

Original sponsor: Rules/Governor

Offered: 4/1/82  
Referred: Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 843 (Resources)

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 estab-  
18 lishment 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 in the state by obtaining approval of a state program of  
4 regulation that 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 in 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 that the state  
15 is best equipped to understand, the state intends to assume exclusive  
16 jurisdiction over the regulation of surface coal mining and reclamation  
17 operations in the state under the Surface Mining Control and Reclamation  
18 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 that were mined and  
18 left without adequate reclamation before the enactment of the Surface  
19 Mining Control and Reclamation Act of 1977, and that 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 of natural re-  
25 sources has exclusive jurisdiction over surface coal mining and reclama-  
26 tion operations in the 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  
10 final 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 that is  
25 subject to the provisions of this chapter to assure that the operation  
26 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  
14 Reclamation Act of 1977, including making recommendations for legislation  
15 to clarify or amend this chapter to conform with the terms of the Surface  
16 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  
26 Surface 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 that comply with 30 U.S.C. 1252  
19 may continue. Permits that 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 threatens  
3 substantial economic loss to the permittee; or (2) for reasons beyond  
4 the control and without the fault or negligence of the permittee. With  
5 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 that 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 that 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 that 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 that 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 that 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 that 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 that include a reclamation plan and liability  
5 insurance consistent with the requirements of 30 U.S.C. 1257(b) and  
6 30 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, the commissioner shall,  
13 at the written request of the applicant, engage at no cost to the  
14 applicant a laboratory to prepare a determination of probable hydrologic  
15 consequences of the applicant's proposed operation and a statement of  
16 test boring or core samplings if these are required by regulations  
17 adopted 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 adopted  
22 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 within  
24 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 the commissioner prescribes, grant

1 appropriate temporary relief pending the commissioner's final decision  
2 if

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

5 (2) the party requesting the temporary relief shows that  
6 there is a substantial likelihood that the party will prevail in the  
7 final decision of the hearing; and

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

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

1 bond or deposit 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 that 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, a bond or deposit may not be  
17 fully 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, the commissioner shall notify the permittee of the decision

1 in writing. The notice must include the reasons for the disapproval, a  
2 description of the actions necessary to secure the release, and notifi-  
3 cation of the 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 the commissioner's action. The applicant has the burden of establishing  
3 that the application complies with the requirements of this chapter and  
4 the regulations adopted under it. Within 10 days after approving an  
5 application, the commissioner shall record in the recording district in  
6 which the permit area is located notice that a permit has been issued.  
7 The notice must describe the location of the permit area and state where  
8 a copy of the permit may be obtained.

9 (b) If the commissioner requests modification of an application,  
10 the commissioner shall state in writing which parts need modification  
11 and in what manner, and which parts of the application meet approval.  
12 The applicant will then need only to correct the deficient portion and  
13 resubmit the application. However, the commissioner may at any time  
14 require additional information from the applicant if the requirement is  
15 based on good cause and on a written finding that the additional infor-  
16 mation is necessary for the commissioner to determine whether the pro-  
17 posed operation will meet the requirements of this chapter and the  
18 regulations adopted under it. After receipt of the information  
19 requested, the commissioner has 60 days to approve, condition, or deny  
20 the permit as described in (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 that is otherwise available to the  
25 commissioner and that 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 that

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 the applicant is applying  
18 for a permit;

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  
9 authorized to extract coal by surface mining methods in the permit  
10 area; however, nothing in this chapter may be construed to authorize  
11 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 of 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  
2 agency responsible for the enforcement of the law, rule, or regulation  
3 if 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 the commissioner finds, after providing the applicant with an  
9 opportunity for a hearing in accordance with the procedures established  
10 in AS 41.45.150, that the applicant, or the operator specified in the  
11 application, controls or has controlled mining operations with a  
12 demonstrated pattern of wilful violations of this chapter of such nature  
13 and duration and with such resulting irreparable damage to the environ-  
14 ment as to indicate 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 the commissioner finds that reclamation required by  
21 this chapter and the regulations adopted under it can be accomplished  
22 under the necessary revisions to the reclamation plan. The commissioner  
23 shall establish guidelines for determining the extent of revision for  
24 which all permit application requirements and procedures, including  
25 notice and hearing, shall apply. A revision which, in the commissioner's  
26 determination, requires significant revisions to the applicant's reclama-  
27 tion plan must, at a minimum, be subject to a notice and hearing require-  
28 ment.

29 (c) A permittee may not apply under this section for an extension

1 of the permit area, except by incidental boundary revision.

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

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

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

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

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

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

29 (c) The commissioner shall keep information submitted to the

1 commissioner under this section confidential upon request of the person  
2 submitting the information if the information is a

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

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

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

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

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

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

1 (b) In order to protect the stability of the land, the commission-  
2 er shall suspend underground coal mining under municipalities or com-  
3 munities and adjacent to industrial or commercial buildings, major im-  
4 poundments, or permanent streams, if the commissioner finds imminent  
5 danger to inhabitants of the municipalities or communities.

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

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

16 (1) the commissioner may require a permittee to

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

19 (B) make monthly reports to the commissioner;

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

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

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

28 (2) for a surface coal mining and reclamation operation that  
29 removes or disturbs strata that serve as aquifers which significantly

1 insure the hydrologic balance of water use either on or off the site of  
2 the operation, the commissioner may specify

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

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

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

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

13 (B) the records of well logs and borehole information  
14 that a permittee must maintain;

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

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

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

26 (2) occur without prior notice to the permittee or the per-  
27 mittee's agents, except as provided in (e) of this section.

28 (d) After conducting an inspection under (b)(3) of this section,  
29 an inspector shall file with the commissioner, and the commissioner

1 shall maintain, an inspection report adequate to assist the commissioner  
2 in enforcing the requirements of this chapter and carrying out the terms  
3 and purposes of this chapter.

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

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

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

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

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

1 receives notification from a person under this subsection, the commis-  
2 sioner shall investigate the inspection and shall furnish the person  
3 with a written determination and the reasons for the determination.

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

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

1 may not exceed 90 days from the date the notice is issued, for the  
2 abatement of the violation. However, the commissioner may, for good  
3 cause, extend the time for the abatement of the violation. If, at the  
4 end of the time allowed for abatement of the violation, the commissioner  
5 finds, in writing, that the violation has not been abated, the commis-  
6 sioner shall order a cessation of the person's surface coal mining oper-  
7 ation or the portion of the operation relating to the violation. The  
8 cessation order remains in effect until the commissioner determines that  
9 the violation has been abated or until it is modified, vacated, or ter-  
10 minated under (d) or (h) of this section. The commissioner shall deter-  
11 mine the steps necessary to abate the violation in the most expeditious  
12 manner possible and shall include the necessary measures in the cessa-  
13 tion order issued under this section.

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

1 at least five days before the hearing. The Administrative Procedure Act  
2 (AS 44.62) applies to a hearing under this subsection except as provided  
3 by regulations adopted under this chapter.

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

12 (e) An applicant for review under (c) of this section may file  
13 with the commissioner a written request for temporary relief from a no-  
14 tice or order issued under (a) or (b) of this section before completion  
15 of the review of the notice or order. The written request must include  
16 a detailed statement of the reasons in support of the request. The com-  
17 missioner shall expeditiously issue an order granting or denying the  
18 temporary relief. If the applicant requests temporary relief from a  
19 cessation order issued under (a) or (b) of this section, the commission-  
20 er shall issue an order granting or denying the temporary relief within  
21 10 days after the commissioner receives the written request. The com-  
22 missioner may grant the temporary relief under this subsection only

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

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

29 (3) if the temporary relief will not adversely affect the

1 health or safety of the public or cause significant, imminent, environ-  
2 mental harm to land, air, or water resources.

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

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

28 (h) A notice or order issued under this section shall state with  
29 reasonable specificity the nature of the violation, the abatement re-

1 quired, the period of time established for abatement, and a reasonable  
2 description of the portion of the operation to which the notice or order  
3 applies. Each notice or order issued under this section must be given  
4 promptly to the alleged violator at the mine site unless the alleged  
5 violator has appointed an agent, in which case the agent may be served.  
6 A notice or order issued under this section may be modified, vacated, or  
7 terminated by the commissioner. A cessation order issued under (a) or  
8 (b) of this section expires not more than 30 days after the alleged  
9 violator receives actual notice of the order unless an informal confer-  
10 ence is held as provided in regulations adopted under this chapter, or  
11 unless the right to such a conference is waived by the alleged violator.  
12 The commissioner shall hold the conference at a location that allows the  
13 permit area to be viewed during the conference. The commissioner shall  
14 issue a written order affirming, modifying, vacating, or terminating the  
15 cessation order within five days of the conference. The holding of a  
16 conference or the waiver of it does not prejudice any other rights to  
17 administrative or judicial review provided under this chapter nor does  
18 it operate as a stay of a notice or order.

19 (i) Whenever an order is issued under this chapter, the commis-  
20 sioner may, in the commissioner's discretion, assess any party for the  
21 costs and attorney fees reasonably incurred by another party in connec-  
22 tion with the order.

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

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

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

1 (3) unlawfully refuses to admit the commissioner into an op-  
2 eration;

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

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

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

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

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

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

25 (2) the person requesting the relief shows that there is a  
26 substantial likelihood that the person will prevail on the merits of the  
27 final determination of the proceeding; and

28 (3) the relief will not adversely affect the public health or  
29 safety or cause significant imminent environmental harm to land, air, or

1 water resources.

2 (m) The commencement of a judicial proceeding to review an order  
3 or decision of the commissioner does not, unless specifically ordered by  
4 the court, operate as a stay of the action, order, or decision of the  
5 commissioner.

6 (n) The fact that action of the commissioner is subject to judi-  
7 cial review in accordance with other provisions of state law may not be  
8 construed to limit the operation of the rights established in AS 41.-  
9 45.950 except as provided in that section.

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

25 (b) Within 30 days after issuing a notice or order under AS 41.-  
26 45.240 to a person, the commissioner shall inform the person of the  
27 amount of the penalty. The person notified of the penalty then has 30  
28 days in which to pay the penalty in full or to contest either the amount  
29 of the penalty or the fact of the violation. If the person wishes to

1 contest either the amount of the penalty or the fact of the violation,  
2 the person may submit to the commissioner a bond equal to the penalty  
3 amount at the time the person files an application for review. The bond  
4 shall be conditioned for the satisfaction of the penalty in full if the  
5 commissioner's determination of an occurrence of a violation and the  
6 assessment of a penalty are affirmed. An application for review is  
7 effective when the bond is approved by the commissioner. If the bond is  
8 not approved, the person charged with the penalty shall forward the  
9 proposed amount to the commissioner within 10 days of the disapproval of  
10 the bond for placement in an escrow account in order to make the petition  
11 effective.

12 (c) The commissioner shall assess a civil penalty under (a) of  
13 this section only after the person charged with a violation has been  
14 given an opportunity for a public hearing. If a public hearing is held,  
15 the commissioner shall make findings of fact and shall issue a written  
16 decision relating to the occurrence of the violation and the amount of  
17 the civil penalty which is warranted. The written decision may order  
18 the person to pay the penalty. The commissioner may consolidate a hear-  
19 ing under this section with other proceedings under AS 41.45.240. The  
20 Administrative Procedure Act (AS 44.62) applies to a hearing under this  
21 subsection except as provided by regulations adopted under this chapter.  
22 If the person notified of a penalty does not request a public hearing,  
23 the commissioner may assess the penalty and order its payment only after  
24 the commissioner has determined that the person committed the violation  
25 and has determined the amount of the penalty which is warranted.

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

29 (e) A person other than a corporation who wilfully and knowingly

1 violates a condition of a permit, an order issued under AS 41.45.240, or  
2 an order incorporated in a final decision under this chapter, except an  
3 order incorporated in a decision issued under (c) of this section, is  
4 guilty of a class C felony.

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

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

17 (h) A person who fails to correct a violation for which a notice  
18 of violation or a cessation order has been issued under AS 41.45.240  
19 within the period or subsequent extension permitted for its correction  
20 shall be assessed a civil penalty of \$750 for each day the failure or  
21 violation continues. The period for correction continues until

22 (1) the entry of a final order by the commissioner in a  
23 review proceeding initiated by the alleged violator in which the commis-  
24 sioner orders, after an expedited hearing, the suspension of the abate-  
25 ment requirements of the notice or order after determining that the  
26 alleged violator will suffer irreparable loss or damage from the appli-  
27 cation of those requirements; or

28 (2) the entry of an order of the court in a review proceeding  
29 under AS 44.62.560 - 44.62.570 initiated by the alleged violator in

1 which the court orders the suspension of the abatement requirements of  
2 the notice or order.

3 (i) A person who, except as permitted by law, wilfully resists,  
4 prevents, impedes, or interferes with the commissioner in the perfor-  
5 mance of duties under this chapter is guilty of a class C felony.

6 Sec. 41.45.260. AREAS UNSUITABLE FOR SURFACE COAL MINING. (a)  
7 The commissioner shall use competent and scientifically sound data and  
8 information in order to make objective decisions as to which areas of  
9 land are unsuitable for all or certain types of surface coal operations.  
10 The decisions shall

11 (1) reflect the planning activities of federal, state, and  
12 municipal governments; and

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

16 (b) A person or municipality having an interest which is or may be  
17 adversely affected may file a petition with the commissioner to desig-  
18 nate an area as unsuitable for mining or to terminate a designation un-  
19 der this section. The petition must contain allegations of facts with  
20 supporting evidence that would tend to establish the allegations. Within  
21 three to seven months after receipt of a petition, the commissioner  
22 shall hold a public hearing in the locality of the area, under regula-  
23 tions adopted by the commissioner. The commissioner may extend the time  
24 within which a hearing must be held if an extension is required to in-  
25 clude a field season. After the filing of a petition and before the  
26 hearing, other persons may intervene by filing allegations of fact with  
27 supporting evidence. Within 60 days after the hearing the commissioner  
28 shall issue and furnish to the petitioner and intervenors a written de-  
29 cision regarding the petition and the reasons for the commissioner's

1 decision. The commissioner may cancel the hearing if the parties all  
2 agree to the cancellation.

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

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

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

12 (A) be incompatible with existing state or local land  
13 use programs;

14 (B) affect fragile or historic land in which the opera-  
15 tions could result in significant damage to important historic,  
16 cultural, scientific and aesthetic values and natural systems;

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

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

24 (d) Subject to valid existing rights, the commissioner may not  
25 permit surface coal mining operations except those which existed on  
26 August 3, 1977,

27 (1) on any land within the boundaries of a unit of the  
28 National Park System, the National Wildlife Refuge Systems, the National  
29 System of Trails, the National Wilderness Preservation System, the Wild

1 and Scenic Rivers System, including study rivers designated under sec-  
2 tion 5(a) of the Wild and Scenic Rivers Act, and National Recreation  
3 Areas designated by Act of Congress;

4 (2) that will adversely affect a publicly owned park or a  
5 place included in the National Register of Historic Sites unless ap-  
6 proved jointly by the commissioner and the federal, state, or local  
7 agency that has jurisdiction over the park or the historic site;

8 (3) within 100 feet of the outside right-of-way line of any  
9 public road, except where mine access roads or haulage roads join the  
10 right-of-way line, and except that the commissioner may permit roads to  
11 be relocated or the area affected to lie within 100 feet of a road, if  
12 after public notice and opportunity for public hearing in the locality,  
13 a written finding is made that the interests of the public and the  
14 landowners affected by it will be protected; or

15 (4) within 300 feet from any occupied dwelling, unless waived  
16 by the owner of the dwelling, or within 300 feet of a public building,  
17 school, church, community, or institutional building, public park, or  
18 within 100 feet of a cemetery.

19 (e) Before designating an area as unsuitable under this section,  
20 the commissioner shall prepare a detailed statement of the potential  
21 coal resources of the area, the demand for coal resources, and the im-  
22 pact of the designation on the environment, the economy, and the supply  
23 of coal.

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

27 (g) This section does not apply to land on which a surface coal  
28 mining operation was conducted on or before August 3, 1977, or under a  
29 permit issued under this chapter before a determination of unsuitabil-

1       ity. This section does not apply to an area if a person had made sub-  
2       stantial legal or financial commitments for an operation or proposed op-  
3       eration in that area before January 4, 1977.

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

6           (i) The commissioner shall adopt regulations to implement this  
7       section.

8                           ARTICLE 3. ABANDONED MINES.

9           Sec. 41.45.270. ABANDONED MINE RECLAMATION FUND. The commissioner  
10       may take the actions necessary to ensure state participation to the  
11       fullest extent practicable in the Abandoned Mine Reclamation Fund cre-  
12       ated in 30 U.S.C. 1231 and to function as the state agency for that par-  
13       ticipation. In conformity with the Surface Mining Control and Reclama-  
14       tion Act of 1977, the commissioner shall

15           (1) by regulation, establish priorities that meet the terms  
16       of the Surface Mining Control and Reclamation Act of 1977, for the  
17       expenditure of money received by the commissioner from the Abandoned  
18       Mine Reclamation Fund;

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

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

25           (4) administer money received by the state for abandoned mine  
26       reclamation or related purposes from the Abandoned Mine Reclamation  
27       Fund.

28           Sec. 41.45.280. ELIGIBLE LAND AND WATER. Land and water eligible  
29       for reclamation or drainage abatement expenditures under this chapter

1 are those that were mined for coal or were affected by such mining,  
2 wastebanks, coal processing, or other coal mining processes, and  
3 abandoned or left in an inadequate reclamation status before August 3,  
4 1977, and for which there is no continuing reclamation responsibility  
5 under state or federal law.

6 Sec. 41.45.290. ENTRY ONTO ABANDONED MINE AREA. (a) The commis-  
7 sioner may enter real property that has been adversely affected by past  
8 surface coal mining practices and other real property necessary for ac-  
9 cess to adversely affected real property to restore or reclaim the real  
10 property or to abate, control, or prevent the adverse effects. The  
11 money expended for and the benefits accruing to the real property from  
12 work performed under this subsection is chargeable against the real  
13 property and mitigates or offsets a claim in or an action brought by an  
14 owner of an interest in the real property for damages resulting from the  
15 entry. This subsection does not create new rights of action or elimi-  
16 nate existing immunities.

17 (b) The commissioner may enter real property for the purposes of  
18 conducting studies or exploratory work to determine the existence of ad-  
19 verse effects from past surface coal mining practices and to determine  
20 the feasibility of restoring or reclaiming the real property or abating,  
21 controlling, or preventing the adverse effects of past coal mining prac-  
22 tices.

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

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

29 (2) making written findings that

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

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

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

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

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

19 (2) the real property, after its restoration or reclamation  
20 or after the abatement, control, or prevention of the adverse effects,  
21 will serve recreational, historic, conservation, or reclamation purposes  
22 or will provide open space benefits; and

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

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

29 (5) public ownership is desirable to meet emergency situa-

1 tions created by the adverse effects and to prevent recurrences of the  
2 adverse effects.

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

7 (c) If real property acquired under this section is suitable for  
8 industrial, commercial, residential, or recreational development, the  
9 commissioner may sell the real property by competitive bidding, at not  
10 less than the fair market value of the real property. The commissioner  
11 shall adopt regulations relating to the sale of real property under this  
12 subsection which will ensure that the use of the real property is con-  
13 sistent with any state and local land use plans. If money received by  
14 the commissioner from the federal government is involved in the acquisi-  
15 tion of the real property, the commissioner may sell the real property  
16 only if the sale is authorized by the Secretary of the United States De-  
17 partment of the Interior. If a person requests it, the commissioner  
18 shall hold a hearing in the area in which the real property is located  
19 to consider the use or disposition of the real property after its re-  
20 storation or reclamation or after the abatement, control, or prevention  
21 of adverse effects. The commissioner shall hold the hearing at a time  
22 that will afford local residents and representatives of municipal gov-  
23 ernment in the area the maximum opportunity to participate in the hear-  
24 ing. The commissioner shall publish notice of the hearing in a newspaper  
25 of general circulation in the area in which the real property is located  
26 at least 10 days before holding the hearing.

27 Sec. 41.45.310. LIENS ON ABANDONED MINE AREAS. (a) Within six  
28 months after the completion of a project under AS 45.41.290 to restore  
29 or reclaim privately owned real property or to abate, control, or pre-

1 vent the adverse effects of past surface coal mining practice on pri-  
2 vately owned real property, the commissioner shall itemize the money  
3 spent on the project. If the project results or will result in a sig-  
4 nificant increase in the real property's fair market value, the commis-  
5 sioner may file a statement of the money spent in the recording office  
6 in the area in which the real property is located with a notarized ap-  
7 praisal by a licensed appraiser of the fair market value of the real  
8 property before the project began. The statement constitutes a lien on  
9 the real property as of the date of the expenditure which is second only  
10 to the lien of property taxes. The lien may not exceed the amount de-  
11 termined by either of two appraisals to be the increase in the fair mar-  
12 ket value of the real property as a result of the project. A lien may  
13 not be filed under this subsection against real property of a person who  
14 owned the surface before May 2, 1977, and who did not consent to, parti-  
15 cipate in, or exercise control over the surface coal mining operation  
16 which necessitated the project.

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

20 Sec. 41.45.320. FILLING VOIDS AND SEALING TUNNELS. The commis-  
21 sioner may authorize the filling of voids, sealing open and abandoned  
22 tunnels, shafts, and entryways resulting from any previous mining opera-  
23 tion and reclaim surface impacts of underground and surface mines to the  
24 extent authorized by the Secretary of the United States Department of  
25 the Interior.

26 Sec. 41.45.330. EMERGENCY POWERS IN ABANDONED MINE AREAS. (a) In  
27 emergency situations the commissioner may use money available to the  
28 state in the Abandoned Mine Reclamation Fund for the purposes of AS 41.-  
29 45.290(a) if the commissioner finds that

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

3 (2) no other person or agency will act expeditiously for  
4 those purposes.

5 (b) If the commissioner makes the findings described in (a) of  
6 this section, the commissioner may enter on real property under AS 41.-  
7 45.290(a) or (b) without giving the notice or making the findings re-  
8 quired by AS 41.45.290(c). An entry onto real property under this sec-  
9 tion may not be considered a condemnation of property or a trespass.

10 Sec. 41.45.340. MISCELLANEOUS POWERS REGARDING ABANDONED MINE  
11 LANDS. (c) The commissioner may request the attorney general to initi-  
12 ate, in addition to any other remedies provided for in this chapter, an  
13 action in equity for an injunction to restrain any interference with the  
14 exercise of the right to enter or to conduct the work described in  
15 AS 41.45.270 - AS 41.45.340.

16 (b) The state has the power and authority to construct and operate  
17 plants for the control and treatment of water pollution resulting from  
18 mine drainage, including major interceptors and other appurtenant facili-  
19 ties, so long as that control and treatment complies with the Federal  
20 Water Pollution Control Act (33 U.S.C. 1151, et seq., as amended).

21 ARTICLE 4. GENERAL PROVISIONS.

22 Sec. 41.45.900. MINING BY GOVERNMENT AGENCIES OR ON GOVERNMENT  
23 LAND. A federal, state or municipal government agency, including a  
24 publicly owned utility or corporation, that proposes to engage in a  
25 surface coal mining operation that is subject to this chapter must  
26 comply with this chapter.

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

29 (1) by a landowner or lessee for the landowner's or lessee's

1 own noncommercial use from land owned or leased by it;

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

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

7 Sec. 41.45.920. EXPERIMENTAL PRACTICES. In order to encourage ad-  
8 vances in mining and reclamation practices, and to allow post-mining  
9 land use for industrial, commercial, residential, recreational, or pub-  
10 lic purposes, the commissioner may, with the approval of the Secretary  
11 of the United States Department of the Interior, authorize departures in  
12 individual cases on an experimental basis from the environmental per-  
13 formance standards established under AS 41.45.210. The commissioner may  
14 authorize these departures if

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

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

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

25 Sec. 41.45.930. WATER RIGHTS AND REPLACEMENT. (a) Nothing in  
26 this chapter may be construed to affect the right of a person to protect  
27 the person's interest in water resources affected by a surface coal  
28 mining operation.

29 (b) An operator shall replace the water supply of an owner of in-

1 interest in real property who obtains all or part of the owner's supply  
2 of water for domestic, agricultural, industrial, or other beneficial use  
3 from an underground or surface source, if the supply has been affected  
4 by contamination, diminution, or interruption, proximately resulting  
5 from the operator's surface coal mining operation.

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

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

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

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

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

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

29 (c) A person may not commence an action under (a)(2) or (a)(3) of

1 this section

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

5 (2) if the state is diligently prosecuting a civil action in  
6 a state or federal court to require compliance with the provisions of  
7 this chapter or a regulation adopted or an order or permit issued under  
8 this chapter; however, any person may intervene in that civil action as  
9 a matter of right.

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

14 (e) Nothing in this section restricts any right that a person or  
15 class of persons may have under statute or common law to seek enforcement  
16 of any of the provisions of this chapter and the regulations adopted  
17 under it, or to seek any other relief, including relief against the  
18 commissioner.

19 (f) A person who is injured or whose property is damaged by the  
20 violation by a permittee of a regulation adopted or an order or permit  
21 issued under this chapter may bring an action for damages, including  
22 reasonable attorney fees and expert witness fees, only in the judicial  
23 district in which the permittee's operation is located. Nothing in this  
24 subsection affects the rights established by or limits imposed under  
25 AS 23.30.

26  
27 Sec. 41.45.960. INCONSISTENCIES WITH FEDERAL ACT. (a) A provi-  
28 sion of this chapter that is inconsistent with the provisions of the  
29 Surface Mining Control and Reclamation Act of 1977 as determined by the  
Secretary of the United States Department of the Interior under 30

1 U.S.C. 1255(b) is invalid from the date of the secretary's determina-  
2 tion.

3 (b) If a provision of the Surface Mining Control and Reclamation  
4 Act of 1977 or of the regulations promulgated under that Act by the Sec-  
5 retary of the United States Department of the Interior is deleted,  
6 amended, set aside, enjoined, or declared invalid by Congress, the sec-  
7 retary, or in a final, unappealable judgment of a court of competent  
8 jurisdiction, then the commissioner shall review the changes made and  
9 make an appropriate recommendation as to whether changes in this chapter  
10 or the regulations adopted under it should be made.

11 Sec. 41.45.970. RELATIONSHIP TO OTHER LAWS. (a) Nothing in this  
12 chapter abrogates or modifies the power of a state agency to enforce  
13 laws and regulations within its jurisdiction, except as specifically  
14 stated in this chapter and regulations adopted under it. The commis-  
15 sioner shall coordinate permitting procedures to prevent unnecessary  
16 duplication in permit review.

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

20 Sec. 41.45.975. SEVERABILITY. If any provision of this chapter or  
21 the applicability of it to any person or circumstances is held invalid,  
22 the remainder of this Act and the application of that provision to other  
23 persons or circumstances is not affected.

24 Sec. 41.45.980. ADMINISTRATIVE PROCEDURE ACT. Unless otherwise  
25 provided, the Administrative Procedure Act (AS 44.62) applies to this  
26 chapter.

27 Sec. 41.45.998. DEFINITIONS. In this chapter

28 (1) "alluvial valley floors" means the unconsolidated stream-  
29 laid deposits holding streams where water availability is sufficient for

1 subirrigation or flood irrigation agricultural activities but does not  
2 include upland areas which are generally overlain by a thin veneer of  
3 colluvial deposits composed chiefly of debris from sheet erosion, depo-  
4 sits by unconcentrated runoff or slope wash, together with talus, other  
5 mass movement accumulation and windblown deposits;

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

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

10 (4) "commissioner" means the commissioner of natural resources  
11 or the commissioner's authorized representatives or agents;

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

13 (6) "imminent danger to the health and safety of the public"  
14 means the existence of a condition or practice, or a violation of a  
15 permit or other requirement of this chapter in a surface coal mining and  
16 reclamation operation under which a rational person would not submit to  
17 exposure for fear of substantial physical harm;

18 (7) "operation" means a surface coal mining operation or a  
19 surface coal mining and reclamation operation;

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

24 (9) "other minerals" means clay, stone, sand, gravel, metal-  
25 liferous and non-metaliferous ores, and other solid materials or sub-  
26 stances of commercial value excavated in solid form from natural depo-  
27 sits on or in the earth, exclusive of coal, and those minerals that oc-  
28 cur naturally in liquid or gaseous form;

29 (10) "permit" means a permit to conduct a surface coal mining

1 and reclamation operation issued by the commissioner under the terms of  
2 this chapter;

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

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

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

13 (14) "reclamation plan" means a plan for the reclamation of an  
14 applicant's proposed surface coal mining operation submitted by the ap-  
15 plicant under regulations adopted under AS 41.45.110;

16 (15) "significant imminent environmental harm to land, air or  
17 water resources" means a condition, practice, or violation which is  
18 causing or can be expected to cause an appreciable, reparable adverse  
19 impact to land, air, or water resources including, but not limited to,  
20 plant and animal life;

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

24 (17) "surface coal mining operations" means

25 (A) an activity

26 (i) conducted on the surface of land in connection  
27 with a surface coal mine or, to the extent that the activity  
28 affects the surface of land, conducted in connection with an  
29 underground coal mine;

1 (ii) the products of which enter commerce or the op-  
2 eration of which directly or indirectly affects interstate  
3 commerce;

4 (iii) which may include contour, strip, auger, moun-  
5 tain top removal, boxcut, open pit, and area mining; the use  
6 of explosives and blasting; on-site distillation or retorting,  
7 leaching, or other chemical or physical processing of coal;  
8 and loading of coal for interstate commerce at or near the  
9 mine site;

10 (iv) other than an activity relating to the extrac-  
11 tion of coal incidental to the extraction of other minerals  
12 under which the coal extracted does not exceed 16 and 2/3 per-  
13 cent of the total tonnage of coal and other minerals removed  
14 annually for purposes of commercial use or sale and other than  
15 a coal exploration activity subject to this chapter; and

16 (B) the areas on which an activity described in (A) of  
17 this paragraph occurs or where the activity disturbs the natural  
18 land surface, including adjacent land, the use of which is inci-  
19 dental to the activity; land affected by the construction of new  
20 roads or the improvement or use of existing roads to gain access to  
21 the site of the activity and for haulage; and excavation, workings,  
22 impoundments, dams, ventilation shafts, entry ways, refuse banks,  
23 dumps, stockpiles, overburden piles, spoil banks, culm banks, tail-  
24 ings, holes or depressions, repair areas, storage areas, processing  
25 areas, shipping areas, and other areas upon which are situated  
26 structures, facilities, or other property or materials on the sur-  
27 face resulting from or incidental to the activity;

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

1 amended;

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

5 Sec. 41.45.999. SHORT TITLE. This chapter may be cited as the  
6 Alaska Surface Coal Mining Control and Reclamation Act.

7 \* Sec. 2. AS 41.45.970 is amended by adding a new subsection to read:

8 (c) As 44.62.632 - 44.62.638 do not apply to actions governed by  
9 this chapter.

10 \* Sec. 3. INITIAL APPLICATIONS FOR SURFACE COAL MINING PERMITS. Not  
11 later than two months after the date of approval by the federal government of  
12 the state program for the regulation of surface coal mining under the terms  
13 of the Surface Mining Control and Reclamation Act of 1977, regardless of lit-  
14 igation contesting that approval or the implementation of the state program,  
15 an operator of a surface coal mine who plans to operate that mine more than  
16 eight months after the approval of the state program must apply for a permit  
17 under AS 41.45.060(a) for the operation of the surface coal mine. The De-  
18 partment of Natural Resources shall process an application received under  
19 this section and shall grant or deny the permit within eight months after the  
20 date of the approval of the state program.

21 \* Sec. 4. RESERVATION CLAUSE. Passage of this Act may not be considered  
22 an admission by the State of Alaska of the legality or constitutionality of  
23 the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91 Stat.  
24 447-532, 30 U.S.C. 1201-1328, as amended, and may not be construed to limit,  
25 waive, or otherwise affect the right of the State of Alaska, or its agencies,  
26 from contesting the constitutional or statutory validity of all or part of a  
27 regulation promulgated under the Surface Mining Control and Reclamation Act  
28 of 1977.

29 \* Sec. 5. The commissioner of natural resources shall adopt regulations

1 under the Administrative Procedure Act (AS 44.62) to implement this Act.  
2 These regulations may not take effect until the effective date of sec. 1 of  
3 this Act.

4 \* Sec. 6. Sections 1 and 3 of this Act take effect upon approval of the  
5 state program for the regulation of surface coal mining, enacted in sec. 1 of  
6 this Act, by the Secretary of the United States Department of the Interior  
7 under the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91  
8 Stat. 447-532, 30 U.S.C. 1201-1328, as amended.

9 \* Sec. 7. Section 2 of this Act takes effect on the effective date of a  
10 version of Senate Bill No. 84, "An Act relating to processing of permits by  
11 state agencies."

12 \* Sec. 8. Sections 4 and 5 of this Act take effect immediately in accor-  
13 dance with AS 01.10.070(c).

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