

H B

762



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

SEP 23 1981

Honorable Ted Stevens  
United States Senate  
Washington, D.C. 20510

Dear Senator Stevens:

Thank you for your September 17 letter asking that the Office of Surface Mining (OSM) not implement a Federal regulatory program for Alaska. We apologize for the delay of our response. You also asked the status of the National Academy of Science (NAS) study of Alaska mandated by Section 708 of the Surface Mining Control and Reclamation Act (SMCRA).

The Section 708 study was completed and transmitted to OSM in October 1980. As a result of OSM's close review of this study, we have concluded that sufficient flexibility exists in the Act to accommodate Alaska's unique environmental conditions. Therefore, we have no plans to ask Congress for changes to the Act. If it becomes apparent in the future that changes are needed, we will consider a request to Congress at that time. On September 22 we sent a letter to Lieutenant Governor Terry Miller, with copies to you, Senator Frank Murkowski, and Representative Don Young, in which we reported this conclusion and in which we stated our desire to work with Alaska to transfer primary regulatory responsibility to the State in accordance with the procedures and criteria specified in the Act.

Several environmental organizations have given us formal notice of their intent to file suit to compel the implementation of a Federal program for Alaska. These organizations point to the provisions of Section 504 of the Act in arguing that we are under a mandatory obligation to take such action at the present time. We are, of course, committed to aid Alaska in the development and implementation of a State regulatory program. This commitment has led us to negotiate with the environmental organizations that have threatened suit in an effort to secure for Alaska enough time to develop and submit to us a proposed State regulatory program. To date these negotiations have proceeded well, and we hope to avoid litigation on this subject.

We believe that Alaska is making substantial progress towards a final program submission and that it remains committed to achieving primacy at the earliest possible date. For our part, we are equally committed to assisting the State in developing and implementing a program that meets the requirements of the Act but recognizes Alaska's unique circumstances. Your letter was only the most recent of several communications the Department has received from Alaskans expressing strong and immediate interest in avoiding a Federal regulatory program for the State. To that end, we have directed OSM to continue to work closely with the Alaska Department of Natural Resources to develop an approvable State program. We have every confidence that Alaska will be successful in doing so.

We appreciate your interest in this matter. Please let us know if we can be of further service.

Sincerely,

Donald Paul noce

Acting . SECRETARY



UNIVERSITY OF ALASKA, FAIRBANKS  
Fairbanks, Alaska 99701  
January 22, 1981

The Honorable Jay S. Hammond  
Governor  
State of Alaska  
Pouch A  
Juneau, Alaska 99811

Dear Governor Hammond:

In early 1979, you appointed an Alaska Surface Mining Advisory Committee composed of individuals representing local government, the University of Alaska, Native interests, the coal industry and conservation interests to advise you with regard to certain questions raised as a result of the passage of the Federal Surface Mining Control and Reclamation Act of 1977. (PL9587). Under that Act, any state failing to develop a coal mining reclamation program would come under the direct jurisdiction of the Federal agency created to implement the Act, the Office of Surface Mining Reclamation and Enforcement (OSM). This letter is to report to you the committee's unanimous recommendation that your administration make every attempt possible to expeditiously adopt a state program which is acceptable to OSM.

The advisory committee in conjunction with involved state agencies has met periodically since 1979. During these meetings we addressed several basic policy questions and advised the state employees in their attempts to develop a state program which would best serve the interests of the State of Alaska. Based upon these meetings and the program developed by the state employees who assisted the committee, we have concluded that the adoption of a program similar to the one presented to us at our January 20, 1980 meeting should take some priority in your administration.

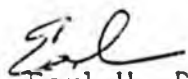
It is our conclusion that the adoption of a state program rather than implementation of a federally developed program will best give the state the flexibility to effectively control coal mining operations within any of the several potential coal mining regions in the State of Alaska. This is so because the federal act contains a "state window policy" which allows states to request variances from federal requirements so long as minimum provisions are met. Should the state fail to adopt a program, the federal program very well may not contain the kind of flexibility we deem is necessary for such a program to be effective when applied to a state with as many diverse geological, climatological and sociological factors as Alaska's.

There is some urgency to our recommendation. Effective action during this legislative session will virtually ensure that the Federal government will not adopt a program for Alaska. The extent that regulatory certainty is needed before the coal industry can further develop Alaska's coal potential clearly indicates the need to act now. More over all major coal producing states have adopted or will soon adopt state programs.

That a committee representing as many diverse interests as ours could reach a unanimous conclusion indicates the wide base of support we would expect on action taken by you to adopt a state program which is acceptable to OSM. We feel confident that expedient action on your part will be in the best interests of all Alaskans.

If you have any questions or desire additional information, the members of the committee and personnel of state agencies involved will be pleased to respond to your request.

Sincerely,



Earl H. Seistline, Chairman  
Advisory Committee

EHB:nlm

CC: Advisory Committee

Richard Douglass, LGL Ecological Research Associates  
Cole E. McFarland, Placer Amex Inc.  
Margaret Sagerser, Cook Inlet Region Inc.  
Joseph E. Usibelli, Usibelli Coal Mine, Inc.  
Philip Waring, Kenai Peninsula Borough

State Agency Personnel

Ronald O. Skoog, Commissioner  
Department of Fish and Game  
Ernst W. Mueller, Commissioner  
Department of Environmental Conservation  
Robert E. LeResche, Commissioner  
Department of Natural Resources

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE: (907)465-2400

March 3, 1982

Mr. James R. Harris  
Director  
Office of Surface Mining  
1951 Constitution Ave., N.W.  
Washington, D. C. 20240

Dear Mr. Harris:

As you are aware, the State of Alaska is in the process of developing its surface mining program for submission to the Secretary of the Interior later this year. As part of this process, House Bill 762 was recently introduced in the Legislature and referred to the appropriate committees for consideration.

During development of this bill, we have had discussions with officials of OSM and the Solicitor's Office. We believe that the bill, with possibly a few minor exceptions, reflects those discussions.

Now that the Legislature has begun consideration of HB 762, it is essential that we have OSM's definitive statement on whether or not the bill will be acceptable to the Secretary. If there are problems in the bill, we need to know whether any given problem would likely give rise to a condition of approval or disapproval, or whether the problem could be remedied by future State regulations. If you believe that changes in our bill would be required for Secretarial approval, we would appreciate receiving the rationale and suggested language, if any.

At present, our Legislature intends to adjourn in April. Therefore, we need to have your statement as soon as possible and hope to receive it no later than March 22. To facilitate

Mr. James R. Harris

-2-

March 3, 1982

your review, I have attached a table for comparison of our bill and SMCRA, which highlights all significant differences between the two. I am also taking the liberty of supplying a highlighted draft directly to Richard Robinson and David Jones, who have reviewed and commented on our prior draft.

Thank you for your attention to this request.

Sincerely,



John W. Katz  
Commissioner

Attachments

cc: Bill Horn, DOI  
Senator Bettye Fahrenkamp  
Rep. Ken Fanning  
Rep. Eric Sutcliffe  
Keith Specking

*Z Lopez*

Comparison of SMCRA and House Bill 762

<u>SMCRA</u>	<u>House Bill 762</u>	<u>Comment</u>
101 and 102	Section I	
201	41.15.020	The state regulatory authority is the Commissioner. See 41.45.440(4).
	41.45.030	General duties, applicable to several succeeding sections.
	41.45.040	Necessary flexibility for state's different environments.
517(g)	41.45.050	
506(a)	41.45.060(a)	
502(f)	41.45.060(b)	
506(b)	41.45.070(a)	
506(c)	41.45.070(b)	
506(d)	41.45.080	
507(a)	41.45.090	
507(e)	41.45.100(a)	
517(f)	41.45.100(b)	
507(b)(17) and 508(b)	41.45.100(c)	
507(b) and 508(a)	41.45.110	Authority for regulations to detail application and reclamation plan contents.
507(b)(11) and 507(c)	41.45.120	
513(a)	41.45.130	Authority for regulations governing public notice details.
513(b)	41.45.140	Authority for regulations governing details of public notice and informal conference procedures.
514(a) and (b)	41.45.140(c)	
514(c)	41.45.150(a)	

SMCRAHouse Bill 762Comment

Page 2

514(d)	41.45.150(b)	
514(e)	41.45.150(c)	Hearing records are only required if requested.
509(a)	41.45.160(a)	
509(b)	41.45.160(b) and (c)	
509(c)	41.45.160(d)	The state intends to detail its financial solvency test in regulations.
509(e)	41.45.160(f)	
519(a)	41.45.170(a)	Authority for regulations detailing notice requirements.
519(b)	41.45.170(b)	A longer bond release investigation period may be allowed if field conditions require.
519(c)	41.45.170(c) and (d)	Bond release is mandatory if standards are met.
519(d)	41.45.170(e)	
519(e)	41.45.170(f)	
519(f) and (h)	41.45.170(g)	Regulations will allow objector to choose the hearing site. The reference to the state APA provides for the powers enumerated in 519(h).
510(a)	41.45.180(a)	
	41.45.180(b)	Unique provision which provides a standard and timeframe for requests for additional information.
510(b)	41.45.180(c) and (d)	
510(c)	41.45.180(e) and (f)	The generic term "all cited violations" is substituted for "notices of violation" to avoid confusion based on other state agencies' use of the latter term.
510(d)		Eliminated because of absence of prime farmland in Alaska.

SMCRAHouse Bill 762Comment

Page 3

511	41.45.190	
512	41.45.200	
515 and 516	41.45.210	Performance standards for both surface mining and surface effects of underground mining deferred to regulation.
516	41.45.220	"Urbanized areas" eliminated as redundant.
517	41.45.230	"May" substituted for "shall" in (b) since all listed requirements may be unnecessary or inapplicable.
521(a)(2)	41.45.240(a)	
521(a)(3)	41.45.240(b)	Time for abatement of cessation orders may be extended for "good cause," which may be required based on unusual Alaska field conditions.
525(a)	41.45.240(c)	Appeal period lengthened to 60 days to eliminate dual appeals of violation and penalty.
525(b)	41.45.240(d)	
525(c)	41.45.240(e)	
521(a)(4)	41.45.240(f)	
525(d)	41.45.240(g)	
521(a)(5)	41.45.240(h)	
525(e)	41.45.240(i)	Costs under judicial review covered by other State law.
521(c)	41.45.240(j)	
	41.45.240(k)	
526(c)	41.45.240(l)	
526(d)	41.45.240(m)	
526(e)	41.45.240(n)	
518(a)	41.45.250(a)	

SMCRAHouse Bill 762Comment

Page 4

518(c)	41.45.250(b)	Prepayment of proposed penalty into escrow eliminated as unnecessary and of questionable constitutionality.
518(b)	41.45.250(c)	
518(d)	41.45.250(d)	
518(e)	41.45.250(e)	
518(f)	41.45.250(f)	
518(g)	41.45.250(g)	
518(h)	41.45.250(h)	
704	41.45.250(i)	
	41.45.260	
522(a)(4)	41.45.270(a)	
522(c)	41.45.270(b)	Note different, but consistent, petition investigation period.
522(a)(2) and (3) and 522(e)	41.45.270(c)	Economic feasibility eliminated as being more stringent and a market place determination.
522(d)	41.45.270(d)	
522(a)(5)	41.45.270(e)	
522(a)(6)	41.45.270(f)	
522(a)(1)	41.45.270(g)	
	41.45.270(h)	
403, 405, 407	41.45.280	
404	41.45.290	
407(a) and (b)	41.45.300	
407(c)	41.45.310	
407(d)	41.45.310(b)	
407(g)	41.45.310(c)	
408	41.45.320	

SMCRAHouse Bill 762Comment

Page 5

409

41.45.330

410

41.45.340

412(c) and (d)

41.45.350

523

41.45.360

528

41.45.370

711

41.45.380

717

41.45.390

719

41.45.400

520

41.45.410

Bond provision of §520(d) covered by  
state rules of procedure.

41.45.420

716

41.45.430

701

41.45.440

707

41.45.450

502(d)

Section 3

Section 4

Section 5

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE:

February 15, 1982

To: Representative Bob Bettisworth

From: Mark Wittow *MW*

Re: Summary of proposed Alaska Surface Coal Mining Program

---

David Rogers asked me to provide you with a quick outline of the status and contents of the proposed surface coal mining program for Alaska.

The Department of Natural Resources has prepared legislation which, if adopted, would allow the state to assume responsibility for the regulation of coal mining and reclamation activities in Alaska. The proposed law was introduced Friday, February 12 as a Governor's bill in the House (HB 762), and was referred to the Resources and Finance Committees. Mirror legislation will be introduced in the Senate during the week of February 15, where Senator Fahrenkamp has indicated a willingness to hear the bill at an early date. The transmittal letter and fiscal note for the legislation are attached.

A surface mining bill was first drafted by the department in 1980. Introduction was delayed in order to incorporate the results of a National Academy of Science study on present and potential surface mining in Alaska. During the past year, the bill has gone through several drafts, each of which has been widely distributed to members of the coal industry, regional corporations and environmental groups. As introduced, the bill satisfies virtually all of the concerns the Alaska coal industry raised during their review of the bill. Other interest groups have not yet come to a final position on the legislation, but are likely to support it with some reservations.

### Contents of the legislation

The Alaska Surface Mining Control and Reclamation Act is a complex, 53-page bill that establishes the powers and procedures necessary for the Department of Natural Resources to conduct a coal surface mining program. The state program generally follows the requirements of the federal Surface Mining Control and Reclamation Act of 1977. Unless the state's program satisfies the standards set out in the federal law, the Secretary of the Interior must establish federal control of all coal operations in the state.

Page 2 - Coal Bill Summary

Key components of the state program that are provided for in the proposed law include:

1. A permit, issued by DNR, is required to conduct surface coal mining operations in the state. The contents of the permit are to be set out in regulation, with special assistance provided for small operators.
2. A performance bond covering the costs of completing reclamation operations must be provided by the permit applicant. Some substitutes for the bond are acceptable. Before the bond is released, the applicant's reclamation work must be inspected and evaluated.
3. A process for designating lands "unsuitable" for all or certain types of coal mining is established.
4. Procedures for a program to rehabilitate abandoned mine lands are established; this program is financed by a federal fund.
5. In general, the bill provides for inspection and enforcement powers necessary to carry out the act; for public notice and comment; and for recognition of Alaska's unique conditions in determining substantive requirements.

I would be pleased to provide a sectional analysis of the legislation upon request.

Other elements of the program

If this bill is passed, the department will rapidly move to adopt regulations to satisfy the additional requirements for the state's assumption of responsibility for surface mining operations. A draft set of regulations was circulated for comment a year ago; another draft is being prepared and will be reviewed in sections this spring by the coal industry, regional corporations, environmental groups and other interested parties. The Department is also working on the steps necessary to continue to receive federal funding for development and implementation of a state program. The attached fiscal note provides a general indication of the scope of a state program, and the sources of funds for it.

Please let me know if you have further questions or would like additional information on any of the aspects of the bill discussed above.

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. \_\_\_\_\_  
Title Alaska Surface Coal Mining Control and Reclamation Act  
Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Natural Resources  
Program Category Affected Management of Mineral Resources  
BRU, Program, Or Subprogram(s) Affected Mineral Development  
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		157.1	157.1	200.2	200.2	200.2
200 TRAVEL		19.8	20.9	42.1	39.5	54.5
300 CONTRACTUAL		375.0	490.3	593.3	428.7	467.3
400 COMMODITIES		1.0	1.1	1.5	1.6	1.8
500 EQUIPMENT		13.0	10.0	2.8	3.0	2.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		565.9	679.4	642.3	684.4	728.2

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		151.0	200.0	300.7	202.5	213.0
FEDERAL FUNDS		402.0	477.6	249.6	479.8	513.2
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		4	4	5	5	5
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

See Attachment

IV. DATE 2/8/82 PREPARED BY Jeff Hays  
AGENCY Natural Resources  
Original: Legislative Finance PHONE 465-2400-  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)  
33-001 (Rev. 12/81)

### III. ANALYSIS

This note assumes that a regulatory program is approved by the Secretary of the Interior and becomes effective on 12-31-82.

#### A. Personal Services

The program will require 4 positions at its inception: Geologist IV, Env. Engineer III, Land Management Officer II and Clerk-Typist III. An additional Scientist/Engineer II position is projected for FY 85 and beyond due to additional coal operations projected in the state at that time.

The Geologist will be the manager of the surface mining regulatory program. He will supervise contracts for review of permit applications, abandoned mine lands work, small operator assistance, etc.; make initial departmental decisions or recommendations on permit applications, bond release, enforcement actions, petitions to designate lands unsuitable, etc. The Env. Engineer will be the primary inspector under the program, as well as assisting and complementing the Geologist in the tasks enumerated above. When additional operations come on line (projected in FY 85), an additional engineer/scientist will be required to meet the inspection workload. The duties of the Land Management Officer will focus on compliance with public notice and public participation requirements, record keeping, and general review and response regarding different new responsibilities of the Department under this program (i.e., reviewing exploration permits and/or notice of intent). The Clerk-Typist will provide secretarial support.

#### B. Travel

The travel budget is composed largely of field inspections and field visits to coal development sites. Other travel funds would be spent on required meetings with operators and members of the public and other agency officials, and public hearings. There would also be investigation of potential abandoned mine reclamation and small operator assistance sites.

#### C. Contractual

The contractual category includes the abandoned mine land program development and projects (all federally-funded), small operator assistance laboratory work (all federally-funded), review of permit applications, laboratory work for inspections, legal counsel, and review of any petitions for designation of lands unsuitable for surface coal mining. Much of this work is speculative as it is based on projections about future development of the program.

#### D. Funding Sources

The federal government funds 50% of the basic cost of the state regulatory program. All small operator assistance contracts and abandoned mine land work are 100% federally funded. Funds in this category represent the return to the state of a portion of the 35¢ per ton reclamation fee levied against operators by the federal government. Substantially more funds should be available in this category after production begins on new coal operations. In addition, 100% federal funding is available to defray the costs of regulating any surface coal mining operation on federal lands. One of the projected future operations would qualify under this funding category.