 41.45.900. MINING BY GOVERNMENT AGENCIES OR ON GOVERNMENT
9 LAND. A federal, state or municipal government instrumentality, includ-
10 ing a publicly-owned utility or corporation, which proposes to engage in
11 a surface coal mining operation which is subject to this chapter must
12 comply with this chapter.

13 Sec. 41.45.910. EXEMPTIONS. The provisions of this chapter do not
14 apply to the extraction of coal

15 (1) by a landowner or lessee for his own noncommercial use
16 from land owned or leased by it;

17 (2) for commercial purposes if the surface coal mining opera-
18 tion affects two acres or less; or

19 (3) as an incidental part of highway or other construction
20 financed in whole or in part as specified by regulation, by a federal,
21 state, or municipal government agency.

22 Sec. 41.45.920. EXPERIMENTAL PRACTICES. In order to encourage ad-
23 vances in mining and reclamation practices, and to allow post-mining
24 land use for industrial, commercial, residential, recreational, or pub-
25 lic purposes, the commissioner may, with the approval of the secretary
26 of the United States Department of the Interior, authorize departures in
27 individual cases on an experimental basis from the environmental per-
28 formance standards established under AS 41.45.210. The commissioner may
29 authorize these departures if

1 (1) the experimental practices are, during and after the sur-
2 face coal mining operation, potentially more protective of the environ-
3 ment than, or at least as protective of the environment, as those re-
4 quired by this chapter and regulations adopted under it;

5 (2) the surface coal mining operation for which the departure
6 is authorized is not larger than necessary to determine the effective-
7 ness and economic feasibility of the experimental practices; and

8 (3) the experimental practices do not reduce the protection
9 afforded public health and safety below that provided by law or regula-
10 tion.

11 Sec. 41.45.930. WATER RIGHTS AND REPLACEMENT. (a) Nothing in
12 this chapter may be construed to affect the right of a person to protect
13 his interest in water resources affected by a surface coal mining opera-
14 tion.

15 (b) An operator shall replace the water supply of an owner of in-
16 terest in real property who obtains all or part of his supply of water
17 for domestic, agricultural, industrial, or other beneficial use from an
18 underground or surface source, if the supply has been affected by con-
19 tamination, diminution, or interruption, proximately resulting from the
20 operator's surface coal mining operation.

21 Sec. 41.45.940. CERTIFICATION OF BLASTERS. The commissioner shall
22 adopt regulations requiring the training, examination, and certification
23 of persons engaging in or directly responsible for blasting or the use
24 of explosives in surface coal mining operations.

25 Sec. 41.45.950. CIVIL ACTIONS. (a) Except as provided in (b) of
26 this section, a person who is or may be adversely affected by a failure
27 to comply with this chapter may commence a civil action in the superior
28 court on the person's own behalf and compel compliance with this chapter
29 against

1 (1) the commissioner, if the commissioner has failed to per-
2 form a nondiscretionary act or duty;

3 (2) an instrumentality or agency of the state which is in
4 violation of this chapter or a regulation adopted, or an order or permit
5 issued, under this chapter; or

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

8 (b) A person may not commence an action under (a)(1) of this sec-
9 tion until 60 days after giving the commissioner written notice of the
10 intended action, in the manner prescribed by regulations adopted by the
11 commissioner, except that an action may be brought immediately after the
12 notice, if the commissioner's failure to perform constitutes an imminent
13 threat to the health or safety of the person or would immediately affect
14 a legal interest of the person.

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

17 (1) until 60 days after the plaintiff has given notice in
18 writing of the violation to the commissioner and to the agency, instru-
19 mentality, or alleged violator;

20 (2) if the state is diligently prosecuting a civil action in
21 a state or federal court to require compliance with the provisions of
22 this chapter or a regulation adopted or an order or permit issued under
23 this chapter; in any such action, any person may intervene as a matter
24 of right.

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

29 (e) Nothing in this section restricts any right which any person

1 or class of persons may have under any statute or common law to seek en-
2 forcement of any of the provisions of this chapter and the regulations
3 adopted under it, or to seek any other relief, including relief against
4 the commissioner.

5 (f) A person who is injured in his person or property by the vio-
6 lation by a permittee of a regulation adopted or an order or permit is-
7 sued under this chapter may bring an action for damages, including rea-
8 sonable attorney fees and expert witness fees, only in the judicial dis-
9 trict in which the permittee's operation is located. Nothing in this
10 subsection affects the rights established by or limits imposed under
11 AS 23.30.

12 Sec. 41.45.960. INCONSISTENCIES WITH FEDERAL ACT. (a) A provi-
13 sion of this chapter which is inconsistent with the provisions of the
14 Surface Mining Control and Reclamation Act of 1977 as determined by the
15 secretary of the United States Department of the Interior under 30
16 U.S.C. 1255(b) is invalid from the date of the secretary's determina-
17 tion.

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

26 Sec. 41.45.970. RELATIONSHIP TO OTHER LAWS. (a) Nothing in this
27 chapter abrogates or modifies the power of a state agency with regard to
28 the issuance and administration of coal leases and exploration permits,
29 except as specifically stated in this chapter and regulations adopted

1 under it.

2 (b) Surface coal mining operations for coal which has been or is
3 conveyed out of federal ownership must meet the requirements of this
4 chapter.

5 Sec. 41.45.975. SEVERABILITY. If any provision of this chapter or
6 the applicability of it to any person or circumstances is held invalid,
7 the remainder of this Act and the application of that provision to other
8 persons or circumstances shall not be affected.

9 Sec. 41.45.980. ADMINISTRATIVE PROCEDURE ACT. Unless otherwise
10 provided, the Administrative Procedure Act (AS 44.62) applies to this
11 chapter.

12 Sec. 41.45.985. SHORT TITLE. This chapter may be cited as the
13 Alaska Surface Coal Mining Control and Reclamation Act.

14 Sec. 41.45.990. DEFINITIONS. In this chapter

15 (1) "alluvial valley floors" means the unconsolidated stream-
16 laid deposits holding streams where water availability is sufficient for
17 subirrigation or flood irrigation agricultural activities but does not
18 include upland areas which are generally overlain by a thin veneer of
19 colluvial deposits composed chiefly of debris from sheet erosion, depo-
20 sits by unconcentrated runoff or slope wash, together with talus, other
21 mass movement accumulation and windblown deposits;

22 (2) "applicant" means a person or other entity seeking a per-
23 mit from the commissioner to conduct surface coal mining or underground
24 mining activities under this chapter;

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

26 (4) "commissioner" means the Department of Natural Resources,
27 acting by the commissioner or his authorized representatives or agents;

28 (5) "department" means the Department of Natural Resources;

29 (6) "imminent danger to the health and safety of the public"

1 means the existence of any condition or practice, or any violation of a
2 permit or other requirement of this chapter in a surface coal mining and
3 reclamation operation to which a rational person would not expose him-
4 self for fear of substantial physical harm;

5 (7) "operation" means a surface coal mining operation or a
6 surface coal mining and reclamation operation;

7 (8) "operator" means any person engaged in coal mining who
8 removes or intends to remove more than 250 tons of coal from the earth
9 by coal mining within 12 consecutive calendar months in any one loca-
10 tion;

11 (9) "other minerals" means clay, stone, sand, gravel, metal-
12 liferous and non-metalliferous ores, and other solid materials or sub-
13 stances of commercial value excavated in solid form from natural depo-
14 sits on or in the earth, exclusive of coal, and those minerals that oc-
15 cur naturally in liquid or gaseous form;

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

19 (11) "permit area" means the area of land indicated on the ap-
20 proved maps submitted by the operator with his application which must be
21 covered by the operator's bond as required by AS 41.45.160 and must be
22 readily identifiable by appropriate markers on the site;

23 (12) "permittee" means a person holding a permit to conduct a
24 surface coal mining and reclamation operation or underground mining ac-
25 tivities under this chapter;

26 (13) "person" means an individual, partnership, association,
27 society, joint-stock company, firm, company, corporation or other busi-
28 ness organization;

29 (14) "reclamation plan" means a plan for the reclamation of an

1 applicant's proposed surface coal mining operation submitted by the ap-
2 plicant under regulations adopted under AS 41.45.110;

3 (15) "significant imminent environmental harm to land, air or
4 water resources" means a condition, practice, or violation which is
5 causing or can be expected to cause an appreciable, irreparable adverse
6 impact to land, air, or water resources including, but not limited to,
7 plant and animal life;

8 (16) "surface coal mining and reclamation operation" means a
9 surface coal mining operation and the activities necessary and incident-
10 al to the reclamation of that operation after August 3, 1977;

11 (17) "surface coal mining operations" means

12 (A) an activity

13 (i) conducted on the surface of land in connection
14 with a surface coal mine or, to the extent that the activity
15 affects the surface of land, conducted in connection with an
16 underground coal mine;

17 (ii) the products of which enter commerce or the op-
18 eration of which directly or indirectly affects interstate
19 commerce;

20 (iii) which may include contour, strip, auger, moun-
21 tain top removal, boxcut, open pit, and area mining; the use
22 of explosives and blasting; on-site distillation or retorting,
23 leaching, or other chemical or physical processing of coal;
24 and loading of coal for interstate commerce at or near the
25 mine site;

26 (iv) other than an activity relating to the extrac-
27 tion of coal incidental to the extraction of other minerals
28 under which the coal extracted does not exceed 16 and 2/3 per-
29 cent of the total tonnage of coal and other minerals removed

1 annually for purposes of commercial use or sale and other than
2 a coal exploration activity subject to this chapter; and

3 (B) the areas on which an activity described in (A) of
4 this paragraph occurs or where the activity disturbs the natural
5 land surface, including adjacent land, the use of which is inci-
6 dental to the activity; land affected by the construction of new
7 roads or the improvement or use of existing roads to gain access to
8 the site of the activity and for haulage; and excavation, workings,
9 impoundments, dams, ventilation shafts, entry ways, refuse banks,
10 dumps, stockpiles, overburden piles, spoil banks, culm banks, tail-
11 ings, holes or depressions, repair areas, storage areas, processing
12 areas, shipping areas, and other areas upon which are situated
13 structures, facilities, or other property or materials on the sur-
14 face resulting from or incidental to the activity;

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

18 (19) "unwarranted failure to comply" means the failure of a
19 permittee to prevent or abate a violation of his permit or of this chap-
20 ter because of indifference, lack of diligence, or lack of reasonable
21 care.

22 * Sec. 2. INITIAL APPLICATIONS FOR SURFACE COAL MINING PERMITS. Not
23 later than two months after the date of approval by the federal government of
24 the state program for the regulation of surface coal mining under the terms
25 of the Surface Mining Control and Reclamation Act of 1977, regardless of lit-
26 igation contesting that approval or the implementation of the state program,
27 an operator of a surface coal mine who plans to operate that mine more than
28 eight months after the approval of the state program must apply for a permit
29 under AS 41.45.060(a) for the operation of the surface coal mine. The De-

1 department of Natural Resources shall process an application received under
2 this section and shall grant or deny the permit within eight months after the
3 date of the approval of the state program.

4 * Sec. 3. RESERVATION CLAUSE. Passage of this Act may not be considered
5 an admission by the State of Alaska of the legality or constitutionality of
6 the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91 Stat.
7 447-532, 30 U.S.C. 1201-1328, as amended, and may not be construed to limit,
8 waive, or otherwise affect the right of the State of Alaska, or its agencies,
9 from contesting the constitutional or statutory validity of all or part of a
10 regulation promulgated under the Surface Mining Control and Reclamation Act
11 of 1977.

12 * Sec. 4. The commissioner of natural resources shall adopt regulations
13 under the Administrative Procedure Act (AS 44.62) to implement this Act.
14 These regulations may not take effect until the effective date of sec. 1 of
15 this Act.

16 * Sec. 5. Sections 1 and 2 of this Act take effect upon approval of the
17 state program for the regulation of surface coal mining, enacted in sec. 1 of
18 this Act, by the secretary of the United States Department of the Interior
19 under the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91
20 Stat. 447-532, 30 U.S.C. 1201-1328, as amended.

21 * Sec. 6. Sections 3 and 4 of this Act take effect immediately in accord-
22 ance to AS 01.10.070(c).