COMMITTEE REPORT

SENATE

3/9/82

FURTHER:

Date: 3/12/82

Mr. President:

The Committee on RESOURCES has had SB 343 surface coal mining

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SB 343 [ ] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the Committee

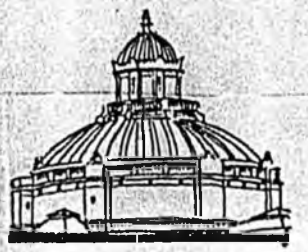
MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

Issue Brief



SURFACE MINING: FEDERAL REGULATION

ISSUE BRIEF NUMBER IB74074

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ISSUE DEFINITION

It is estimated that during 1975, 54.7% (350.2 out of 640 million tons) of coal produced in the U.S. was mined by the controversial surface-mining method, resulting in disturbance to more than 1000 acres of land each week. While there are numerous environmental and social costs associated with unregulated surface-mining, this method is a less expensive, safer, and quicker way of obtaining large tonnages of coal. The energy crisis has provoked a need for easy access to energy sources, and coal accounts for nearly 90% of domestic fossil fuel reserves. As a result, certain power-generating facilities with cleaner but domestically scarce gas and fuel oils have been asked recently to convert or revert to coal-fired operations. The overriding policy issue is how the Government can regulate surface mining in environmentally acceptable ways.

BACKGROUND AND POLICY ANALYSIS

Stated in simple terms, surface mining removes the overburden consisting of topsoil, rock, and other strata that lie above mineral or fuel deposits. After extraction of the coal or other desired material, the overburden may be replaced. In practice, however, the process is considerably more complex. In area strip mining -- usually practiced on flat terrain -- a trench is made through the overburden to expose a portion of the deposit, which is then removed. As each succeeding parallel cut is made, the overburden is deposited in the cut just previously excavated. In contour strip mining, most commonly practiced in rolling or mountainous countryside, the overburden is removed by making a series of shelves along hillsides. The vertical wall left in the hillsides resulting from this type of excavation can be as great as 100 feet. At times, operators have cast the overburden over the edge of the shelf creating landslide hazards. This is one reason why contour surface mining in mountainous areas has been severely criticized by environmentalists, many of whom advocate banning this method on slopes greater than 20 degrees.

Strip mining first started before World War I, but it did not become a significant technology for mining coal until after World War II. By the early 1960s, more than 30% of this country's coal was produced by surface mining. Although 50% of the country's coal is now obtained by surface mining, it has been estimated that only 5% of the estimated 3 trillion tons of coal resources in the United States is close enough to the surface to lend itself to stripping procedures.

Compared to underground methods, surface mining offers distinct advantages. It provides safer working conditions, usually results in a more complete recovery of the deposit (90% recovery in area stripping vs. 55% recovery in underground mines), and is generally cheaper in terms of cost-per-unit of production. The Bureau of Mines estimates 1975 f.o.b. mine values for coal as follows:

Eastern surface=$18/short ton
Eastern underground=$20/short ton
Midwestern surface=$11/short ton
Midwestern underground=$12-13/short ton

Environmental costs of stripping, however, are high. It has been estimated that surface mining destroys outdoor recreation resources worth $35 million a year. Water supplies are polluted through acid drainage, farm lands are adversely affected, and natural beauty is degraded. Environmentalists feel that much of this strip mining is unnecessary. A new underground mining technology called longwall mining, developed in Western Europe, permits 80-95% recovery of coal, a rate equal to that of area surface mining.

During the debate surface mining proponents conceded that stripping produces environmental damage in the short term; but, they argued that it can be limited and repaired through reclamation. Estimates for the cost of thorough reclamation range from just a few cents to several dollars per ton of coal, depending upon the degree of reclamation and the total tonnage of resource removed from a given area (reclamation costs per ton are extremely sensitive and inversely proportional to the thickness of the coal vein). Reclamation is more feasible and less costly for area mines in rolling or flat land than for contour mines in mountainous or hilly terrain. This could presage a shift in strip mine operations from the eastern Appalachian coal fields to the central and western fields. However, the Environmental Protection Agency has indicated that the feasibility of adequate reclamation in the semiarid western lands has not yet been demonstrated satisfactorily.

In the United States, meaningful reclamation is being done for most currently mined lands, following the pattern of success reported in Great Britain and West Germany. In a recent report to the Senate Committee on Interior and Insular Affairs, however, the Council on Environmental Quality calculated that of the four million acres of land that have been disturbed by surface mining to date, more than half of them lie unreclaimed. Since much of this land was disturbed prior to the promulgation of any State surface mining regulations, the companies involved are no longer liable for its reclamation.

At issue in the surface mine debate is who should regulate the mining and reclamation process. Until recently, surface mining was relatively unregulated, although reclamation laws were on the books in most States by the early 1960s. Environmental lobbies feel that State laws are largely unenforced, ambiguous, hampered by lack of funds and personnel, and, in general, too limited in coverage to provide a comprehensive remedy for the problem. Advocates of stripping, in contrast, feel that Federal rules would undermine State and local authorities that propose rational growth and land development.

Another issue arises from the fact that 40% of the coal deposits are on lands where the Government owns the mineral rights. (Moreover, these lands contain 85% of the supply of environmentally desirable, low-sulfur coal.) Coal and utility companies began buying up leases on coal rights in the Northern Great Plains in the mid-1960s. Thus, re-examination of Federal leasing policies for coal is crucial.

There has been strong public and congressional support for Federal legislation to control strip mining. Congress experienced extended delays in trying to pass a strip mining bill. Control bills were introduced as early as 1940, and have been introduced in every Congress since 1960. In 1972, the House passed a bill, but the Senate did not act. In December 1974, a surface mining bill, S. 425, was finally agreed upon by both houses, but was pocket vetoed by President Ford at the end of the 93d Congress. The President contended that the legislation would hinder coal production and be

inflationary. Since the fuel shortages have prompted a reappraisal of surface mining legislation, the Ford Administration was concerned that any restrictions on surface mining will impede increased coal production. The issue, then, is one of balancing energy needs and environmental costs.

Action on the surface mining issue in the 94th Congress included the introduction of several new bills, some of which were virtually identical to the joint conference bill, S. 425, of the 93d Congress. Bills S. 7 and H.R. 25 were the reintroduction of S. 425 (93d Congress). S. 652 and its companion bill H.R. 3119 were the Administration's proposals. In a statement issued by the Administration, 27 changes in the joint conference bill (S. 425; 93d Congress) were suggested; 8 of them were classified as critical. Among these 8 changes were decreases in the per-ton tax on mined coal to establish an abandoned lands reclamation fund, changes in the stream siltation standards, and definition of certain ambiguous terms in the joint conference bill and its successors, S. 7 and H.R. 25.

Secretary of the Interior Rogers C.B. Morton offered a statement on S. 7 and H.R. 25 to the House Interior Committee on Feb. 18, 1975 in which he estimated coal production losses to be from 48 to 141 million tons during the first full year of implementation of either strip mining bill. The same statement was presented to the Senate Interior Committee on Feb. 20, 1975 for Mr. Morton by Assistant Secretary Jack Carlson.

Markup sessions for S. 7 and H.R. 25 were held during the week of Feb. 24, 1975. A joint conference met to consider the bills on Apr. 16, 18, 23, and finished their work Apr. 29. The joint conference bill then went before the House and Senate for final approval.

Major provisions in the surface mining regulation proposal included the following: (1) allowance of surface mining in alluvial valley floors, where such activities will not jeopardize irrigated agricultural activities; (2) prohibition of surface mining in National Forests; (3) imposition of a tax in the amount of 35 cents/ton on surface-mined coal and 10 cents/ton on deep-mined coal, for the establishment of an abandoned mine reclamation fund; (4) exemption of anthracite coal mines from the provisions of the bill; and (5) elimination of special unemployment compensation for persons dislocated from their jobs by the administration and enforcement of the bill's provisions.

On May 20, 1975, President Ford vetoed H.R. 25, the Surface Mining Control and Reclamation Act of 1975, citing unacceptable levels of lost coal production and unemployment as two of the primary reasons for returning the measure to Congress. Sponsors of the bill asked Administration officials to appear on June 3, 1975, before a Joint Committee consisting of members of the House Subcommittee on Mines and Mining and the House Subcommittee on Natural Resources. The Administration was asked to verify these projected unemployment and production loss figures. Members of the Senate Subcommittee on Natural Resources were invited to participate in the proceedings.

On June 11, 1975, H.R. 25 received override consideration in the House. The major issue in the consideration was the accuracy of the Administration's assessment of the potential impact of the legislation on coal production and industry employment, which had been offered in testimony before the House Interior Committee, June 3, 1975, by Secretary of Interior Morton and FEA Administrator Zarb. Although Administration officials were unable to substantiate their impact estimates to the satisfaction of many members, the Committee was unable to produce figures to refute those of the

Administration. The floor debate concluded with neither the proponents nor opponents of the bill being able to prove their own impact estimates or disprove those of the opposition. The final vote narrowly failed to post a two-third's majority to override the President's veto. The vote was 278 to 143, with 1 voting "present," and 12 not voting.

On Feb. 24, 1976, the House Interior Committee voted 28 to 11 to report H.R. 9725, the Surface Mining Control and Reclamation Act, to the full House. The bill was virtually identical to H.R. 25, its predecessor of the 94th Congress, 1st session, which was vetoed by President Ford. Technical changes by the Committee were made to correct typographical errors in the bill and the language of Section 510 (b) (5), which restricted mining in alluvial valley floors west of the one hundredth meridian west longitude, was altered to exclude mines producing coal in commercial quantities one year prior to the date of enactment from the provisions of the Section. Further consideration of H.R. 9725 was tabled by the House Rules Committee on Mar. 23, preventing the bill from being considered by the full House. The action was seen as a major victory for the Ford Administration and the coal industry, which have fought congressional efforts to institute Federal standards to govern the reclamation of lands disturbed by the surface mining of coal.

Senate legislation - 96th Congress

S. 1403 (Mr. Jackson, by request)

As introduced: Legislation to amend the following section of the Surface Mining Control and Reclamation Act, P.L. 95-87.

Section 502(d) extends the maximum period during which the State or Federal regulatory authority shall process and grant or deny a surface mining permit from forty-two to forty-nine months;

503(a) extends the period for submission of State programs to the Federal agency from 18 to 31 months;

504(a) extends the period for the promulgation and implementation of a Federal program for a State from 34 to 41 months following the date of enactment of the Act.

Strikes the following sentence from the Act: "If State compliance with clause (1) of this subsection requires an act of the State legislature, the Secretary may extend the period of submission of a State program up to an additional six months."

In action on the bill, the Senate Energy and Natural Resources Committee made the following changes including the controversial "Rockefeller" amendment:

The 42-month period contained in section 502(d) of the Act was extended from the originally proposed 49 months to 54 months;

The 34-month period contained in section 504(a) of the Act was extended from the originally proposed 41 months to 46 months.

"Rockefeller" amendments:

Strike the following language from sections 503(a)(7) and 701(25): 503(a)(7) strike the phrase "regulations issued by the Secretary pursuant to"; 701(25) strike the phrase "and regulations issued by the Secretary pursuant to this act."

The "Rockefeller" amendments would allow the State to assume enforcement of surface mining reclamation by promulgating regulations that are consistent with the provisions of the Act without those regulations being consistent with the regulations promulgated by the Secretary of the Interior.

In the Committee, additional language was added to S. 1403 which allowed for the implementation of a Federal lands program coincident with the implementation of a State program pursuant to section 503 or a Federal program pursuant to section 504 of the Surface Mining Act.

Minor changes were also made in the Title of the Act to accommodate the proposed changes of the "Rockefeller" amendments to sections 503(a)(7) and 701(25).

All of the amendments made in Committee remained unchanged in Senate floor action on the bill with the following exception:

Section 502 of the Surface Mining Control and Reclamation Act of 1977 was amended by adding the following language:

"(g) Notwithstanding any other provision of this section, each State shall, to the greatest extent possible, have principal responsibility for the inspection of mines during the period of time prior to the submittal of State plans for approval. Such responsibility shall remain with each State until such time as the Secretary shall furnish personnel assistance to the States in carrying out this responsibility upon request of the State regulatory agency."

As amended, S. 1403 passed the Senate Sept. 11, 1979, and was referred to the House Committee on Interior and Insular Affairs.

House legislation - 96th Congress

H.R. 4728: A bill to amend the Surface Mining Control and Reclamation Act of 1977.

H.R. 4728 is identical to S. 1403 (as introduced) and provides for extensions of the deadlines for the submission of State programs and approval of those programs, but does not provide for any changes in the Act that would release the States from promulgating regulations consistent with those promulgated by the Secretary of the Interior.

Latest Action

As of Oct. 10, 1979, the House Interior Committee had scheduled no action on either of the bills.

By request, the General Accounting Office examined several internal memos of the Office of Surface Mining written during the period that S. 1403 was being considered by the Senate. Many of these memos were printed in the Congressional Record of Mar. 27, 1980, pages S3104 to S3115. The information

in the memos suggests numerous improprieties by the Office of Surface Mining including direct lobbying of Congress in order to defeat S. 1403, using appropriated funds to muster support among several environmental organizations against passage of the bill, and trying to influence congressional support against the legislation by selectively allocating OSM State contract funds.

The Department of Justice, at the request of Congress, has supplied the Federal Bureau of Investigation with copies of the memos so that the Bureau might look into the possibility of criminal misconduct.

Regulation

Virtually all of the provisions of S. 1403, passed by the Senate during the first session of the 96th Congress and referred to the House Interior and Insular Affairs Committee, are now attached as amendments to the Maritime Tonnage Measurement Act (H.R. 1197). The amendments would eliminate the requirement that the individual States, in order to assume primacy of surface mining regulation within their boundaries, enact legislation that is consistent with the regulations promulgated by the Secretary of the Interior, through the Office of Surface Mining. Instead, the States would only be required to provide regulation of the industry which is consistent with all of the provisions of the Federal Surface Mining Control and Reclamation Act of 1977, P.L. 95-87. In addition to this change in the Federal law, three other amendments to the surface mining law were included in H.R. 1197. The first was intended to further protect alluvial-valley floor areas in the Western United States, the second to protect prime farmland in the Midwestern and Eastern part of the U.S., and the third would allow surveyors to be eligible to prepare the mining and reclamation plans, in addition to registered professional engineers and geologists, which is currently the case under the existing law.

LEGISLATION

P.L. 95-87 (H.R. 2)

Regulates surface coal mining operations through a permit program administered by the Secretary of the Interior. Reguires applicants to meet minimum environmental protection performance standards. Allows States to establish surface mining control programs at least as stringent as minimum Federal standards. Includes provisions to fund mineral resources research programs and to provide for reclamation of abandoned mine sites.

H.R. 2 was reported, with amendment, by the Committee on Interior and Insular Affairs on Apr. 22, 1977. Passed the House, amended, on Apr. 29, 1977, by a vote of 241-64. Passed the Senate, amended, in lieu of S. 7, on May 20, 1977, by a vote of 57-8. Signed into law (P.L. 95-87) on Aug. 3, 1977.

As it was introduced, H.R. 2 was very similar to H.R. 13950, the last bill to receive any action in the 94th Congress. Amendments were made by the House Interior Committee to five of the seven titles in the bill. The most substantive changes were made to Title 5, including the following:

1. Section 503(a). Non-Federal land.
   This subsection was amended to make it clear that a

State normally has jurisdiction over surface mining on non-Federal lands under the Act unless the State enters into an agreement with the Secretary to exercise jurisdiction over Federal coal pursuant to sections 521 and 523.

This section remained essentially the same in the final version of the bill. (This language is also consistent with tentative arrangements which have been made between the States of Wyoming and Colorado and the Department of the Interior.)

2. Section 510(b)(3). Hydrologic impacts.

Under H.R. 2, prior to approval of a permit application, the regulatory authority is to make an assessment of the cumulative hydrologic impact of all mining in the area of concern. The committee amendment clarifies the test to be applied to this review. The words "sigrificant irreparable offsite" damage have been deleted in favor of language that specifies that the mine is to be designed to prevent damage to the hydrologic balance outside the permit area.

The language in the final version of the bill is essentially the same.

3. Section 510(b)(5). Alluvial valley floor modification.

H.R. 2 and the committee amendment contain a prohibition on mining of alluvial valley floors--areas of agricultural significance in the Western United States--in certain circumstances. In addition to adding clarifying language in subsection (A). the committee amendment incorporates the test that operations off alluvial valley floors but affect water systems that supply such valley floors should "not materially damage" the supply systems. The pharse "not adversely affect" was deleted in order to avoid a possible interpretation that any operation off an alluvial valley floor may have some adverse effect on the water system that supplies an alluvial valley floor.

The language in the final version of the bill is essentially the same.

4. Section 510(b)(6). Surface owner consent over privately owned coal.

The committee amendment includes a new condition for permit approval designed to assure that coal rights which have been served from the surface estates will not be surface mined unless the parties to the severance, or the surface owner or his assignee, contemplated that the coal would be extracted by surface mining methods.

The language in the final version of the bill is essentially the same. (This provision of the bill is designed to abrogate the rights of companies with coal rights under the broadform deeds now in existence in some of the Applachian states.)

5. A new subsection 515(b)(7) was adopted which specifies certain standards concerning soil preservation and reconstruction by horizons. These standards apply only to the highly productive prime agricultural lands which have been and are being used for agricultural production. The standards

are designed to assure full reclamation of the natural productivity of these lands.

The language in the final version of the bill is essentially the same.

6. The committee amendment to subsection 515(c) removed the variance procedure for mountaintop mining operations, reduced the economic, land development and other tests required as justification for such an operation and broadened the applicable post-mining land use to include all types of agriculture. The subsection specifies that a permit is required, and this is the same permit required under sections 507 and 508 and the same hearing and other procedures apply.
7. The committee amendment deletes the discretionary capability of mine operators on steep slopes to place the spoil from the first short or initial block cut on the downslope immediately below the bench.

The language in the final version of the bill is essentially the same. The final language further requires that the placement of excess spoil be designed by a registered engineer in conformance with professional standards.

8. Section 520(d). Attorney's fees related to citizen suits. The committee amendment authorizes the award of attorney's and expert witness fees to any party to the litigation.

The language in the final version of the bill is essentially the same. The provision also requires that in cases where a temporary restraining order to preliminary injunction is sought, the court may require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure. This requirement could act to discourage the filing of frivolous suits.

9. Section 522(a)(6). The designation of "grandfather". Both H.R. 2 and the committee amendment require implementation of a system for designated areas unsuitable for surface coal mining. H.R. 2 "grandfather" existing operations and those for which there were substantial legal and financial commitments prior to September 1, 1974. The applicability of the grandfather to operations where there has been a substantial legal and financial commitment is updated to January 4, 1977, in the committee amendment.

The language in the final version of the bill is essentially the same. As finally passed, H.R. 2 exempts operations for which a substantial legal or financial committment were made prior to January 4, 1977.

10. Section 522(e). Mining in national forests The committee amendment includes an exception to H.R. 2's prohibition of coal strip mining in national forests. Under the committee amendment, surface coal mining operations may be permitted on national forests lands without significant forest cover west of the 100th meridian if the Secretary determines there are not other specified values incompatible with surface mining and the Secretary of Agriculture determines that surface mining is in compliance with certain specified laws. Surface operations and impacts

incident to an underground coal mine are permitted. Surface mining is prohibited within the boundaries of the Custer National Forest.

The language in the final version of the bill is essentially the same.

11. Section 701(2). "Approximate original contour". The definition of "approximate original contour" is modified in the committee amendment to establish clearly that the concept includes the terrace shaping of the spoil and leaving access roads.

The language in the final version of the bill is essentially the same.

The following is a list of the more significant floor amendments to the Surface Mining Control and Reclamation Act, H.R. 2.

1. ADOPTED: The Secretary of the Interior is required to return 50% of the Federal reclamation fee on mined coal to the State where the coal was mined; whereas the bill originally gave him discretionary authority to do so.
2. ADOPTED: Reclamation funds can be used to prevent acid water damage and Indian reservations are eligible to use reclamation funds in the same manner as States.
3. ADOPTED: The authority of the Secretary of the Interior to designate lands as unsuitable for non-coal mining is limited to lands within the National Forests rather than all public lands.
4. ADOPTED: Informal conferences are permitted, instead of mandatory public hearings, on objections to mining permits.
5. REJECTED: A 5-year moratorium on strip mining on prime agricultural lands was to be imposed and a study conducted of farmland reclamation techniques.
6. ADOPTED: Mining is permitted in alluvial valley only for mines actually in commercial production in the year preceding enactment of the bill.
7. ADOPTED: Public hearings are required within 30 days after an operator receives a cessation notice.

S. 7 (Metcalf et al.)

Regulates surface coal mining operations through a permit program administered by the Secretary of the Interior. Requires applicants to meet minimum environmental protection performance standards. Allows States to establish surface mining control programs at least as stringent as minimum Federal standards.

Establishes an Abandoned Mine Reclamation Fund to reclaim lands formerly used in mining operations. Introduced Jan. 10, 1977; referred to the Committee on Interior and Insular Affairs. On May 20, 1977, the measure was indefinitely postponed in the Senate and H.R. 2 was passed in lieu.

The following is a summary analysis of the Senate version of the Surface Mining Control and Reclamation Act of 1977 (S. 7). Changes made by the Senate Committee on Energy and Natural Resources to the bill, as it was introduced in the Senate, included the following:

1. As introduced, S. 7 contained a very controversial provision labeled

the "Mansfield amendment," which imposed the following requirement on the regulatory authority. In instances where the ownership of the surface of Western lands was privately owned and the coal subjacent to the land was federally owned, the bill would have prohibited the leasing of the federally owned coal, even in instances where the surface owner would have granted his permission. This provision was changed in committee markup to allow the operator to mine Federal coal under private surface if the written permission of the surface owner is first obtained. The amendment also required the Secretary of the Interior to avoid, wherever possible, leasing lands for coal development if the owners of the surface expressed a preference against the leasing of any such lands for surface coal mining. The language in the final version of the bill is essentially the same as that in the reported version. Section 714 of the bill requires the written permission of the surface owner or the deposit of the appraised value of the surface owner's interest in the United States district court by the lessee and the final execution of the settlement of the rights of the two parties.

2. Section 402 of the bill, as introduced, contained the provisions for the initial regulatory procedures. This section outlined the timetables for compliance with the provisions of the legislation. As introduced, the bill contained no exemptions for mine operators regardless of the size of their operations. In an amendment to the bill, the Senate Committee on Energy and Natural Resources included a variance for small and intermediate sized operators which, in effect, stated that these operators, if they were not producing in excess of 200,000 tons of coal annually, would not have to comply with the provisions of the bill until 30 months from the date of enactment. This amendment was altered in floor action in the following manner: Instead of allowing the mine operators 30 months to comply with the requirements of the legislation, it only allows them 24 months and the exemption itself would be extended only to operators producing 100,000 tons or less of coal annually.

3. As introduced, S. 7 contained stringent provisions regarding the restoration of the approximate original contour of the land. In instances in which a company was engaged in mountaintop removal, this section of the bill did allow the mine operator to vary from the standard requirements of the legislation to the extent that the mined area could be graded to a gently rolling topography with inward drainage except at specified points, and the land could be used for either agricultural purposes or for industrial, commercial, residential, or public facility uses. Any such action, however, did require the issuance of a variance by the regulatory authority. In the reported bill, the mine operator is not required to obtain a variance in order to reclaim the mined area with this post-mining land use in mind. Unlike the original bill, the reported version does not require that in order to qualify for such a variance, the permit area must have been included in a land use plan prior to the actual mining. The language merely states that the reclaimed area must be "capable" of supporting post-mining agricultural, industrial, commercial, residential, or public facility uses...."

4. The original language of S. 7 established a reclamation fund for abandoned lands which would have been generated by levying a tax on coal produced on Federal lands. The amount of the tax was originally 3 cents/ton of Federal coal produced by surface mining methods and 15 cents/ton of Federal coal produced by underground methods. This requirement was changed by the Committee in the following manner: the funds for the establishment of the abandoned mines reclamation fund are to be established by a tax of 35 cents/ton for all coal produced by underground mining methods, or 10% of the value of the coal at the mine as determined by the Secretary, whichever is

less. No reclamation fee is assessed on lignite production. The language in the final version of the bill is the same as that in the report.

5. In an amendment to Section 416 (Surface Effects of Underground Mining), the Committee added a provision which called upon the Secretary of the Interior, when promulgating the rules and regulations directed toward the surface effects of underground mining, to consider the distinct differences between surface coal mining and underground coal mining. Language was also added which stated that any rules and regulations issued pursuant to the Act should not be in conflict with or supersede any provision of the Federal Coal Mine Health and Safety Act of 1969 and the Secretary would be further required to obtain the written concurrence of the head of the department which administers the Mine Safety Act prior to issuing any regulations. The committee amendment was retained in the final version of the legislation.

6. As introduced, S. 7 contained language that mining operations west of the 100th meridian would not be permitted if any such mining would have "substantial adverse effect on alluvial valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in the form of irrigated, flood irrigated, or naturally subirrigated hay meadows or other crop lands (excluding undeveloped range lands), where such valley floors are significant to the practice of farming or ranching operations, including potential farming or ranching operations if such operations are significant and economically feasible." Although this language was retained in the committee report, further language was added that provides an exemption to this provision for mining operations which had produced coal in commercial quantities in the year preceding the enactment of the Act or those mining operations for which a substantial legal or financial committment had been made prior to Jan. 1, 1977. This language was essentially unchanged by subsequent floor action by the full Senate.

7. The [illegible] of the timetables for compliance which were established in the original version of the bill were lengthened by the Committee during markup. As reported, the bill requires, under Section 402, that all State-regulated surface coal mining operations comply with the provisions of the environmental protection performance standards within 6 months after the date of enactment of the Act. As introduced, the bill required compliance upon the date of its enactment. Under Section 403, each State wishing to assume the exclusive jurisdiction over the regulation of surface mining operations is given 18 months to demonstrate, through the submission of a State program, that it has the capability of carrying out the provisions of this Act. Under Section 404, the Secretary shall have approved or disapproved a State program within 6 months following the date that the program was submitted to him. If the Secretary disapproves a State program, in whole or in part, the State shall have 60 days to resubmit a revised program to the Secretary. The Secretary shall implement a Federal program for a State no later than 30 months after the date of enactment if the State fails to submit its own program within 18 months after the date of enactment or fails to resubmit an acceptable program within 60 days following the disapproval of its initial program. The Secretary may extend the period for the submission of a State program up to six months. (Sections 403 and 404 remained essentially the same as the introduced version.)

8. As S. 7 was introduced, the approval of the State programs, promulgation of Federal programs, or the implementation of the Federal lands programs pursuant to the provisions of the Act would have constituted a major action within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. This provision of the Surface Mining Control and

Reclamation Act was changed by the Committee in markup, therefore any such action pursuant to the legislation does not constitute a major action under the aforementioned section of the National Environmental Policy Act of 1969. The language contained in the committee report was retained in the final version of the bill.

9. In the original Senate bill, the following amounts would have been granted to the States for the purpose of assisting such States in developing, administering, and enforcing State programs under the Act: The first year -- 80% of the total costs incurred; the second year -- 60% of the total costs incurred; the third and fourth years -- 40% of the total costs incurred. (No assistance after the fourth year.) This provision was changed by the Committee during markup in the following manner: The percentages of the costs assumed by the Federal Government during the first and second years remains the same. In the third year and each year thereafter, the Federal Government assumes 50% of the cost of the aforementioned actions by the States. The language contained in the Committee report on S. 7 was retained in the final version of the bill.

On Thursday, June 30, the Senate and House conferees completed action on H.R. 2. Among their actions, the conferees:

Adopted House language on Title VI — Designation of Lands Unsuitable for Noncoal Mining — after deleting language relative to national forests.

Adopted House language limiting research institutes to coal research.

Adopted a reclamation fee on lignite of 2% of the value of the coal at the mine or 10 cents per ton, whichever is less.

Agreed that inspections during the interim program be performed without advance notice but that the Secretary has discretionary authority to have them made.

Adopted House language to assure that grandfather permit renewals for operations in existence on alluvial valley floors are for the life of the operations.

Agreed to delete language requiring that notice of inspection be given to State and county governments.

Agreed to require inspections at least once every 6 months during the interim program.

Agreed to language requiring States to comply with "rules and regulations issued by the Secretary pursuant to this Act."

Adopted language that requires the regulatory authority to issue a permit for mining on prime farmland after making a finding in writing that the applicant has the technological capability to restore the mined area within a reasonable time to "equivalent or higher levels of yield as non-mined prime farmland soils in the reconstruction standards" in the Act.

Adopted House language on surface owner protection in federal-coal/private-surface situations.

Adopted House language relative to a study of Indian lands, with a proviso that the jurisdictional status of such lands will not change during the

study.

Adopted language relative to private-coal/private-surface situation that if the land conveyance "does not expressly grant the right to extract coal by surface mining methods, the surface/subsurface legal relationships shall be determined in accordance with state law." Also agreed to language stating that the regulatory authority is not expected to adjudicate property rights disputes.

Adopted essentially the Senate definition of prime farmlands.

Adopted House language on special bituminous coal mines.

Adopted essentially the Senate language on alluvial valley floors, including the Wallop amendment on land exchanges. Also adopted a proviso on land exchanges where fee coal is involved.

Adopted the Senate grandfather clause for prime farmlands. Also adopted language making prime farmland provision effective upon enactment.

Adopted language requiring highwalls to be covered, but permitting spoil to be placed on the bench under the same conditions as are provided in the mountaintop provision.

Adopted language in Section 711 — Experimental Practices — to allow private, commercial, industrial, and residential post-mining land uses to be experimented with in highwall areas.

Adopted House language to permit mining within 500 feet of active or abandoned underground mines if approved by the regulatory authority and MESA.

Adopted Senate language permitting the regulatory authority to permit retention of natural barriers as part of the reclamation performance standards.

Adopted Jan. 1, 1977, as effective date of legislation.

Agreed to language requiring daily door-to-door notice of blasting.

Agreed to strike language that would have permitted the Secretary to deduct a penalty from an operator's performance bond.

Adopted Senate language in subsection 521(a)(4) relative to shutdown orders.

Adopted language making the Secretary's actions relative to approval of a State program of promulgation of rules and regulations subject to judicial review in the District Courts.

Adopted language to allow the Secretary to award attorney's fees in cases he decides.

Agreed to delete language making the provision on designation of areas unsuitable for surface coal mining applicable to national forests in Alaska.

Adopted Senate language regarding Secretary's authority to enforce State programs.

Agreed to language to assure that workers' compensation laws are not affected by the Act.

Adopted Senate language to allow a sliding scale for cost-sharing with the states.

Agreed that lands controlled by the Tennessee Valley Authority would be considered federal lands for the purposes of the bill.

H.R. 4018 (Evans of Delaware)

Sections 138 and 139 amend Title VIII of the Surface Mining Act and increase the number of coal research laboratories from 10 to 13, with attendant increases in authorized funds. Introduced Feb. 24, 1977. Reported from the Committee on Ways and Means (H.Rept. 95-429) on June 16, 1977. Measure passed House, amended, on July 18, 1977. Measure passed Senate, amended, on Oct. 6, 1977. House agreed to Senate amendment, with amendment, on October 13, and conferences were scheduled in both Houses.

S. 2672 (Ford et al.)

Increases assistance to small mine operators from $150 million to $245 million over the next 15 years. Introduced Mar. 6, 1978; referred to the Committee on Energy and Natural Resources.

HEARINGS

U.S. Congress. House. Committee on Interior and Insular Affairs. Subcommittee on Mines and Mining. Regulation of strip mining. Hearings, 92d Congress, 1st session, on H.R. 60 and related bills. Washington, U.S. Govt. Print. Off., 1972. 890 p. Hearings held Sept. 20...Nov. 30, 1971.

U.S. Congress. Senate. Committee on Interior and Insular Affairs. Regulation of surface mining operations. Hearings, 93d Congress, 1st session, on S. 425 [and] S. 923. Mar. 13-16, 1973. Parts 1 and 2. Washington, U.S. Govt. Print. Off., 1973. 1410 p.

U.S. Congress. Senate. Committee on Interior and Insular Affairs. Subcommittee on Minerals, Materials and Fuels. Coal surface mining and reclamation. Hearing, 93d Congress, 1st session. Apr. 30, 1973. Washington, U.S. Govt. Print. Off., 1973. 85 p.

——— Surface mining. Hearings, 92d Congress, 1st session, on S. 77, S. 630, S. 993, S. 1160, S. 1240, S. 1498, S. 2455, and S. 2777; pending surface mining legislation. Parts 1 and 2. Washington, U.S. Govt. Print. Off., 1972. 882 p.

----- Surface mining. Hearings, pursuant to S. Res. 45; a national fuels and energy policy study, 92d Congress, 1st session on S. 2777 and S. 3000. Feb. 24, 1972. Part 3. Washington, U.S. Govt. Print. Off., 1972. p. 883-1173. "Serial no. 92-13"

REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. Senate. Committee on Interior and Insular Affairs. Coal surface mining and reclamation. Washington, U.S. Govt. Print. Off., March 1973. 143 p.
At head of title: 93d Congress, 1st session. Committee print.
"Serial no. 93-8(92-43)"

----- Factors affecting the use of coal in present and future energy markets. Washington, U.S. Govt. Print. Off., 1973. 43 p.
At head of title: 93d Congress, 1st session. Committee print.
"Serial no. 93-9(92-44)"

——— The issues related to surface mining. Washington, U.S. Govt. Print. Off., December 1971. 255 p.
At head of title: 92d Congress, 1st session. Committee print.
"Serial no. 92-10"

----- Legislative proposals concerning surface mining of coal. Washington, U.S. Govt. Print. Off., Sept. 1, 1971. 25 p.
At head of title: 92d Congress, 1st session. Committee print.

——— Surface Mining Reclamation of 1972; report to accompany S. 425. Washington, U.S. Govt. Print. Off., 1973. 94 p. (93d Congress, 1st session. Senate. Report no. 93-402)

U.S. Council on Environmental Quality. Coal surface mining and reclamation: an environmental and economic assessment of alternatives. Prepared at the request of Henry M. Jackson, chairman, Committee on Interior and Insular Affairs, United States Senate, pursuant to S. Res. 45; a national fuels and energy policy study. Washington, U.S. Govt. Print. Off., 1973. 143 p.
At head of title: 93d Congress, 1st session. Committee print.
"Serial no. 93-8 (92-43)"

OTHER CONGRESSIONAL ACTION

N/A

CHRONOLOGY OF EVENTS

03/06/78 — S. 2672 was introduced, which would increase assistance to small mine operators from $150 million to $245 million over the next 15 years.

03/00/78 — Deadlines for compliance with the provisions of the Act will become effective in May 1978. The

Office of Surface Mining has been unable to establish its inspection and regulatory programs due to lack of funding caused by a delay in enacting a supplemental appropriations bill which also contained the funding for the B-1 bomber.

12/13/77 — The Office of Surface Mining Reclamation and Enforcement (OSM) issued its final interim regulations pursuant to the Surface Mining Law, P.L. 95-87. Since then, the National Coal Association, along with coal mine operators have filed approximately 11 suits against the OSM alleging that the regulations go beyond the intent of the Law and have generated undue hardships, especially for small mine operators.

08/03/77 — H.R. 2 signed into law (P.L. 95-87).

07/21/77 -- House conference report on H.R. 2 (H.Rept. 95-493) was approved by a vote of 325-68.

07/20/77 -- Senate conference report on H.R. 2 (S.Rept. 95-337) was approved by a vote of 85-8.

06/30/77 -- Senate and House conferees completed action on H.R. 2 (see legislation section for details of changes made in the bill).

05/20/77 -- The Senate passed S. 7 (57-8). The Senate also passed H.R. 2, after striking all provisions after the enacting clause and inserting the language of S. 7.

05/10/77 -- S. 7 reported to the Senate from the Committee on Energy and Natural resources (S.Rept. 95-128).

05/05/77 — H.R. 2 discharged in the Senate by the Committee on Energy and Natural Resources. The measure was held at the desk.

05/02/77 -- Surface mining bill S. 7 reported by Committee on Energy and Natural Resources.

04/29/77 — Surface mining bill H.R. 2 was approved by the House (241-64).

04/26/77 -- H.R. 2 was reported by the House Rules Committee with an open rule allowing one hour of general debate.

04/20/77 -- Markup of S. 7 by the Committee on Energy and Natural Resources, with further markup tenatively scheduled for Monday, May 2, 1977.

04/19/77 -- H.R. 2 was reported from full House Interior Committee, including the following changes:

1. The definition of "approximate original contour" is modified in the Committee amendment to establish clearly that the concept includes the terrace shaping of the spoil and leaving access roads.

2. Variances have been included in the bill to allow mining in National forests under certain conditions.
3. A new subsection was added to the environmental protection performance standards, which requires the reconstruction of or suitable substitutes for the various horizons of soil in prime and unique agricultural lands.
4. The regulatory authority will be allowed to use its discretion when determining whether citizen complaints are worthy of holding a public hearing.
5. Regarding alluvial valley floors, the Committee added language that would prohibit mining in alluvial valley floor areas of agricultural significance. Furthermore, the Committee included language authorizing the regulatory authority to restrict mining outside alluvial valley floors but that could adversely affect the water supply to any such valley floor. The Committee amendment also contains an expanded "grandfather clause" exempting certain operations in alluvial valley floors if the operations were already in effect and producing coal during the year preceding the enactment of the Act or if large financial commitments had already been made for the establishment of such a mining operation.
6. Modifications have been made to Section 711 to allow the Secretary of the Interior to permit experimental practices in land reclamation providing that the Secretary examines and approves each proposed plan individually.

03/24/77 — House Interior Committee printed a revised version of H.R. 2 — a committee print.

03/01/77 - 03/03/77 — Hearings held on S.7.

02/22/77 - 02/25/77 — Hearings held on H.R. 2.

02/08/77 — The House held its first day of hearings on its bill, H.R. 2. Secretary Andrus was also present at these proceedings and offered testimony very similar to that offered to the Senate on the previous day. Also present at the hearings was the Honorable Milton Shapp, Governor of Pa. The Governor emphasized the fact that Pa. presently has a law almost identical to the Federal proposal and that the implementation of their law has not caused any coal production losses. Information, along with a slide presentation, was also provided by Mr. William Guckert, a state official in charge of coal mine reclamation. Mr. Guckert suggested that it is entirely possible for operators to restore economically the approximate original contour and eliminate any highwall remnants.

02/07/77 — The Senate held its first day of hearings on the bill, S. 7. The primary witness at the proceedings was the Honorable Cecil Andrus, the newly appointed Secretary of the Interior. The Secretary emphasized that the new Administration wants to cooperate in every way possible with the Congress in establishing a strong, comprehensive,

and workable surface mining bill. The Secretary suggested some changes in the legislation including the elimination of the "Mansfield amendment" and changes in the language of the provisions dealing with the alluvial valley floors in the Western coal mining states.

01/10/77 - 01/12/77 -- The House Interior Committee held briefings on the question of Federal regulation of surface mining. Leaders of the coal mining industry attended. Participants included Mr. Ian MacGregor, an official of the National Coal Association and Chairman of the Board of AMAX Corporation and Mr. Edwin Phelps, President of Peabody Coal Company, the Nation's largest producer. Also present were representatives of various environmental groups and organizations representing residents of coal mining districts affected by mining.

09/15/76 -- H.R. 13950 was denied a rule by the House Rules Committee by a vote of 9-6.

08/31/76 -- H.R. 13950 was reported by the House Interior Committee.

03/23/76 -- Further consideration of H.R. 9725 was tabled by the House Rules Committee.

02/24/76 -- The House Committee on Interior and Insular Affairs reported H.R. 9725, the Surface Mining Control and Reclamation Act, to the full House.

12/04/75 -- The House Committee on Interior and Insular Affairs voted 24-14 to put H.R. 9725, the new Surface Mining Control and Reclamation Act on its Calendar. Action on the bill, however, will not take place until the next session of Congress, probably in January 1976.

06/10/75 -- Motion to override veto failed of passage in the House, 278-143.

05/20/75 -- President Ford vetoed H.R. 25, the Surface Mining Control and Reclamation Act of 1975.

04/16/75 -- Joint Conference considered the surface mining bills, H.R. 25 and S. 7.

04/09/75 -- A caravan of truckers, representing coal mining interests, drove to Washington, D.C. from many of the Eastern coal mine areas to protest the strip mining bills S. 7 and H.R. 25. Upwards of 60 coal trucks circled the White House and Capital with air horns blowing and carrying protest signs and banners.

12/31/74 -- Surface Mining [illegible]1, S. 425, was pocket vetoed.

12/16/74 -- Senate agreed to S. 425 Joint Conference Report No. 93-1522.

12/13/74 -- House agreed to S. 425 Conference Report No. 93-1522.

12/09/74 -- In the House, the Joint Conference Report failed under suspension of the rules.

08/07/74 -- Conference Committee began meeting on H.R. 11500 and S. 425.

07/25/74 -- The House passed H.R. 11500 by a vote of 298 to 81, culminating six days of floor debate that began on July 17. In the process, the house voted down H.R. 12989 by 156 to 255, and H.R. 15000 by 69-336.

05/14/74 -- Full Committee on Interior and Insular Affairs completed 19 days of public markup on H.R. 11500, which began on Feb. 20, 1974; the Committee reported it favorably, 26 to 15.

11/12/73 -- Joint Interior Subcommittees on Mines and Mining and on the Environment reported a clean bill (H.R. 11500) to the full Committee having held 29 days of public markup after Aug. 2, 1973 on a new bill (Draft No. 3)

10/09/73 -- The Senate passed S. 425 by a vote of 82 to 8.

09/10/73 -- The Senate Committee on Interior and Insular Affairs completed 10 days of public markup on S. 425.

09/00/73 -- The Senate Interior Committee unanimously reported S. 630, but the 92d Congress adjourned before the Senate took any action on it.

06/08/73 -- The Senate Committee held three days of hearings on coal policy issues, which included the potential impact of Federal Surface mining legislation on coal development.

05/15/73 -- Joint Subcommittee completed six days of hearings, which had begun on Apr. 9, 1973.

05/00/73 -- Joint Interior Subcommittees inspected Western coal surface mining sites. This continued the April 1973 inspection of coal surface mines and reclaimed areas in the Eastern States.

04/30/73 -- The Senate Interior Committee held hearing on report of Council on Environmental Quality, entitled "Coal Surface Mining and Reclamation--An Environmental and Economic Assessment of Alternatives."

03/16/73 -- The Senate Interior Committee held four days of hearings on S. 425, S. 923, S. 1163, S. 1185, S. 1612, and S. 946, beginning on Mar. 13.

10/00/72 -- The House passed H.R. 6482 by 265 to 75, but the 92d Congress adjourned before the Senate took any action on its bill.

ADDITIONAL REFERENCE SOURCES

U.S. Department of the Interior. Surface mining and our environment. Washington, 1967. 124 p.

U.S. Library of Congress. Congressional Research Service. Mined land reclamation requirements: Issues, actions and arguments [by] George Siehl. [Washington] Apr. 18, 1968 (rev. Apr. 24, 1972). 52 p.
Multilith 72-101EP [Available from CRS Environment and Natural Resources Policy Division]

——— Strip mining, selected references [by] George Siehl. [Washington] Jan. 1974. 21 p.
Multilith 74-16EP [Available from CRS Environment and Natural Resources Policy Division]

LEGISLATIVE SUMMARY

SB 843 "An Act relating to surface coal mining and the surface effects of underground coal mining; and providing for an effective date."

The bill proposes to add a new chapter to AS 41.

Sec. 41.45.010 Basic finding that the state is best able to regulate surface coal mining and reclamation under the U S. Surface Mining Control and Reclamation Act of 1977. The purposes of the bill include: assuring the responsible extraction of coal, the reclamation of coal mining areas, protecting the rights of surface owners, minimizing degradation of land and water and assuring appropriate public participation in the regulatory process.

.020 Vest jurisdiction over surface coal mining and reclamation operations in the Commissioner of the Department of Natural Resources.

.030 Enumerates general duties, including adoption of regulations, issuing permits, holding hearings, issuing orders, inspections, prepare reports, receive grants, participate in the abandoned mine land program, coordination and cooperative agreement with other agencies.

.040 Regulations adopted or permits issued may vary for a particular condition, type of coal, or area of the state.

.050 Employees administering or a private contractor may not have a direct or indirect financial interest in an underground or surface coal mining operation. Prescribes a designation of a class A misdemeanor if a person knowingly violates this section. (NOTE: $5,000 fine and a jail sentence of one year).

.060 Requires coal mine operators to apply for a permit to conduct surface coal mining and reclamation operations beginning 8 months after approval of the state's program.

If the Alaska program is disapproved and the federal program has not been promulgated, existing operations which comply with the federal statute may continue. Permits which lapse during this period will continue in full force until promulgation of a federal program.

.070 Permits will be issued for five years. The Commissioner can issue a permit for a longer period if the applicant shows that it is necessary in order to obtain financing for equipment or to open the operation.

A permittee is required to commence operations within 3 years after the permit is issued. This can be extended if the permittee show litigation is precluding commencement of operation or threatens substantial economic loss or for

reasons beyond the control, fault, negligence of the permittee. If the coal is to be mined for use in a synthetic fuel facility or specific major electric generating facility, surface mining is considered to have begun at the time construction of the facility is begun.

.080 Provides that permits carry a right of successive renewal with respect to areas within the boundaries of the original permit, subject to a burden of proof on the opponents of renewal to demonstrate that the operation is not in compliance with regulatory requirements.

Renewals involving new land areas require the same procedures and standards as apply to new permit applications.

Application for permit renewal must be received by the Commissioner at least 120 days before expiration of the permit.

If the application is received at least 120 days before expiration and the permittee has complied with the bonding requirement the operation may continue under the permit after the expiration date until a final administrative decision on the renewal is made.

.090 Allows the Commissioner to set a fee schedule for a new permit, permit renewal, or transfer permit applications; requires that the fees not exceed the actual or anticipated costs of reviewing the application.

.100 Requires the public filing of permit applications and copies of all materials filed under this chapter; with the exception of designated confidential information.

.110 Requires the Commissioner to adopt regulations relating to the contents of permit applications consistent with the requirements of the federal program. These must take into account the unique mining and environmental conditions of Alaska.

.120 Establishes small operator assistance for certain laboratory work at no cost. This is for operations which will produce under 100,000 tons of coal annually.

.130 Provides for public notice of pending applications for surface coal mining and reclamation permits.

.140 Allows a person who may be adversely affected by the proposed operation, as well as federal, state or municipal agencies, to file written comments and objections to the application within 30 days. Such persons must request an informal conference to discuss their comments or objections with the Department.

The Commissioner is required to issue a decision regarding the permit application within 60 days of the informal conference, or as provided in Section .180 below.

.150 Provides for formal hearings regarding the Commissioner's decision on the permit application upon request of the applicant or any person who may be adversely affected within 30 days after the request. The Commissioner may grant temporary relief pending his final decision when circumstances warrant.

.160 Requires that before a permit can be issued, the applicant must furnish a performance bond conditioned on faithful performance of the requirements of this statute and the permit. The bond must be sufficient to assure completion of the applicant's reclamation plan by the Department in the event of a forfeiture. In lieu of a bond, the Commissioner may accept cash or negotiable bonds or certificates of deposit or the Department may accept a self-bond under future regulations to assure financial solvency. The amount of the bond may be adjusted for good cause, including changes affecting land areas and costs of reclamation.

.170 Contains provisions governing release of performance bonds. The applicant must give notice of its request for release of bond, and the Department must conduct an inspection and evaluation of the reclamation work involved. Provides for staged release of the bond, depending on the degree of reclamation work completed and the Commissioner's evaluation. Persons whose legal interests may be adversely affected, and governmental agencies, may file objections to the release of bond and request a hearing, as may an applicant whose request for bond release has been denied.

.180 Requires the Commissioner to make a decision on a permit application within 120 days after receipt, which may be extended by an additional 60 days upon receipt of additional information required for a decision. This section sets out the basic criteria for approval of an application. A permit may not be issued if the applicant is currently in violation of environmental standards regarding surface coal mining operation which it operates in the United States or if the applicant has had a demonstrated pattern of willful violations of this chapter.

.190 Deals with revisions and transfers of permits. The Commissioner is required to establish guidelines for determining the extent of revision for all permit application requirements and procedures, including notice of hearing.

A permit can not be transferred, assigned or sold without written approval of the Commissioner. A successor may continue the operation until the transfer application is granted or denied and meets the requirements of this section.

.200 Requires exploration activity to be conducted only according to regulations adopted by the Commissioner. The regulations must include provisions for reclamation of excavations, roads, drill holes, and the removal of facilities and equipment.

Under a coal exploration permit no more than 250 tons can be removed without specific written approval of the Commissioner.

.210 Within 120 days after the effective date of this chapter, the Commissioner is required to propose regulations consistent with the environmental performance standards of the Federal law. The regulations promulgated under this chapter for both surface coal mining and reclamation operations and surface effects of underground mining must include appropriate adjustments to meet the conditions in Alaska.

.220 Requires the surface effects of underground mining be regulated in a similar fashion to surface coal mining operations. The Commissioner can suspend underground coal mining activities in populated areas if there is an imminent danger to the inhabitants.

.230 Provides the basic authority for the Department to inspect and monitor operations. The Commissioner may require a permittee to: make monthly reports, install, use and maintain necessary monitoring equipment or methods and other information relating to the operation as the Commissioner considers reasonable and necessary. The Commissioner can inspect the operation. The inspections are to occur on an irregular basis. Inspections are to occur without prior notice, the inspector must notify the permittee's representative, on the site, upon his arrival and invite the representative to accompany him during the inspection. The inspector is required to file a report about the inspection.

.240 Sets forth the Department's basic enforcement authority. A violation of this chapter or permit which causes imminent danger to public health or safety or which threatens significant, imminent environmental harm, requires the inspector to issue a cessation order for the whole operation or that portion causing harm. The order remains in effect until further Departmental action. If a violation cited does not cause imminent danger, a notice of violation is issued.

Cessation orders and notices of violation are subject to appeals and full due process hearings by persons who may be adversely affected. The Commissioner is authorized to request the Attorney General to institute a civl action for relief. There are provisions governing judicial review of these actions.

.250 Provides for both civil and criminal penalties for violations of this chapter and permits. Civil penalties are mandatory for cessation orders (may not exceed $5,000), but discretionary for notices of violation Willful and knowing violations are class C felonies (NOTE: $50,000 fine and 5 years jail). Failure to correct a violation during the period of time permitted by the notice or subsequent extension requires a $750 per day penalty.

.260 Requires the Commissioner to use competent and scientifically sound data in determining lands unsuitable for all or certain types of surface coal operations. It allows a person with a legal interest which may be adversely affected to petition the Commissioner to have areas designated unsuitable for all or certain types of coal mining. Areas must be designated unsuitable if the Commissioner determines that reclamation in the area in question is not technologically feasible. There are four discretionary criteria for designating land unsuitable. Mining is prohibited in protected areas (subject to existing rights); National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, National Recreation Areas, publicly owned parks, historic sites, 100 feet of public roads, 300 feet of occupied dwelling, public building, school, church, community or institutional building, public park or 100 feet of a cemetery.

.270 Provision regarding abandoned mine lands in order to ensure state participation in the federal Abandoned Mine Reclamation Fund. The Fund is for the reclamation of land adversely affected by past coal mining practices. Contains the administrative authority to establish priorities, designate eligible lands, submit reclamation plans and annual projects to the Department of Interior and administer funds received.

.280 Defines eligible lands as those which were mined or affected by coal mining, left in an inadequate reclamation status, and for which there is no continuing reclamation responsibility under law.

.290 Gives the Department power to enter onto property for reclamation purposes. Does not create new rights of action or eliminate existing immunities.

.300 Authorizes the Commissioner to acquire abandoned mine areas for reclamation purposes and to dispose of such property when: it is necessary for successful reclamation, in the public interest, serve recreational, historic, conservation, open space, and to meet emergency situations. The Commissioner shall pay the fair market value of the property. The Commissioner can sell the property if it is suitable for industrial, commercial, residential or recreational development. The sale has to be consistent with any state and local land use plans.

.310 Requires the Commissioner to place a lien upon state funded reclaimed property for the increase in fair market value. Exempted are properties owned before May 2, 1977, the owner did not consent to, participate in, or exercise control over the surface operation which necessitated the project. A person affected by this section may petition for a hearing within 60 days after the lien is recorded.

.320 Authorized the filling of voids and sealing tunnels with money from the Abandoned Mine Land Fund.

.330 Authorized emergency entry without prior notice onto land to

abate an emergency which constitutes a danger to the public health and safety

.340 The Commissioner may request the Attorney General to initiate action for an injunction to restrain any interference with the exercise of the right to enter or work described in .270 - .340. Authorizes the State to construct and operate plants for control and treatment of water pollution from mine drainage in compliance with the Federal Water Pollution Control Act.

.900 Specifies that the requirements of this chapter apply to government agencies, including publicly-owned utilities.

.910 Exempts from this chapter extraction of coal for non-commercial use of the land owner or lessee, commercial coal operations which affect 2 acres or less and coal extraction as part of government-financed construction.

.920 Authorizes departures from the environmental performance standards for experimental practices of limited size and which do not down grade the environmental, public health or safety standards of the program. This provision needs approval of the U. S. Department of Interior.

.930 Provides that this chapter does not affect a person's water rights and that any impairment of water supply must be remedied by the operator.

.940 Provides authority for the Commissioner to require training, examination and certification of blasters.

.950 Creates a civil cause of action on behalf of persons who may be adversely affected by a failure to comply with the chapter against both the state agencies and alleged violators. A person commencing action under this section must give 60 days notice and the action can only be filed in the judicial district in which the operation is located.

.960 Provides that any provision of this chapter which the Secretary of Interior determines to be inconsistent with the federal Act is invalid. Also, requires the Commissioner to review all changes made in the federal Act or regulations, and to make appropriate recommendations as to whether or not the State program should be changed.

.970 Provides that this chapter is not to be interpreted to modify any existing state agency's powers over coal leases and exploration permits, except as specifically provided by this chapter and implementing regulations. This section also requires that the provisions of this chapter are applicable to lands conveyed out of federal ownership.

.975 Is the severability clause.

.980 Makes the Administrative Procedure Act applicable to this chapter unless otherwise provided.

.985 Cites the short title of the chapter as the "Alaska Surface Coal Mining Control and Reclamation Act."

.990 Is the definitions section.

Section 2. Requires applications to be submitted under this chapter within 2 months after the date the state program is approved by the Secretary of Interior, and requires the Commissioner to process such an application within 8 months after the Secretary's approval.

Section 3. Reserves the right of the state to contest the constitutional or statutory validity of any of the regulations issued under the federal act.

Section 4. Requires the Commissioner to adopt regulations under the Administrative Procedure Act. The regulations do not take effect until the effective date of Section 1.

Section 5. Provides that Sections 1 and 2 become effective upon approval of the state program by the Secretary of Interior.

Section 6. Provides that Sections 3 and 4 become effective immediately.

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	49.5	54.5
300 CONTRACTUAL		375.0	490.3	393.3	428.7	467.3
400 COMMODITIES		1.0	1.1	1.5	1.5	1.8
500 EQUIPMENT		13.0	10.0	3.8	3.0	3.0
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		565.9	679.4	642.3	684.4	728.2

FUNDING (Thousands of Dollars)

GENERAL FUND		161.9	200.0	199.7	209.6	213.0
FEDERAL FUNDS		402.0	477.5	442.6	474.8	513.2
OTHER (Specify Source)						

POSITIONS

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 Haynes
AGENCY Natural Resources
PHONE 465-2400

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

March 26, 1982

To: Senate Resources Ct.

From: Mark Wittow (MW) and Howard Roitman (HR)

Re: Amendment to SB 843 concerning the escrow of civil penalty provision required by the federal Office of Surface Mining.

The following language would likely meet the concern expressed by the Office of Surface Mining regarding the omission of prepayment of a proposed civil penalty into escrow as required by Section 518(c) of the SMCRA. The suggested language is patterned after a similar provision in the approved Wyoming state program.

Page 32, line 25. Add to the end of paragraph (b):

"If the person wishes to contest either the amount of the penalty or the fact of the violation, the person must submit a bond equal to the proposed penalty amount at the time he files his application for review. The bond shall be conditioned for the satisfaction of the penalty in full if the commissioner's determination as to the occurrence of the violation and the assessment of a penalty are affirmed. The application for review is effective when the bond is approved by the commissioner. If the bond is not approved, the person charged with the penalty has ten days to forward the proposed amount to the commissioner for placement in an escrow account in order to make the petition effective."

Howard Roitman
Attorney
Surface Mining Consultant

March 19, 1982

MEMORANDUM

TO: Mark Wittow

SUBJECT: Amendments to Senate Bill 843

I recommend that the following amendments be made to Senate Bill 843:

1. Page 34, line 6. End the sentence after the word "continues." A new sentence introductory phrase should be inserted immediately after: "Such period continues until"

   The Attorney General's office attempted to clarify some awkward phrasing in the House Bill, but in the process reversed the meaning of this section. The mandatory daily penalty kicks in only after the abatement period, as extended by the actions described in (h)(1) and (2) expires. As presently written, the $750/day penalty applies during the period described in (h)(1) and (2).

2. Page 30, line 10. Insert the following between the words "violator" and "within": "The Commissioner shall hold the conference at a location which allows the permit area to be viewed during the conference. The Commissioner shall issue a written order affirming, modifying, vacating, or terminating the cessation order..."

   This is part of the language wnich got juxtaposed in the House Bill, and disappeared in the Senate Bill. I suppose the first sentence could be covered by regulations. The present sentence dosen't make sense in requiring waiver of the conference within five days of the conference and should be changed.

3. More in the area of typos:
   Page 2, line 17. THe word should be "within" rather than "with."
   Page 30, line 12. Add the word "or" between "administrative" and "judicial."

4. With regard to the OSM letter, we could make the following changes:

   Comment 7. We could change the reference as they suggest, but I think the present reference should be sufficient since both refer to judicial reveiw provisions.

   Comment 10. I suggest changing the word "irreparable" to "reparable" on page 49, line 5. This would be the simplest way to meet this concern.

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STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE:

March 25, 1982

The Honorable Bettye Fahrenkamp
Alaska State Senate
Pouch "V"
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Re: Amendments to SB 843

Thank you for the timely and careful consideration of SB 843 by the Senate Resources Committee. I would appreciate the Committee's consideration of several amendments that either make technical corrections to the bill or that help reduce unnecessary conflicts among state agencies concerning the legislation.

We have discussed these proposed amendments with Phil Holdsworth, who has expressed no objection. Due to time constraints, we have not reviewed the amendments with coal operators or public interest groups. Under the same time constraints, we have reviewed these amendments with interested state agencies and have obtained their preliminary approval of the bill if amendment number 3 is adopted. The amendments, with our explanation, are set out below.

1. Page 34, line 6. End the sentence after the word "continues." A new introductory phrase should be inserted immediately after "continues:" "Such period continues until"

The Department of Law attempted to clarify some awkward phrasing in the House Bill, but in the process reversed the meaning of this section. The mandatory daily penalty kicks in only after the abatement period, as extended by the actions described in (h) (1) and (2) expires. As presently written, the $750/day penalty applies during the period described in (h) (1) and (2).

2. Page 30, line 10. Insert the following between the words "violator" and "within": "The Commissioner shall hold the conference at a location which allows the

permit area to be viewed during the conference. The Commissioner shall issue a written order affirming, modifying, vacating, or terminating the cessation order..."

This part of the language was juxtaposed in the House Bill, and was inadvertently left out of the Senate Bill. Although the first sentence could be covered by regulations, the present sentence, requiring waiver of the conference within five days of the conference, does not make any sense and should be changed.

3. Page 46, line 27. Delete the phrase "with regard to the issuance and administration of coal leases and exploration permits," and replace with "to enforce laws and regulations within its jurisdiction."

Page 47, line 2. After "under it," add a new sentence to read: "The commissioner shall coordinate permitting efforts to prevent unnecessary duplication in permit review."

This amendment would clarify the role and responsibilities of other state agencies for coal operations, and satisfy several of the concerns expressed in testimony to the Senate Resources Committee. The suggested language merely clarifies what is already true in fact.

4. Page 26, line 19. Change "he" to "the commissioner."

This would clarify the meaning of the sentence, as "he" could be mistakenly interpreted to refer to the operator.

5. Page 49, line 5. Change the work "irreparable" to "reparable."

This change would satisfy concerns expressed by the federal Office of Surface Mining. Alternatively, the word "irreparable" could simply be removed. As currently written, the definition is incorrect.

6. Add two new sections at the end of the bill to read:

"* Section 7. AS 41.45.970, as enacted in Section 1 of this Act, is amended by adding a new subsection to read:

(c) The requirements of AS 44.62.632 - 638 do not apply to actions governed by this chapter.

* Section 8. Section 7 of this Act takes effect on the effective date of a version of SB 84, "An Act relating to processing of permits by state agencies."

Federal requirements prevent us from being able to include the surface mining program in the permit reform legislation.

7. Page 2, line 17. Change "with" to "within". Page 30, line 12. Insert "or" between "administrative" and "judicial."

These are typographical errors.

One other possible change is worthy of discussion. The March 19, 1982 letter from the Department of the Interior's Office of Surface Mining raises one serious concern in regard to the State's proposed surface mining law:

"With one major exception, we believe the bill meets the standards for State program legislation required in the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1201 et seq.

Section 41.45.250(b) does not require the prepayment of a proposed civil penalty into escrow as required by Section 518(c) of SMCRA. This provision is an essential part of all State programs which must be included in the State law. We urge you to include this statutory provision."

Coal operators in all other parts of the United States are subject to this requirement. We originally did not include the provision because we felt it was onerous and a denial of due process. However, it is clear that the provision requested by OSM must be included if the State is to have its surface mining program approved. We therefore recommend its inclusion in your Resources Committee Substitute for SB 843. On the other hand, we would also recommend that litigation funds be included in the fiscal note to enable the State to mount a timely legal challenge to the federal

provision. We are in the process of discussing this issue with the coal operators and developing satisfactory language to present to you on Friday.

All of the other comments in the March 19 OSM letter are either addressed by existing State law or Rules of Court, or will be addressed by regulation.

Thank you for your hard work on this important legislation.

Sincerely,

John Katz

John W. Katz
Commissioner

Alaska Surface Coal Mining Program

By
Pedro Denton

Introduction

Almost everyone recognizes that coal mining in Alaska requires different technology than in the other coal producing states. Alaska's remoteness, climatic extremes and sparse population obviously pose conditions not common to the other states. The differences were recognized by congress when it commissioned in Section 708 of PL 95-87 a special study to determine if any of the provisions of the law should be modified because of unique conditions in Alaska. Partly in anticipation of the results of this study and to accurately assess a program by which the State could assume jurisdiction over surface coal mining in Alaska, the Department of Natural Resources started preparing a draft program early in 1980. A preliminary draft of this program is nearly complete and ready for legislative, public and federal review. The purpose of this paper is to give an overview of Alaska's program development progress to date.

The opinions and interpretations in this paper are the author's and do not necessarily represent the opinions of the State or the Department of Natural Resources. The paper has not been reviewed by the state. The author has served as program development coordinator for the program since early in 1980 on a special project basis and is not a permanent employee of the State.

Federal Act and Regulation

The Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 91 Stat. 445 (30 U.S.C. section 1201 et. seq.)) is essentially an environmental law designed to regulate surface coal mining on a national scale. Its primary purpose is to prevent water and air pollution and other adverse environmental impacts and to require that disturbed areas be reclaimed to an appropriate postmining use. It pertains to all coal mining regardless of whether the coal is on federal, state or private lands. The Act recognizes that "the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations" should rest with the states. The act took the power to regulate coal mining from the states and provided a mechanism by which this power can be partially returned to the states upon approval by the federal Office of Surface Mining (OSM) of a state program incorporating minimum federal standards.

OSM reported in a news release dated March 5, 1980 "Twenty four States, including all of the Nation's major coal producers, have submitted plans to assure primary responsibility for regulating the surface effects of coal mining." States submitting plans were Maryland, Pennsylvania, Virginia, West Virginia, Kentucky, Tennessee, Alabama, Mississippi, Illinois, Indiana, Ohio, Arkansas, Iowa, Kansas, Missouri, Oklahoma, Texas, Louisianna, Colorado, Montana, New Mexico, North Dakota, Utah and Wyoming. Georgia, Washington and Alaska, none of which are considered major producers did not submit plans by the March 3, 1980 deadline for state program submittal. In this same news release, OSM Director Walter N. Heine noted that "The bottom line is approval by January 3, 1981. Where programs are not approved by that date a Federal

program is required." The foregoing statement would seem to indicate that Federal regulations will be applied to Alaska on Jan. 3, 1981. But, Alaska has argued that the special study by the National Academy of Sciences/National Academy of Engineering required by Section 708 of the Federal Act would dictate a different time frame for Alaska. This was noted by OSM in the May 16, 1980 Federal Register which states on page 32330:

> Alaska did not submit a program and has asserted it does not have to do so at this time because the study of surface coal mining in Alaska being carried out by the National Academy of Sciences pursuant to Section 708 of the Act is not complete. OSM is currently examining what action should be taken with regard to Alaska.

The issue has not been resolved but obviously Alaska cannot design a final program until the results of the 708 study are made available. Even then the uncertainty of what changes will be made to the federal act could further complicate the time schedule.

The time frame for submittal under the Act is important for Alaska because the deadline for program submittal (March 3, 1980) has passed and OSM's position is that if a state fails to meet the deadline a federal program must be imposed before the state can apply for program approval. This is an extremely narrow and impractical interpretation of 30 CFR 731.12, but so far, the state has been unable to change OSM. It apparently does not matter that the 708 study is already over a year late and that both Alaska and OSM consider the 708 study a critical element in developing an Alaska program.

The following excerpt from OSM's 1979 annual report is a good indicator of OSM's recognition of the importance of the 708 study to developing Alaska's program:

> A number of outstanding issues related to Alaska's program may have to await formulation and resolution until after completion of the Alaska Study and Departmental response mandated by the Act. Study scheduled for completion by May 31, 1980.

It should be noted that the Act required the study be completed no later than two years after the date of enactment or by Aug. 3, 1979.

The Federal Act is one of the most complex and detailed statutes ever written. If Alaska adopts a companion law, which it must if it wishes to regulate coal mining in Alaska, it will be one of the longest statutes on the books for such a special purpose containing over 50 pages. For instance, the Statute which regulates oil and gas operations in Alaska, AS 31, contains only 25 pages. But it is the regulations and their seemingly endless detailed requirements for procedural matters that has caused the most criticism. These regulations and their program submittal requirements are extremely tiresome to read and work with and require a very cumbersome and unwieldly process for approval of a state program. Alaska's draft of the regulations are nearly 350 single spaced pages and this includes many consolidations which OSM may not approve. The section on bonding alone contains over 40 pages. In addition, there will probably be two to three hundred additional pages of explanatory materials. In comparison, the Alaska Oil and Gas conservation regulations contain only 35 pages.

Much of the problem that the other states have had is in getting variations from the federal regulations. The federal act provides in section 101(f) that "because of the diversity in terrain, climate, biologic, chemical and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, issuing, and enforcing regulations..... should rest with the states." OSM has implemented this policy by regulations under 30 CFR 731.13 (called the state window) which provides for detailed state justification for any state variations to the federal regulations. Many states have complained that the window is closed, but one of the most interesting characterizations was by the United States Court of Appeals in a July 10, 1980 decision on the Peabody Coal Company case. In a footnote to a statement that the statutory scheme "leaves broad discretion in state officials while ensuring through federal oversight, that the minimum requirement of the Act are achieved." they made the following comment:

> The Secretary insists that he has left this discretion intact through the so-called "state window" provision in the regulations. This section allows states to propose alternatives that are "consistent with the regulations" the Secretary has issued, 30 CFR 731.13(c)(1). The language of this provision, however, is deceptively comforting. Elsewhere, the regulations define "consistent with" as meaning "no less stringent than and meet(ing) the applicable provisions of the "regulations" the Secretary has issued. Id 730.5(b). Thus there is little room for states to maneuver. The "window" would be more accurately described as a one way mirror.

These characterizations could be alarming for Alaskans knowing that mining in Alaska will require different mining practices than in the other states if it were not for the 708 study. The 708 study could provide an open "window" for Alaska that will allow variations from the federal program to adjust to the unique conditions in Alaska. In this respect, Alaska could have it easier than some of the other states, but to accomplish this it must aggressively follow through on the 708 study to be sure there is appropriate response by the Secretary of Interior and Congress.

Program Development Progress

Alaska received a $100,000 program development grant from OSM on March 11, 1980. The actual monies were received on April 8, 1980. The grant required that the state contribute $25,000 to the program. The grant application was the beginning of the formal process to determine whether Alaska would assume control of surface coal mining in Alaska. Under this grant, The Department of Natural Resources hired the author full time early in the year to coordinate development of a state program including regulations, statute and other program submittal elements. Prior to that time several individuals had on a part time basis closely followed OSM activities and had analyzed how the program might impact Alaska. There was also considerable participation in the NAS-NAE hearings in Alaska and most of the general problems in applying the act and regulations were identified.

The program development grant provided for accomplishing the following:

1. A comprehensive review of existing Alaska statutes and regulations to identify current authorities relevant to the regulation of surface mining.

2. Draft legislation and regulations necessary to comply with PL 95-87.

3. Recommendations for a process by which lands could be determined to be suitable or unsuitable for surface mining.

4. Recommendations for the coordination of review and issuance of permits for surface coal mines among all state and federal permitting authorities.

5. Assembly of all the elements into a program submittal for the purpose of assuming state jurisdiction.

The proposal provided for an advisory committee to be appointed by the Governor to guide the Department of Natural Resources in developing a program and in deciding whether or not the state should assume jurisdiction over surface coal mining. The committee was appointed by the Governor in early April 1980 and consists of Earl H. Beistline of the University of Alaska, Richard Douglass of the Alaska Conservation Society, Cole E. McFarland of Placer Amex Inc., Margaret Sagerser of Cook Inlet Region Inc., Joseph E. Usibelli of Usibelli Coal Mine Inc. and Philip Waring of the Kenai Peninsula Borough. Since Earl Beistline was chairman of the NAS committee on Alaskan Coal Mining and Reclamation and to avoid any possible conflict of interest, Ernest N. Wolff has served on the committee on his behalf to the present time. Now that the report is complete, Mr. Beistline is back on the Advisory Committee. The first committee meeting was held on May 13, 1980 and two meetings have been held since then.

Perhaps the major task in developing the program was in identifying the specific federal standards and regulations which were not applicable to Alaska and determining what change would be necessary for Alaska. To accomplish this objective, the Department of Natural Resources invited all state coal lessees to a workshop in Anchorage on March 18, 19 and 20, 1980 to go through the federal regulations with the state section by section identifying the specific sections requiring a variance and the need for the variance. A state team composed of members of the Departments of Natural Resources, Fish and Game and Environmental Conservation was formed to participate in the workshop and to develop recommendations for a state position on the proposals. The proposals developed at this meeting and in subsequent meetings of the state team were reviewed by the involved state departments and the advisory committee and have been accepted for review purposes.

These proposals are the basis for the Alaska Regulations proposals which are presently nearly complete in review draft form. It was decided to closely follow the federal regulations except where substantive changes were necessary or where necessary to conform to Alaska regulation style requirements. It was felt that this procedure would minimize explanations to OSM and would

considerably shorten preparation time. A key to the success of this approach is the extent to which the 708 study will justify the need for the variance in Alaska and will provide the data necessary by the regulations to support a variance from the federal regulations. A summary of the substantive variances to the federal regulations is attached.

In a somewhat backwards process a proposed Alaska statute is also being drafted which would conform to the regulation variances and the federal requirements. This is of course a variation from the normal procedure, but in this case, it may be justified by the strict federal standards which leave very little latitude for statute or regulation drafting.

There are numerous other program elements which must be developed as a part of the program submittal, 30 CFR 731.14. The most important of these relates to the organizational structure of the surface mining authority and how it will function, the process for determining lands suitable or unsuitable, and permit coordination and review, a compilation of existing state laws and regulations, a section-by-section comparison of proposed state laws and regulations with the federal, and the permit coordination and review process. The other submittal elements are largely narrative explanations of the regulatory process provided by the proposed state regulations and statistical information on Alaska past and projected coal activities.

It has been proposed and endorsed by the Advisory Committee that the surface mining authority be in the Department of Natural Resources. The authority would be with the Commissioner and he could delegate this authority to an appropriate director. The director would be supported by a technical advisory team of experts from other Departments or within the Department of Natural Resources. The proposed team would consist of a hydrologist, geological engineer, habitat biologist, environmental engineer, air quality engineer, agronomist, attorney and a coal mining engineer. The team would be available for permit review as well as special problems in enforcement and administration. The members would serve on an as needed basis. The coal mining engineer would be in charge of enforcing and administrating the program. Total costs of such a program are estimated at about $125,000 a year, half of which would be funded by the federal government under program administration grants. The Department of Environmental Conservation has countered this proposal with a proposal that the authority be in their Department.

The unsuitability process required by Section 522 of the act has been one of the most troublesome to develop. The requirements of the law and regulation are difficult to understand and people working with it generally have a problem in separating the planning type process required by the act from a process that would be used in leasing considerations. The data base and inventory requirements are also troublesome, primarily because of the lack of detailed data in Alaska. The presently proposed process has a petition process patterned after the federal regulations. In addition, a process is provided by which coal lessees or other coal owners can petition the authority to have lands declared suitable for mining. The primary objective of this provision is to provide a process by which determinations can be made as soon as possible so that long range land use and mine planning can be done with as much certainty as possible. Alaska already has programs in the Department of Natural Resources

which can be adapted to this process. Also additional program development funds have been requested from OSM to refine the process and to develop a data base and inventory system.

The permit coordination and review process is not complete but it probably will be patterned after existing programs requiring detailed review.

A preliminary draft of the section-by-section comparison of the regulations is also nearly complete. This should considerably facilitate review of the program by the public and others.

Alaska's program development has been easier than other states' in several respects. First, Alaska has not been on the same time schedule. This has allowed the utilization of other approved state programs as guides. The Texas and Montana programs, already approved, have served as models for much that has been done. Litigation by the National Coal Association/American Mining Congress (NCA/AMC) and others may also resolve many of the issues that would cause problems for Alaska. A long series of issues have been decided at the U.S. District Court and Court of Appeals level in industry's favor and generally in favor of more flexible regulations. The exact number is difficult to determine because of the interrelationship of so many of the issues, but a figure of 38 regulations withdrawn and 44 invalidated has been used by NCA/AMC. These issues have not been finally decided and how many of the federal regulations will be redrafted to address the court decision is not known. This problem is often characterized as a "shifting target". Allowing the "target" to settle down will make it easier in Alaska.

Summary

A preliminary draft of a program for Alaska to assume jurisdiction over the surface mining of coal is nearly complete. Within a few weeks a complete package will be sent to the involved agencies for final review before going to the Surface Mining Advisory Committee for their review and help in resolving any differences. A complete program package should emerge ready for public, federal, or legislative review. It is difficult to determine how the draft program will be adjusted as a result of this process or what final decisions will be made. The issues are complex and understanding is complicated by extremely detailed procedural regulations; but, the decisions that will be made could have considerable impact on the development of Alaska's coal resources.

Proposed Significant Modifications
to
Federal Surface Coal Mining Regulations

Federal Reg No.	Summary of Change to Federal Concept
700.11(c)	Allow groups of individuals to mine cooperatively without permit, in excess of the 250 ton limitation where approved by the regulatory authority.
701.5	Allow exception from classifying waters with pH of less than 6 as "acid drainage" where a lower pH is natural for the area.
764.13(b), Part 765	Special procedures for determining lands unsuitable for mining in Alaska.
779.13(b)(3) 783.13(a)(3)	Allow exception in Alaska for requiring all hydrologic data in all cases.
780.15 816.95	To provide for Air Quality control in Alaska to be based on state and federal air quality standards.
785.14(c)(1)	Allow wildlife habitat as postmining use which could qualify for exceptions from restoring to original contour.
785.15(c)(4)(i)	To allow returning watershed to original condition as standard for getting exception to return to original contour rather than requiring improvement, the reg. and statute standard.
785.19(a)	Limits application of "alluvial valley floor" standards based on lack of agricultural potential. ALVs would not apply in the Northern, Nenana, Yentna, Susitna, Beluga and Matanuska fields.
786.25(b)(1)	Allow longer time for commencement of operations than provided by statute and regulation.
815.15(e)(1), (e)(2)	Provide special standards for exploratory roads.
815.15(f)(1)	To allow other than native species for revegetation for areas disturbed in exploration.
815.15(i)(3)	To allow leaving exploration equipment in the field where it will facilitate future exploration.
816.11(a)	To allow reduction of marker requirements where area is inaccessible.
816.21(b)	To allow mixing of topsoil with overburden where it will not be used in revegetation.

Federal Reg No.	Summary of Change to Federal Concept
816.22(e)(1)	To allow exception from requirement to seek out and separate "best" material even if other material is adequate for revegatation.
816.22(e)(1)(ii)	To not require trials and tests of topsoils being certified by a laboratory unless required by the state.
816.22(e)(1)(iii)	To allow the state to use practices proven in other areas as guide in approving use of topsoil substitutes.
816.22(f) 816.71(c)	To allow leaving topsoil and vegetative cover in place where needed as insulating layer.
816.42(a)	To allow alternate sediment control methods to sedimentation ponds and rely on federal and state water quality standards rather than OSM effluent standards.
816.42(c)	To allow exception from treating all waters as "acid water" where natural conditions are less than a pH of 6.
816.57(a)	To allow exception from the requirement to restore all streams to original channel without regard to importance.
816.64(a)	Remove the requirement to publish blasting schedule and rely on notice to residents and agencies.
816.65(a)	To relate blasting time to time of day rather than "sunrise" and "sunset".
816.71(a)	To allow excess spoil to be placed in mined area to limit disturbed area.
816.83(a) 816.89(b)	Allow alternative to the requirement to make all waste banks impervious.
816.97(b)	To allow discretion in reporting requirements for eagles because of numbers of eagles in some areas.
816.97(d)(2)	To clarify that some interference with wildlife is inherent in any structure in remote areas and allow recognition of this in Alaska.
816.104(a)	Remove the numerical relationship of final thickness to initial thickness because of difficulty in determining in permafrost areas.
816.104(b)	To prevent redisturbance of storage areas in permafrost areas where material condition is not adaptable to temporary storage methods.

Federal Reg No.	Summary of Change to Federal Concept
816.106	Allow discretion by regulatory authority in requiring repair of revegetated areas.
816.150-176	Special road building standards for Alaska.
825, New Section	Special performance standards for Alaska areas with natural cliffs and highwalls.
843.12(c)	Allow more time for abatement actions where needed because of remoteness or weather.
845.18(a)	To allow more time for service by mail.

CHUGACH NATIVES, INC.
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March 18, 1982

Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee
Pouch V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Thank you very much for your letter of March 10 regarding Senate Bill 843, relating to surface coal mining and the surface effects of underground coal mining in Alaska. Unfortunately, we will not be able to be in Juneau on March 19 to testify on this bill. For that reason I am sending you a copy of our January 18, 1982, correspondence to Commissioner John Katz, which contains our comments on the draft of your bill.

In general, Chugach supports the comments of the Coal Operators and Leaseholders Association on this matter. We believe that the transfer of the Surface Mining Control and Reclamation Act to the State's jurisdiction will prove beneficial to the coal industry in Alaska. However, we further maintain that the State should take advantage of the opportunity which the proposed transfer presents to make the federal law less onerous, where possible, to the industry. This can be achieved simply by making the federal regulations less burdensome, and without sacrificing any standards of environmental quality or public participation now contained in the federal program.

We would be pleased to discuss our thoughts on this matter with you in greater detail in the future. For the time being, we would ask that this letter and the attached correspondence be included in the hearing record on S.B. 843. Thank you for this opportunity.

Sincerely,

CHUGACH NATIVES, INC.

Carl A. Propes, Jr., Director
Land and Natural Resources Department

Attachment

CHUGACH NATIVES, INC.
903 WEST NORTHERN LIGHTS, SUITE 201 • ANCHORAGE, ALASKA 99503
(907) 276-1080 TELEX 26-497

January 18, 1982

Commissioner John Katz
Department of Natural Resources
Pouch M
Juneau, AK 99811

Dear Commissioner Katz:

We have only recently had the opportunity to review the draft State legislation entitled "An Act relating to surface coal mining and the surface effects of underground coal mining." Our general comments follow below, with our specific comments listed on the following pages.

Chugach supports the concept of transferring the federal government's regulatory authority over surface coal mining in Alaska to the State of Alaska. As the only current operator in Alaska under a federal coal exploration license, we are quite familiar with the communications difficulties of working with a federal bureaucracy whose nearest office is in the Rocky Mountain west. Alaska, which is in its infancy in terms of coal development, is in a unique position to take over the administration of this federal program.

As a general rule, the proposed State statute and regulations need not parallel the maze of federal regulations governing the Office of Surface Mining (OSM) in Chapter 30 of the Code of Federal Regulations. They need only be "as effective" in their results as the federal regulations. Originally, the OSM regulations contained the language that State programs should be "no less stringent" than the federal regulations. However, this language was purposely deleted by the Interior Department in revised regulations in 1981 in order to allow State programs greater latitude. The new terminology gives State programs the benefit of the doubt unless they are clearly "inconsistent with" the federal regulations.

Chugach's greatest concern with the proposed statute is that it errs on the side of going too far in the area of public participation. The proposed regulation is inconsistent in that it recognizes "any person who is or may be adversely affected" in certain clauses and in others the language reads "any person having an interest which is or may be adversely affected." We believe that persons in the former category are given considerably too much recognition in your proposal. A person should be required to demonstrate a substantial interest in a coal mining activity in order to be able to forestall it the way he can in the current proposal. Therefore, we ask that the latter language be employed throughout the regulations,

Finally, we are somewhat concerned with the interrelationship of different clauses in the proposed statute. For instance, how would you respond if a petition were received under Section 270 to have an area declared unsuitable for surface mining while at the same time an application for a permit was filed under this authority? Both provisions have lengthy time frames which somehow would have to be balanced.

We appreciate your consideration of our comments on this important subject, and would be pleased to consult with you and your staff further on it.

Sincerely,

CHUGACH NATIVES, INC.

Carl A. Propes, Jr. Director
Land and Natural Resources Dept.

CAP/ls

Attachment

cc: KADCO
Cook Inlet Region, Inc.
Doyon, Ltd.
Howard Roitman, DNR
Patrick Burden, ERTEC
Frederick Boness
Irene Rowan, AFN

Specific Comments

41.45.100 (c) A definition of "any person with an interest which is or may be adversely affected" is needed. Also, further clarification is needed here that it is the Department's responsibility to make this information available--not the permittee's.

41.45.140 Recommend that this section be deleted. It creates a potential delay in the permit's issuance of at least 120 days. It is highly discretionary with the Department whether or not an informal conference is held. There is no requirement for one in the federal program. Moreover, any "person who is or may be adversely affected by the issuance or revision of a permit..." may request one.

41.45.150 (a) Instead of allowing any person "who is or may be adversely affected" to request a hearing and compel the Department to hold one, this statute should be more narrowly worded. The criteria in 30 CFR 721.13 should be followed as a guide concerning who has authority to petition for a hearing. Such persons should be able to demonstrate that there is a "violation of the Act, regulations or permit conditions" to show cause for such a hearing. The burden of demonstrating that a reasonable basis for concern exists should rest with the petitioner. Only after he or she has established this should the Department schedule a hearing. In other words, the Department should have greater discretion on whether a hearing on an application is needed and justified.

(b) The Department should have the discretion to grant temporary relief to the applicant or operator under circumstances where a hearing would cause severe economic hardship on him/her or his/her activities.

41.45.180(c)(5)(a) Many coal mining activities may "preclude" the possibility of farming on an alluvial valley floor. However, this should be the landowner's decision and not the State's, This requirement should be deleted--at least for private lands.

41.45.230 (c) Requiring partial inspection of an operation not less than once per month and a complete inspection at least quarterly could prove quite onerous on the Department. We suggest this provision be tailored after 30 CFR 721.11(c), which requires a complete inspection every six months and has no [illegible] partial inspection requirement.

(h) As it stands written now, this clause presumes that an operator is in violation of his or her permit upon the notification of "a person who is or may be adversely affected..." While a Department inspector could be required to check for an alleged violation by a petitioner upon his or her next inspection of a particular operation, he or she should not have to justify refusing to issue a notice of violation or cessation order upon just one such complaint.

41.45.240 (c) Here again, a single "person who is or may be adversely affected" can require the Department to investigate a notice of violation or order of cessation which it issued. Also, a public hearing process can be triggered here by an "adversely affected" person. This becomes ridiculous.

Alaska Department of Environmental Conservation

Testimony Concerning SB 843:
The Alaska Surface Coal Mining Control
and Reclamation Act

by John Halterman
Director, Environmental Quality Management
March 19, 1982

Reclamation and Revegetation Not Defined

The importance that DNR ascribes to reclamation is not made clear. The terms "successful revegetation" and "reclamation" are, in fact, never defined in the legislation. Lack of definition of these key terms could significantly affect the ability of this Act to encourage mitigation of environmental effects while promoting resource development. The following comments summarize our concerns about this issue:

1. Reclamation should either be defined in this Act or via reference to a regulation.

2. The importance of reclaiming disturbed lands should be emphasized in Article 1 on page 3 by terminating Sec. 41.145.010 (5) with the following phrase:

   "recognizing that the responsible extraction of coal by responsible mining operators and the reclamation of lands disturbed by surface mining are essential and beneficial activities."

3. The difficulty and the expense involved in reclaiming and revegetating an area should be of prime consideration to the agency(ies) that, by default of an operator on a reclamation bond, would be responsible for reclaiming an area. Therefore, the Act should provide for designating as unsuitable for surface coal mining any area where reclamation is not technologically OR ECONOMICALLY feasible (pg. 35, line 22).

Forfeiture of Performance Bonds

In Sec. 41.45.160, the Act provides a detailed discussion of performance bond requirements, including the specification that the amount of the bond must be sufficient to "assure the completion of the reclamation plan by the commissioner in the event of forfeiture." However, the legislation as a whole does not clearly address agency responsibility in the event of forfeiture of bond. Language should be included to require the completion of a reclamation plan by DNR should there be a default on the performance bond.

4

DEC vs. DNR Jurisdiction on Water Quality Issues Remains Unclear

DNR's desire to maintain exclusive jurisdiction over surface coal mining, processing, and reclamation operations in the state could lead to problems in mitigating anticipated water quality problems. In the course of normal water pollution control activities, DEC addresses water quality in areas where surface coal mining does and will occur. We hope to work closely with DNR to clarify the roles of the two agencies with respect to surface coal mining and thereby avoid duplication of agency effort.

We suggest that Sec. 41.45.020. JURISDICTION contain the following passage, in whole or in part:

> The Commissioner may develop proposed regulations under AS 41.45.010 - 41.45.340 as part of the state program for control of nonpoint source pollution, and shall seek to enter into a cooperative agreement with the Commissioner of Environmental Conservation for that purpose. However, the Department of Environmental Conservation is the lead agency for water quality and control of nonpoint source pollution under this act, and the regulations and cooperative agreement are therefore subject to the advance approval of the Commissioner of Environmental Conservation.

Additional Concerns

With respect to the amount of the application fee required (Sec. 41.45.090.), the state may wish to follow more closely the federal statute [PL 95-87 Sec. 507.(a)]. Such legislation allows application fees to be charged which cover not only the anticipated costs of reviewing the application, but also the costs of monitoring and enforcement.

Throughout the Act, a number of vague and undefined terms are used when referring to certain aspects of environmental protection. Examples are included as an appendix to this memo (attached).

APPENDIX

page 2, line 26-28	(3) to assure that surface coal mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources;
page 7, line 3	substantial economic loss
page 10, line 14-15	of probable hydrologic consequences
page 18, line 7	prevent damage to the hydrologic balance
page 18, line 27-28	(B) materially damage the quantity or quality of water in surface or underground water systems
page 20, line 29	incidental boundary revision
page 26, line 19	impose affirmative obligations
page 29, line 28	reasonable specificity
page 35, line 28	fragile or historic land
page 37, line 15-16	substantial legal or financial commitments
page 49, line 3-4	"significant imminent environmental harm to land, air or water resources" means a condition, practice, or violation which is causing or can be expected to cause an appreciable, irreparable adverse impact to land, air or water resources including, but not limited to, plant and animal life.

Alaska Department of Environmental Conservation

Testimony Concerning HB 762:
The Alaska Surface Coal Mining Control
and Reclamation Act

by John Halterman
Director, Environmental Quality Management
March 10, 1982

Reclamation and Revegetation Not Defined

The importance that DNR ascribes to reclamation is not made clear. The terms "successful revegetation" and "reclamation" are, in fact, never defined in the legislation. Reclamation should either be defined in this Act or via reference to a regulation. The importance of reclaiming disturbed lands should be emphasized in Section 1 on page 3 by terminating (5) with the following phrase:

> "recognizing that the responsible extraction of coal by responsible mining operators and the reclamation of lands disturbed by surface mining are essential and beneficial activities."

The difficulty and the expense involved in reclaiming and revegetating an area should be of prime consideration to the agency(ies) that, by default of an operator on a reclamation bond, would be responsible for reclaiming an area. Therefore, the Act should provide for designating as unsuitable for surface coal mining any area where reclamation is not technologically OR ECONOMICALLY feasible (pg. 37, line 10).

Forfeiture of Performance Bonds

The Act provides a detailed discussion of performance bond requirements, including the specification that the amount of the bond must be sufficient to "assure the completion of the reclamation plan by the commissioner in the event of forfeiture." However, the legislation as a whole does not clearly address agency responsibility in the event of forfeiture of bond. Language should be included to require the completion of a reclamation plan by DNR should there be a default on the performance bond.

DEC vs. DNR Jurisdiction on Water Quality Issues Remains Unclear

DNR's desire to maintain exclusive jurisdiction over surface coal mining, processing, and reclamation operations in the state could lead to problems in mitigating anticipated water quality problems. In the course of normal water pollution control activities, DEC addresses water quality in areas where surface coal mining does and will occur. We hope to work closely with DNR to clarify the roles of the two agencies with respect to surface coal mining and thereby avoid duplication of agency effort.

We suggest that Sec. 41.45.020. JURISDICTION contain the following passage, in whole or in part:

> The Commissioner may develop proposed regulations under AS 41.45.010 - 41.45.460 as part of the state program for control of nonpoint source pollution, and shall seek to enter into a cooperative agreement with the Commissioner of Environmental Conservation for that purpose. However, the Department of Environmental Conservation is the lead agency for water quality and control of nonpoint source pollution under this act, and the regulations and cooperative agreement are therefore subject to the advance approval of the Commissioner of Environmental Conservation.

Additional Concerns

With respect to the amount of the application fee required, the state may wish to follow more closely the federal statute. Such legislation allows application fees to be charged which cover not only the anticipated costs of reviewing the application, but also the costs of monitoring and enforcement.

Throughout the Act, a number of vague and undefined terms are used when referring to certain aspects of environmental protection. Examples are included as an appendix to this memo (attached).

page 2, line 22-24	(3) to assure that surface coal mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources;
page 7, line 3	substantial economic loss
page 10, line 20	of probable hydrologic consequences
page 18, line 26	prevent damage to the hydrologic balance
page 19, line 17-19	(B) materially damage the quantity or quality of water in surface or underground water systems
page 21, line 21-22	incidental boundary revision
page 27, line 18	impose affirmative obligations (legal jargan; the Act should be in plain English)
page 31, line 2	reasonable specificity
page 37, line 17	fragile or historic land
page 39, line 9	substantial legal or financial commitments
page 50, line 28 page 51, line 1-3	"significant imminent environmental harm to land, air or water resources" means a condition, practice, or violation which is causing or can be expected to cause an appreciable, irreparable adverse impact to land, air or water resources including, but not limited to, plant and animal life.

TITLE

Strip Mine Reclamation

SUMMARY

Given increasing costs and decreasing availability of other fossil fuels, coal is expected to represent a critical transition fuel throughout the remainder of this century. Such a prominent role in the nation's fuel supply will have significant long-term socioeconomic and environmental effects on those regions where coal deposits are found.

The Surface Mining Control and Reclamation Act of 1977 has tended to reduce many of the differences among state reclamation and environmental standards for strip mining operations. Adequate state implementation of the Reclamation Act depends on several factors:

- Coordination of the activities of federal and state agencies;
- Public participation in the development of reclamation legislation and regulations;
- Successful renegotiation of lease contracts with the Council of Energy Resource Tribes (CERT).

BACKGROUND

As a result of the increasing demand for coal as a transition fuel throughout the remainder of the 20th century, production levels are expected to increase rapidly. Industry forecasts estimate the development of at least 88 new surface coal mines and expansion of 107 existing surface mines in the future. While underground coal mining is expected to grow, it is declining in proportion to surface mining production. Coal that can be surface-mined accounts for a large portion of U.S. reserves, particularly in the Western states.

Increasingly, state legislatures are treating mining as an interim land use. Realizing that careful reclamation can mitigate the adverse impacts of mining, many states have been enforcing reclamation and environmental standards on strip mining operations for years. In an effort to provide uniformity to reclamation requirements that were comprehensive and detailed in some states, but general and vague in others, Congress enacted the **Surface Mining Control and Reclamation Act of 1977**, (P.L. 95-87; 30 USC 1201 et seq.).

Environmental Impacts of Strip Mining

The environmental impacts of coal surface mining are wide-ranging and complex. Some of the most immediate effects are complete elimination of vegetation, disruption of natural soil structure, displacement or destruction of wildlife and habitat, and degradation of air quality from increased dust levels. Impacts to groundwater supplies range from drainage of usable water to contamination from percolation of poor quality mine water. Poor quality water can contaminate both groundwater and local streams for long periods.

Reclamation Technologies

The potential for rehabilitating land disturbed by surface mining to a condition equal to or better than its pre-mined state varies according to regional characteristics. Variable characteristics include topographic, chemical, climatic, biologic, geologic, economic, and social conditions in mined areas.

Reclamation technologies should be adapted to fit area diversity. The sequence of actions in mined area reclamation consists of:

- Control of water flow and quality;
- Conservation and replacement of topsoil;
- Backfilling and grading;
- Reducing highwall or pitwall;
- Burying or neutralizing toxic wastes; and
- Revegetating for beneficial uses.

KEY QUESTIONS

Policy Uncertainties

- What financial requirements and guarantees are appropriate to state and federal strip mine reclamation policies?
- What state and federal agencies should be charged with responsibility for the development of environmental impact statements for strip mine activities and land reclamation?
- What are the appropriate policy criteria for allocation of costs, risks and benefits of strip mine reclamation projects and regulatory programs?
- What is the appropriate allocation of reclamation policy and regulatory responsibilities among federal and state agencies?
- What are appropriate roles for the public and private sectors in activities associated with strip mine reclamation?
- How can public participation be integrated into the regulatory process associated with strip mine reclamation?
- What are the economic, legal and regulatory consequences of tribal jurisdiction on Indian lands affected by reclamation activities?
- What options should be examined by a state legislature in developing and implementing statutory authority for reclamation activities?
- What are appropriate legal responses to noncompliance with regulatory provisions associated with strip mine reclamation activities?
- Are the opportunities for citizen suits and other forms of public interest legal intervention adequately balanced with the interests and rights of strip mine developers and operators?

Technical Uncertainties

- What improvements are needed in procedures for assessing environmental impacts of strip mining and reclamation activities?
- What improvements are needed in reclamation technologies, and how likely are these improvements to be accomplished in the near future?
- Can changes in strip mining technology and operations be made that will decrease environmental impact, and thus decrease reclamation costs?

LEGISLATIVE ISSUES

Technical:

Environmental performance standards require coal operators to restore the mined area to a productive state. In the West, this specifically includes restoration of the hydrologic balance. Operators must also provide comprehensive and detailed pre-mining information, planning, and specific techniques used in all phases of mining operations.

Economic:

Mined-land reclamation costs are included in the four phases of reclamation: Design, engineering and overhead; bond and permit fees; backfilling and grading; and revegetation. In an analysis conducted by the Center for the Environment and Man Inc., it was determined that the economic impact of all regulations pursuant to P.L. 95-87 will average about $1 per ton of coal mined. Ninety-five percent of that figure will fall on the private sector. Electrical rate increases should be minimal. The major areas of increased cost impact have been identified as water sample analysis, hydrologic impact assessment, permit fees, minimum bond requirements, sedimentation control, and road construction requirements. In terms of regional variations, cost impacts will be greatest in Appalachia and least in Western coal mining states.

The strip mine reclamation program incl[illegible] $.35 per ton charge as a reclamation fee. 50 % of the funds collected will be directly returned to the state; 50 % will be held in a national pool and distributed by priority. The funds in the national pool will be used to mitigate coal mining impacts and other mineral extraction damages. Excess funds will be directed towards research and energy impact assistance.

States may tag the $.35 reclamation fee onto already existing severance taxes. The additional costs will be absorbed by coal importing states.

Office of Surface Mining staff have determined the $.35 per ton fee to be insufficient in covering the costs associated with necessary reclamation.

Legal:

From a legal perspective federal actions relating to the development of Western coal resources have been of particular concern. Over 80% of western coal lands are owned by the federal government. Prior to the enactment of P.L. 95-87, federal reclamation efforts were often less stringent than state requirements.

Much of the opposition to this law, after it had been introduced in Congress, stemmed from the feeling that it would lead to excessive federal intervention. As a result of its enactment, any state with an unapproved reclamation program, or with no program at all, forfeits all authority and jurisdiction over coal mining activities to the federal government. Supporters of the bill assert, however, that it would encourage the states to establish primary control over the implementation of the complex reclamation program. The sponsors of the reclamation act support the concept of "good faith," defined as follows: so long as a state wants to administer its own program, it will, and no federal intervention will occur. Only when a state defaults will the federal government impose a federal regulatory program.

Institutional:
Effective implementation of the reclamation act will require significant cooperation between federal and state governments in committing manpower, funds and efforts

Public participation is a key component of the strip mine reclamation legislation. Any legitimate citizen complaint is to be diligently investigated by the regional staff of the Office of Surface Mining.

The Council of Energy Resource Tribes (CERT), formed by 22 tribes in 1975, controls a substantial share of western energy resources: over 70 billion tons of coal, which is 16% of all U.S. coal and at least 30% of all coal west of the Mississippi. Past lease arrangements with the Indians provided very small royalties (less than $.15 per ton). Tough contract renegotiations may cost Western states millions of dollars in lost taxes.

CERT has received a federal grant to develop strip mine reclamation regulations. A priority effort of the grant is to coordinate reclamation work with the states. Some tribes and states have already arrived at successful cooperative reclamation agreements. In other cases, however, such as in Montana, a great deal of work remains before a cooperative agreement can be achieved.

State Reactions to OSM Activities:
Oversight hearings on implementation of the 1977 act by the Office of Surface Mining (OSM) were held by the House Subcommittee on Energy and Environment of the Interior and Insular Affairs Committee in 1979. Governors Julian Carroll of Kentucky and Ed Herschler of Wyoming told the subcommittee that states are anxious to work with the federal government in reclamation, but that actions by OSM have thwarted the forging of the strong state-federal partnership envisioned by the authorizing legislation. Governor Carroll said during House Interior and Insular Affairs Committee oversight hearings that, "the basic problem with OSM as an organization is that the organization continuously attempts to do things administratively that they do not have the authority to do... OSM is not interested and does not employ personnel who have the necessary experience in maintaining good relationships with the states." Governor Carroll cited OSM's failure to offer meaningful consultation to states, which have primary responsibility for implementation of the programs; OSM delays in issuing regulations and approving grants; the lack of clear lines of decision-making authority between OSM headquarters and its regional offices; and OSM action to recruit experienced state inspection personnel, at higher salaries, for the federal program. "Federal mechanisms exist," Governor Carroll said, "with which to tie our hands, but it need not be so... We will gladly make the hard, responsible decisions that are necessary in the enforcement effort."

Governor Herschler said he had two main complaints about the performance of OSM—"the questionable competence of the agency and its failure to forge a partnership with the states. Under both headings the Office of Surface Mining has forgotten the respect for specific local conditions that are central to the Congressional scheme." Noting OSM inability to meet statutory deadlines, Governor Herschler said the deadline could have been met if OSM's had pursued a policy of "cooperation, trust and delegation with the states. Instead we have had the confrontation, mistrust, and an effort to centralize authority within the federal establishment." Actions of OSM, Governor Herschler said, are giving environmental protection a bad name. "As the public becomes convinced that the controls on strip mining mean delay, sharply increased costs, and general confusion, the public develops a hostility to the concept of environmental protection, not the agency involved. This clearly is not right."

POLICY ACTIONS

State:

- **Alabama:** The Alabama Surface Mining Act of 1969 and The Alabama Surface Mining Reclamation Act of 1975 (Act No. 551) and subsequent rules are very extensive and detailed in certain areas such as vegetative cover, soils, and mapping requirements; while they are much less stringent in other areas (e.g., wildlife habitats and air quality). However, permits now issued in the state of Alabama "are subject not only to Act No. 551, the (subsequent) rules and regulations, but also to the provisions and requirements of Public Law 95-87, . . . and regulations adopted thereunder," Consequently, Alabama is in total compliance with the new federal strip mining regulations.

- **Colorado:** House Bill 1223, the **Colorado Surface Coal Mining Reclamation Act** of 1979, closely follows the language of PL 95-87. Under the Colorado Mined Land Reclamation Act, no longer applicable to coal since enactment of HB 1223, reclamation requirements varied significantly from the new federal standards. The Act and its implementing regulations lacked provisions for exploration permits or for obtaining air quality and geological data. Other portions of state mandated reclamation plans, such as the collection of topography and soil information, were not as strict as federal requirements. On the other hand, coal mining impacts on water quality and fish and wildlife habitats have been thoroughly controlled.
- **Iowa:** Legislation enacted in 1979 (House File 670) provides for state compliance with Public Law 95-87 and enforcement of the permanent rules and regulations established by the federal Office of Surface Mining. Iowa's reclamation program is particularly thorough regarding surface mining performance standards. Land use and back filling and grading (topography) requirements are much more stringent than the federal standards.
- **Kentucky:** As of September, 1978, Kentucky has been operating under regulations for the strip mining of coal and the surface effects of underground mining that fully implement the initial regulatory program of Section 502(c) of Public Law 95-87. According to Kentucky's Bureau of Surface Mining Reclamation, the current regulations "must be significantly revised in order to implement the full scope of Public Law 95-87 under the permanent regulatory program." In terms of data requirements, none have been established for exploratory permits. Requirements for reclamation plans and performance standards in the state already meet federal standards in many areas. The Kentucky legislature, in a 1979 special session, approved a program of technical assistance for small coal operators. Other revisions to the state's reclamation program could not be approved until the 1980 legislative session.
- **Montana:** The **Montana Strip and Underground Mine Reclamation Act** is the primary strip mining legislation in the state, with the two subsequent acts expanding on the original intent. Montana's laws and regulations are quite extensive and essentially fulfill the requirements of the federal regulations. In many cases Montana's laws are much more stringent and more specific than the federal rules and regulations. Montana is one of the few states than make provisions for exploration permits.
- **Ohio:** After a thorough study, a comprehensive strip mine reclamation law was passed and became effective April 10, 1972. (Ohio Revised Code, Chapter 1513; Amended 10/10/75, 8/2/78.) The Division of Reclamation in the Ohio Department of Natural Resources and the Ohio mining industry have had five years experience operating under the Ohio rules and regulations. Nevertheless, the 112th General Assembly enacted Amended Substitute House Bill 1081 for the purpose of complying with the initial regulatory program under P.L. 95-87, so that it could assume exclusive jurisdiction over coal mining reclamation in the state.
- **Virginia:** According to Article 4, Section 45.1-220.2, of the state code, "The Director shall include in all permits issued . . . terms which require the operator to comply with the provisions set out in Section 502(c) of Public Law 95-87." However, although Virginia agreed to the reclamation/permit standards established by the federal government, the state is definitely opposed to the federal enforcement and administration of the initial regulatory program, maintaining that the regulation of surface mine operations should remain within the powers of the state. To guarantee an approvable program and allow for state enforcement and administration of federal provisions, the 1979 General Assembly enacted HB 1514, Chapter 290, the **Virginia Surface Mining Control and Reclamation Act.**
- **West Virginia:** This state has extensive surface mining activity and its statutes and regulations are accordingly very extensive. It is one of the few states providing for exploration permits, referred to as prospecting permits in the state code. The requirements for such operations are as stringent or more so than federal standards. Within current rules and regulations, the state allows for compliance with federal laws. The issuance of a permit "does not release the permit holder from any other legal duties imposed by the laws of this state or these United States." In 1979 West Virginia's legislature considered the possibility of legal action to prevent enforcement of P.L. 95-87. The rules and regulations are considered by the state's mining industry and some lawmakers as far too unwieldly and costly to implement. However, during its 1980 session, the legislature passed the **West Virginia Surface Coal Mining and Reclamation Act** (HB 1529; Chapter 20, Article 6, Code of West Virginia), which is felt to bring the state's statutory base for regulation of strip mining and reclamation largely into compliance with P.L. 95-87.

Federal:

- **Surface Mining Control and Reclamation Act of 1977** (P.L. 95-87; 30 U.S.C. 1201; enacted August 3, 1977). Initial regulatory procedures under this act began on February 3, 1978. State regulatory authorities were required to have legal authority to enforce its initial regulatory procedures by May 3, 1978. Compliance by coal mine operators was also required by this date. The main objections to the federal regulations appear to be that they deal with methods and procedures rather than on performance and results.
- The Interior Department ruled in 1977 that Western states cannot collect taxes on Indian coal.

RESOURCES

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Senator Fahrenkamp

SB843

Alaska State Legislature

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MAR 17 1982

M E M O R A N D U M

March 15, 1982

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senator Arliss Sturgulewski
Senate Resources Committee

RE: Beluga Coal Development

I share with you an interest in seeing development of the major coal resources in the Beluga area. I know that your office is presently doing detailed work on the proposed state surface mining bill which would allow us to take over from the federal government the regulation of coal mining activities. I'm interested in finding ways that the state can assist private industry in developing our major coal resources and yet meet needed regulatory requirements.

Because of this interest, I asked the Department of Fish and Game to develop for me a proposal that they felt was necessary to assist getting needed information for various permit reviews, regulations and environmental impact statements that might be required in the Beluga development. It seems to me that it makes good sense to start accumulating data now, rather than have the project impeded because of inadequate information available at some critical later date. I wanted to make this information available to you and the committee members. Possibly it can merit some discussion at the time we have the surface mining bill before the committee.

Attachment

cc: Senate Resources Committee Members

(REVISED)

Beluga CIP

The Beluga coal development will be the first large scale surface coal mining activity to occur within the watershed of a major anadromous stream system in Alaska. The most recent information available to the Department indicates that the Beluga Coal Company and Diamond Alaska Coal Company plan to strip mine coal from beneath four to five tributaries of the Chuitna River known to provide spawning and rearing habitat for king, coho and pink salmon, rainbow trout and Dolly Varden. The "Chuitna East" mine is scheduled to be operational by the fourth quarter of 1986. The proposed 30 year pit boundaries for the "Chuitna East" and "Lone Ridge" mines will eliminate approximately nine stream-miles of existing anadromous and resident fish habitat. A preliminary flow budget for the Chuitna River watershed indicates that approximately 48% of the total flow in the Chuitna River originates in or flows through the proposed Chuitna East and Lone Ridge mine pits.

Strip mining will result in the ultimate destruction of fish and wildlife habitats presently existing within the mine pit boundaries. It can be expected that stream habitats existing adjacent to and upstream from the mine pits will be severely degraded by channelization and coalescence of existing streams routed around the working pit boundaries. Downstream effects may also be severe and include dewatering, siltation and other adverse water quality changes. The existing aquifers which presently control stream water quality and quantity will be significantly disrupted by mining. Groundwater which currently provides base flow to fish overwintering areas will be cut off in many instances. Mine waters which collect within the pit and site run-off will require treatment and discharge into a nearby stream of opportunity causing additional water quality and flow changes.

Assuming that one-half of the anadromous fish production is lost from the Chuitna River system, the estimated annual loss of fish available to Cook Inlet fisheries will lie within the following ranges:

Pink Salmon	70,000 - 650,000
	mean = 275,000
Coho Salmon	5,250 - 48,750
	mean = 20,625
King Salmon	2,100 - 19,500
	mean = 8,250
Chum Salmon	700 - 6,500
	mean = 2,750
Total Salmon	78,050 - 724,750
	mean = 306,625

The Department has reviewed recent literature on the restoration of stream habitats and finds that there presently exists no reliable and cost-effective technology for reclaiming anadromous fish habitat on post-mined lands. Reclamation of wildlife habitat for moose, small mammals and birds is thought to be technically feasible.

The Department has the statutory responsibility through AS 16.05.870 and AS 16.05.840 to regulate activities that might impair or degrade anadromous fish habitat. The Department will require detailed information to quantify the effects of strip mining on the anadromous fish habitat of the Chuitna River and to develop biologically sound and technically feasible mitigation to counter the as yet to be quantified loss of fish production resulting from mining.

The Department will provide advice to industry on the types and quantity of data necessary to evaluate and mitigate impacts to anadromous stream habitat. However, without a data gathering program of its own, the Department will likely be in a poor position to evaluate and control the quality of the data provided by the operators and, as a result, important habitat values may be compromised and inappropriate mitigation assessed. Perhaps more importantly the Department needs a high level of participation in order to acquire the experience and sophistication to deal with the coal industry particularly because coal mining is a relatively long term committment of resources (in excess of thirty years) and the Department will likely be repeatedly called upon to evaluate the impacts to area fish and wildlife resources occurring from ongoing operational developments and activities that cannot yet be adequately addressed during the pre-mining planning and permitting phase of the project.

The program proposed in this CIP is based upon our understanding of the types and severity of impacts anticipated from Beluga coal development and the mitigation options available for industry to ameliorate those

impacts. The information obtained from this program will build upon the data gathering programs presently in existence in addition to those being proposed by industry and government agencies including Bechtel Inc., USGS, ADNR-DGGS, ADEC and USF&WS. The Department has coordinated this CIP through the Beluga Interagency Mining and Resource Management Team and the Governor's Coal Task Force.

The program will be accomplished under four major tasks: Fisheries Resources Assessment, Wildlife Resources Assessment, Habitat Impact Assessment and Permit Management. and Subsistence Use Assessment. The studies proposed will be targeted on habitats which are likely to be most severely affected by strip mining and ancillary developments. Prior to proceeding with field work, a detailed study plan will be prepared in FY 83 to precisely define the data requirements, study methods, coordination and reporting that will achieve the objectives of the task assignments.

Task I - Fisheries Resources Assessment

Fishery resources of the Beluga area which will be significantly affected by extraction and production of coal resources involve both anadromous and resident fish species. These stocks of fish are currently utilized by commercial, subsistence, and recreational users. Exceptional aquatic habitats and instream flows currently support these fish populations, all of which will be impacted to some extent by strip coal mining within the area.

Objectives

1. Determine adult salmon numbers by species, migration timing, and spawning habitat requirements in terms of depth, substrate, velocity and water quality parameters.

2. Determine resident species occurrence, relative abundance and distribution in each of the respective streams to be affected by the project.

3. Determine the habitat requirements, and their availabilities and adequacies with respect to the various life stages of both resident and juvenile anadromous fishes occupying the affected streams. Measurements of water quality, velocities, substrate and depths will be correlated with species occurrence.

4. Intrasystem movements and migrations of rearing juvenile salmon, and how the tributaries relate to each other in meeting requirements of various life stages will be determined. Ultimately the contribution of the individual tributaries to the system as a whole, in terms of production, will be determined.

5. Current utilization of the subject fish stocks, by the various user groups, will be quantified.

6. Determination of on-going and post developmental changes in the fishery resource due to improved access and increases in human

population will be conducted. It is expected both anadromous and resident fish utilization will be dramatically affected as a result of the proposed project.

Task II - Wildlife Resources Assessment

Wildlife resources of the Beluga area include moose, black bear, brown bear, ptarmigan, beaver and land otter and small furbearers which will be significantly affected by extraction and production of coal resources and increased access and harvest. Moose populations are presently considered to be moderate to high in areas directly affected by the project, and their movements, behavior and habitat requirements are only generally known.

Moose and small mammal populations may respond favorably to offsite habitat manipulation and mine reclamation over time. It is expected that little if any practical mitigation is available for brown bear and black bear populations and these will be expected to decline.

Baseline wildlife studies will focus on establishing pre-mining population levels, movements and habitat preference for moose. Preferred mitigation measures will be developed to address habitat rehabilitation and enhancement relative to access, facility siting, railroad operation and the mine pit itself. The additional data gathering required can be dove-tailed to annual moose composition counts conducted by the Game Division.

Objectives

1. Determine pre-mining population and movements of moose within the Beluga sub-basin.

2. Develop mitigation measures specific to the Beluga area that will address anticipated lost moose production and increased harvest demands.

Task III - Habitat Impact Assessment and Permit Management

A great deal of study will be required to evaluate the impacts of surface mining operations and associated Beluga area developments on fish and wildlife resources. The Department will need to analyze and synthesize considerable quantities of mining and engineering data as well as fisheries, wildlife and hydrology data to respond rapidly and effectively to project related permits, reviews, regulations, and environmental impact statements. If the State assumes the primary regulatory responsibility for the Beluga project through passage of a State Surface Mining Bill, the Department will likewise need to assume additional burdens of regulation and review responsibilities that are currently being handled by federal agencies. There is a need within the Department to develop experience and expertise in coal related impact assessment and mitigation in order for the State to prepare for large scale coal developments which appear to be imminent.

Objectives

1. Data collection occuring within the Beluga area will be continuously monitored and coordinated with the Department's data gathering, permitting and review programs.

2. An ongoing review of the habitat impacts of all aspects of the development will be maintained. The Department will maintain the capability to expeditiously provide "real time" biological input to ongoing engineering, planning and management decisions by both industry and government.

3. A comprehensive review of the probable effects of the proposed surface mining operation and related developments will be accomplished. Included will be a technical fact finding trip to operational surface coal mines in the western United States and Canada. First hand experience and information will be obtained from local State and Federal regulatory agencies and industry environmental managers. Emphasis will be placed upon studying state-of-the-art mitigation and reclamation techniques and the applicability of technology transfers to the Beluga area. The results of this investigation will appear in a report which will be available to industry and government agencies during the design and development phase of the project.

4. Alternative mine waste water disposal strategies will be evaluated for their impact on aquatic habitats. It is expected that large volumes of water will be associated with mining in the Lone Ridge,

Center Ridge and Chuitna East areas. Expected downstream water quality changes will be evaluated for their effect upon resident and anadromous fish habitat. This study will be coordinated with ADEC's water quality monitoring and discharge permit program.

5. Reviews of permits, EIS's, regulations and reclamation plans will be coordinated within the Department and responses prepared on a timely basis.

6. Mitigation measures will be developed jointly with industry to address fish and wildlife production lost on mined lands. It is expected that significant quantities of fish and wildlife habitat will be destroyed or damaged by mining operations. Development of biologically sound and practical mitigation measures will require considerable Department time and involvement.

Task IV - Subsistence Use Assessment

Moose, furbearers, game birds and salmon produced in the Beluga coal fields are some of the important wild resources utilized by local residents. The Tyonek Comprehensive Resource Use Study conducted by the Subsistence Division is currently generating data on prefered resource use areas and the socio-economic values of wild resources. Additional data gathering and data manipulation will be required as development plans are prepared and mine construction begins.

Objective

Conduct additional resource use mapping, data gathering, and data manipulation to supplement ongoing Tyonek Comprehensive Resource Use Study.

Project Management Responsibility

The Habitat Division will be delegated the responsibility for overall project coordination within the Department of Fish and Game.

Beluga CIP
PROJECT COST SUMMARY
(in thousands of dollars)

LINE ITEM	DESCRIPTION	TASKS	FY 83
Line 100	Personal Services	I	76.787
		II	24.9
		III	81.5
Line 200	Travel	I	--
		II	--
		III	--
Line 300	Contractual Services	I	23.0
		II	62.0
		III	32.0
Line 400	Commodities	I	6.0
		II	6.0
		III	6.0
Line 500	Equipment	I	3.5
		II	2.5
		III	2.5
	TOTAL COSTS BY TASK	I	109.2
		II	95.4
		III	122.0
	Subtotal by Fiscal Year		326.6

Note: Budget costs do not include administrative overhead.
Task I: Fisheries resource assessment
Task II: Wildlife resources assessment (includes funds for mitigation evaluation subcontract)
Task III: Habitat impact assessment and permit management (includes funds for engineering subcontract)

Leadership for Task II will be provided by a Game Biologist III who is funded out of Game Management unit 16 operational funds.

FISCAL NOTE
BELUGA PROJECT

FY 83: Total for all tasks $326.8
DETAIL BUDGET AVAILABLE

FY 84: Total for all tasks $300.0

FY 85: Total for all tasks $356.0

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

Received 3/17/82 SSC

1:20 pm 3/22/82

MIKE O'MEARA
P.O. BOX 1125
HOMER, AK 99603

FEBRUARY 28, 1982

ALASKA ENVIRONMENTAL LOBBY
419 6TH, SUITE 328
JUNEAU, AK 99801
ATTEN: JAY NELSON

DEAR JAY:

AS REQUESTED BY YOUR OFFICE I OBTAINED AND REVIEWED COPIES OF HOUSE BILLS 762, 769, AND 804. I AM SENDING MY THOUGHTS ON THESE, LESS THE BILLS THEMSELVES, ASSUMING THAT YOU HAVE COPIES TO WHICH YOU CAN REFER.

THE GOVERNOR'S BILL, #762, SEEMS TO ME THE MOST IMPORTANT TO THE EXTENT THAT #769 AND #804 OR ANY OTHER SUCH BILLS SHOULD NOT EVEN BE CONSIDERED FOR PASSAGE UNTIL SOMETHING LIKE IT IS MADE LAW.

IN MY OPINION AN ACT WHICH WOULD CONTROL COAL EXPLORATION AND MINING IS LONG OVERDUE GIVEN ALASKA'S MANY AND WIDE SPREAD DEPOSITS. WITH THE RECENT REVIVAL OF INTEREST IN COAL AS AN ALTERNATIVE TO OTHER TYPES OF FUEL WE WILL SEE INCREASING EFFORTS TO EXPLOIT THESE DEPOSITS AND WITHOUT WELL DESIGNED REGULATING LEGISLATION, COMBINED WITH STRONG ENFORCEMENT, IT SEEMS LIKELY THAT GREAT ENVIRONMENTAL DAMAGE WILL OCCUR THROUGHOUT THE STATE.

AFTER AN INITIAL EXAMINATION OF H.B. 762 I FEEL THAT IT IS A GOOD STARTING POINT, BUT THAT THERE ARE SEVERAL POINTS WHICH MUST HAVE MORE WORK IF THE BILL IS TO BE CLEAR AND USABLE. I WILL TRY TO SUMMARIZE AS BRIEFLY AS POSSIBLE IN THE HOPE THAT MY

OBSERVATIONS AND QUESTIONS CAN BE OF SOME USE TO YOU.

AS A LAYMAN I SEE MUCH THAT IS COMMENDABLE IN THIS LEGISLATION, BUT IN THE INTEREST OF SIMPLICITY AND BREVITY I CONFINE MY COMMENTS HERE TO THOSE THINGS WHICH STRIKE ME AS FLAWS IN THE BILL.

1. QUESTONABLE ASSUMPTIONS
2. VAGUE PHRASING
3. FAILURE TO SPECIFY DEGREE OF ENVIRONMENTAL PROTECTION SOUGHT
4. LACK OF MECHANISMS PROTECTING INDIVIDUALS WITH INTERESTS IN THE SURFACE ESTATE
5. INADEQUATE ATTENTION TO EXPLORATION
6. MINING PERMIT AND REGULATION INADIQUACIES
7. INADEQUATE PUBLIC DISCLOSURE PROVISIONS
8. EXCESSIVE DISCRETIONARY LANGUAGE

QUESTIONABLE ASSUMPTIONS:

THE BILL MAKES THE ASSUMPTION IN ITS STATEMENT OF PURPOSE THAT COAL MINING IS AN "ESSENTIAL AND BENEFICIAL" ACTIVITY (P.3, L.1-3 AND 8-9). MANY OF US WOULD DISAGREE WITH THIS AND SINCE SUCH LANGUAGE CAN HAVE LITTLE USE IN THE MECHANICS OF THE BILL IT SHOULD BE OMITTED.

ANOTHER ASSUMPTION WHICH IS INFERRED IS THAT THE STATE OF ALASKA SHOULD ENCOURAGE SMALL OPERATORS. WHILE I DO NO FEEL WE SHOULD MAKE IT DIFFICULT FOR THEM I DOUBT THE ADVISABILITY OF ENCOURAGING SMALL OR LARGE OPERATORS. THINGS

WHICH CONCERN ME MOST ABOUT THIS INCLUDE WORDING WHICH WOULD SUBSIDIZE SMALL OPERATIONS BY PAYING FOR REQUIRED ENVIRONMENTAL STUDIES (P. 10, L. 13 - 23), AND THE OUTRIGHT EXEMPTION FROM REGULATION OF OPERATIONS COVERING UNDER TWO ACRES (P. 45, L. 7-16). IN MY OPINION THIS ASSUMPTION AND THE SPECIFIC PROVISIONS CITED HAVE NO PLACE IN A BILL OF THIS KIND.

THROUGHOUT THE BILL THERE IS EVIDENCE OF A VERY NARROW VIEW OF WHO MIGHT HAVE STANDING AS CONCERNS COMMENTING ON PERMITS, EXPLORATION, MININGS, AND LEGAL ACTION. THE PHRASE "A PERSON WHO IS OR MAY BE ADVERSELY AFFECTED" APPEARS IN MANY PLACES (EX. P. 11, L. 1-7) AND THE ASSUMPTION SEEMS TO BE THAT THE COMMISSIONER SHOULD HAVE AUTHORITY TO DETERMIN WHO THIS HAPPENS TO BE. THIS IS NOT LOGICAL AND A BROAD DEFINITION SHOULD BE PROVIDED INSTEAD.

FINALLY, IT IS ASSUMED THAT THE EXTRACTION OF COAL FOR PRIVATE USE SHOULD NOT BE REGULATED IN ANY WAY (P. 45, L. 7 - 10). WHILE IT IS REASONABLE TO EXEMPT INDIVIDUALS FROM THE REGULATIONS DESIGNED TO REGULATE COMMERCIAL OPERATORS, IT SEEMS RATHER SHORT SIGHTED TO FAIL TO SEE THE POTENTIAL FOR ENVIRONMENTAL DEGRADATION AND CIVIL DISPUTE INHERANT IN AN UNREGULATED PERSONAL DEVELOPMENT. SOME SORT OF REGULATION IS IN ORDER.

VAGUE PHRASING:

THERE ARE MANY EXAMPLES OF PHRASES WHICH FAIL TO CONVEY ANY MEANING. IF THIS DOCUMENT IS TO BECOME USABLE LEGISLATION THESE PHRASES MUST BE

DEFINED CLEARLY SO THAT ALL PARTIES AFFECTED WILL HAVE A REASONABLE BASELINE FROM WHICH TO MEASURE THEIR OWN ACTIONS. I LIST SOME OF THE MORE TROUBLESOME EXAMPLES ... YOU CAN UNDOUBTEDLY FIND OTHERS.

- P. 2, L. 23 "UNREASONABLE DEGRADATION"
- P. 2, L. 29 "CONTEMPORANEOUSLY AS PRACTICABLE"
- P. 3, L. 1 "REASONABLE EXTRACTION"
- P. 3, L. 2 "REASONABLE MINING OPERATORS"
- P. 3, L. 4 "APPROPRIATE PROCEDURES"
- P. 4, L. 15 "REASONABLY NECESSARY"
- P. 11, L. 1 "A PERSON WHO IS OR MAY BE ADVERSELY AFFECTED"
- P. 5, L 10-11 "STRIKE A BALANCE BETWEEN PROTECTION OF THE ENVIRONMENT AND OTHER USES OF THE LAND"

THIS LAST ITEM IS NOT IN ORDER BY PAGE NUMBER BECAUSE IT IS IMPORTANT ENOUGH TO MERIT SPECIAL ATTENTION. IT IS VITAL THAT THE LEGISLATION GIVE SOME CONCRETE EXAMPLE OF WHAT TYPE OF WEIGHING MECHANISM WILL BE UTILIZED TO MEASURE CONFLICTING CLAIMS AND STRIKE THIS "BALANCE". WE KNOW THAT IN THE PAST, THE GREATEST FINANCIAL INTEREST ALWAYS MANAGED TO GET ITS THUMB ON THE SCALE.

FAILURE TO SPECIFY DEGREE OF ENVIRONMENTAL PROTECTION SOUGHT:

RELATED TO THE ABOVE COMMENTS ABOUT VAGUE PHRASING, THIS IS A MAJOR FLAW IN THE BILL. WHILE UNDER "THE PURPOSES OF THIS ACT" WE FIND MANY STATEMENTS WHICH SEEM TO INDICATE A DESIRE ON THE PART OF THE WRITERS TO "DO THE RIGHT THING", NO SPECIFIC STANDARDS FOR ENVIRONMENTAL QUALITY ARE GIVEN. WITHOUT SUCH

GUIDELINES IT IS DOUBTFUL THAT SUCH LEGISLATION WILL BE ABLE TO MEET ITS GENERAL GOALS.

LACK OF MECHANISMS PROTECTING INDIVIDUALS...

THIS IS VERY IMPORTANT, YET THIS BILL FAILS TO SET UP ANY STRUCTURE WHICH WILL HELP GUARANTEE THE RIGHTS OF INDIVIDUALS NOT IN CONTROL OF SUB-SURFACE ESTATE (WHICH IS MOST PRIVATE LAND HOLDERS IN ALASKA). WHILE THIS IS A STATED PURPOSE OF THE BILL (P. 2, L. 19-20), ANY STATEMENT OF THE TYPE AND DEGREE OF PROTECTION IS CONSPICUOUSLY ABSENT, AS IS ANY DESCRIPTION OF METHODS FOR RESOLVING DISPUTES BETWEEN THEM AND OWNERS OF SUB-SURFACE RIGHTS. WHILE LANGUAGE DEALING WITH PERMIT APPLICATION DENIAL MIGHT GIVE SOME COMFORT (P. 19, L. 17-29), IT MUST BE READ WITH THE UNDERSTANDING THAT THE STATE OF ALASKA HAS RESERVED SUB-SURFACE RIGHTS FOR MOST LAND OTHERWISE TRANSFERRED INTO PRIVATE HANDS SINCE STATEHOOD. GIVEN THIS, WE SHOULD HAVE SPECIFIC LANGUAGE WHICH EXPLAINS HOW THE STATE WILL DEAL WITH ITS SUB-SURFACE RIGHTS ON PRIVATE SURFACE HOLDINGS.

IN THE CASE OF INJURY OR LOSS DUE TO THE OPERATION OF A COAL MINE IT IS STATED THAT "A PERSON WHO IS INJURED IN HIS PERSON OR PROPERTY BY THE VIOLATION BY A PERMITTEE OF A REGULATION... OR ORDER OR PERMIT..." MAY BRING ACTION FOR DAMAGES, ATTORNEY FEES, ETC. THE QUESTION WHICH OCCURS TO ME IS, WHAT HAPPENS TO A PERSON WHO SUFFERS LOSS OR INJURY BY AN OPERATION WHICH IS NOT IN VIOLATION IN ANY WAY? WE MUST HAVE LANGUAGE WHICH FIXES RESPONSIBILY AND

WHICH PROVIDES A MECHANISM FOR THE RECOVERY OF SUCH LOSS OR COMPENSATION FOR SUCH INJURY (P. 48, L. 2-8).

WATER RIGHTS ARE PROTECTED (P. 46, L 7-16), BUT ONLY AFTER A LOSS HAS BEEN SUFFERED. THE PERMIT PROCESS SHOULD BE REDESIGNED IN SUCH A WAY AS TO ASSURE THAT CONFLICTS OVER WATER USE WHICH MIGHT ARISE THROUGH THE OPERATION PROPOSED WOULD BE IDENTIFIED AND RESOLVED BEFORE THE PERMIT IS ISSUED.

UNDER PROVISIONS OF THIS BILL, IT WOULD BE POSSIBLE TO PETITION THE COMMISSIONER TO HAVE AN AREA DESIGNATED AS "UNSUITABLE FOR MINING" (P. 36, L. 17-20). THIS OF COURSE IS AS IMPORTANT FOR PROTECTING PUBLIC LAND AS FOR PRIVATE HOLDINGS. UNFORTUNATELY SUCH DESIGNATION WOULD SEEM TO BE MEANINGLESS IF ONE READS FURTHER..." A DESIGNATION OF UNSUITABILITY... SHALL NOT PREVENT COAL EXPLORATION..." THIS OBVIOUS CONTRADICTION SHOULD BE RESOLVED BEFOR THIS BILL IS PASSED INTO LAW (P. 39, L. 11-12).

INADEQUATE ATTENTION TO EXPLORATION:

IT IS MOST UNFORTUNATE THAT THIS BILL MAKES ABSOLUTELY NO PROVISION FOR REQUIRING EXPLORATION PERMITS. LANGUAGE STATES ONLY THAT A PERSON MUST FILE A "NOTICE OF INTENT" BEFORE CONDUCTING EXPLORATION ACTIVITIES. NO PUBLIC NOTICE WOULD BE REQUIRED, NO NOTICE WOULD BE GIVEN SURFACE LAND OWNERS INVOLVED, NO BONDING WOULD BE REQUIRED, AND THE OPERATOR WOULD BE ALLOWED TO REMOVE UP TO 250 TONS OF

COAL WITHOUT "SPECIFIC WRITTEN APPROVAL" (P. 22, L. 12-15 AND P. 23, L. 2-4). THIS WOULD BE DISASTROUS IF IT WAS PASSED INTO LAW. IT WOULD ALLOW ALMOST ANY IDIOT WITH SOME EQUIPMENT TO RAISE HAVOC WITH PUBLIC AND PRIVATE LANDS, IN SECRET, WITHOUT BEING HELD RESPONSIBLE FOR ANYTHING HE MIGHT DO. WE MUST NOT ALLOW ANY BILL OF THIS KIND TO PASS WITHOUT SPECIFIC REGULATIONS GOVERNING THE EXPLORATION FOR COAL.

MINING PERMIT AND REGULATION INADEQUACIES:

IN THE SECTION OF THE BILL DEALING WITH MINING PERMIT APPLICATION APPROVAL, THERE IS LANGUAGE WHICH REQUIRES AN APPLICANT TO LIST ALL PREVOUS VIOLATIONS OF LAW OR ADMINISTRATIVE RULE CONNECTED WITH A SURFACE COAL MINING OPERATION OF HIS FOR A PERIOD OF THREE YEARS PRIOR TO THE APPLICATION. THIS IS AN OUTSTANDING IDEA BUT IT WOULD SEEM VALID TO REQUIRE THE LIST TO INCLUDE ANY RESOURCE EXTRACTION RELATED VIOLATIONS ... IF HE SCREWED UP AS A FORESTER OR A GOLD MINER WHY SHOULD HE BE EXPECTED TO DO A BETTER JOB WITH COAL (P. 20, L. 7-26)? IT WOULD ALSO BE A GOOD IDEA FOR LANGUAGE IN THIS SECTION TO INCLUDE SPECIFIC GUIDELINES FOR THE COMMISSONER TO FOLLOW IN MAKING VERIFICATION OF THIS KIND OF BACKGROUND INFORMATION ... PEOPLE DO HIDE THINGS FROM TIME TO TIME.

RELATED TO THE LIST OF VIOLATIONS IS WORDING WHICH PRECLUDES AN APPLICANT WITH A BACKGROUND SHOWING A "PATTERN OF WILLFUL VIOLATIONS" FROM OBTAINING APPROVAL. THIS IS GREAT, BUT I WOULD

SUGGEST THAT THE WORD "WILLFUL" BE REMOVED. NO MATTER THE CAUSE, ANY PATTERN OF VIOLATIONS INDICATES AN INABILITY TO CONDUCT BUSINESS IN A SAFE AND COMPETENT MANNER (P. 21, L. 1-5).

THE ESTABLISHMENT OF A SET OF FEES AND PENALTIES WHICH HAVE SOME LOGICAL RELATIONSHIP TO THE PERMITS OR VIOLATIONS APPLIED TO COAL MINING IS VERY IMPORTANT TO A BILL OF THIS TYPE. THESE SHOULD NOT BE ARBITRARY FIGURES, BUT SHOULD REFLECT THE VALUE OF THE RESOURCE AND THE COSTS INVOLVED OR LOSSES INCURRED IN REGULATING COAL MINING. TO EVALUATE THE BILL IN THIS RESPECT REQUIRES A PERSON WITH KNOWLEDGE WHICH I LACK, SUCH AS AN ATTORNEY. I AM CONCERNED THAT WITH THE PRESENT WORDING, THE BILL WOULD NOT ALWAYS REQUIRE THE POSTING OF A SECURED BOND (P. 14, L. 7-11). IT WOULD BE MORE CONSISTENT, AND SAFER TO ALWAYS REQUIRE A BOND. AS FOR PENALTIES, I CAN ONLY PROPOSE QUESTIONS WHICH I WOULD LIKE TO SEE ANSWERED... ARE THEY HARSH ENOUGH TO MAKE THE COMMISSION OF VIOLATIONS TOO COSTLY TO BE PROFITABLE?

- P. 6, L. 2-6 CONFLICT OF INTEREST, CLASS A MISDEMEANOR
- P. 33, L. 17-27 VIOLATIONS, CONDITIONS OF PERMIT, $5,000
- P. 34, L. 26-29, P. 35, L. 1 WILLFUL VIOLATIONS, CONDITIONS OF PERMIT, CLASS C FELONY
- P. 35, L. 10-14 MISREPRESENTATION OF FACT REGARDING COAL OPERATION, CLASS C FELONY
- P. 35, L. 15-19 FAILURE TO CORRECT VIOLATION AFTER NOTIFICATION, $750 PER DAY

INADEQUATE PUBLIC DISCLOSURE LANGUAGE:

WHILE FOR THE MOST PART THE BILL PROVIDES FOR

METHODS WHEREBY THE PUBLIC CAN GAIN INFORMATION ABOUT THE ACTIONS & PROPOSALS OF COAL OPERATORS AND OF THE COMMISSIONER'S RESPONSE TO THEM, THERE ARE THOSE THINGS WHICH ARE LACKING. IT IS PARTICULARLY TROUBLING THAT WORDING IN THE SECTION ON PUBLIC INFORMATION AND INSPECTION WOULD ALLOW "INFORMATION WHICH RELATES ONLY TO THE ANALYSIS OF THE CHEMICAL AND PHYSICAL PROPERTIES OF THE COAL..." TO BE "KEPT CONFIDENTIAL AND NOT MADE A MATTER OF PUBLIC RECORD..." (P.9, L.6-28) WHILE I RECOGNIZE THAT COAL OPERATORS WISH TO KEEP SUCH INFORMATION FROM THE HANDS OF COMPETITORS, I ALSO UNDERSTAND THAT WE ARE DEALING WITH A RESOURCE WHICH IS PUBLIC PROPERTY. MY FEELING IS STRONG THAT THE PUBLIC MUST HAVE ACCESS TO INFORMATION ABOUT ITS PROPERTY. IT HAS BEEN THE PRACTICE TO ALLOW THIS SORT OF CONFIDENTIALITY FOR THE OIL INDUSTRY. THE RESULT HAS BEEN A WASTEFUL AND DESTRUCTIVE PATTERN OF EXPLORATION SUBJECTING MANY AREAS IN THE STATE TO ALMOST CONTINUOUS SURVEYS BY THE VARIOUS COMPETING FIRMS.

AGAIN, IN THE SECTION OF THE BILL RELATING TO PUBLIC INFORMATION AND INSPECTION, IT IS STATED THAT "COPIES OF RECORDS, PERMITS, INSPECTION MATERIALS, OR OTHER INFORMATION... SHALL BE MADE IMMEDIATELY AND CONVENIENTLY AVAILABLE TO THE PUBLIC AT THE DISTRICT OFFICE OF THE DEPARTMENT CLOSEST TO THE LOCATION OF THE... OPERATION" (P.9, L. 12-18). THIS IS OUTSTANDING BUT FOR THE LIMITATION TO LOCATION. MY FEELING IS THAT THIS SHOULD BE MADE AVAILABLE AT ANY DEPARTMENT OFFICE.

IN THE MATTER OF NOTIFICATION OF MEETINGS, HEARINGS, CONFERENCES, AND THE LIKE LANGUAGE IN THE

BILL IS PRETTY CLEAR. WHAT SEEMS LACKING IS A REQUIREMENT THAT ALONG WITH THE USUAL PUBLIC NOTICE, AN ATTEMPT BE MADE TO LOCATE AND NOTIFY DIRECTLY, ANY PRIVATE LANDOWNERS WHO MIGHT BE AFFECTED, PERHAPS BY CERTIFIED MAIL. THIS SHOULD ALSO BE A REQUIREMENT OF THE PERMIT PROCESS FOR BOTH EXPLORATION AND MINING, SO THAT ALL PARTIES MAY BE HEARD. LANGUAGE SHOULD BE ADDED TO SECTIONS WHICH OUTLINE THE PROCEDURES FOR CONDUCTING HEARINGS, MEETINGS, CONFERENCES, ETC. THAT WOULD REQUIRE THEM TO BE SCEDULED FOR TIMES AND PLACES ACCESSIBLE TO THE GENERAL (WORKING) PUBLIC (P. 11-12, 17 L. 7-15 FOR EXAMPLE).

EXCESSIVE DISCRETIONARY LANGUAGE:

MUCH OF THE LANGUAGE IN THE BILL IS QUITE DIRECTIVE, COMMITTING THE COMMISSIONER TO A SPECIFIC COURSE OF ACTION, GIVEN A SPECIFIC SET OF CIRCUMSTANCES. I LIKE THAT AND WOULD HOPE TO SEE THIS KIND OF APPROACH USED THE REWRIGHT LANGUAGE WHICH IS MORE DISCRETIONARY. AS STATED UNDER MY REVIEW OF VAGUE PHRASING, I DO NOT WANT THE COMMISSIONER TO HAVE THE OPTION OF DETERMINING WHAT CONSTITUTES "A PERSON WHO IS OR MAY BE ADVERSELY AFFECTED" OR HAVE A VALID AND LEGAL INTEREST IN MINING. THIS SHOULD BE STATED SOMEHOW IN A SPECIFIC, BUT BROAD MANNER.

REFERENCE TO ADMINISTRATION AND REGULATION OF SURFACE DISTURBANCES BY UNDERGROUND MINING ROADS "THE COMMISSIONER MAY REQUIRE A PERMITTEE TO" MAINTAIN RECORDS IN THE STATE, MAKE MONTHLY

REPORTS, MAINTAIN MONITORING EQUIPMENT OR METHODS, AND EVALUATE RESULTS. I SUGGEST THAT THE WORD SHALL REPLACE THE WORD MAY (P. 24, L. 8-21).

AS CONCERNS SURFACE OPERATIONS AND DISRUPTION OF AQUIFERS THE BILL STATES THAT "THE COMMISSIONER MAY SPECIFY"...MONITORING OF SURFACE DRAINAGE, RELATED GROUND WATERS, AND PRECIPITATION AT THE SITE. THIS IS ANOTHER CASE OF MAY BETTER BEING REPLACED BY SHALL (P. 24, L. 22-29 AND P. 25, L. 1-6).

WITH THE EXISTING LANGUAGE, THE COMMISSIONER HAS THE OPTION OF REQUIRING OR NOT REQUIRING A SECURED BOND FROM THE PERMIT HOLDER. THE DECISION SHOULD BE TAKEN OUT OF HIS HANDS BY CHANGING THE BILL SO THAT IT REQUIRES SECURED BONDING OF ALL PERMIT HOLDERS (P. 14, L. 7-11).

ANY LANGUAGE WHICH YOU MIGHT ENCOUNTER IN BILLS OF THIS TYPE THAT GIVES EXTENSIVE POWERS OF DISCRETION SHOULD BE QUESTIONED, I BELIEVE.

OBVIOUSLY I FAILED TO BE BRIEF, THOUGH I DID MAKE THE EFFORT. MY FEELING IS, AS PREVIOUSLY STATED, THAT THIS IS IMPORTANT LEGISLATION AND THAT WITH SOME CAREFUL ADJUSTMENT COULD BECOME BENIFICIAL LAW. MY EXPERIENCE WITH THE STATE OF ALASKA WARNS ME OF A POTENTIAL EMPHASIS OF INDUSTRIAL CLAIMS OVER REGULATION IN THE PUBLIC INTEREST, SO I HAVE MADE AN EFFORT TO POINT OUT ITEMS THAT MIGHT TEND TO FOSTER THAT SORT OF THING AND TO SUGGEST CHANGES WHICH MIGHT BE MORE IN THE PUBLIC INTEREST. I HOPE THAT IT CAN BE OF HELP TO YOU AND THAT YOU MIGHT KEEP ME INFORMED OF YOUR PROGRESS.

SINCERELY,

Alaska State Legislature

SENATE
Resources Committee

Offical Business

BETTYE FAHRENKAMP, Chairman
VIC FISCHER, Vice-Chairman
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Bradley
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturuglewski

March 26, 1982
1:40 p.m.

Beltz Room
Room 211 - Capitol

Hearing:

SB 772 Making a special appropriation to the Department of Natural Resources for construction of a plant quarantine station at the plant material center operated in cooperation with the Institute of Agricultural Sciences.

SB 803 Establishing the land clearing account in the agricultural revolving loan fund.

SB 804 Making a continuing appropriation of repayments of the principal and interest on loans made by the Alaska Agriculture Action Council for land clearing to the land clearing account in the agricultural revolving loan fund.

SB 843 Relating to surface coal mining and the underground effects of underground coal mining.

SB 697 An Act relating to the Alaska Renewable Resources Corporation.

SB 772

Paul Huppert, Matanuska Valley farmer, explained that a quarantine center is needed at the latitudes of the Matanuska Valley for plants brought in from that latitude. This would require modification of existing facilities at the plant material center, and employment of a person to collect plant material worldwide.

Nick Carney, Director, Division of Agriculture, Department of Natural Resources, explained that the appropriation would pay for construction of a "screen house". Bud materials would be reproduced inside, with the screen restricting movement of insects, thus inhibiting the spread of disease. The long term fiscal needs are minor, as most of the infrastructure is already in place.

Bob Palmer, Alaska Agriculture Action Council, expressed support for the bill, stating that it was long overdue.

Senator Sturgulewski moved SB 772 with individual recommendations.

SB 803 and SB 804

Nick Carney expressed support for SB 803. It helps small farmers who do not presently qualify for land clearing loans.

Bob Palmer said he supports both SB 803 and SB 804.

Senator Sturgulewski pointed out that SB 804 has a negative impact on the general fund, by allowing repayment of principal and interest of loans to the revolving loan fund rather than to the general fund, and thinks this should be reflected in a fiscal note.

Senator Fahrenkamp stated this should be brought to the attention of the Finance Committee.

Ken Vassar, Assistant Attorney General, Department of Law, expressed concern over the constitutionality of SB 804, specifically the dedicated fund prohibition.

Paul Huppert supports SB 803 as curing the current inequity, by allowing all farmers to obtain land clearing loans.

Senator Mulcahy moved SB 803 and SB 804 with individual recommendations.

SB 843

Mark Wittow, Special Assistant to the Commissioner, Department of Natural Resources, discussed several amendments DNR is proposing, mostly of a technical nature.

Howard Roitman, Consultant to DNR, explained DNR's suggested solution to the issue raised by the Office of Surface Mining, namely the prepayment of penalties into an escrow account pending appeal. DNR's proposed alternative would require submitting a bond for the amount of the penalty.

Phil Holdsworth, COAL, expressed the coal operators support for the bond alternative.

Senator Gilman moved and asked unanimous consent for several amendments to SB 843. (For brevity's sake, please see attached copy of memo to Billy Berrier, Legal Division.)

Senator Fischer moved and asked unanimous consent for several amendments which serve to neuter SB 843. (Again, see attached copy of memo.)

Senator Mulcahy moved CSSB 843, as amended, with individual recommendations.

SB 697

Senator Fahrenkamp explained that three Committee Substitutes had been prepared for SB 697.

Senator Rodey testified in support of Committee Substitute #3, which reflects the work done by the Banking Committee.

Dean Olson, Chairman of the Board, Alaska Renewable Resources Corporation, endorsed Committee Substitute #3.

Senator Sturgulewski emphasized the drastic changes Committee Substitute #3 makes to the Corporation, and expressed concern over what impact these changes would have on the current investments made through ARRC.

Wayne Littleton, President, ARRC, stated that funding is adequate to continue the Corporation.

Senator Rodey explained that the sunset provision for ARRC, which is much longer than most other sunset provisions, is a traditional banking concept, as a longer period is required to adequately judge the competency of such a corporation. He also explained that there is a confusing section at the top of page 5, and that correct language will be prepared by the time the bill goes to Finance Committee.

Don Hostak, Director, Division of Business Loans, Department of Commerce, stated that a fiscal note is needed, because the Department of Commerce will need operating funds for ARRC.

Senator Fischer moved the accentance of Committee Substitute #3.

Senator Sturgulewski moved CSSB 697 with individual recommendations.

The meeting was adjourned at 3:05 p.m.

Alaska State Legislature

SENATE
Resources Committee

Offical Business

BETTYE FAHRENKAMP, Chairman
VIC FISCHER, Vice-Chairman
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

March 19, 1982
1:35 p.m.

Beltz Room
Capitol - 211

MEMBERS PRESENT

Senator Fahrenkamp
Senator Gilman
Senator Mulcahy
Senator Sturgulewski
Representative Sutcliffe

Hearing:

SB 843 An Act relating to surface coal mining and the surface effects of underground coal mining.

John Katz, Commissioner, Department of Natural Resources, expressed support for SB 843, explaining that the legislation is required by federal law. One major conflict between SB 843 and federal law has arisen--the absence in SB 843 of the requirement that fines be prepaid into an escrow account pending appeal. Katz finds such a provision constitutionally suspect.

Bob Stiles, Coal Owners and Leaseholders Association, supports SB 843, a "compromise bill", and prefers that the State government, rather than the federal, be in charge of the program.

Charles Boddy, representing operational coal miners, spoke in support of SB 843, and opposes prepayment of fines as the taking of property without due process. He prefers the State, rather than the federal government, administer the program.

Joe Usibelli called SB 843 an "excellent compromise bill", stating that the regulations will be the major aspect of the State's coal mining program.

Deena Henkins, Division of Environmental Quality Operations, Department of Environmental Conservation, expressed concern over

the fact that "reclamation" and "rehabilitation" are not defined in the Act, and that agency responsibility in the event of forfeiture of bond is not addressed. She stated that the roles of DEC and DNR need to be clarified, the application fee should more closely follow the federal statute, and that several vague terms need to be better defined.

Phil Holdsworth, COAL, responded to Henkins's remarks, stating that SB 843 gives DNR the authority to enter into agreements with other agencies.

The meeting was adjourned at 2:35 p.m.

Alaska State Legislature

SENATE
Resources Committee

Offical Business

BETTYE FAHRENKAMP, Chairman
VIC FISCHER, Vice-Chairman
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

MEMBERS PRESENT

Senator Fahrenkamp
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

March 22, 1982
1:35 p.m.

Beltz Room
Room 211 - Capitol

Hearing:

SB 731	Establishing the Shuyak Island State Park.
SB 769	Removing the requirement that power projects constructed under the energy program for Alaska be owned by the State.
SB 843	Relating to surface coal mining and the surface effects of underground coal mining.
SJR 70	Relating to commercial fishing of North Pacific chinook salmon.
SJR 79	Requesting the National Park Service to adopt procedures providing public notice of proposed regulations, emergency regulations, and field orders for national parks, preserves, and monuments in Alaska.

SB 731

Senator Mulcahy said a Committee Substitute had been prepared, changing the word "compatible" to "other".

Jim Lieb, Alaska Department of Fish and Game, expressed support for the Committee Substitute.

Senator Gilman moved the acceptance of the Committee Substitute. He then moved CSSB 731 with individual recommendations.

SB 769

Senator Gilman explained that a Committee Substitute with a changed title had been prepared. It requires that federal power projects in which the State participates must meet the same tests as all State projects, and gives the Alaska Power Authority approval to proceed with the Bradley Lake project.

Senator Mulcahy moved the acceptance of the Committee Substitute. He then moved CSSB 769 with individual recommendations.

SB 843

Jay Nelson, Alaska Environmental Lobby, stated that some provisions of SB 843 are not strong enough to protect the people and the environment. He stressed the need for revegetation with native species, the designation as unsuitable for surface coal mining areas that are highly biologically productive, and the recognition of the fisheries value.

Mark Wittow, Department of Natural Resources, stated that the Department of Fish and Game and the Department of Environmental Conservation both have permitting requirements that protect fisheries which would still stand. He further stated that performance standards will determine the type of reclamation and the amount of habitat protection required.

Senator Sturgulewski stated that State lands on which surface mining will not be allowed should be further defined.

Phil Holdsworth, COAL, in supporting the bill, clarified the point that all State agencies will continue to work together, so there are "built in" protections.

Senator Fahrenkamp stated that SB 843 would be held until 3/24/82.

SJR 70

Senator Mulcahy stated that SJR 70 had been heard in the Fisheries Subcommittee. He moved the acceptance of the Committee Substitute. He then moved CSSJR 70 with individual recommendations.

SJR 79

Senator Mulcahy stated that SJR 79 had been heard in the Fisheries Subcommittee. He moved the acceptance of the Committee Substitute. He then moved CSSJR 79 with individual recommendations.

The meeting was adjourned at 2:35 p.m.

Alaska Environmental Lobby, Inc.

419 6th Street, Suite 328 Juneau, Alaska 99801 907-586-2345

SB -843

THE ALASKA ENVIRONMENTAL LOBBY, REPRESENTING 11 STATEWIDE OUTDOOR AND ENVIROMENTAL GROUPS IS CONCERNED WITH SOME OF THE PROVISIONS IN SB-843. LAST FRIDAY YOU HEARD FROM SEVERAL LARGE MINING COMPANIES AS THEY SAID THAT THIS BILL MAKES THE BEST OF A BAD SITUATION. WHEN WE HEAR MULTI-NATIONAL COMPANIES- NOT YET PRODUCING COAL IN OUR STATE SAYING THEY FAVOR A MAJOR PIECE OF COAL MINING LEGISLATION WE FEEL IT IS TIME TO TAKE A CLOSE LOOK AT THAT PIECE OF LEGISLATION.

WHILE WE AGREE THAT STATE SURFACE MINING LEGISLATION IS NECESSARY, OUR CONCERN IS THAT SOME PROVISIONS OF THIS BILL ARE NOT STRONG ENOUGH TO PROTECT THE PEOPLE OF THIS STATE, NOR IN MANY CASES, THE ENVIROMENT. THE BUSINESS OF COAL COMPANIES IS TO MAKE MONEY FOR STOCKHOLDERS. THIS BILL WILL COST THEM MONEY. THAT CONFLICTS WITH THE STATED PURPOSE OF SB843 TO PROTECT THE QUALITY OF THE HUMAN ENVIRONMENT FOR THE PEOPLE OF THIS STATE.

WE ARE NOT SAYING THAT THE COAL PRODUCERS ONLY THOUGHT IS FOR THEMSELVES, BUT BY MAKING SOME PROVISIONS OF THIS BILL TOO WEAK, YOU PUT TO A SERIOUS COMPETITIVE DISADVANTAGE, THOSE ALASKAN COAL OPERATORS WHO WANT TO CONDUCT THERE COAL MINING OPERATIONS IN AN ENVIRONMENTALLY SOUND WAY.

IF WE MAY GET INTO THE SPECIFICS OF THIS BILL, THE ALASKA ENVIROMENTAL LOBBY IS CONCERNED THAT ADEQUATE PROTECTION HAS NOT BEEN GIVEN TO OUR UNIQUE ALASKAN ENVIROMENT. THE DRAFT REGULATIONS BY DNR GIVE US SOME IDEA OF HOW THE DEPARTMENT IS NOW INTERPRETING SB-843. TWENTY-ONE SECTIONS OF THE DRAFT REGULATIONS DEAL WITH THE EFFECTS OF MINING ON THE PRODUCTIVITY OF FARMLAND. WHERE ARE THE CORRESPONDING SECTIONS ABOUT THE PROTECTION OF SPECIAL BIOLOGICAL AREAS? WE HAVE NO QUARREL WITH PROTECTING FARMLANDS, BUT WE WOULD LIKE TO

TO POINT OUT THAT ONLY A SMALL PORTION OF THIS STATE IS POTENTIAL FARMALNDS WHEREAS, AT PRESENT, MOST LAND IS IN A RELATIVELY PRODUCTIVE AND PRISTINE CONDITION. AREAS OF HIGH PRODUCTIVITY WHETHER FARMABLE OR NOT SHOULD RECEIVE HIGH AND SPECIAL CONSIDERATION AND PROTECTION.

IN ADDITION THERE IS NO PROVISION IN THIS BILL FOR RECLAMATION OF LAND TO A NATURAL STATE WITH NATIVE SEEDS AND NATIVE PLANT SPECIES. DOES THE STATE EVEN HAVE THE CAPACITY TO PRODUCE OR COLLECT NATIVE SEEDS FOR REVEGETATION PURPOSES? WE THINK NOT. THIS BILL NEEDS TO RECOGNIZE THE IMPORTANCE OF OUR NATURAL VEGETATION. WITH PROPER CARE WE CAN HAVE BOTH COAL EXTRATION AND A PRODUCTIVE ENVIRONMENT.

SOME AREAS OF OUR STATE ARE SEASONALLY AMONG THE MOST BIOLOGICALLY PRODUCTIVE ON EARTH. WE MUST SEE THAT THESE GREAT RESOURCES ARE PROTECTED. THIS BILL AT PRESENT DOES NOT DO THIS. COST BENEFIT ANALYSIS SHOULD BE CONDUCTED TO EVALUATE THE PRODUCTIVITY LOSS FROM SURFACE MINING. WHY DOES THIS BILL-AND IN FACT, THE DRAFT REGULATIONS, MENTION PROTECTING FOOD AND FIBER SO PROMINANTLY AND YET NOT ONCE SPECIFICALLY MENTION OUR GREAT WILDLIFE AND FISHERIES RESOURCES. THIS STATE PRODUCES VERY LITTLE FIBER, BUT IT PRODUCES AN ABUNDANCE OF F H AND WILDLIFE.

IT'S OUR POSITION THAT SECTIONS SHOULD BE ADDED TO SB-843:

-TO STRESS THE NEED FOR REVEGETATION WITH NATIVE PLANT SPECIES

-TO DESIGNATE HIGHLY BIOLOGICALLY PRODUCTIVE AREAS AS UNSUITABLE FOR SURFICIAL COAL MINING

-TO CLEARLY RECOGNIZE FISHERIES AS A MAJOR ECONOMIC ACTIVITY IN THIS STATE WORTHY OF SPECIAL PROTECTION

IN THE PRESENT BILL THESE ISSUES ARE NOT STRESSED OR, IN FACT, EVEN MENTIONED. SB-843, BASED ON THE FEDERAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, JUST DOES NOT ADEQUATELY ADDRESS THE UNIQUENESS OF THE ALASKA LANDSCAPE. THIS BILL MUST BE MODIFIED TO PROTECT THOSE UNIQUE CHARACTERISTICS AND VALUES OF ALASKA.

THE ALASKA ENVIRONMENTAL LOBBY APPRECIATES THIS OPPORTUNITY TO ADDRESS

THESE ISSUES AND ON BEHALF OF OUR MORE THAN 4000 ALASKA MEMBERS AND OUR ASSOCIATED ORGANIZATIONS, WE THANK YOU FOR YOUR ATTENTION TO AND CONSIDERATION OF OUR COMMENTS AND PROPOSED AMENDMENTS.

1:20 pm
3/22/82

Alaska Environmental Lobby, Inc.

419 6th Street, . .te 328 Juneau, Alaska 99801 907-586-2345

Amendent 1

Sec. 41.45.100

Page 9 line 15

Replace the "period" with a comma and add the words,"and at least three other district offices of the department."

Reason: Corporate and other private citizens other than those in the immediate vicinity of the mining operation should have access to the mining records. The present language in this section assumes that people have an "out of sight, out of mind" philosophy that has no place in an informed democratic society.

Alaska Environmental Lobby, Inc.

419 6th Street, Suite 328 Juneau, Alaska 99801 907-586-2345

Amendment 2

Sec. 41.45.120

Page 10 line 8-17

Delete this section.

Reason: The state should not be paying the cost of hydrologic laboratory analyses. The draft regulations even go so far as to allow the operator to declare this state purchased information relating to the chemical and physical properties of the coal to be proprietary information. Public funds should not be used to pay for the proprietary information of coal operators.

Small coal operators as defined in this section can produce up to 100,000 tons, that is 200,000,000 pounds of coal per year. That may be small by export standards but we feel that these operators should be capable of paying there own laboratory fees. Unless changed, this provision reaffirms corporate welfarism for the benefit of corporation stockholders and to the detriment and cost of Alaskan taxpayers.

Alaska Environmental Lobby, Inc.

419 6th Street, Suite 328 Juneau, Alaska 99801 907-586-2345

Amendment 3

Sec. 41.45.170 (c) (1)

Page 15 line 3

Strike the word"part" and insert in lieu thereof the words "substantially all"

Sec. 41.45.170 (c) (2)

Page 15 line 6

strike the word "part" and insert in lieu thereof the words "substantially all"

Reason: Experience in areas outside Alaska demonstrate that extraction companies, especially small, wholly owned subsidiarys of other companies, often terminate reclamation as soon as bonds are cancelled or surety is released. By requiring all or substantially all of drainage control and revegetation the legislature protects the commissioner from constant pressure by his "client" regulated companies to release one bond to allow the money or surety to be applied to a "new operation".

Alaska Environmental Lobby, Inc.

419 6th Street, Suite 328 Juneau, Alaska 99801 907-586-2345

Amendent 4

Sec. 41.45.180

Page 20 line 12

Delete "wilful"

Reason: Any"pattern of violations of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with this chapter" should be grounds for denial of permit. We believe that "wilful" intent should not need to be proved if, in fact, such a pattern exists.

Alaska Environmental Lobby, Inc.

419 6th Street, Suite 328 Juneau, Alaska 99801 907-586-2345

Amendent 5

Sec. 41.45.250

Page 32 line 11

Delete "$5000", insert "$50,000"

Reason: The sum of $5000 as a maximum fine is clearly too small a sum to be an effective enforcement tool against multibillion dollar companies. The maximum fine of $5000 hardly amounts to a slap on the wrist for a 500 million dollar export mining operation. Furthermore, the declining real value of the dollar will make the figure even less significant over time.

A maximum fine is presumeably for a "worst case" situation and should reflect the seriousness the state will attach to grave permit violations.

Alaska Environmental Lobby, Inc.

419 6th Street, Suite 328 Juneau, Alaska 99801 907-586-2345

Amendment 6

Sec. 41.45.910

Page 43 line 17-18

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

Reason: Even small commercial strip mines should be regulated. While we agree that regulations for these small operators should be more simplified than for large scale coal operators, we do not believe that they should be left completely unregulated. Two acres of strip mining would have potentially serious effects on local groundwater supplies, area streams, and other portions of the area environment.

Alaska Environmental Lobby, Inc.
419 6th Street Suite 328 Juneau, Alaska 99801 907-586-2345

Amendent 7

Sec. 41.45.920

Page 44 line 8

Delete "reduce", insert "significantly degrade"

Page 44 line 9-10

Insert a period after "safety" and delete the words, "below that provided by law or regulation"

Reason: Experimental reclamation practices should not reduce the public health and safety at all. As presently written this bill would unwisely allow the public health and safety to be reduced to some minimal level.

Alaska Environmental Lobby, Inc.
419 6th Street, Suite 328 Juneau, Alaska 99801 907-586-2345

Amendment 8

Sec. 41.45.990

Page 48 line 29

Insert "(14) Person who is or who may be adversely affected" means any person whose traditions or likely future use of a given area would be adversely affected by mining operations."

Reason: We feel a broad definition should be provided for this phrase. Strip mining of ones favorite hunting or fishing area will adversely affect that person even though the person may live a considerable distance away from the mine.

Interpretation of this phrase should not be left to the discretion of the commissioner. Such an impact would be as serious for a subsistance hunter from an Arctic village several hundred miles from whose traditional hunting or fishing area is the home village as for a sports hunter from Anchorage or commercial guide or fisherman who has traditionally used a given resource area.

Alaska Environmental Lobby, Inc.

419 6th Street, Suite 328 Juneau, Alaska 99801 907-586-2345

Amendment 9

Sec. 41.45.990

Page 48 line 3

Strike the word "rational", insert in lieu thereof the word"reasonable"

Page 48 line 4

Strike the word "substantial"

Reason: The "reasonable man" standard is well recognized and interpreted in the law. "Rational person" is not a significant term- every "person" is, by definition "rational" so that term adds nothing to the term "person.

The term "substantial" subjects the phrase "physical harm" to excessive limitation.

Alaska Environmental Lobby, Inc.
419 6th Street, Suite 328 Juneau, Alaska 99801 907-586-2345

To members of the Senate Resources Committee

Re: SB-843

These comments provided to the Alaska Environmental Lobby by Mr. Mike O'Meara from the Kenai Peninsula are directed to a prior bill, HB-762. Nevertheless, all of his comments apply to SB-843.

Because of the scope and depth of Mr. O'Meara's comments, we feel that all members of the committee should have the opportunity to read his words just as they were written.

Thank you for your consideration.

Pam Allison

Executive Director

MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS AND ENERGY MANAGEMENT

TO: Mark Wittow
Special Assistant
to the Commissioner

DATE: March 2, 1982

FILE NO:

TELEPHONE NO: 276-2653

FROM: Howard A. Roitman Howard

SUBJECT: Surface Mining Program
Regulation Development

The surface mining regulatory program will require an extensive set of implementing regulations. These will be necessary to comply with the requirements of the Federal Surface Mining Control and Reclamation Act of 1977 and the Department of the Interior's regulations for the approval of state programs. Our program submission will need to demonstrate that Alaska's regulations are no less effective than the federal regulations in meeting the requirements of the federal law.

We anticipate that state regulations will encompass the following general areas:

1. General administrative provisions, including restrictions on financial interests of state employees; exemptions from the requirements of the program, and definitions.

2. Permitting. Under the program, permits will be required for surface coal mines, surface effects of underground mines, and exploration operations which remove more than 250 tons of coal or substantially disturb the natural land surface. These regulations will detail the permit application requirements for legal, financial, compliance and environmental information; the contents of the required reclamation and operation plans; the procedures for review of applications, public participation, and decisions on applications. including administrative and judicial review; and procedures for revisions, renewal and transfer of permits.

3. Bonding and insurance. The program will require liability insurance and a performance bond adequate to ensure sufficient funds for the state to complete reclamation of any site for which the operator fails to fulfill his reclamation obligations. These regulations will detail the requirements for performance bonds and the procedures, criteria and scheduling for bond release or forfeiture.

4. Environmental performance standards. Performance standards will cover such concerns as casing and sealing of drilled holes; topsoil; hydrologic balance; coal recovery; use of explosives; disposal of excess spoil; coal processing waste; protection of fish and wildlife; backfilling and grading; revegetation; postmining land use; and roads.

5. Inspection and enforcement procedures, including procedures and criteria for imposition of civil penalties.

6. Lands unsuitable, including criteria and procedures for decisions on petitions to designate lands unsuitable for all or certain types of surface coal mining operations.

7. Small operator assistance program.

8. Abandoned mine land reclamation program.

We have begun the task of drafting regulations in several of these areas. The Department will seek to involve industry, environmentalists and other interested governmental agencies in drafting a set of regulations which meet both federal requirements and the unique Alaskan environmental and other conditions.

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 resposibility 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 a 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 programs 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.

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.

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 Hodel

Acting SECRETARY

United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

MAR 19 1982

Mr. John W. Katz
Commissioner, Alaska Department
of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Mr. Katz:

Thank you for the opportunity to review House Bill 762, containing Alaska's proposed surface mining law. With one major exception, we believe the bill meets the standards for State program legislation required in the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1201 et seq.

Section 41.45.250(b) does not require the prepayment of a proposed civil penalty into escrow as required by Section 518(c) of SMCRA. This provision is an essential part of all State programs which must be included in the State law. We urge you to include this statutory provision.

We have the following other concerns about House Bill 762, which concerns can be corrected by regulation or further explanation:

1. Section 41.45.050. This section is acceptable if the penalty for a Class A misdemeanor is at least a fine of not more than $2,500 or imprisonment of not more than one year, or both.

2. Section 41.45.170(b). The phrase, "or such longer period as field conditions require," is not in accordance with Section 519(b) of SMCRA, which permits only a 30 day period to inspect and prepare an evaluation. If, however, it is explained in the State program submission that the above phrase refers only to the impossibility to inspect because of weather conditions during the long winter, this section should be acceptable.

3. Section 41.45.230(b). In this section, the word "may" appears in regard to what the commissioner requires of a permittee. SMCRA Section 517(b) uses the word "shall". If the specific requirements of permittees are contained in the State program regulations, this section will be acceptable.

4. Section 41.45.240. (a) This section does not state that the commissioner shall "immediately" issue a cessation order if, at the end of the abatement period, the violation has not been abated. This deficiency can be cured by regulation. (b) This section allows the

commissioner, "for good cause," to extend beyond 90 days the time for abatement of a violation. If "good cause" is defined by regulation in a manner no less effective than the comparable Federal rule at 30 CFR 843.12 (46 FR 41702, August 17, 1981), this section will be acceptable.

5. Section 41.45.240(f). This section does not provide that the commissioner shall "forthwith" issue a show cause order if he finds a pattern of violations as in SMCRA Section 521(a)(4). This deficiency can be cured by regulation.

6. Section 41.45.240(i). This section omits the award of costs in matters under judicial review. If this matter is covered under other State law in a manner which is in accordance with SMCRA Section 525(e), this section will be acceptable.

7. Section 41.45.250(h). The last sentence of this section erroneously refers to AS 41.45.260. The reference should be to AS 41.45.250(l).

8. Section 41.45.~~410~~950. This section omits litigation costs, which was subsection (e) in the previous draft of the legislation. This must be included in the bill.

9. Section 41.45.170(a). This section does not require the same steps for a permittee request for release of bond as in SMCRA Section 519(a). This deficiency can be cured by regulation.

10. Section 41.45.~~420~~990(15). The definition of "significant imminent environmental harm to land, air or water resources" is in conflict with the Federal definition at 30 CFR 701.5, by using the term "irreparable" instead of "reparable". Under the State definition, it would be meaningless to issue an order requiring abatement in an imminent harm situation since any reclamation would be to no avail.

Of course, any legislation which is enacted would be subject to public notice and comment in the State program approval process. We look forward to receiving the State's submission in the near future. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

J. F. Roberts

Director

ARTICLE 5. PROCESS FOR IDENTIFYING LANDS UNSUITABLE FOR MINING.

Section
81. Petition filing
83. Initial processing of petitions
85. Notification and request for information
87. Data base and inventory system
89. Public information
91. Hearing requirements
93. Decision
95. Maps and records
97. Lands exempt from designation

11 AAC 90.081. PETITION FILING. (a) A petition filed under AS 41.45.260(b) must be on a form provided by the commissioner, and must include all information requested on the form.

(b) Petitions shall be mailed or delivered to: Alaska Department of Natural Resources, Lands Unsuitable for Mining Program, 555 Cordova Street, Pouch 7-005, Anchorage, Alaska 99510. (Eff. / /82, Register)

Authority: AS 41.45.260

11 AAC 90.083. INITIAL PROCESSING OF PETITIONS. (a) Within 30 days of the receipt of a petition to designate or terminate, the commissioner will notify the petitioner by certified mail whether or not the petition is complete.

(b) If the commissioner determines that the petition is incomplete, it shall be returned to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(c) The commissioner will determine whether any identified coal resources exist in the area described in the petition. Should the commissioner find that there are not identified coal resources in that area, the petition will be returned to the petitioner with a statement of findings.

(d) The commissioner may reject petitions which are found to be frivolous. If the commissioner finds that the petition is frivolous he will return the petition to the petitioner with a written statement of the reasons for the determinations.

(e) The commissioner may suspend consideration of petitions on lands where there is no real and foreseeable potential for surface coal mining operations to occur or, for state lands, if the lands are unleased, not available for leasing, or are not the subject of an application for a coal prospecting permit. "Real and foreseeable potential" means that the petitioned lands are not currently available for mining or where coal resource currently lacks economic potential for development. The commissioner will resume review of the petition when the petitioned area is found to have real or foreseeable potential for surface coal mining to occur or when state lands become available for leasing or are subject to coal prospecting permit applications.

(f) When considering a petition for an area which was previously and unsuccessfully proposed for designations, the commissioner will determine if the new petition presents substantial new allegations of facts and supporting evidence. If the petition does not contain new and substantial allegations of facts, the commissioner will return the petition with a statement of findings and a reference to the record of the previous designation proceedings.

(g) Petitions received after the close of the public comment period on a permit application relating to the same area shall not prevent the commissioner from issuing a decision on that permit application. The commissioner may return such a petition to the petitioner with a statement of why the petition will not be considered. For the purpose of this regulation, close of the public comment period shall mean at the close of the period for filing written comments and objections under 11 AAC *, or the close of the informal conference, whichever is later. If a petition submitted during the public comment period on a permit application is deemed incomplete, the commissioner may allow the petitioner to resubmit the petition within 15 days after the rejection or before with the close of the public comment period, whichever is longer. Resubmissions must clarify or refine materials which were originally submitted and not provide new allegations as the basis of the petition. (Eff. / /82, Register)

Authority: AS 41.45.260

11 AAC 90.085. NOTIFICATION AND REQUEST FOR INFORMATION. (a) The commissioner will notify the petitioner of any application for a permit which proposes to include any area covered by the petition.

(b) Within 21 days after the determination that a petition is complete, the commissioner will circulate copies of the petition to, and request submission of relevant information from:

(1) other interested government agencies;

(2) native corporations and villages;

(3) the petitioner;

(4) intervenors; and

(5) other persons known to the commissioner to have an interest in the property.

(c) Within 21 days after the determination that a petition is complete, the commissioner will notify the general public of the receipt of the petition by a newspaper advertisement and any other means necessary to reach interested members of the public. The notice shall request submissions of relevant information and shall request that persons with an ownership or other interest recorded in the property covered by the petition who wish to be notified of any hearing identify themselves to the commissioner. The advertisement shall be placed once a week for two consecutive weeks in the newspaper of largest circulation in the state and the region of the petition area.

(d) Until 14 days before the commissioner holds a public hearing on a petition pursuant to 11 AAC 90.091 *, any person may intervene in the proceeding, by filing:

(1) the intervenor's name, address, and telephone number;

(2) identification of the intervenor's interest which is or may be adversely affected;

(3) an identification of the petition;

(4) allegations of fact and supporting evidence which would tend to establish or dispute the allegations found in the petition. (Eff. / /82, Register)

Authority: AS 41.45.260

11 AAC 90.087. DATA BASE AND INVENTORY SYSTEM. (a) The commissioner will develop and maintain a data base and inventory system which will permit evaluation of reclamation feasibility in areas covered by petition.

(b) The commissioner will include in the data base and inventory system information relevant to the criteria in AS 41.45.260(c).

(c) The commissioner must include in the data base and inventory system sufficient information to prepare the statements required in 11 AAC 90.093, including information on:

(1) the coal resources of Alaska;

(2) the demand for Alaskan coal;

(3) the supply of Alaskan coal;

(4) the economy of Alaska and its coal mining regions; and

(5) the environment and natural resources of Alaska.

(d) The commissioner will include in the data base inventory system relevant information that comes available from federal, state and local agencies, petitions, publications, studies, experiments, permit applications, surface coal mining operations, and other sources. (Eff. / /82, Register)

Authority: AS 41.45.260

11 AAC 90.089. PUBLIC INFORMATION. (a) The commissioner will compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the commissioner. This record shall be maintained in the Lands Unsuitable Program office in Anchorage. The commissioner will also maintain a copy of the petition, a list of intervenors, and a schedule of all hearings, public meetings, and formal action related to the petition at the district office closest to the area in which the petitioned land is located.

(b) The commissioner will make the record, data base, and information system available for public inspection, free of charge, and copying at reasonable cost during all normal business hours. (Eff. / /82, Register)

Authority: AS 41.45.100
AS 41.45.260

11 AAC 90.091. HEARING REQUIREMENT. (a) Within three to seven months after receipt of a complete petition, the commissioner will hold a public hearing in the locality of the area covered by the petition. The commissioner may delay the hearing up to five additional months if such period is necessary to provide a field season and a reasonable period of time to review the results of the field surveys. If all petitioners and intervenors agree, the hearing may be delayed further, may be held in Anchorage or need not be held. The commissioner will make a record of the hearing.

(b) The commissioner will give notice of the date, time, and location of the hearing to:

(1) federal, state, and municipal agencies and native corporations and villages which may have an interest in the petition;

(2) the petitioner and the intervenors;

(3) any person known by the commissioner to have an ownership or other interest in the area covered by the petition.

(c) Notice of the hearing shall be sent by certified mail to the petitioner and any intervenors and by regular mail to the persons identified in (b)(1) and (b)(3) of this section, and be post-marked not less than 30 days before the scheduled date of the hearing.

(d) The commissioner will notify the general public of the date, time, and location of the hearing at least 30 days before the hearing and during the week before the hearing by notices in the newspaper of largest circulation in the state, and through newspapers, public service announcements, or any other method calculated to reach interested persons in the area covered by the petition.

(e) The commissioner may consolidate in a single hearing, the hearings required for each of several petitions which relate to areas in the same locale.

(f) In the event that all petitioners and intervenors agree before the hearing, the petition may be withdrawn from consideration. (Eff. / /82, Register)

Authority: AS 41.45.260

11 AAC 90.093. DECISION. (a) In reaching a decision on a petition, the commissioner will use:

(1) the relevant information contained in the data base and inventory system;

(2) relevant information or analysis submitted during the comment period and public hearing; and

(3) relevant information provided by other governmental agencies.

(b) A final written decision, including a statement of reasons, will be issued by the commissioner, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition unless otherwise extended by agreement with petitions and intervenors. The commissioner will simultaneously send the decision by certified mail to the petitioner, all intervenors, and to the Director of the Office of Surface Mining, U.S. Department of Interior, and by regular mail to all other persons who have requested a copy of the decision.

(c) If the commissioner does not designate a petitioned area under this chapter, the commissioner may direct that any future permits issued for the area contain specific requirements for mitigating the impact of surface coal mining operations on the feature that was the subject of the petition. (Eff. / /82, Register)

Authority: AS 41.45.260

11 AAC 90.095. MAPS AND RECORDS. (a) The commissioner will maintain a current map or other unified and cumulative record of areas designated as unsuitable for all or certain types of surface coal mining operations at each district office and at the Lands Unsuitable Program office. Copies of such maps will be available for inspection and copying. Such maps will be distributed to appropriate federal, state, and municipal agencies and native corporations and villages whenever the maps are updated. (Eff. / /82, Register)

Authority: AS 41.45.260

11 AAC 90.097. LANDS EXEMPT FROM DESIGNATION. (a) Petitions for designating lands as unsuitable for all or certain surface coal mining operations will not be considered for:

(1) lands on which surface coal mining operations were being conducted on August 3, 1977;

(2) lands covered by a permit issued under this chapter or a permit application for which the public comment has closed according to 11 AAC 90. *;

(3) lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

(b) Determination of "substantial legal and financial commitments" will be based on a finding that significant investments have been made on the basis of a long term coal contract. The costs of acquiring the coal in place or the right to mine such coal, will not alone constitute a substantial legal and financial commitment in the absence of an existing mine. Factors to be considered will include, but not be limited to, the following:

(1) the actual expenditure of substantial monies or the execution of a valid and binding contract for the expenditure of substantial monies on the improvement or modification of lands within, for access to, or in support of surface coal mining operations in the petitioned area.

(2) the actual expenditure of substantial monies or the execution of a valid and binding contract for substantial monies on exploration, mapping, surveying, and geological work, as well as engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations. (Eff. / /82, Register)

Authority: AS 41.45.260

ARTICLE 6. PERMIT APPLICATION REVIEW

Section
101. Permit application review
103. Assistance review
105. Valid existing rights
107. Exploration permits
109. Designated lands

11 AAC 90.101. PERMIT APPLICATION REVIEW. (a) Upon receipt of an application for a surface coal mining and reclamation operation permit, and subject to valid existing rights, the commissioner will prohibit such operations in accordance with AS 41.45.260(c)(3), subject to the following exceptions.

(1) For operations which will adversely affect any publicly owned park or publicly owned site included on the National Register of Historic Places, the commissioner will transmit a copy of the complete permit application to the agency with management responsibility for the park or site. The commissioner will not approve the application for such lands unless approved by the agency with management responsibility.

(2) The commissioner will not approve an application for operations on lands within 300 feet, measured horizontally, from any occupied dwelling unless the applicant submits with the permit application a written waiver from the owner of the dwelling, consenting to such an operation within a closer distance of the dwelling specified in the waiver. Waivers obtained prior to August 3, 1977 are valid for the purposes of this paragraph. Waviers obtained from previous owners shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser shall be deemed to have constructive

knowledge if the waiver has been recorded in the public property records pursuant to State law. The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver. In such case, a copy of the lease or deed must be included with the permit application.

(3) The commissioner will not approve an application for operations on lands within 100 feet, measured horizontally, of the outside right-of-way of any public road (except where mine access roads or haulage roads join such right-of-way), except as follows. The commissioner may allow areas within 100 feet to be affected or may allow the public road to be relocated if the commissioner:

(A) requires the applicant to obtain any necessary approval of the governmental authority with jurisdiction over the public road;

(B) provides opportunity after appropriate notice to the public for a public hearing in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected;

(C) makes a written finding within 30 days after any such hearing or at the end of the public comment period if no hearing is held, as to whether the interests of the public and affected landowners will be protected. (Eff. / /82, Register)

Authority: AS 41.45.260

11 AAC 90.103. ASSISTANCE REVIEW. If the commissioner is unable to determine whether the proposed surface coal mining operation is located within the lands identified in AS 41.45.260(c)(3), the commissioner will transmit a copy of the relevant portions of the permit application to the appropriate federal, state, municipal agency or native corporation or village for a determination of the relevant boundaries or distances, with a request that it respond in writing within 30 days of receipt of the request. The commissioner will presume that the proposed surface mining operation is not located within the boundaries of any such lands if no response is returned within the 30 day period. (Eff. / /82, Register)

Authority: AS 41.45.260

11 AAC 90.105. VALID EXISTING RIGHTS. (a) Except for haul roads, "valid existing rights" means property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on such lands either:

(1) had been validly issued or exercised a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, or

(2) can demonstrate that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(b) A determination that coal is "needed for" will be based upon a finding that additional production originating on adjacent land is necessary to preclude a financial hardship on the mining operation measured by standard accounting and financial procedures provided that:

(1) a fair rate of return on invested capital cannot be achieved on existing permitted land;

(2) a less than fair rate-of-return on invested capital is attributable to the provision of this chapter; and

(3) the operator can establish that the adjacent unpermitted land is part of the operator's mining plan.

(c) For haul roads, "valid existing rights" means:

(1) a recorded right of way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

(2) any other road in existence as of August 3, 1977.

(d) The applicant may establish a valid existing right by demonstrating that the operation existed at the time a structure, road, cemetery, or other activity protected in this section came into existence.

(e) "Valid Existing Rights" does not mean that mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. (Eff. / /82, Register)

Authority: AS 41.45.260

11 AAC 90.107. EXPLORATION. Designation of any area as unsuitable for all or certain types of surface coal mining operations does not preclude exploration in the area, if conducted in accordance with this chapter. Exploration operations shall be approved only when the commissioner finds that the proposed exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining operations. (Eff. / /82, Register)

Authority: AS AS 41.45.260

11 AAC 90.109. LANDS DESIGNATED UNSUITABLE. The commissioner will not issue a permit for surface coal mining operations which are inconsistent with designations made pursuant to this chapter. (Eff. / /82, Register)

Authority: AS 41.45.180

Definitions related to Articles 5 & 6

"Fragile lands" means geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed by surface coal mining and reclamation operations. These lands may include, but are not limited to, uncommon geologic features, National Natural Landmark sites, groundwater recharge areas, valuable habitats for fish and wildlife, critical habitats for endangered species of animals and plants, wetlands, environmental corridors containing concentrations of ecologic and aesthetic features, areas of recreational value due to high environmental quality, buffer zones around areas where surface coal mining is prohibited, and important, unique or highly productive soils or mineral resources.

"Historic lands" means historic or cultural districts, places, structures or objects, including but not limited to sites listed or eligible for listing on a state or National Register of Historic Places, National Historic Landmarks, archeological and paleontological sites, cultural or religious districts, places, or objects.

"Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including but not limited to areas subject to landslides, cave ins, subsidence, substantial erosion, earthquakes, unstable geology, long term disruptions or degradation of surface and subsurface water supplies, and substantial increases in flood heights or frequencies.

"Occupied dwelling" means any building that is currently being used on a regular basis for human habitation.

"Public building" means any structure that is owned or leased by a public agency or used by a government agency principally for public business, meetings, or other group gatherings.

"Public park" means any area dedicated or designated by any federal, state, municipal agency or native village for recreational use, despite whether such use is limited to certain times or days. It includes any land leased, reserved, or held open to the public because of that use.

"Public roads" means any thoroughfare constructed or maintained with public funds which is open to the public for passage of motorized vehicles.

"Cemetery" means any area of land where human bodies are interred.

PETITION FORMS

We expect the petition forms to request the following information:

1. petitioner's name, address, telephone number
2. identification of the petitioner's interest which is or may be adversely affected
3. U.S.G.S. 7 1/2 minute topographic map(s) marked to show the location and size of the geographic area covered by the petition
4. a description of how surface coal mining operations in the area have or may adversely affect people, land, air, water, or other resources
5. allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of surface coal mining operations

Petitions to terminate a designation would include 1, 2, and 3 above, and

4. allegations of facts with supporting evidence, not contained in the record of the proceeding in which the area was designated as unsuitable which would tend to establish the allegations that the designation should be terminated, including allegations that
   (a) reclamation is now technologically feasible, if the designation was based on a finding of technological unfeasibility;
   (b) that the resources or conditions specified in the original designation decision will no longer be impacted or that the nature or severity of the impact has changed.

SB 803

SURFACE MINING REGULATORY PROCESS OVERVIEW
April 6, 1982

The Department of Natural Resources is beginning the process of drafting a set of regulations which will implement the Alaska Surface Coal Mining Control and Reclamation Act, when passed. Although this state act is still in bill form in the legislature, the implementing regulations will be complex and comprehensive and, in order to meet projected deadlines, the Department is beginning the drafting process now. Our aim is to submit a program to the United States Department of the Interior by July 1, 1982. To aid in drafting the regulations the Department has enlisted the assistance of various experts from within the Department and from such sources as other state, federal, and local agencies; private industry; environmental organizations and native corporations. The Department welcomes the participation of any other persons who are interested in the process.

The Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) created programs for surface coal mining regulation and for the reclamation of abandoned mine lands. SMCRA and the regulations of the Office of Surface Mining, which administers the federal act, set up a series of standards by which the Secretary of the Interior will judge whether state program submissions are approved. If the Alaska program submission is approved, the state will be the primary regulator of surface coal mining activities on both state and private lands in Alaska. It should then be a relatively easy step for the state to be granted authority to regulate such activites on federal lands in Alaska. Our goal is to draft a program which will meet Alaska's unique environmental concerns and which will be approved by the federal government.

Standards for program approval

The standards for approval of the state program may be summarized as follows:

--With regard to the federal Act (SMCRA), the State laws and regulations must be no less stringent than, meet the minimum requirements of and include all applicable provisions of SMCRA.

--With regard to the federal regulations, the State laws and regulations must be no less effective than the federal regulations in meeting the requirements of SMCRA.

--Enforcement provisions of a state program must incorporate sanctions no less stringent than those of SMCRA; civil and criminal penalties must be no less stringent than SMCRA; and there must be the same or similar procedural requirements relating to both.

There may be particular standards governing particular sections of the federal program which will be discussed when the corresponding sections of the draft regulations are distributed for review.

The bill currently under consideration in the legislature meets the basic standards for approval. Several key areas of SMCRA were deferred to the implementing regulations, however, meaning that those areas will have to meet the "no less stringent than" standard applicable to the federal law. These areas include the contents of permit applications and reclamation plans, performance standards applicable to surface coal mining and reclamation operations and to the surface impacts of underground coal mining, and some of the public participation requirements which apply to various processes under the program. Other areas under the regulations will generally be subject to the "as effective as" standard. Please keep these tests in mind when reviewing draft regulations.

Regulation subject areas

The Federal regulations contain the following main subject areas, which the state program submission will need to address:

A. General
   1. Definitions
   2. Restrictions on financial interests
   3. Applicability and exemptions
   4. Public information
B. Areas unsuitable for mining
C. Permitting
   1. Application requirements, including legal, financial, and compliance information; information on environmental resources; and a reclamation and operations plan
   2. Permitting process
   3. Small operator assistance
D. Bonding and insurance
E. Performance standards
   1. signs and markers
   2. casing and sealing of drilled holes
   3. topsoil
   4. hydrologic balance
   5. coal recovery
   6. use of explosives
   7. disposal of excess spoil
   8. protection of underground mining
   9. coal processing waste
   10. air resources
   11. fish, wildlife and related values
   12. slides and other damage
   13. backfilling and grading
   14. contemporaneous reclamation
   15. revegetation
   16. postmining land use
   17. roads
   18. transportation, support and utility installations
   19. subsidence control
F. Inspection and enforcement
G. Abandoned mine land reclamation

The regulation drafting process

The Department is not starting from scratch in approaching the drafting of its regulations. During 1979 and 1980, the Department drafted a complete program submission, which included both a draft bill and regulations. This draft is referred to as the 1980 draft, and was the product of an extensive work effort directed by the Commissioner's office and the Alaska Surface Mining Advisory Committee. The 1980 draft included extensive input from other interested agencies, industry, members of the public, and the Office of Surface Mining. The 1980 draft regulations reflected the then-current draft bill, as well as the then-current federal regulations.

Much has changed since the 1980 draft regulations. The bill presently under consideration by the legislature is different from the 1980 bill draft Many of the federal regulations in effect in 1980 have been changed, either as the result of judicial action or as a result of changes in regulations made by

the Office of Surface Mining. In addition, the "as effective as" standard for judging state regulations' compliance with federal regulations is new and should give the Department of Natural Resources considerably more flexibility in drafting regulations which meet the unique environmental conditions found in Alaska. Unfortunately, the Office of Surface Mining is not very far along in its revision of its regulations. It appears likely that the final federal regulations will not all be in place before 1983, and it is likely that many of them will be the subject of court challenges even then.

The Department of Natural Resources is pursuing the following approach in drafting its regulations. Our contractor has reviewed the 1980 draft regulations. Since those regulations had already been the subject of review and issue resolution by other agencies, industry, members of the public, the Surface Mining Advisory Committee, and the Office of Surface Mining, the Department has not made extensive changes in the 1980 draft regulations, except where the federal regulations have been changed or are proposed to be changed, or where the experience of our contractors with other state programs has suggested a better alternative to the 1980 draft. Of course, we have also examined and changed the 1980 draft to conform to Senate Bill 843, the current surface mining bill. Proposed federal rule-changes cause a problem in drafting a state program submission because of the uncertainty of when any proposed changes will become final and how such final regulations may differ from the proposals based on the extensive public comment which the Office of Surface Mining receives on most of its proposals. We are carefully examining proposed federal rule-changes. Where the proposed change appears to be an improvement on the 1980 draft regulation, and where we believe that the proposed change could be justified under the "as effective as" standard, even if it is not ultimately adopted by the Office of Surface Mining, some or all of the proposed change has been incorporated in the draft which we are disseminating. Other federal proposals have not been incorporated at this time; however, the Department is continuing to monitor these rule changes carefully and will look to incorporate whatever proposed concepts that seem to be appropriate for an Alaska surface mining program. The tables which accompany each group of our draft regulations indicates whether or not there are final or proposed federal regulations in that area.

Beginning with this April 6 meeting, we envision using the following process in proceeding with the development of our surface mining regulations and program submission. We are asking today that everybody who is interested in assisting in this process complete a short form which indicates what regulations they are interested in reviewing and working on. As sections of the draft regulations are ready for review we will distribute them to the interested members of this working group, and request a review and comment within a relatively short period of time, usually about 2 weeks. Based on the comments which the Department receives, we will either proceed with a new draft which considers all of the comments made or attempt some kind of dialogue with the reviewers to redraft the regulations in a manner which satisfies the concerns raised. Depending on the nature of the comments, this dialogue would either take place at one or more meetings or through telephone calls. Our goal is to have all sections of the draft regulations distributed this month and a package to go to formal rule-making by June 1.

Today we are distributing the draft regulations on the designation of lands unsuitable process, as well as the appropriate portion of Senate Bill 843. This seemed to be an appropriate area with which to begin since that process cuts across a range of disciplines and interests. It also serves to

introduce you to some of the common threads you will encounter in reviewing these draft regulations. The federal law and regulations contain a number of systems, all of which are highly procedural. Many of these procedures were designed to insure public participation in the whole area of regulation of surface coal mining activities. Before approving a state program, the Secretary of the Interior must find that the program provisions for public participation are as effective as those of the federal regulations. The lands unsuitable area is one of these systems.

You will find it difficult to track the draft regulations without reading the cross references to the Senate Bill, which we have provided. We have followed the guidance of the Drafting Manual for Administrative Regulations in not restating or paraphrasing statutes as regulations, but we have tried to reference the appropriate statutory section where necessary. We suggest that you read AS 41.45.260 before reviewing the draft regulations.

Please note that a great deal of checking of internal cross references, making style and references consistent, and reorganizing of materials will take place prior to formal rule-making. All of the definitions will be put in one section, and we are going to attempt, to the extent possible, to standardize many of the notice and hearing provisions under the different systems, and place them in one place. We welcome any suggestions along these lines. For the purposes of reviewing the draft regulations, however, we have kept many of these provisions intact to aid the reviewers.

It is not necessary that all comments on the draft regulations be made to us in writing, or with any other formality. Feel free to return a marked-up copy to us with your comments. Also feel free to call and ask questions about the material. We have found that many concerns can be explained in terms of the requirements imposed by federal law.

We are asking that those of you interested in reviewing the designation of lands unsuitable regulations respond to us by April 19, 1982. Within the next week we will mail to you a list of the people in this working group and their areas of interest, along with some additional sections of the draft regulations. We may need to solicit further help in certain areas based on the responses today. Please suggest any other persons who you feel might be interested in this effort.

We thank you for your help.

Laurel Murphy 265-4222
Howard Roitman 265-4221
John Antenucci 265-4220

Division of Minerals and Energy Management
Pouch 7-005
Anchorage, Alaska 99510

(d) The commissioner will, in his discretion, disregard existing acreage limitations and will adopt a bidding method under AS 38.05.180(f).

(e) All sales of re-offered land will be by competitive bids after proper notice to the public. (Eff. 7/22/79, Reg. 71)

Authority: AS 38.05.035
AS 38.05.145
AS 38.05.180

CHAPTER 84.
OTHER LEASABLE MINERALS

Article

Editor's Note: The mineral-leasing regulations in chapters 82, 83, 84, 86 and 88 of this title, effective September 5, 1974, and distributed in Alaska Administrative Register 51, constitute a comprehensive reorganization and revision of this material, and thus the history line at the end of each section does not reflect the history of the provision before September 5, 1974, and the section numbering may or may not be related to the numbering before that date.

ARTICLE 1.
COAL

Section

11 AAC 84.100. LEASING METHOD. (a) Land classified as competitive for coal leasing purposes may only be leased under the competitive procedures provided in 11 AAC 82.

(b) Land classified as noncompetitive for coal leasing purposes may only be obtained through the noncompetitive procedures provided in 11 AAC 82. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.145(a)

11 AAC 84.105. PUBLIC AND CHARITABLE USE. (a) Sales to a qualified government or

cooperative agency under AS 38.05.315 may not be made at less than 50 percent of the appraised price. Consideration will only be given to requests filed 60 days in advance of sales initiated by the state for competitive leasing. Leases on school, university, or mental health land may only be made at the full appraised price.

(b) A qualified government or cooperative agency as provided by AS 38.05.315 shall furnish substantive information that it is qualified within the meaning of AS 38.05, and that the disposal of coal deposits by lease, sale or other methods at less than the appraised price will be fair and proper and in the best interest of the public. This statement must include the nature of the public service or function rendered by the qualified government or cooperative agency and outline the plan of operation, including a showing that the coal used will be used only in the plants and facilities owned, leased, or operated by the agency, and the reason upon which the right to be considered as other than an ordinary individual or corporation is based. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.145
AS 38.05.150(b)
AS 38.05.315

11 AAC 84.110. STATEMENT OF CONFORMANCE WITH ACREAGE LIMITATIONS. Every applicant for a prospecting permit or lease shall show that, with the area applied for, his or its interest or interests in such permits, leases, or applications for them, directly or indirectly, do not exceed the acreage limitations, or that an application for exception under AS 38.05.140(a) has been filed. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)
AS 38.05.035(a)(4)
AS 38.05.145(a)

11 AAC 84.115. PROSPECTING PERMITS OPERATIONS. Before commencing operations under a prospecting permit, the permittee shall submit a plan of operations for approval by the director. The prospecting plan shall describe the method to be used in prospecting the land, the area to be covered, the type of equipment to be used, the estimated time schedule for the operations and any other information the director may require. Operations may not

commence prior to approval of the plan. The approved plan is subject to any conditions the director may determine are necessary to protect the land and minimize damage to the land and its resources. The director shall require a corporate surety or personal bond in a sum of $1,000 or more for each permit. The bond shall be filed before commencing operations. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.035(a)(4)
AS 38.05.145(a)
AS 38.05.150(c)

11 AAC 84.120. PERMIT EXTENSIONS. (a) Any coal prospecting permit may be extended by the director for a period of two years if he finds that the permittee has been unable, with the exercise of reasonable diligence, to determine the existence or workability of coal deposits in the area covered by the permit and desires to pursue further prospecting or exploration, or for other reasons in the opinion of the director warranting an extension.

(b) If application is made for extension of a coal prospecting permit, it must be filed in duplicate within the 90-day period immediately preceding the date on which the permit expires.

(c) An application for extension may not be considered unless accompanied by a showing that the applicant has performed at least $1.00 per acre worth of drilling, excavating, geological or geophysical work for the benefit of the permit. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.035(a)(4)
AS 38.05.145(a)
AS 38.05.150(c)

11 AAC 84.125. PERMIT ROYALTY. (a) The coal prospecting permit shall state the amount of royalty to be paid for coal mined and marketed or used from the land covered by the permit during the time that the permit is in effect, and shall also state the amount of royalty to be paid under any lease that may supersede the permit. The royalty paid for coal mined and marketed or used during the time that the permit is in effect shall be greater by at least five cents per ton (2,000 avoirdupois pounds) than the royalty to be paid under any superseding lease, and in no case may the royalty paid during the time the permit is in effect be less than 10 cents per ton (2,000 avoirdupois pounds).

(b) Royalties shall be paid within 30 days after the end of each calendar month during which the coal was disposed of. Remittances are payable to the Department of Revenue of the State of Alaska. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)
AS 38.05.145(a)

11 AAC 84.130. PERMIT CONVERSION TO LEASE. (a) At any time while a coal prospecting permit is in effect, if the permittee shows to the satisfaction of the director that the land covered by the permit contains coal in commercial quantities and submits a satisfactory mining plan, the permittee is entitled to a noncompetitive coal lease on all or part of the land covered by the permit.

(b) If during the time that a coal prospecting permit is in effect, more than 300 tons (2,000 avoirdupois pounds per ton) of coal is used or marketed in any three-month period, the prospecting permit shall be converted to a lease on all or part of the land included in the permit. The lessee shall submit a satisfactory mining plan. The starting date of the lease shall be the first day of the month following the three-month period in which the coal was removed. Failure to convert to a lease is grounds for cancellation of the permit. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.145(a)
AS 38.05.150(c)

11 AAC 84.135. USE OF TIMBER. If the holder of a coal prospecting permit wishes to use timber on the land covered by the permit for firewood, fencing, buildings, mining, prospecting, or for domestic purposes, he may apply to the division for a personal use permit; but no timber may be sold, bartered, or removed from the area covered by the permit except under the provisions of regulations governing disposal of timber and materials. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)
AS 38.05.145(a)

11 AAC 84.140. COMPETITIVE SALE NOTICE. The notice of a lease offer for a competitive sale shall specify, in addition to the requirements of 11 AAC 82.415, the minimum

expenditure that will be required by sec. 150 of this chapter. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.145(a)
AS 38.05.345(a)

11 AAC 84.145. LEASE ROYALTIES AND RENTALS. (a) The amount of royalty to be paid under a coal lease shall be stated in the lease, and in no case may the amount be less than five cents per ton (2,000 avoirdupois pounds) of coal mined and marketed or used. The amount of rental may not be less than 25 cents per acre for the first year the lease is in effect, not less than 50 cents per acre for the second, third, fourth and fifth years, respectively, and not less than $1.00 per acre for each year thereafter during the continuance of the lease. All leases shall provide that the annual rental payment is subject to adjustment at intervals of no more than 20 years and that any adjustments will be based on the current rates for properties similarly situated. The requirements of this section pertaining to royalty may be waived if the privileges of a government or cooperative agency are considered favorably, but the amount of the rental may not be reduced.

(b) Royalties shall be paid within 30 days after the end of each calendar month except when the payment of rentals has established a credit against royalties as provided in (c) of this section. Remittances shall be made payable to the Department of Revenue of the State of Alaska.

(c) The rental payments for the first year of the lease are due on the date that the lease is granted, and the rental for each succeeding year shall be paid on or before the beginning of each lease year. The rental for each year is credited against the royalties as they accrue for that year. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.145(a)

11 AAC 84.150. MINIMUM EXPENDITURE. A minimum expenditure for mine operations, development, or improvement purposes, on or for the benefit of the leased land, is a condition in each lease. Not less than one-third of the expenditure must be made during the first year and a like amount each year for the two succeeding years. The investment during any one year over the required amount for that year may be credited to the expenditure required for the ensuing year or years. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.145(a)
AS 38.05.150(e)

11 AAC 84.155. MINIMUM LEASE BOND. A coal lease bond is required before a lease is issued, and in no case may the amount be less than $1.00 per acre. The director may, in the event of any significant change in the scope of operations or prior to approval of an assignment, alter the amount of the bond. The bond shall be filed in accordance with 11 AAC 82.600. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.145(a)

11 AAC 84.160. TERMINATION. If the lessee fails to comply with the provisions of the lease, or of the statutes, and regulations in force at the date of the lease, and the failure continues for 30 days after service of written notice by the director, the director may institute appropriate proceedings in a court of competent jurisdiction for the termination of the lease. A waiver of a cause of termination does not prevent the termination of the lease for any other cause or for the same cause occurring at any other time. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.145(a)

11 AAC 84.165. ASSIGNMENTS. Before approval of a transfer of a permit or lease may be given

(1) the account of royalties and rentals under the permit or lease must be in good standing; and

(2) the assignee must file a statement that he will carry out prospecting, development, or mining work that was prescribed in the required mining lease plan or file an acceptable alternate plan. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.145(a)

11 AAC 84.170. LIMITATION ON OVERRIDING ROYALTIES. No overriding royalty interests may be created which exceed the rate of royalty first payable to the State of Alaska under the lease or permit unless the lessee shows to the satisfaction of the director that the royalty is justified by substantial

improvements to the leasehold. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)
AS 38.05.145(a)

ARTICLE 2.
PHOSPHATES

Section
200. Phosphate leasing method

11 AAC 84.200. PHOSPHATE LEASING METHOD. Phosphate leases authorized by AS 38.05.155 are subject to disposition under 11 AAC 82. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 3.
OIL SHALE

Section
300. Oil shale leasing method

11 AAC 84.300. OIL SHALE LEASING METHOD. Oil shale leases authorized by AS 38.05.160 are subject to disposition under 11 AAC 82. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 4.
SODIUM

Section
400. Sodium leasing method

11 AAC 84.400. SODIUM LEASING METHOD. (a) Sodium leases authorized under AS 38.05.165 for land which the director determines is known to contain valuable deposits of sodium compounds are issued competitively under 11 AAC 82.

(b) Prospecting permits authorized under AS 38.05.165 for land not known to contain valuable deposits of sodium compounds are issued noncompetitively under 11 AAC 82. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 5.
SULPHUR

Section
500. Sulphur leasing method

11 AAC 84.500. SULPHUR LEASING METHOD. (a) Sulphur leases authorized under AS 38.05.170 for land which the director determines is known to contain valuable deposits of sulphur are issued competitively under 11 AAC 82.

(b) Prospecting permits authorized under AS 38.05.165 for land not known to contain valuable deposits of sulphur are issued noncompetitively under 11 AAC 82. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 6.
POTASSIUM

Section
600. Potassium leasing method

11 AAC 84.600. POTASSIUM LEASING METHOD. (a) Potassium leases authorized under AS 38.05.175 for land which the director determines is known to contain valuable deposits of potassium compounds are issued competitively under 11 AAC 82.

(b) Prospecting permits authorized under AS 38.05.175 for land not known to contain valuable deposits of potassium compounds are issued noncompetitively under 11 AAC 82. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 7.
GEOTHERMAL RESOURCES

Section
700. Geothermal resources leasing method
710. Qualifications
720. Known geothermal resource area
730. Plan of operations

11 AAC 84.700. GEOTHERMAL RESOURCES LEASING METHOD. (a) Geothermal resource leases authorized under AS

38.05.181 for lands classified as known geothermal resource areas are issued competitively under 11 AAC 82.

(b) Prospecting permits authorized under AS 38.05.181 for lands which have not been classified as geothermal resource areas are issued noncompetitively under 11 AAC 82. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 84.710. QUALIFICATIONS. The provisions of 11 AAC 82.200 which are not inconsistent with the qualification requirements of AS 38.05.181 are also applicable to persons who may hold geothermal permits and leases. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 84.720. KNOWN GEOTHERMAL RESOURCE AREA. AS 38.05.181(b)(2) is interpreted to require that an area be identified around each well capable of producing geothermal resources in commercial quantities which is reasonably proven by the well and other information to be capable of producing geothermal resources in commercial quantities. In addition, other areas which meet the criteria of AS 38.05.181(q)(8) may be classified as competitive. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.145(a)
AS 38.05.181

11 AAC 84.730. PLAN OF OPERATIONS. A permittee or lessee shall submit a plan of operations for approval by the director prior to commencing any operations on a permit or lease. Operations may not commence prior to approval of the plan and are subject to any conditions the director may determine are necessary to prevent waste and to protect or minimize damage to the land and its resources. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.145(a)
AS 38.05.181

CHAPTER 86.
MINING RIGHTS

Article

1. General Provisions (11 AAC 86.100–11 AAC 86.135)
2. Staking, Recording and Maintaining Claims and Leasehold Locations (11 AAC 86.200–11 AAC 86.230)
3. Mining Leases (11 AAC 86.300–11 AAC 86.325)
4. Prospecting Sites (11 AAC 86.400–11 AAC 86.435)
5. Offshore Permits and Leases (11 AAC 86.500–11 AAC 86.570)
6. Millsites (11 AAC 86.600)

Editor's Note: The mineral-leasing regulations in chapters 82, 83, 84, 86 and 88 of this title, effective September 5, 1974, and distributed in Alaska Administrative Register 51, constitute a comprehensive reorganization and revision of this material, and thus the history line at the end of each section does not reflect the history of the provisions before September 5, 1974, and the section numbering may or may not be related to the numbering before that date.

ARTICLE 1.
GENERAL PROVISIONS

Section

100. Applicability
105. Discovery defined
110. Existing mining claims, federal leases and permits
115. Locations prior to tentative approval
120. Conditional mining leases and locations
125. Failure to comply
130. Filing and recording
135. Mineral deposits open to location

11 AAC 86.100. APPLICABILITY. The provisions of this chapter apply to the acquisition of mineral rights under AS 38.05.280. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 86.105. DISCOVERY DEFINED. "Discovery" means a finding of valuable mineral as would justify an ordinarily prudent person in expending further time, labor, and money upon the property with a reasonable expectation of developing a paying mine. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)
AS 38.05.185(b)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

MEMORANDUM

April 8, 1982

SUBJECT: CSSB 843 (Resources)

TO: Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee
Attn: Resa King

FROM: Thomas A. Sofo TAS
Legislative Counsel

It has come to my attention that the most recent version of CSSB 843 (Resources) contains the word "may" on page 33, line 2. A review of the backup material provided by your office indicates that both the word "may" and the word "must" were provided as the language to be contained in the bill at that point. Had I been aware of the inconsistency in the directions which you provided I would have asked for clarification at the time the bill was being prepared by this office. It is my understanding that the word which was actually intended is "must". Typically, this office would change the word "must" to "shall". If that is your preference please let me know at your earliest convenience so we can provide you with a corrected version of the bill.

TAS:ljb

do a correction

"Proposed"

MARCH 22, 1982

ATTN: CHARLIE PODDY

SUBJECT: POLICY STATEMENT OF C.O.A.L. WITH REGARD TO STATE OF ALASKA INVOLVEMENT IN INFRASTRUCTURE CREATION FOR RESOURCE DEVELOPMENT

C.O.A.L. SUPPORTS THE CONCEPT OF STATE OF ALASKA FINANCIAL INVOLVEMENT IN INFRASTRUCTURE CREATION FOR RESOURCE DEVELOPMENT.

C.O.A.L. BELIEVES THERE ARE SEVERAL ROLES THE STATE OF ALASKA COULD APPROPRIATELY PLAY IN A FOSTERING DEVELOPMENT OF ALASKA'S RESOURCES.

THE STATE COULD CONSIDER PROVIDING LONG TERM LOW INTEREST LOANS THPOUGH TAX FREE BONDS. SUCH AN ACTION COULD SUBSTANTIALLY ENHANCE THE OVERALL ECONOMICS OF A PROJECT AS WELL AS PROVIDE A DIRECT ECONOMIC BENEFIT TO THE STATE. C.O.A.L. SUPPORTS THIS APPROACH TO STATE FINANCIAL INVOLVEMENT IN CREATON OF INFRASTRUCTURE WHICH IS DIRECTLY RELATED TO THE DEVELOPMENT AND PRODUCTION OF A NATURAL RESOURCE.

THE STATE MAY ALSO CONSIDER DIRECT INVOLVEMENT IN THE CONSTRUCTION AND OPERATION OF DEVELOPMENT AND PRODUCTION RELATED INFRASTRUCTURE. C.O.A.L. SUPPORTS THIS APPROACH SUBJECT TO CERTAIN LIMITATIONS.

IF THE SCALE OF ONE OR MORE DEVELOPMENTS IS SUCH THAT THE PROJECTS AND THE PRODUCTS THEY PRODUCE CAN CARRY THE COSTS OF DEVELOPMENT AND PRODUCTION RELATED INFRASTRUCTURE, THEN C.O.A.L. BELIEVES THAT STATE INVOLVEMENT IN THE CONSTRUCTION AND OPERATION OF THE INFRASTRUCTURE IS INAPPROPRIATE. WE BELIEVE THIS IS THE CASE WITH THE PLACER AMEX AND DIAMOND CHUITNA PROJECTS IN THE BELUGA REGION.

IF, HOWEVER, MULTIPLE PROJECTS, WHICH COULD BE SERVED BY MORE OR LESS COMMON INFRASTRUCTURE, WHERE RESTRAINED FROM DEVELOPMENT BY INDIVIDUAL ECONOMICS OF SCALE, IT MAY BE VERY APPROPRIATE FOR THE STATE OF ALASKA TO CONSTRUCT AND OPERATE ALL OR PART OF THE DEVELOPMENT AND PRODUCTION RELATED INFRASTRUCTURE. UNDER SUCH CONDITIONS AND ASSUMING THE STATE WOULD RECEIVE OVER THE LONG TERM A RETURN AT LEAST ADEQUATE TO RECOVER THEIR INVESTMENT, C.O.A.L. WOULD SUPPORT STATE INVOLVEMENT.

THIS IS MY CUT A POLICY STATEMENT. WE SHOULD RUN IT BY THE OTHER MEMBERS BEFORE WE MAKE IT PUBLIC.

REGARDS,
B. STILES

USIBELMIN HELY

DIASHAM LEX

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE:

April 5, 1982

The Honorable Don Bennett
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

As you are aware, the fiscal note to SB 843, which establishes Alaska's Surface Coal Mining Program, requests approximately $163,000 from the State's general fund for fiscal year 1983. An additional $403,000 would be supplied from federal funds. Although I am keenly aware of the budget pressures facing the State, I am writing to explain why State funding is vital for our Surface Mining Program to be a success.

SB 843 is the foundation for the Surface Mining Program which the Department intends to submit to the Department of the Interior later this year. The bill is supported by the coal industry and, with minor reservations, by public interest groups. Upon approval by the Interior Department, the Alaska Department of Natural Resources will replace the federal Office of Surface Mining as the regulatory authority for coal mining operations in the State. As part of the Secretary of the Interior's decision on whether or not to approve a State program, he must find that the State agency has "sufficient legal, technical, and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the program..." 30 C.F.R. sec. 732.11(d).

The funding contained in the fiscal note for SB 843 will enable that finding to be made. Once the State has an approved program, we are entitled to 50% reimbursement from the federal government for expenditures in regulating surface mining on non-federal lands in the State, and 100% funding for regulation of such operations on federal lands.

First priority is to determine best coal sites, panel told

News-Miner Bureau

JUNEAU—The state of Alaska should spend a year figuring out which of its extensive coal reserves should be developed before it asks voters to approve bonds to build roads and docks for coal exports.

That was the message coal industry representatives delivered to a House panel last week. The industry officials represent companies who are contemplating mining portions of the estimated 141 billion tons of coal in Alaska.

But before spending millions of dollars on coal export facilities, Mobil's West Boettger told the House Transportation Committee, the state should take a year or 18 months and spend $200,000 to $500,000 determining which are the best coal sites to develop.

Opening up the wrong sites or doing so at the wrong time could mean Alaska's coal will not be sold on the world market, he said.

The committee is considering a bill (HB 768) that calls for a $200 million bond sale to develop Alaska's coal industry and pay for roads, ports and shipping facilities. The measure, sponsored by Rep. Ray Metcalfe, R-Anchorage, requires voter approval of the bonds.

While coal industry officials called the bill a significant indicator of the state's interest in coal development, they said it's probably premature.

"The best thing government can do is stand by and help private enterprize," said Dan Renshaw of the Usibelli Coal Co., Alaska's only coal company in production.

The key is determining when that help is needed, he said, because the world coal market is subject to changes.

Much of the world's coal is currently being consumed by Pacific Rim countries such as Japan, Korea and Taiwan, the panel was told. South Africa, Australia and the Lower 48 are supplying much of that coal, but it's of a considerably higher grade than Alaska coal.

For example, Far East countries are geared up to process coal rated at 12,000 to 14,000 British thermal units (BTUs). Much of Alaska's lower quality coal is rated at 8,000 BTUs.

However, Alaska's proximity to those markets makes it competitive with the higher quality coal, that is, if the facilities are in place to export it, Renshaw said.

SB 843 also establishes an Abandoned Mine Lands (AML) Program and a Small Operator Assistance Program (SOAP), both of which are funded entirely by the federal government. The money for these programs comes from a severence tax that has been paid by coal operators to the federal government since 1977. In part, then, we will be receiving back money which has been paid by the Usibelli mine since 1977, and will be paid by other operators as new coal mines are developed in the State. I should also note that AML funds are only available to the State if the Secretary of the Interior approves our Surface Mining Regulatory Program. These funds are available for reclaiming abandoned mine lands which were left in an inadequate reclamation status prior to passage of the 1977 federal law. At present, 18 such sites have been identified, and we anticipate many more such sites will be discovered upon more thorough investigation.

The approximately $290,000 of State and federal funding requested in FY83 to run the Surface Mining Regulatory Program contrasts with the following amounts estimated by other western states for the same period: Colorado, $1,520,000; Montana, $1,531,000; New Mexico, $908,000; Wyoming, $2,357,000. Our contemplated staff of four people contrasts with 29, 16, 16, and 49, respectively, for those states. This staffing level should be adequate to handle regulatory activities until there are four or more operations in the State, at which point we predict the need for one additional staff person (in Fiscal Year 1985). The four positions requested would also constitute the staff for the AML program and SOAP.

The positions projected for the program are a geologist, environmental engineer, land management officer, and clerk-typist, which we deem to be the minimum necessary to run the various programs. Present mining personnel in the Department are already overtaxed, due, in part, to the record number of mining claims which were filed this year and our initiation of a Coal Leasing Program. We anticipate that a fair amount of the technical analysis required by SB 843 programs will be handled through contracts to private consultants, since a program of our size does not justify employment of the broad spectrum of disciplines required by the federal law. The geologist will be the manager of the Surface Mining Program. His primary duties will include supervision of contracts for review of permit applications, abandoned mine lands work, small operator assistance, and review of petitions to designate lands unsuitable for mining; making initial departmental

decisions or recommendations on permit applications, bond release, enforcement actions, petitions to designate lands unsuitable, etc.; and preparing and negotiating grant requests and agreements with the Department of the Interior. The environmental engineer will be the primary inspector under the program, as well as assisting and complementing the geologist in the above tasks. The duties of the land management officer will focus on compliance with the myriad public participation requirements, record-keeping, and general review and response regarding different new responsibilities under this program (i.e., reviewing exploration permits and notice of intent). The clerk-typist will provide secretarial support.

In summary, the funds requested constitute what we believe is the minimum funding level necessary for the Department to fulfill its new duties under SB 843, as well as to obtain approval of our program by the federal government. In addition, approval of SB 843 and this funding should result in a better than 2:1 federal match of funds for these programs.

Sincerely,

John W. Katz
Commissioner

cc: The Honorable Al Adams
The Honorable Robert H. Bettisworth
The Honorable Ed Dankworth
The Honorable Bettye Fahrenkamp
Keith Specking
Ron Lehr
Phil Holdsworth, Coal Association

MEMORANDUM State of Alaska

TO: The Honorable John Sackett
Alaska State Senate

DATE: April 13, 1982

FILE NO:

TELEPHONE NO: 465-2400

FROM: John W. Katz
Commissioner
Depart. of Natural Resources

SUBJECT: Fiscal Note, CSSB 843

Attached is the detailed breakout of expenditures and funding categories for the fiscal note to CSSB 843 which you requested this morning. I have also attached a letter to Senator Bennett of April 5, which details the rationale for the fiscal note. Please do not hesitate to call me if you require any additional material.

cc: Senator Bennett
Senator Dankworth
Senator Eliason
Senator Ferguson
Senator Stimson
Senator Sturgulewski
Senator Fahrenkamp

with attachment

DETAILED BREAKOUT OF COSTS CONTAINED IN FISCAL NOTE TO CSSB 843

The expenditure and funding categories for Fiscal Year 1983 are composed of the following:

100 Personal Services		$ 157,100.00
Each position includes a standard formula for benefits and inflation.		
Geologist IV	$	51,579.00
Environmental Engineer III		46,911.00
Land Management Officer II		34,091.00
Clerk-Typist III		24,519.00
200 Travel	$	19,800.00
Field inspections of each operation or coal development area.	$	6,600.00
Meetings with Department of Interior (DOI) officials in Washington, Denver, and Casper, Wyoming, regarding program development, approval, implementation; and negotiation of a cooperative agreement for regulation on federal lands.		7,200.00
In-state meetings and hearings of the Department and its advisory committee on regulation drafting, regulation and program development and implementation, and the Office of Surface Mining (OSM) approval process.		6,000.00
300 Contractual	$	375,000.00
Abandoned mine land program development. This figure represents the low end of the range of costs incurred by other western states, and includes such items as identification, inventory, and prioritization of potential sites, program development, and submission to the DOI. This amount is 100% federally funded.	$	200,000.00
Review of permit applications. This figure is based on OSM contractor costs for a completeness review, technical and environmental assessment, with additional costs of increased site travel and analyzing unique Alaska problems under a new regulatory program, plus an inflation factor.		60,000.00

Small operator assistance. Based on OSM costs, with above-mentioned factors added. This amount is 100% federally funded. 40,000.00

Program development. Continued development of program submission, including regulations, inter-agency agreements, data base and inventory system, training of new staff, development of forms and manuals, cooperative agreement sub-mission, etc. 55,000.00

Legal review of extensive regulations, opinion and other elements necessary for program submission to OSM. 20,000.00

400 Commodities $ 1,000.00

Based on standard Department factor per employee.

500 Equipment $ 13,000.00

Based on one-time cost per employee for new office equipment and new equipment necessary for inspections and analyzing field data.

Funding

The DOI funds 50% of the cost of the state regulatory program, and 100% of regulation on federal lands, the abandoned mine land program, and small operator assistance contracts. Based on these formulae, the funding under this fiscal note is derived as follows:

General Fund	$ 163,000.00
Federal funds	403,000.00

This fiscal note does not consider income to the state based on permit application fees and collection of civil penalties, since these are speculative at this time.

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

January 26, 1982

Mr. Mark Wittow
Special Assistant to the Commissioner
Department of Natural Resources
State of Alaska
Pouch M
Juneau, Alaska 99811

Dear Mark:

Enclosed, as per your request, is a copy of our most recent status report regarding State programs. If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Richard Robinson

Richard Robinson

Enclosure

STATE PROGRAM SUBMISSIONS
STATUS OF OSM REVIEW

STATE	DECISION	DATE	DATE INJ. ISS. (if any)	DATE INJ. LIFT.	RESUB. DATE
* See notes below.					
AL	Disapp.	10/16/80	11/12/80	11/12/81	1/11/82- ~~1/12/82+~~ --
*AK	--	--	--	--	--
AR	Con. Ap.	11/21/80	--	--	--
CO	Con. Ap.	12/15/80	--	--	--
*GA	--	--	--	--	--
IL	Par. Ap.	10/31/80	12/11/80	12/11/81	12/22/81
IN	Par. Ap.	11/25/80	7/26/80	7/26/81	9/28/81
IA	Con. Ap.	1/21/81	--	--	--
KS	Con. Ap.	1/21/81	--	--	--
KY	Par. Ap.	10/22/80	10/31/80	10/31/81	12/30/81
LA	Approval	10/10/80	--	--	--
*MD	Con. Ap.	12/1/80	5/1/81	5/1/82+	--
*MA	--	--	--	--	--
*MI	--	--	--	--	--
MS	Approval	9/4/80	--	--	--
MO	Con. Ap.	11/21/80	--	--	--
MT	Con. Ap.	4/1/80	--	--	--
NM	Con. Ap.	12/31/80	--	--	--
ND	Con. Ap.	12/15/80	--	--	--
OH	Disapp.	10/1/80	11/25/80	11/25/81	~~1/25/82+~~ 1/22/82
*OK	Con. Ap.	1/19/81	1/9/81	7/20/81	--
*OR	--	--	--	--	--
PA	Disapp.	10/22/80	11/26/80	11/26/81	~~1/26/82+~~ 1/25/82
*RI	--	--	--	--	--
TN	Par. Ap.	10/10/80	12/5/80	12/5/81	2/5/82+
TX	Con. Ap.	2/27/80		--	--
UT	Con. Ap.	1/21/81	--	--	--
VA	Con. Ap.	12/15/81	12/3/80	12/3/81	8/13/81
*WA	--	--	--	--	--
*WV	Con. Ap.	1/21/81	2/13/81	2/13/82+	--
WY	Con. Ap.	11/26/80	--	--	--

Con. Ap. = Conditional Approval
Par. Ap. = Partial Approval / Partial Disapproval
Disapp. = Disapproval

+ (Target Date)

NOTES:

Alaska: Expected to submit State program.
Georgia: Federal program proposed 9/15/80. Target date for reproposing Georgia Federal program is January 31, 1981.
Maryland: Injunction restrains State from enforcing portions of the approved program.
Massachusetts: Federal coal exploration program to be promulgated.
Michigan: Federal coal exploration program to be promulgated.
Oklahoma: Injunction restrained State from implementing the approved program. All regulations rescinded 2/12/81. Emergency regulations recently promulgated.
Oregon: Federal coal exploration program to be promulgated.
Rhode Island: Federal coal exploration program to be promulgated.
Washington: Expected to submit State program.
West Virginia: Injunction restrains State from enforcing portions of the approved program.

Howard Roitman
Attorney
Surface Mining Consultant

April 1, 1982
(This is not, however, an April Fool's joke.)

MEMORANDUM

TO: Mark Wittow
Laurel Murphy

Per a telephone conversation with Walt Morris (Assistant Solicitor for Enforcement, Division of Surface Mining, Washington, D.C.) this date, the Settlement Agreement regarding implementation of a surface mining program in Alaska provides as follows:
If the state submits a program by September 1, the Department will act expeditiously to reach a decision on it. In the event that the state fails to submit a program by that date, the Department agrees to publish a proposed program in the Federal Register by November 1, 1982 and a final program by March 1, 1983. If the state legislature adjourns without having passed the requisite bill, the Department schedule for proposing and implementing a federal program is moved up to require publishing a proposed program within 120 days of the legislature s adjournment.

This is, of course, probably an impossibly short timeframe for Interior to meet. This timeframe would ensure at least two undesireable results: First, a federal program would certainly be implemented before the 1983 session of the legislature could make another try at a bill, thereby triggering a permit application requirement for Usibelli, and conceivably an EIS. The worst-case scenario which we've joked about, that Usibelli could be shut down, becomes a little closer to reality given the present backlog of federal mine plan approvals and the uncertainty as to whether Usibelli is permitted according to the federal interim program. Second, this timeframe ensures that the federal program would not reflect unique Alaskan conditions since the time would allow only publication of a "generic" type federal program, probably similar to that already published for Georgia.

Howard

cc: J. Antenucci

2225 Birch • Denver, Colorado 80207 • (303) 322-1955
2607 Palmer Court • Anchorage, Alaska 99504 • (907) 274-2653 ext. 159 337-0052

Oswald discusses coal mining regs

By MAURICE P. OSWALD
DOWL Engineers

The federal Surface Mining Control and Relamation Act of 1977 directs the Secretary of Interior to establish a permament regulatory procedure for surface coal mining and reclamation operations.

The federal act also requires all states to enact their own program according to federal guidelines by Feb. 1981, or the federal program automatically would be instituted in the state.

The regulatory program, administered through the Office of Surface Mining Reclamation and Enforcement is intended to control adverse environmental impacts stemming from activity in and around surface coal mines.

Although the state has not yet enacted its own surface mining regulatory program as required by the federal act, it is likely the future state program will resemble the requirements of the federal regulations.

The new regulations contain two types of guidelines: those dealing with performance standards or goals, and those concerning the design criteria for all construction in the mine plan area.

To satisfy the many stringent requirements in permitting future coal mining operations, various specific environmental requirements must be met. Typical examples include:

- hydrologic engineers are to work with the mine plan design team to establish ground water and surface water quality and control methods for both pre mining and post mining stages.
- hydrologic engineers also will be needed to design water control structures such as diversion channels, impoundments and underdrains for reclaimed areas.
- environmental specialists such as biologists, botanists, ecologists, soils scientists, and agronomists will be needed to assist in the design of mine plans to minimize adverse impacts on fish, wildlife, plants, soils and other environmental values of the mine plan area and to establish a reclamation plan.

Various legal challenges to the act have been posted since its enactment. However, in a unanimous decision the U.S. Supreme Court upheld the constitutionality of the act, reversing previous U.S. District Court rulings in Indiana and Virginia that the law was unconstitional.

Despite other ongoing challenges, indications are the act has the highest court's support in both spirit and substance. The federal act did make a special provision relative to Alaska, although the significance is not yet clear.

It was believed at the time of passage that surface coal mining conditions in Alaska might be sufficiently different from those in other coal producing states to warrant modified regulatory treatment under the act.

Sect. 708 of the act therefore directed the Secretary of the Interior to contract with the National Academy of Sciencies - National Academy of Engineering for an in depth study of surface coal mining conditions in Alaska, in order to determine which, if any, provisions of the act should be modified with respect to surface coal mining operations here.

The study considered certain environmental characteristics of Alaska, in particular the widespread areas of permafrost and arctic tundra, which are not encountered in coal mining areas in the Lower 48 states and which were not contemplated as unique features of mining and reclamation when the act was written.

Surface mining of coal in perennially frozen tundra areas in North America has been limited, and the optimum technology for dealing with mining and reclamation problems in such areas is not known.

In addition, some environmental and socioeconomic conditions in Alaska could interact with coal mining in ways not addressed by the act, and it was believed that such matters deserved comment in considering how the act might be modified.

For example, the effects of mining on wildlife as related to Native subsistence economies and social structures are not addressed in the act. Further complications can arise due to diverse types of land ownership (federal, state and private including regional and village Native corporation selections, Native allotments and non-Native holdings).

Jurisdictional entanglements (except in certain areas) will need to be resolved if coal mining is to be carried out on a broad scale in Alaska.

The results of the study by the National Academy of Sciences - National Academy of Engineering will influence the formulation of the state surface mining regulatory program for years to come.

The lead time eventually required to comply with regulations in preparing a coal mine for production may be as much as 4-5 years.

However, actual production of Alaska coal on a large scale remains dependent primarily on external market conditions, rather than regulatory constraints.

Properly implemented, the regulatory programs are intended to achieve an acceptable balance between maximizing the recovery of Alaska's energy resources, and achieving orderly industrial growth along with the preservation and enhancement of environmental values.

"A bill already has been drafted for consideration by the first session of the 12th Alaska state legislature. Regardless of the final outcome of the bill and resulting regulatory program, vastly new requirements will confront the future developers of Alaska's enormous untapped coal resources.

The planning and design efforts as well as the environmental constraints for a surface coal mine are considerable, and will have a profound effect on both the costs and timing necessary to prepare for actual coal mine production."

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF ECONOMIC ENTERPRISE
OFFICE OF MINERALS DEVELOPMENT

JAY S. HAMMOND, GOVERNOR

675 7TH AVENUE
STATION G
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-7464

April 7. 1982

APR 12 19

Senator Betty M. Fahrenkamp
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Betty:

There is some interesting material in this recent article from the magazine LANDMARK which relates to the Surface Mining Act.

Perhaps some of the pitfalls could be addressed by regulation to enable Alaska to end up with a workable, realistic and non-punitive regulatory framework.

Sincerely,

John Sims
Director
Office of Mineral Development

JS:nw

Senator Fahrenkamp

Surface Mining Regulation . . .

. . . a case study in Temporary Permanence

Since the enactment of the Surface Mining Control and Reclamation Act of 1977, coal operators have been forced to comply with endless regulations that govern the industry. With the entrance of the Reagan Administration, the Federal Office of Surface Mining has worked hard to relieve operators of some of the regulatory overburden through revisions in the rules.

Albeit unlikely, a set of "permanent" regulations was set forth for the surface mining industry back in March 1979. The constant revision of these rules has created for us a contradiction in terms: temporary permanence.

Some problems still exist in areas of the regulations. Following are several regulatory issues facing the coal industry today. The outcome of the revisions remains unclear at best. Industry members have taken a stand; OSM continues to seek that balance between industry and environment without making legislative changes in the Act itself—at least for the foreseeable future.

Land previously mined and left unreclaimed, or abandoned mine lands (AML), causes environmental problems and tarnishes the countryside. Because most of these areas were abandoned prior to the passage of the Surface Mining Control and Reclamation Act of 1977, (SMCRA), it is difficult to place the ensuing SMCRA responsibility on any specific group.

For this reason, congress created under the act the Abandoned Mine Reclamation Fund, designed to finance the reclamation of abandoned mine lands. Although a good idea on paper, the true effectiveness of the Fund has yet to be tested.

The Fund is comprised of money collected from the states by the Department of Interior (DOI) and is deposited into the Fund from a) user charges imposed on land reclaimed pursuant to SMCRA after the deduction of maintenance expenditures, b) donations, and c) reclamation fees collected from the individual states.

Title IV of SMCRA calls for a fee of $.35 per ton of surface mined coal, $.15 per ton of underground coal, or 10 percent of the entire coal value, whichever is less. DOI collects the fees every calendar quarter, along with a statement prepared by the individual operator describing the amount and type of coal removed and the method of its removal.

The penalties under SMCRA are stiff. A fine of as much as $10,000, jail, or both, may await operators who fail to remit their fees. Ultimately, delinquent fees will be collected by DOI, with interest, through the U.S. court system.

Allocation procedures call for a return of 50 percent of reclamation fees to the state or Indian reservation it was collected from for use in DOI-approved reclamation projects. Project validity is determined in a joint agreement by the state governor and DOI secretary that the Fund's objectives have been met, a need for public facilities on abandoned mine lands exists and that other funds are inadequate. The balance of the Fund is distributed under the discretion of the DOI secretary.

Which brings us to the problem. According to Title IV provisions, monies allocated to the states from the AML Fund that haven't been spent within three years suddenly become "available for expenditure in any area as determined by the Secretary." Because many states do not yet have approved state mining and reclamation programs, they are not yet eligible for their AML allocations. As the three-year deadline for monies originally allo-

cated in 1978 and 1979 draws, near, there is considerable worry that these states could lose a significant amount of money through no fault of their own. The reason? An insufficient time period in which to receive and utilize AML funds between the date of approval for a permanent state mining program and the deadline date, three years after allocation. The Interstate Mining Compact Commission (IMCC) had submitted a petition to the Federal Office of Surface Mining (OSM), simply requesting an extension of this initial three-year deadline. Thus far, no final judgement has been made on the petition.

Another, and more recent, controversy surrounding the Title IV program, spurred by an OSM proposal to ensure that deductions for excess moisture are not made, is the per-ton reclamation fee paid by operators. Those operators who do not wash their coal before selling it claim that they shoulder a greater burden than those who do. Unwashed or "run-of-mine", coal contains impurities, such as moisture that often make it heavier. Coal prices are scaled down according to its impurity, yet it is taxed equally.

One of the most significant problems with the AML Fund is that the majority of it presently sits in the United States Treasury, unused. Reclamation fees are collected from the states by the Interior Department, and deposited in the Treasury. Funds are then allocated back to DOI, where officials distribute it among only those states with approved programs.

"It's cumbersome," said Vince Marino, president of the Pennsylvania Coal Mining Association, of the fund transaction process. "We have projects all worked up and ready. They're just waiting for the money. I have serious reservations about whether or not that money is even gaining interest." Sources confirmed Marino's suspicions.

Marino offered a solution that has become an issue of late.

"Why not let the states raise the AML revenues?", he said. "The states would still give 50 percent of the fees to the Federal government, but keep the remainder within their own borders. That way, another program would come in line with President Reagan's effort to return power to the states."

If this program were adopted, say Federal officials, states in little need of extensive reclamation work would begin to stockpile funds that may be needed elsewhere. For this reason, they say, a Federal authority must be charged with allocating the money where it is most needed. The controversy goes on.

One of the most significant problems with the AML Fund is that the majority of it presently sits in the United States Treasury, unused.

As the three-year deadline draws near, there is considerable worry that these states could lose a significant amount of money through no fault of their own.

One of the main drives behind SMCRA was to provide each state with the opportunity to achieve "primacy"; that is, to assume full jurisdiction of its own mining and reclamation program. The Act required each state desiring its own program to submit to the Federal Office of Surface Mining (OSM) "a state program which demonstrates that such state has the capability of carrying out the provisions of the Act."

A program regulating all surface coal mining operations has to be comprehensive, establishing sanctions for violations of state laws and regulation; a state regulatory authority both well-manned and funded; a process for determining which lands are unsuitable for mining and a method of processing applications and permits designed to cut down on costly and time-consuming duplication.

Upon submission of a state's proposed program, the Interior Secretary is required to solicit the views of other chief administrators from the Agriculture Department and the Environmental Protection Agency (EPA). Before a state program can be approved, at least one hearing must be held and provisions in the Clean Air Act and Water Pollution Control Act must be complied with.

If a program is disapproved by the Interior Secretary, he is required to outline the reasons why. If a state fails to submit a proposed plan, it is still eligible for financial assistance under SMCRA, and a Federal surface mining program will be developed and implemented.

The "state window" concept developed as a vehicle for applying flexible regulations varying from the Act to many different types of areas; operators argued that a "window" of flexibility was necessary, allowing them to achieve the same results, but through different methods.

The DOI secretary also has the option of issuing cessation of operations orders if he determines a violation to be environmentally harmful.

Under the Carter Administration, the window remained closed as Federal officials permitted little, if any, variance from provisions in the Federal program. The state window issue grew to be a long, drawn out struggle between Federal regulators and the industry, relieved with the entrance of the Reagan Administration. Officials under the new Administration responded to industry appeals by proposing to replace the regulatory phrase "as consistent with" (maintaining strict adherance to Federal program provisions) with "as effective as," thereby granting states the needed flexibility. Coal operators have effectively argued that allowing more state flexibility will enhance both cost-efficiency and effectiveness in meeting the Act's Congressional intent.

Industry members have also been concerned with OSM's procedure in the event that a state fails to submit or resubmit a program. The Federal law states that no permits may be issued for such a state until a Federal program is implemented, yet many operators could feasibly mine out their permitted areas in the time necessary to implement a Federal program. Recently, OSM has proposed to allow states the flexibility to submit or resubmit at any time, but a continued limit on state authority to grant permits still threatens the industry. Operators are actively seeking a mechanism for extending or renewing interim program permits in states where this situation exists

OSM officials have also proposed to remove certain requirements in the citizen participation process. Presently, state programs are required to contain provisions for citizen suits in state courts, and citizens' rights to accompany officials during mine inspections. Mine operators point out that communication lines are delicate between industry members and their surrounding communities, and removal of those lines will increase Federal involvement in subsequent suits. As a result, Federal officials may be forced to inspect unfamiliar minesites. The Mining and Reclamation Council (MARC) had argued for the retention of the citizen participation roles primarily to avert additional Federal involvement and citizen hostility that could lead to increased complaints against operators.

With any Federal law comes enforcement. Inspection and enforcement procedures under the Federal surface mining law has been the subject of strong debate between industry members and officials who are currently engaged in the revision process.

The original provisions in SMCRA require that operators maintain extensive records on their operations for submission to the regulatory authority, and that monitoring equipment and methods are established. Although Federal officials are required to conduct partial minesite inspections once a month and complete inspections each calendar quarter, they are done with no prior notice, assuring safe and proper practice.

The Act encourages a degree of public monitoring, granting residents of the mine area the authority to submit complaints of possible mine violations and accompany officials on minesite inspections.

Civil penalties are assessed by the Interior Secretary following a hearing for mine violations and, under SMCRA, penalties shall not exceed $5,000 for each violation. However, each day that a violation exists is considered an additional violation.

The DOI secretary also has the option of issuing cessation of operation orders if he determines a violation to be environmentally harmful. If the violation is not considered dangerous, the operator may be given a period of 90 days to correct, or abate, the problem. Moreover, if the regulatory authority finds a pattern of violations developing as a result of failure to comply with SMCRA provisions, a permit can be revoked or suspended.

One of the several issues of concern in the coal industry has been mentioned before, and involves the public participation process. OSM has proposed deleting provisions for a) state courts being used as vehicles for citizens' lawsuits, and b) citizens joining state and Federal officials on mine inspections. In an effort to maintain fragile community relations, MARC has sought retention of these rules.

A "compliance conference" is a mechanism proposed by OSM designed to promote a closer working relationship between operators and the regulatory authority; however, operators are concerned with the agency's proposal to man the compliance conference program with personnel authorized to issue notices of violation (NOV). In other words, operators may be hesitant to discuss operations that they are unsure whether or not would constitute a violation with anyone who can levy immediate violations. As this would obviously be a hindrance to the program, operators prefer personnel with equal expertise but no authority to issue NOV.

Another regulatory issue of chief concern to the coal industry is OSM's interpretation of a pattern of violations. Operators argue that many violations in one small area of the requirements, such as erosion and/or sediment control, should constitute a pattern of violations rather than violations of unrelated requirements.

Because of its potential effect on the nation's agriculture and food supply, mining and reclamation practices on areas designated as prime farmland has become one of the most controversial issues of the Federal surface mining law.

As a provision for determining whether a permit is approved or denied, the Act requires that the secretaries of Agriculture and Interior "grant a permit to mine on prime farmland if the regulatory authority finds...that the operator has the technological capability to restore such mined area...to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area."

However, SMCRA specifies that permits issued to surface mining operators before the Act's enactment were to be exempt from its prime farmland provisions until Aug. 3, 1982 (5 years following enactment), during which time they would be "grandfathered" in.

Several legal problems have sprung from this grandfather clause, particularly the process by which lands are exempted. OSM's final regulations were published in the Sept. 29, 1981 *Federal Register*. Under the rules, lands considered to be exempt from SMCRA provisions are those that a) are mined and reclaimed pursuant to any permit issued before Aug. 3, 1977 (the Act's enactment), b) are mined and reclaimed pursuant to any renewal or revison of a permit issued before Aug. 3, 1977, and c) are included in any existing operations "for which a permit was issued for all or any part thereof" before Aug.

3, 1977.

Put simply, a company must have owned, leased or contracted land prior to the Act's enactment in 1977 in order to qualify for the grandfather clause.

A final rule was made eliminating the deadline date for the grandfather clause. However, in response to the controversy surrounding this decision, OSM will be reproposing alternative solutions in the near future.

The process of performance bonding has been likened to a vicious circle that has created, at times, a no-win situation for either side.

A performance bond, in plain terms, is similar to an insurance policy paid by one party (the coal operator) to another party (a surety company) for the benefit of a third party (the state regulatory authority). Before land is permitted, SMCRA provisions require that the operator involved apply for a performance bond with a surety company or offer some alternative mechanism achieving the same purpose. The operator then pays premiums to the company during operations. If that operator were to default on the subsequent reclamation work, the surety company would be held liable.

A vicious circle? It would certainly seem so. Many surety companies were devastated by granting performance bonds to smaller operators who frequently defaulted from their reclamation responsibilities, particularly after passage of more stringent and costly performance standards. In turn, surety companies now consider legitimate small- and medium-sized operators a high risk, and often make it difficult for them to obtain the necessary bonds.

The principle bonding requirements under SMCRA:

1) the bond must cover all surface mining and reclamation operations during the life of the mine, and for a period that coincides with the revegetation requirements of the Act (which could be for a period of up to 10 years after augmented seeding, fertilizing, irrigation or other work to assure successful revegetation)
2) the amount of the bond is determined by the regulatory authority based on estimated costs of reclamation, and additional estimated costs in the event of forfeiture to complete reclamation, after abandonment.
3) the minimum bond for a permit area is $10,000.
4) the bond amount can be adjusted from time to time by the regulatory authority due to inflation or new technology costs.
5) the liability period extends for 5-10 years (depending upon rainfall levels across the country).
6) there are provisions for public participation in the bond release process.

The most significant problems that surety companies and, as a result, coal operators have to deal with are mid-term bond increases, the uncertainties of public involvement in the release process and long-term liability.

An increasing risk for sureties, bond increase during its term is nearly impossible to predict at the time it is originally requested, and the small, less solvent operator is particularly vulnerable to any increase. The surety may not consider the additional bond justifiable and the operator must then seek other means to comply, means that smaller companies may not have access to.

Public involvement in bond release is an uncertainty that sureties equate with higher risk. Unfamiliarity with OSM's public involvement process and a general belief that the result will be an increase of the period of bond liability appear to be the basis for assuming increased risk.

Finally, long-term liability has become a severe problem for sureties because, as time goes on and regulations constantly change, forecasting the financial future of an operator becomes increasingly difficult.

The coal industry has been pushing for changes in the regulations involved with performance bonding, calling for phased bonding and incremental bond release. Phased bonding will allow sureties to bond one or more of the three phases, as long as the operator has an alternative system to replace the surety bond upon expiration. The three phases of reclamation are I) topsoil replacement and grading, II) revegetation, and III) firm establishment of complete reclamation over a period of from 5-10 years. Surety companies would be relieved of bonding phase III, thereby eliminating complaints of long-term liability. By allowing an operator-funded escrow account or a state fund to cover the third phase, the sureties can more specifically identify their involvement and risks.

MARC petitioned OSM to allow for bond release on specific segments of the permit area upon completion of the various reclamation phases. Currently, discrete increment amounts cannot be released until the entire area has been reclaimed. This regulation was developed on the notion that cost estimates on each increment may not reflect the actual dollars needed to reclaim in the event of forfeiture. Thus money could be floated over the increments and phases to cover potential problems that could crop up in previously released areas within the permit. The result of this request will be determined when the final rules are published in the near future.

The Federal surface mining law requires that any state seeking primacy for its own state program must develop a process to determine what, if any, lands are unsuitable for coal mining and reclamation. Again, a noble attempt to protect lands that would be adversely affected by mining, but criteria used for choosing the lands has since been an issue not without controversy.

According to the act, lands may be declared unsuitable for surface mining by the state regulatory authority if the ensuing operations a) are incompatible with current land use programs, b) adversely affect fragile or historic lands, c) adversely affect renewable resource lands such as water and food supplies, and d) adversely affect natural hazard lands, endangering life and property.

Provisions call for public participation in designating land unsuitable for mining. Any individual with an interest in the land involved may submit a petition to be reviewed by the regulatory authority. The petition must contain evidence supporting the petitioners' case, and the decision will be made based on that evidence.

A company must have owned, leased or contracted land prior to the Act's enactment in 1977 in order to qualify for the grandfather clause.

Three main problems confront the coal industry in the unsuitability criteria: the petitioning process itself, the concept of valid existing rights, and a small criterion known simply as the 300-foot barrier.

The 300-foot barrier rule prohibits a coal operator from establishing mining operations closer than 300 feet to any occupied residences or facilities, unless the occupants give their consent.

Many small operators remain in business by mining small tracts of land leased from local landowners. The 300-foot language in SMCRA has resulted in significant acreage losses in the smaller operators' proposed permit areas, and subsequent losses in coal reserves.

Industry members argue that the 300-foot barrier rule is excessive. A smaller distance can be considered that would still effectively protect residences and public facilities.

Valid existing rights (VER), applied only to those areas which were permitted or were in the process of being permitted prior to that date of the Act's enactment, has become an intensely legal matter. VER are exempt from the Act's unsuitability clause. However, the industry argues that its financial commitment to lands is not taken into consideration. companies who have purchased acreage in past decades have it effectively "stolen" from them as a result of the 300-foot barrier rule, 100 feet in the case of public roads.

Operators argue that many violations in one small area of the requirments should constitute a pattern of violations, not violations of unrelated requirements.

MARC has contended that the VER definition should be expanded to include not only those lands permitted before the Act, but those where significant financial commitments have been made, regardless of when. Further, the land must have been leased for the sole purpose of mining coal. If VER were interpreted in this manner and all new deeds, leases, etc. were subject to new requirements, the companies' past economic invesiments would be protected and, at the same time, protection would be provided to those areas designated as unsuitable to mine.

Finally, the petitioning process for designating lands as unsuitable for surface coal mining has been a problem for some coal operators, many of whom have disputed the criteria by which a petition is submitted.

Case in point: the West Virginia Rivers Coalition filed just such a petition in September 1981 with the West Virginia Department of Natural Resources requesting that an area involving some 300,000 acres in Upshur, Barbour and Randolph Counties be declared unsuitable for surface coal mining. The Rivers Coalition contended that mining the area would damage natural streams and reduce the value of water supplies. The petition was not signed.

According to the West Virginia Code, no mining permits can be issued for an area involved in an unsuitability petition.

"As you can see," wrote Jim Christie of Grafton Coal Company, West Virginia, in a letter to a Congressional staffer, "an individual by the mere filing of a petition can immediately cease the issuance of permits for a particular area and possibly have mining in such an area abolished. All this can be done without putting up a bond, without signing or verifying the petition, and without giving notice to all those companies and individuals who own property, coal or mining rights within the subject area." The petition was recently denied by the West Virginia Department of Natural Resources.

MARC petitioned OSM to allow for bond release on specific segments of the permit area upon completion of the various reclamation phases.

Christie set forth suggested revisions in the criteria "to assure that only responsible parties exercise such rights, and to minimize effect upon existing companies in the area." Those suggested changes include a bonding requirement, written notice to all owners and operators in the subject area, continued processing of mining permits, exemption of areas being mined or permitted as of the date of the petition's filing and compensation consideration to property owners.

MARC Technical Services Manager Lauri Zell contributed significantly to this article.

SB 313

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 1982

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. II, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to surface coal mining and the surface effects of underground coal mining. The bill is an edited and corrected version of HB 762, introduced at my request February 12, 1982.

This bill is a response to the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87 (SMCRA), which provides for the establishment of a nationwide program for the regulation of surface coal mining and reclamation. That regulation is to be carried out by the Secretary of the United States Department of the Interior unless he approves a state program which would vest exclusive authority for that regulation in the state. This bill is designed to provide the authority necessary for the state to submit such a program and assume regulation.

The program proposed in this bill is both complicated and comprehensive. Most of its contents are mandated by federal law and regulations, although some improvements on the federal law have been made, and the bill is considerably shorter than its federal counterpart.

The most compelling reason for the state to undertake this program is to assure that surface coal mining and reclamation is conducted in accordance with Alaskan needs, conditions, and concerns. With the present and potential vast future development of Alaska coal, it is essential that the state tailor a program which meets the needs of both local coal development and deals effectively with the conservation concerns of our citizens and the unique Alaskan environment. This bill is the tool to do this.

If the state does not assert its jurisdiction in this area, the Office of Surface Mining in the Department of the Interior is required to become the regulatory authority to administer a program for the regulation of Alaskan surface coal mining and reclamation operations.

A section-by-section analysis of the bill is attached.

Sincerely,

Jay S. Hammond
Governor

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 Resource
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	49.5	54.5
300 CONTRACTUAL		375.0	490.3	393.3	428.7	467.3
400 COMMODITIES		1.0	1.1	1.5	1.6	1.8
500 EQUIPMENT		13.0	10.0	3.8	3.0	3.0
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		565.9	679.4	642.3	684.4	728.2

FUNDING (Thousands of Dollars)

GENERAL FUND		161.9	200.0	190.7	202.6	213.0
FEDERAL FUNDS		402.0	477.6	449.6	479.8	513.2
OTHER (Specify Source)						

POSITIONS

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 Haynes
AGENCY Natural Resources
PHONE 465-2400

Original: Legislative Finance
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 additonal 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.

Proposed ALASKA SURFACE COAL MINING CONTROL

and RECLAMATION ACT

Section-by-Section Analysis

Section 1 of the bill enacts a new AS 41.45 entitled "Alaska Surface Coal Mining Control and Reclamation Act", consisting of the following sections:

AS 41.45.010 states the basic finding that the state is best able to regulate surface coal mining and reclamation under the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA), and lists the purposes of new AS 41.45, which include assuring responsible extraction of coal, reclamation of coal mining areas, protecting the rights of surface owners, minimizing degradation of land and water, and assuring appropriate public participation in the regulatory process.

AS 41.45.020 vests jurisdiction over surface coal mining and reclamation operations in the state in the commissioner of natural resources.

AS 41.45.030 enumerates general powers, including adoption of regulations, issuing permits, holding hearings, issuing orders, inspections, receiving funds, participating in the federal abandoned mine land program, coordination and cooperation with other agencies.

AS 41.45.040 specifies that individual provisions of regulations or permits may vary depending on local conditions so long as the provisions are consistent with the purposes of the chapter. This flexibility is necessary to accommodate the different environmental conditions encountered in the three major geographical areas of potential or actual coal development in Alaska.

AS 41.45.050 prohibits conflicts of interest in employees and contractors who administer the new chapter and prescribes a criminal penalty for violation of this prohibition. This provision is required by SMCRA, sec. 517(g) and 30 CFR 732.15(b)(11).

AS 41.45.060 requires coal mine operators to apply for a permit to conduct surface coal mining and reclamation operations.

AS 41.45.070 sets a basic permit term of five years, unless a longer initial period is necessary to obtain financing. A permittee is required to commence operations within 3 years after the permit is issued, subject to some exceptions.

AS 41.45.080 provides that permits carry a right of successive renewal unless an opponent of renewal demonstrates that the operation is not in compliance with regulatory requirements. Renewals involving new land areas require the same procedures and standards as apply to new permit applications.

AS 41.45.090 authorizes the commissioner to set a fee schedule for permit applications, not to exceed the costs of processing the applications.

AS 41.45.100 requires public filing of permit applications and other materials, except for designated confidential information including information relating to the competitive rights of the applicant.

AS 41.45.110 requires the commissioner to adopt regulations relating to the contents of permit applications, consistent with the requirements of the federal program, but taking into account the unique mining and environmental conditions in Alaska.

AS 41.45.120 establishes small operator assistance for certain laboratory work required as part of the permit application for

operations which will produce under 100,000 tons of coal annually. This is required by SMCRA, sec. 507(c) and 30 CFR 732.15(b)(13).

AS 41.45.130 provides for public notice of pending applications for surface coal mining and reclamation permits.

AS 41.45.140 allows government agencies and persons who may be adversely affected by the proposed operation to file written comments and objections to the application, and to request an informal conference with the department. The commissioner is required to issue a decision regarding the permit application within 60 days of the informal conference, or as provided in AS 42.45.180.

AS 41.45.150 provides for a formal hearing on a permit application at the request of the applicant or any person who may be adversely affected. The commissioner may grant temporary relief pending his final decision when circumstances warrant it.

AS 41.45.160 requires that, before a permit can be issued, the applicant must furnish a performance bond conditioned on faithful performance of the requirements of the chapter and the permit. The bond must be sufficient to assure completion of the applicant's reclamation plan by the department in the event of a forfeiture. In lieu of a bond, the commissioner may accept cash, a self-bond, or negotiable bonds or certificates of deposit, upon which the department must pay interest annually. The amount of the bond may be adjusted for good cause, including changes in affected land areas and costs of reclamation.

AS 41.45.170 provides for release of performance bonds at the request of a permittee after notice, inspection and evaluation of the reclamation work involved. A schedule for staged release of a bond is established, depending on work completed and the commissioner's evaluation. Government agencies and persons whose legal interests may be adversely affected may file objections to the release of bond and request a hearing, as may an applicant whose request for bond release has been denied.

AS 41.45.180 requires the commissioner to make a decision on a permit application within 120 days after receipt, which may be extended by an additional 60 days after receipt of additional

information required for a decision. This section sets out the basic criteria for approval of an application. A permit may not be issued if the applicant is in violation of environmental standards regarding surface coal mining operation in the United States or if the applicant has demonstrated a pattern of wilful violations of this chapter.

AS 41.45.190 provides for revision and transfer of permits.

AS 41.45.200 requires notice to the commissioner before commencement of coal exploration. Exploration would be governed by regulations based on the degree of disturbance and amount of coal to be removed. Coal exploration operations are required to conform to the general requirements of the surface mining program.

AS 41.45.210 requires the ommissioner to propose regulations consistent with the environmental performance standards of SMCRA, with adjustments for the special conditions of Alaska. SMCRA, sec. 503(a)(7) requires consistency with these standards, which apply to all permits.

AS 41.45.220 requires regulation of the surface effects of underground coal mining in a manner similar to the regulation of surface coal mining operations. The commissioner is given the power to suspend underground coal mining activities in populated areas if there is an imminent danger to inhabitants.

AS 41.45.230 authorizes the department to inspect and monitor surface coal mining and reclamation operations. The commissioner can require various forms of reporting and monitoring by operators, and must inspect operations on a irregular basis. Although inspections occur without prior notice to the permittee, the inspector must notify the permittee's representative on the site upon his arrival and invite the representative to accompany the inspector during the inspection. The inspector is required to file a inspection report. Procedures are set out for individuals to trigger inspections and for the commissioner to review failures to inspect adequately. This section is mandated by SMCRA, sec. 517(b).

AS 41.45.240 sets out the department's basic enforcement authority. SMCRA, sec. 518(i) and 521(d) require that state programs contain sanctions that are no less stringent than those

of the federal law and that state programs contain the same or similar procedural requirements. There are two basic enforcement mechanisms. A violation of the chapter or permit which causes imminent danger to public health or safety, or which threatens significant, imminent environmental harm, requires the inspector to issue a cessation order. The order remains in effect for 30 days unless an informal conference is held and further action taken. If a violation does not cause the sort of imminent danger noted above, a notice of violation is issued. Failure to comply with a notice of violation gives rise to a cessation order as well. Cessation orders and notices of violation are subject to appeals and full due process hearings for persons who may be adversely affected by them. Temporary relief is also available. The commissioner may issue a show cause order based on a pattern of unwarranted violations of the program. The commissioner may also request the attorney general to institute a civil action for relief. All of these actions are subject to judicial review.

AS 41.45.250 provides for civil and criminal sanctions for violations of the chapter and permits. Civil penalties are mandatory for cessation orders, but discretionary for notices of violation. Wilful and knowing violations, including those of a corporate officer, are class C felonies, as is wilful

interference with the department's employees. Failure to correct a violation during the period of time allowed in a notice or an extension requires a $750 per day penalty.

This bill omits a provision of SMCRA which requires operators to pay proposed penalty amounts into an escrow account before administrative and judicial review of the proposed penalty. This provision has been required of state programs in the past and its omission may not be acceptable to the Interior Secretary. It has been deleted because the department considers it unfair and constitutionally suspect.

AS 41.45.260 allows persons with an interest which may be adversely affected to petition the commissioner to designate areas as unsuitable for all or certain types of coal mining. An area must be so designated if the commissioner determines that reclamation in the area is not technologically feasible. There are also four discretionary criteria for designation of unsuitable areas, as well as an outright prohibition of mining in certain protected areas, such as near dwellings, schools, and churches. These provisions are required by SMCRA, sec. 522 and 30 CFR 732.15(b)(9).

AS 41.45.270 -- 41.45.340 contain provisions regarding abandoned mine lands, and are necessary for the state to implement a program through which it receives funds from the Federal Abandoned Mine Reclamation Fund for the reclamation of land adversely affected by past coal mining practices. After all coal lands have been reclaimed, the funds may be used for reclamation of non-coal lands and for community impact assistance in areas affected by coal mining operations.

AS 41.45 270 contains the administrative powers necessary to establish priorities, designate eligible lands, submit program elements to the Interior Department and administer funds received.

AS 41.45.280 defines eligible lands as those which were mined or affected by coal mining, left in an inadequate reclamation status, and for which there is no continuing reclamation responsibility.

AS 41.45.290 gives the department the power to enter property for reclamation purposes.

AS 41.45.300 authorizes the commissioner, under limited circumstances, to acquire abandoned mine areas for reclamation purposes, and to dispose of them.

AS 41.45.310 requires the commissioner to place a lien on property for an increase in fair market value because of the abandoned mine land reclamation efforts.

AS 41.45.320 authorizes filling voids and sealing tunnels with money from the Abandoned Mine Reclamation Fund.

AS 41.45.330 authorizes emergency entry without prior notice onto land to abate an emergency which constitutes a danger to the public health and safety.

AS 41.45.340 contains miscellaneous powers by SMCRA, sec. 412.

AS 41.45.900 specifies that the requirements of the chapter apply to government agencies, including publicly-owned utilities.

AS 41.45.910 exempts commercial coal operations which affect two acres or less from the chapter, as well as coal extraction as part of government-financed construction, and extraction of coal for the non-commercial use of the land owner or lessee.

AS 41.45.920 authorizes departures from the environmental performance standards for experimental practices of limited size which do not downgrade the environmental or public health or safety standards of the program.

AS 41.45.930 provides that this chapter does not affect water rights, and that any impairment of water supply must be remedied by the operator.

AS 41.45.940 provides authority for the commissioner to require certification of blasters, a power required by 30 CFR 732.15(b)(12).

AS 41.45.950 creates a civil cause of action against state agencies and alleged violators for persons who may be adversely affected by a failure to comply with the chapter. This provision is required by 30 CFR 732.15.(b)(10).

AS 41.45.960 provides that any provision of this chapter which the Secretary of the Interior determines to be inconsistent with the federal act is invalid. This provision merely recognizes that since the Interior Secretary has the power to declare inconsistent state provisions invalid for purposes of federal

program approval, the provision should become ineffective as a matter of state law, as well. The second part of this section requires the commissioner to review all changes made in the federal act or regulations, and to make appropriate recommendations as to whether or not the state program should be changed.

AS 41.45.970 clarifies that this chapter does not modify any state agency's powers over coal leases and exploration permits, except as specifically provided by this chapter and the implementing regulations. This section also makes the requirements of the chapter applicable to lands conveyed out of federal ownership.

AS 41.45.975 is a severability clause.

AS 41.45.980 makes the Administrative Procedure Act (AS 44.62) applicable to this chapter unless otherwise provided.

AS 41.45.985 cites the short title of the chapter, the "Alaska Surface Coal Mining Control and Reclamation Act."

AS 41.45.990 is a definitions section.

AS 41.45.920 authorizes departures from the environmental performance standards for experimental practices of limited size which do not downgrade the environmental or public health or safety standards of the program.

AS 41.45.930 provides that this chapter does not affect water rights, and that any impairment of water supply must be remedied by the operator.

AS 41.45.940 provides authority for the commissioner to require certification of blasters, a power required by 30 CFR 732.15(b)(12).

AS 41.45.950 creates a civil cause of action against state agencies and alleged violators for persons who may be adversely affected by a failure to comply with the chapter. This provision is required by 30 CFR 732.15.(b)(10).

AS 41.45.960 provides that any provision of this chapter which the Secretary of the Interior determines to be inconsistent with the federal act is invalid. This provision merely recognizes that since the Interior Secretary has the power to declare inconsistent state provisions invalid for purposes of federal

Section 2 of the bill requires applications to be submitted under this chapter within two months after the date the state program is approved by the Secretary of the Interior, and requires the Commissioner to process such an application within eight months after the Secretary's approval. These time frames are mandated by SMCRA, sec. 502(d).

Section 3 of the bill reserves the right of the state to contest the constitutional or statutory validity of any of the regulations issued under the federal act.

Sections 4 and 6 of the bill authorize the immediate adoption of regulations to implement new AS 41.45 although the regulations will not take effect until the effective date of the rest of the bill.

Section 5 provides that the rest of the bill becomes effective upon approval of the state program by the Interior Secretary.

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES IN ALASKA STATE ARCHIVES. TITLE PAGE ONLY HAS BEEN FILMED.

Federal Register

Wednesday
September 9, 1981

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations Permanent Regulatory Programs; Performance Bonding

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

MINERALS AND ENERGY MANAGEMENT

Pouch 7-005
Anchorage, Alaska 99510

NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES

Notice is hereby given that the Department of Natural Resources, under authority vested by AS 38.05.020, AS 38.05.145 and AS 38.05.150, proposes to repeal and adopt regulations in Title 11 of the Alaska Administrative Code, dealing with Coal Leasing, to implement AS 38.05.145 and AS 38.05.150, as follows:

11 AAC 84.100 -- 11 AAC 84.170 are repealed and replaced with 11 AAC 85.005 -- 11 AAC 85.[illegible]5 which establish procedures for the disposal of coal resources owned by the State of Alaska.

These proposed regulations provide for the designation of lands as competitive and noncompetitive for coal leasing purposes and set out procedures for issuing and administering competitive coal leases, coal prospecting permits and noncompetitive coal leases. The proposed regulations include the criteria for a best interest determination to be made before a lease sale, plans of exploration and development and royalty value computation.

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at public hearings to be held February 3 at the FNSB Noel Wien Public Library, 1215 Cowles Street, Fairbanks, Alaska from 7:30 p.m. to 8:45 p.m., February 4 on the top floor of the Pioneer School House, 3rd and Eagle Street, Ben Crawford Memorial Park, Anchorage, Alaska at 7:30 p.m. and February 5 at the Juneau Municipal Assembly Chambers, 155 S. Seward Street, Juneau, Alaska at 7:30 p.m.

Written comments may also be submitted to the Department of Natural Resources, Division of Minerals and Energy Management, Pouch 7-005, Anchorage, Alaska 99510. Comments must be received by February 12, 1982.

It is estimated that this action will require increased appropriations as follows (in thousands): FY 82, 34.8; FY 83, 73.5; FY 84, 133.1; FY 85, 142.9.

Copies of the proposed regulations may be obtained by writing or calling the Department of Natural Resources, Division of Minerals and Energy Management, Pouch 7-005, Anchorage, Alaska 99510, (907) 276-2653. Copies may also be obtained at the Department of Natural Resources, Office of the Commissioner, 11th Floor, State Office Building, Juneau and the Department of Natural Resources, Division of Minerals and Energy Management, Room 22, 555 Cordova Street, Anchorage.

The Department of Natural Resources, upon its own motion or at the instance of any interested person, may, at the hearing or after it, adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Kay Brown

Date: Jan. 6, 1982

Kay Brown
Acting Director
Division of Minerals and Energy Management

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

MINERALS AND ENERGY MANAGEMENT

Pouch 7-005
Anchorage, Alaska 99510

January 7, 1982

Dear Alaskan:

Attached are proposed revisions to coal leasing regulations of the Department of Natural Resources.

Previous drafts of these regulations were sent out for informal review in February and November of 1981. Through this process, we have received valuable assistance from coal operators, environmentalists, and other interested persons. Many of their suggestions have been incorporated into this hearing draft.

I would like to take this opportunity to thank those persons for taking the time to help us. I feel these regulations will encourage and guide development of Alaska's coal industry in a manner which is consistent with the state's best interest.

The department will hold public hearings on these regulations in Anchorage, Fairbanks, and Juneau (see the attached "Notice of Proposed Changes in the Regulations of the Department of Natural Resources" for hearing details) and invites you to present a statement, oral or written, at the hearing or to send a statement directly to the Department of Natural Resources, Division of Minerals and Energy Management, Pouch 7-005, Anchorage, Alaska 99510. Please submit written comments by February 12, 1982.

Although some of the draft regulations are based on regulations already in effect (11 AAC 84.100 -- .170), extensive changes have been made and new sections have been proposed. In addition, we have moved the regulations from 11 AAC 84 to 11 AAC 85 and have renumbered all sections. Note the regulatory history enclosed in parentheses after each section. If a 1974 effective date is shown and there are no blank spaces, the regulation is identical to one now in effect in 11 AAC 84. If blanks are shown also, the section is a proposed amendment of a regulation in 11 AAC 84. If no date is shown at all, the section is totally new.

This new chapter is divided into three articles. The first two (11 AAC 85.005 -- 11 AAC 85.025 and 11 AAC 85.100 -- 11 AAC 85.125) deal with competitive and noncompetitive leasing, respectively. The third article (11 AAC 85.200 -- 11 AAC 85.285) addresses general leasing provisions. Please note that certain sections relate to the Surface Mining Control and Reclamation Act of 1977. We are currently working on a State of Alaska Surface Mining Act which, if enacted by the legislature, would supersede the Federal act.

Of particular concern to reviewers of past drafts was section 11 AAC 85.015, Bidding Terms. Commissioner John Katz has determined that, for the foreseeable future, competitive coal lease sales by the Department of Natural Resources will utilize the cash bonus/fixed royalty bidding method. However, since there may be circumstances for which other bidding methods are more appropriate, these regulations do not limit the bidding methods available to the state for coal lease sales. A similar position was taken by Charles W. Rech, Director, Office of Coal Leasing, Planning and Coordination, U.S. Department of Interior, in a letter to Mr. Robert H. Lawton, Director, Leasing Policy Development, Department of Energy. This letter was cited approvingly by some of those who commented on prior drafts of the proposed regulations.

Your testimony on the proposed regulations will be most useful to the Department if you reference particular sections by number and suggest specific wording changes or other modifications you feel would improve them.

Thank you for your assistance in this important matter.

Kay Brown

Kay Brown
Acting Director
Division of Minerals and Energy Management

CHAPTER 84. OTHER LEASABLE MINERALS.

Article
1. [Repealed]

DRAFT

ARTICLE 1. COAL. Repealed / /81.

CHAPTER 85. COAL.

Article
1. Competitive Leasing (11 AAC 85.005 -- 11 AAC 85.020)
2. Noncompetitive Leasing (11 AAC 85.100 -- 11 AAC 85.125)
3. General Leasing Provisions (11 AAC 85.200 -- 11 AAC 85.285)

ARTICLE 1. COMPETITIVE LEASING.

Section
005. Leasing procedures, general
010. Competitive designation
015. Bidding terms
020. Right to reject bids

11 AAC 85.005 LEASING PROCEDURES, GENERAL. Land designated as competitive for coal leasing purposes will be leased under the procedures provided under this chapter and in 11 AAC 82.400 -- 11 AAC 82.475. (Eff. 9/4/74, Reg. 51; am / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145

11 AAC 85.010. COMPETITIVE DESIGNATION. (a) State land will be designated as competitive for coal leasing purposes if the coal potential of the land for commercial development has been determined to be high or moderate by the Division of Geological and Geophysical Survey (DGGS) after reviewing all available data. Land will be ranked as having "high" potential where potentially commerical reserves are already proven by drilling or field investigation. Land will be ranked as having "moderate" potential if the land is within such a reasonable distance from coal outcrops or drill holes data to indicate the probable existence of potentially commercial deposits of coal.

(b) Land will not be designated as competitive for coal leasing purposes if the commissioner determines that there exists an irreconcilable conflict with surface use and coal development is not considered to be the highest and best use of the land. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

11 AAC 85.015. BIDDING TERMS. (a) The commissioner may choose any appropriate leasing method including but not limited to, cash bonus, royalty share, or net profit share as the bid variable. The written finding, prepared by the department under AS 38.05.035(a)(14), will contain the rationale on which the leasing method decision was based.

★ (b) Notwithstanding 11 AAC 82.465, up to 50 percent of the bonus payments may be deferred at the discretion of the commissioner, provided that notice of the deferred bonus payment and method of payment is published before the sale. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

11 AAC 85.020. RIGHT TO REJECT BIDS. The commissioner reserves the right to reject any and all bids and the right to offer the lease to the next highest qualified bidder if the successful bidder fails to obtain the lease for any reason. The commissioner will not accept any bid that is less than the minimum bid established before the sale. The commissioner will notify any bidder whose bid has been rejected and include in the notice a statement of the reason for the rejection. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

ARTICLE 2. NONCOMPETITIVE LEASING.

Section
100. Leasing procedures, general
105. Noncompetitive designation
110. Coal prospecting permits
115. Permit extensions
120. Permit conversion to lease
125. Determination of royalty

11 AAC 85.100. LEASING PROCEDURES, GENERAL. Land designated as noncompetitive for coal leasing purposes will be leased under the procedures provided under this chapter and in 11 AAC 82.500 -- 11 AAC 82.540. (Eff. 9/4/74, Reg. 51; am / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145

11 AAC 85.105. NONCOMPETITIVE DESIGNATION. (a) State land may be designated as noncompetitive for coal leasing purposes if the commissioner determines that:

(1) the land does not qualify for competitive leasing under 11 AAC 85.010; or

(2) the land was offered at a competitive sale and no acceptable bids were received.

(b) Land will not be designated as noncompetitive for coal leasing purposes if the commissioner determines that there exists an irreconcilable conflict with surface use and coal development is not considered to be the highest and best use of the land.

(c) Land opened for noncompetitive leasing before the effective date of this section is not available until the land is evaluated under 11 AAC 85.205. (Eff. / /82, Reg.) (prior noncom designations reevaluated)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

11 AAC 85.1 COAL PROSPECTING PERMITS. (a) A coal prospecting permit may be issued on those lands designated as noncompetitive.

(b) A coal prospecting permit issued under this section is a disposal of an interest in land and is subject to the requirements of AS 38.05.035(a)(14), AS 38.05.305 and AS 38.05.345. coal prospecting permit = land disposal

(c) A permit on noncompetitive land on which a permit or lease or a part of one is expired, relinquished, or otherwise terminated will be issued under the noncompetitive drawing procedure described in 11 AAC 82.515 -- 11 AAC 82.540. A decision to accept or reject an application shall be made within 6 months.

(d) The filing of an application for a coal prospecting permit does not vest a property right but merely creates a preference right to a permit, if a permit were to be issued.

(e) The permittee shall submit a prospecting plan of operations for approval by the commissioner before initiating any activity which would otherwise require a surface use permit. The plan must describe the method to be used in prospecting the land, the general location of all activities and routes of travel of all equipment, the type of equipment to be used, the estimated time schedule for the operations and any other information the commissioner may require. The plan must comply with applicable federal, state and local environmental protection laws and regulations. Within 30 days after receiving the plan, the commissioner will approve or disapprove it. The approved plan is subject to any conditions the commissioner may determine are necessary to protect the land and minimize damage to the land and its resources. Operations may not commence prior to approval of the plan.

(f) No coal may be removed and marketed or used from lands under prospecting permit except for that amount necessary for sampling and testing.

(g) A copy of all data obtained from the land reflecting all pertinent tests, reports, surveys, and analyses conducted on or pertaining to the permit land shall be submitted to the commission either upon application for conversion to lease under 11 AAC 85.120 or not more than 90 days after the expiration or termination of the permit. Data submitted under this section will be held confidential in accordance with AS 38.05.035(a)(9) or as otherwise required by law and will only be used for the administration of the functions, responsibilities, and duties vested by law in the commissioner. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

11 AAC 85.115. PERMIT EXTENSIONS. (a) In accordance with AS 38.05.150, a coal prospecting permit shall be extended by the commissioner for one period of two years if the application for extension includes

(1) an affidavit stating that the applicant has spent, in accordance with the terms of the permit, at least $10.00 per acre, to be adjusted, starting from the effective date of this section, in accordance with the GNP implicit price deflater, on work which adds to the knowledge of the coal deposit within the area covered by the permit and

(2) a description of prospecting activities showing substantial compliance with the prospecting plan of operations submitted under 11 AAC 85.110(e) or a statement which shows to the satisfaction of the commissioner that compliance with the prospecting plan of operations has been delayed or interrupted by force majeure; the permittee shall supply additional information if requested by the commissioner.

(b) Failure to pr ide the information or to make a showing of substantial compliance or force majeure as required in (a) of this section may result in denial of the request.

(c) An application for extension of a coal prospecting permit must be filed at least 30 days before the expiration of the permit.

(d) An extension will be issued within 65 days after receipt of a completed application. The filing of an application for an extension extends the permit until the application is either approved or denied.

(e) Before commencing operations under a prospecting permit extension, the permittee may be required to submit a new or revised plan of operations in accordance with 11 AAC 85.110(e). (Eff. 9/4/74, Reg. 51; am / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

11 AAC 85.120. PERMIT CONVERSION TO LEASE. (a) At any time during the term of a coal prospecting permit, the permittee is entitled to a noncompetitive coal lease on that portion of the permit area shown to contain coal in commercial quantities or needed for mining, reclamation or processing operations of that coal, upon the submission of a satisfactory mining plan.

(b) A plan submitted under (a) of this section may be conceptual and must include

(1) qualitative data supported by proximate and ultimate analyses on the coal beds on which reserve calculations are based;

(2) quantitative data for the coal beds on which reserve calculations are based describing bed thickness and bed continuity; all reserve calculations shall be classified as to the degree of accuracy using USGS/USBM terms "measured," "indicated," and "inferred" as defined in USGS Bulletin 1450-A (1976);

(3) topographic and geologic maps of the area of the permit, indicating the locations of sampling and drilling;

(4) description of the probable mining method;

(5) evidence of commercial quantity including, but not limited to, the estimated revenues from the sale of coal and the estimated cost of developing the mine and extracting, removing, processing, transporting, and marketing the coal; the costs of development shall include the estimated cost of exercising environmental protection measures, suitably reclaiming the land, and complying with all applicable federal, state, and local laws and regulations; and

(6) documentation or information as may be required by the commissioner in addition to or instead of (b)(1) through (5) of this section that may be reasonably required to assist the commissioner in understanding and evaluating the conversion of a prospecting permit to a lease.

(c) A "satisfactory mining plan" as used in (a) of this section is a plan which shows commercial quantities in an amount and quality sufficient under present and reasonably anticipated conditions to induce a prudent operator to pursue development.

(d) Under 11 AAC 85.110(g) an application for conversion to lease must include a copy of all data obtained from the permit land.

(e) Within 20 days from receipt, the commissioner will review the application and notify the applicant of any deficiency in the application. A decision will be issued within 65 days after receipt of a completed application. The filing of an application for conversion to lease extends the permit until the application is either approved or denied. A decision denying conversion to lease must be accompanied by a detailed description of the grounds or rationale on which the denial is based. (Eff. 9/4/74, Reg. 51; am / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

11 AAC 85.125. DETERMINATION OF ROYALTY. The commissioner will determine the royalty rate in accordance with 11 AAC 85.220 before the issuance of a coal prospecting permit. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

ARTICLE 3. GENERAL LEASING PROVISIONS.

Section
200. Best interest determination
205. Reevaluation
210. Statement of conformance with acreage limitations
215. Term of lease
220. Royalty
225. Royalty value computation
230. Royalty in kind
235. Lease rental
240. Rental and royalty relief
245. Coal lease reclamation bond
250. Plan of operations
255. Transfers of interest
260. Limitation on overriding royalties
265. Suspension and termination
270. Coal mining units
275. Cooperative leasing
280. Surface Mining Control and Reclamation Act
285. Domestic Use coal license

11 AAC 85.200. BEST INTEREST DETERMINATION. (a) The Department will prepare a written finding before holding a competitive lease sale or issuing coal prospecting permits.

(b) This finding, based upon the best available information, shall consider

(1) the coal potential of the land as determined by DGGS;

(2) applicable state and local land use plans and classifications;

(3) comments from affected agencies;

(4) conflicts with surface use;

(5) the social and environmental impacts of coal exploration, development, and production in the area;

(6) the impact on potentially affected communities, including public services, and other public or commercial uses of the land; and

(7) economic values of coal exploration and development, including revenue potential and administrative cost to the state.

(c) When the commissioner determines that there exists an irreconcilable conflict with surface use and coal development is not considered to be the highest and best use of the land, a coal prospecting permit or lease will not be issued.

(d) Land which is legislatively designated for recreation, conservation or other related purposes and where coal exploration and development is prohibited will not be available for coal prospecting and leasing. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

11 AAC 85.205. REEVALUATION. (a) Land available for coal leasing may be periodically closed for a period of 30 days by order of the commissioner to reevaluate the appropriateness of the designation. The closing order must state the effective date and must state that the results of the reevaluation will be announced on the 31st day. If the land is reopened to noncompetitive leasing, new applications may be filed beginning on the 31st day.

who notified? DGGS?

(b) A decision not to reopen the land for noncompetitive leasing rejects any pending coal prospecting permit applications for that land. A rejected applicant will be notified of the reasons for rejection.

(c) Notwithstanding 11 AAC 82.110, permit applications filed before the closing order will be issued on a first-come-first-served basis in accordance with 11 AAC 85.110 if the land is reopened to noncompetitive leasing. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

11 AAC 85.210. STATEMENT OF CONFORMANCE WITH ACREAGE LIMITATIONS. An applicant for a prospecting permit or lease shall submit an affidavit which states that, with the area applied for, the applicant's interest or interests in other coal permits, leases, or applications for them, directly or indirectly, do not exceed the acreage limitations of AS 38.05.140 or that an application for additional acreage under AS 38.05.140(a) has been filed. If a lease or permit is issued which results in excessive acreage under AS 38.05.140, that lease or permit is null and void ab initio. (Eff. 9/4/74, Reg. 51; am / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.140

11 AAC 85.215. TERM OF LEASE. (a) In accordance with AS 38.05.150, a lease will be issued for an indeterminate period of time subject to the conditions of diligent development and continued operation of the mine.

(b) The condition of diligent development will be determined to have been met if, upon review of the lease operations every ten years, the commissioner finds that

(1) the lease is producing coal in commercial quantities;

(2) the leased lands are committed to a coal mining unit as defined in 11 AAC 85.270, coal is being produced from the CMU in commercial quantities and the lessee is complying with all lease terms;

(3) the lessee is proceeding in good faith to develop the leased lands; or

(4) the lessee shows to the satisfaction of the commissioner that the development of a mine in accordance with a plan of exploration and development under (c) of this section is delayed or interrupted by force majeure.

(c) Within one year from the issuance of the lease, lessee shall submit to the commissioner a plan of exploration and development which outlines a schedule and discussion of proposed expenditures and commitments for the exploration and development of the lease or leases. This plan of exploration and development must be consistent with the estimated size of reserves and designed to bring the lease into production within a reasonable period of time. The commissioner will issue a written decision within 65 days from receipt of the plan which determines whether the proposed plan of exploration and development, when and if actually undertaken by the lessee, will qualify as "good faith to develop" within the meaning of (g)(4) of this section. This plan will remain in effect until production commences or the plan is revised.

(d) The plan of exploration and development must be revised whenever it appears that actual exploration or development will significantly deviate from that outlined in a previously approved plan.

(e) Within 65 days after receiving the proposed update of a plan of exploration and development, the commissioner will approve or disapprove the updated plan. If the plan is disapproved, the commissioner will state his reasons for disapproval and will, in his discretion, propose modifications which, if accepted by the lessee, would qualify the plan for approval.

(f) If operations are interrupted, the commissioner shall be notified. The commissioner shall determine whether the interruption constitutes failure to comply with the condition of "continued operation."

(g) The commissioner will, in his discretion, and upon request of the lessee, authorize the payment of an advance royalty instead of continued operation for any particular year.

(h) As used in this section,

DEFINITIONS:

(1) "commercial quantities" means a quantity of coal sufficient to yield a return in excess of operating costs, even if exploration and operation costs may never be repaid and the undertaking, considered as a whole, may ultimately result in a loss;

(2) "continued operation" means production of coal in commercial quantities, except when the operations under the lease are interrupted by force majeure;

(3) "force majeure" means war, riots, strikes, acts of God, unusually severe weather or any other cause beyond the lessee's reasonable ability to foresee or control, including delays caused by administrative or judicial decisions or lack of them, whether similar to those enumerated or not;

(4) "good faith to develop" means compliance with the plan of exploration and development in (c) of this section. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.150

11 AAC 85.220. ROYALTY. (a) The royalty rate will be based on the gross value of coal sold or used from the leased area in accordance with the following:

(1) five percent for noncompetitive leases;

(2) no less than five percent for competitive leases where royalty is a bid variable;

(3) no less than five percent nor more than 12 percent for competitive leases where royalty is not a bid variable.

(b) For leases in existence at the effective date of this section, the royalty rate will be changed to five percent of gross value at the time of adjustment.

(c) All royalty shall be paid by lessee to lessor and shall be received by lessor on or before the last day of the month following the month of production.

(d) For leases issued after the effective date of this section, the royalty rate is subject to adjustment at intervals of 10 years. The adjustment will take into account the current royalty rates and other consideration then being paid or received for coal of like or similar quality in the same general area or other relevant areas, wherever situated, and all relevant factors including changes in market conditions, transportation costs, the composition of the deposit and special characteristics, and the BTU content of the coal. A lease in existence at the effective date of this section will be adjusted in accordance with the terms of the lease. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

11 AAC 85.225. ROYALTY VALUE COMPUTATION. (a) If only crushing, storing and loading are performed prior to the point of sale, the gross value shall be the spot sale or contract adjusted unit price, whichever is applicable, times the units sold or used.

(b) If beneficiating or transportation costs are incurred prior to the point of sale, the following costs may be deducted from the gross value in determining value for royalty purposes:

(1) any processing performed prior to sale which adds value to the coal as compared to its run-of-mine value; these deductible processing costs include, but are not limited to, the costs of grinding, washing, drying, grading, sorting, briquetting, and any other means of beneficiating;

(2) reasonable transportation costs from the mine mouth to the point of sale.

(c) The commissioner will allow deductions under (b) of this section only when in his judgement the lessee provides him with an accurate account and justification for the costs. All deductions claimed will be subject to audit by the commissioner.

(d) If the commissioner determines that a contract or sale or other business arrangement between the lessee and a purchaser of some or all of the coal produced from the lease is not a bona fide arms length transaction between independent parties because it is based in whole or in part upon consideration other than the value of the coal; or that no consideration is received for some or all of the coal because the lessee is consuming such coal for his own use, the commissioner shall determine the gross value of such coal, taking into account

(1) any consideration received by the lessee in other related transactions;

(2) the average current price paid for coal of like quality from the same general area during the lease month;

(3) contracts or other business arrangements between coal producers and purchasers for the sale of coal other than coal produced under the lease which are comparable in terms, volume, time of execution, area of supply, and other circumstances; and

(4) such other relevant factors as the commissioner determines appropriate.

(e) The commissioner may, upon petition by the lessee, adjust the percent of value royalty rate to a comparable cents per ton rate in accordance with a written determination in which he states that it is in the best interest of the state to make the adjustment and there is adequate information to make an adjustment which is equitable to the state and the lessee. (Eff. 9/4/74, Reg. 51; am / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

11 AAC 85.230. ROYALTY IN KIND. (a) Royalty from a coal lease may be taken in kind under the provisions of 11 AAC 82.700 -- 11 AAC 82.715, if the commissioner determines that taking in kind would be in the best interest of the state. The commissioner shall take into consideration the financial or legal hardships the taking may have on the lessee, including but not limited to, the necessity for additional capital equipment, increased costs in production and the inability to meet existing contractual obligations with customers.

(b) Notwithstanding 11 AAC 82.700, six months' written notice will be given to each lessee of the state's election to take the royalty in kind.

(c) Notwithstanding 11 AAC 82.700, if the state elects to take royalty in kind, the lessee shall deliver the royalty coal to lessor on the leased premises, into trucks or other carriers, slurry pipelines, or onto storage piles designated by lessor free of charge, but lessee may not be required to provide free storage for longer than 30 days or pay slurry pipeline charges

for any such coal run onto storage piles or into slurry pipelines. The lessor may elect to receive the royalty coal at point of sale or any other established unloading or transfer point between the lease and the point of sale, but the lessee will not be required to pay transportation and handling costs. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

11 AAC 85.235. LEASE RENTAL. (a) The annual rental will be $3 per acre or fraction thereof.

(b) For leases issued after the effective date of this section, the annual rental payment is subject to adjustment at intervals of 10 years. The adjustment will take into account the current rental rates for leases in the same or similar areas, wherever situated, and all relevant factors affecting the development of a commercial operation. A lease in existence at the effective date of this section will be adjusted in accordance with the terms of the lease.

10-year adjustment

(c) The rental payment for the first year of the lease is due on the date that the lease is granted, and the rental for each succeeding year shall be paid on or before the beginning of each lease year.

pay in advance by year

(d) The rental for each lease or coal mining unit for each year will be credited against the royalties as they accrue for that year. (Eff. 9/4/74, Reg. 51; am / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.150

11 AAC 85.240. RENTAL AND ROYALTY RELIEF. (a) An application under AS 38.05.140(d) for reduction of the lease royalty, or for a waiver, suspension, refund, or reduction of the rental or minimum royalty, must be filed in accordance with 11 AAC 82.665.

(b) For the purposes of this section and AS 38.05.140(d), "royalty" includes net profit share payments. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.140
AS 38.05.150

11 AAC 85.245. COAL LEASE RECLAMATION BOND. (a) A coal lease reclamation bond is required before a lease is issued, and in no case may the amount be less than $5 per acre or $5,000, whichever is greater. For any mining operation subject to the provisions of the Surface Mining Control and Reclamation Act of 1977, the amount of the bond shall cover the entire lease prior to approval of a plan of operations and after that for that portion of the lease outside of the area covered by a permit issued under that Act. For a mining operation exempt from that Act, the amount of the bond shall cover the entire lease. The commissioner may, in the event of any significant change in the scope of operations or prior to approval of an assignment, alter the amount of the bond.

(b) The bond must be filed in accordance with 11 AAC 82.600.

(c) The commissioner will not consent to termination of liability under the coal lease bond unless an acceptable substitute bond has been filed or until all terms and conditions of the lease have been fulfilled. (Eff. 9/4/74, Reg. 51; am / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145

11 AAC 85.250. PLAN OF OPERATIONS. For any mining operation exempt from the provisions of the Surface Mining Control and Reclamation Act of 1977, the commissioner will require the lessee to submit a plan of operations that accords with the principles embodied in that Act for his approval before beginning mining operations. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145

11 AAC 85.255. TRANSFERS OF INTEREST. (a) Before the commissioner approves an assignment, sublease or other transfer of an interest in a permit or lease, including assignments of working or royalty interest and operating agreements and subleases,

(1) the account of royalties, net profit share payments, and rentals due under the lease must be in good standing;

(2) the transferee must submit a statement of qualifications under 11 AAC 82.205 and 11 AAC 85.210; and

(3) the transferee must file an affidavit stating who is responsible for performing all obligations under the permit or lease.

(b) The consent of the surety to the substitution of the transferee as principal or a new bond with the transferee as principal must be submitted in writing to the commissioner if the original lease required the maintenance of a bond. If the transfer is for part of the leased land only, the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the lessee must be submitted, as well as a new bond with the transferee as principal covering the portion of the leased lands assigned or subleased.

(c) The assignor shall be liable for all obligations and liabilities accrued before the effective date of the assignment and the assignee shall be liable for all obligations and liabilities accrued after the effective date of the assignment. In the case of a sublease or a transfer of an interest other than an assignment, the lessee or permittee shall continue to remain liable for all obligations under the lease or permit. The commissioner may take any legal action necessary to secure compliance with the terms and conditions of a lease or permit. This action may be taken against either lessee or permittee or any of its successors or against both lessee and permittee and its successors.

(d) The approval of an assignment of only a part of the lands in a lease shall create a new lease bearing a new serial number but containing the same terms and conditions as the original lease. (Eff. 9/4/74, Reg. 51; am / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145

11 AAC 85.260. LIMITATION ON OVERRIDING ROYALTIES. (a) No overriding royalty, net profits interests or other payments out of production or revenues from the lease may be created which exceed the rate of royalty first payable to the State of Alaska under the lease unless the lessee shows to the satisfaction of the commissioner that the royalty is justified by substantial improvements made or to be made to the leasehold.

(b) The term "payments out of production" as used in this section is defined as a share of the coal produced from the lease, free of the costs of production. (Eff. 9/4/74, Reg. 51; am / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145

11 AAC 85.265. SUSPENSION AND TERMINATION. If the lessee substantially breaches a significant provision of a permit or lease, or fails to comply with the applicable statutes and regulations, and the failure continues for 30 days after service of written notice by the commissioner, the commissioner may suspend activity on the permit or lease until compliance is achieved, or may terminate the lease after notice and an opportunity to be heard. (Eff. 9/4/74, Reg. 51; am / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145

11 AAC 85.270. COAL MINING UNITS. (a) For the purpose of achieving more economic operations or more efficient and orderly recovery of coal, leases may, with the approval of the commissioner, be united and the lessees adopt a cooperative or unit plan of development and operation of their leases. As a condition of approval of a Coal Mining Unit (CMU) the commissioner may, with the consent of the state lessees, establish, alter, change, or revoke the development, production, rental, minimum royalty, or royalty requirements of the state leases within the unit area, which he determines necessary or proper to protect the public interest and to conserve natural resources. The commissioner may require, as a term of a competitive sale lease, that the leased area be united into a CMU.

(b) A unit shall consist of an area of coal land which can be developed and mined in an efficient, economic and orderly manner with due regard for the conservation of coal and other resources. It may consist of one or more leases and may include intervening or adjacent nonstate lands, but all land in the unit must be capable of being developed and operated as a unified operation. Approval of the CMU is subject to the conditions of diligent development and continued operation of the unit. Diligent development and continued operation anywhere within the CMU, with respect to either state or nonstate coal deposits, shall be considered to have occurred on each state lease in the CMU.

(c) A CMU containing any interest other than a single State lease becomes effective upon approval by the commissioner when requested by the lessees.

(d) The boundaries of a CMU may be changed upon application by the lessee and with the approval of the commissioner.

(e) If any coal lands in a CMU are relinquished, the lease terms for the unit will be adjusted accordingly.

(f) Interests in coal gained through the formation of a CMU shall not be counted as acreage under 11 AAC 85.210. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145

11 AAC 85.275. COOPERATIVE LEASING. The commissioner may enter into agreements with other owners of coal deposits for joint lease sales or to offer state leases on terms compatible with leases on lands owned by the other party that could be united with the state leases in a CMU. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.027
AS 38.05.145

11 AAC 85.280. SURFACE MINING CONTROL AND RECLAMATION ACT. All coal mining leases and operations must conform to the approved state program under the Surface Mining Control and Reclamation Act of 1977 or to the federal program in the event a state program is not adopted. (Eff. / /82, Reg.)

Authority: AS 38.05.145

11 AAC 85.285. DOMESTIC USE COAL LICENSES. (a) The commissioner may issue licenses to individuals to prospect for, mine, and take for their personal use, coal from designated areas upon payment of fair market value. Only that coal needed for actual use may be mined and no coal shall be disposed of for profit.

(b) A coal license will be limited to a designated area and will terminate at the end of two years from the date of issuance. An application for a two year renewal must be filed 30 days before its termination date.

(c) Each holder of a coal license shall file an annual report on the form provided by the Department of Natural Resources. (Eff. / /82, Reg.)

Authority: AS 38.05.020
AS 38.05.145

Coal Surface Mine Land Reclamation Costs

Walter S. Misiolek and Thomas C. Noser

INTRODUCTION

Prior to passage of the Surface Mining Control and Reclamation Act of 1977, land reclamation requirements varied considerably among the major coal-producing states.[1] Although the Act established uniform standards for restoration of mined lands and protection of the environment and appears to be compatible with the goal of internalization of external costs, it has been assailed by the mining industry and by elected political officials in several states as excessively costly and stringent.[2] Criticism has been particularly strong in some eastern states where profits for many mining operations were marginal under prior, less stringent state requirements, and where coal beds are thinner than in other regions, so that the costs of surface preparation and revegetation are spread over fewer tons of coal per acre of land disturbed. There is growing evidence that cost (and profit) differentials associated with this effect may be contributing significantly to shifts in regional mining patterns, with many eastern states experiencing negative employment effects in this expanding industry. In addition, some analysts have expressed concern that the high cost of producing eastern coal in compliance with federal land reclamation requirements, coupled with rail transportation constraints in the West, may severely inhibit continued expansion of the coal industry.[3]

A number of recent studies, including papers by Lin, Spore, and Nephew (1976) and Randall et al. (1978), and federally funded research projects conducted by Energy and Environmental Analyses, Inc. (1977) and ICF, Inc. (1977), have attempted to estimate environmental benefits and/or employment effects of the new land reclamation requirements. It has become common practice in such work to adapt cost estimates for land reclamation operations from one or more of five principal sources: Skelly and Loy (1975), Evans and Bitler (1975), Nephew and Spore (1976), Fluor Utah/Bonner and Moore (1977), and Persse, Lockard, and Lindquist (1977). Each of these five studies estimates the cost of land reclamation through either the case-study or the mine-simulation approach. Both of these methods involve specification of

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[1] ICF, Inc. (1977) and Energy and Environmental Analysis, Inc. (1977) analyze pre-1977 state surface mining requirements.

[2] Several suits have been filed against the regulations, the first by the Virginia Surface Mining and Reclamation Association, Inc. The governor of Virginia, in apparent support of mining interests, has spoken out forcefully against the federal regulations. For additional details, see the Tenth Annual Report of the Council on Environmental Quality, December 1979, p. 338.

[3] Larwood and Benson (1976) project a potentially severe shortage of rail capacity in 1985 due in part to the financial conditions of the carriers, the uncertain future, and unfavorable financial market conditions, all of which promote highly conservative investment decisions.

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equipment and labor requirements for performance of the necessary earthmoving and revegetation operations under assumed or actual mining conditions. Despite this similarity, wide differences exist among the land reclamation cost estimates developed in the five studies. This is due, in part, to differences in the mining scenarios analyzed and to differences in defining the cost of land reclamation.

Inconsistencies sometimes occur when the cost estimates derived in these studies are used without adjustment in cost-benefit analysis. For example, of the five studies cited, only Nephew and Spore include an appropriate return on capital in calculating land reclamation costs; the other four fail to allow for normal profits (or required returns) in estimating costs of reclamation. The Nephew and Spore study, however, focuses specifically on contour mining operations in Appalachia, which differ substantially from larger scale area mining techniques employed in other regions of the country. It would seem inappropriate therefore to use the Nephew and Spore cost estimates in analyzing impacts of the new legislation in other geographical regions.

Given the lack of consistency in prior reclamation cost estimates and what we perceive to be some definite methodological problems, the primary objective of this study is to develop a method for estimating costs of land reclamation for large-scale area mining operations in the United States consistent with basic economic principles. The mine simulation approach, which typifies work in this area, will be extended to include relevant opportunity costs and will be studied to determine whether any unusual properties may be typically associated with this method of cost estimation. In addition, we will develop estimates of land reclamation costs for surface mining scenarios, characteristic of those found in the major coal-producing states, to compare the cost impacts of the federal reclamation regulations in different regions.

THE MODEL

A common problem shared by recent land reclamation studies is the lack of sufficiently complete, technically accurate data on the behavior of individual firms. Many mine operators are reluctant to reveal information for competitive or legal reasons. In other cases, questions arise concerning the validity of the data provided. Land reclamation equipment, for example, is typically used for a variety of nonreclamation functions at the mine, including road work, clearing, and bench preparation, and it is frequently difficult for an outsider—given little, if any, opportunity to observe an ongoing mining operation—to ascertain the extent to which reclamation equipment is actually utilized in land reclamation activity at a given site. The case study approach used by Evans and Bitler and by Skelly and Loy, among others, is susceptible to biases in overestimation of land reclamation cost due to failure to apportion part of the cost of reclamation equipment to other mining operations.

Recognition of this problem contributed to our decision to estimate reclamation costs via the mine simulation approach. We treat land reclamation activities as an integral element of the whole mining process and estimate the cost of these activities through a comparison of estimated mining costs when specific reclamation operations either are or are not performed. Thus, we allow for potential cost savings which may occur when land

reclamation operations perform tasks that would otherwise be performed by basic mining equipment, such as occurs when topsoil removal reduces the volume of overburden to be excavated by the primary stripping equipment.

The structure of the model developed reflects the individual operations that are performed in coal surface mining and land reclamation. These include exploration drilling; fragmentation and stripping of the overburden; coal fragmentation, loading, and hauling; recontouring and grading; topsoil removal and replacement; and revegetation. We determine the size and/or number of pieces of equipment required to perform each task through conventional engineering formulas adapted from a variety of sources including the *SME Mining Engineering Handbook* (1973), the *Coal Age Operating Handbook of Coal Surface Mining and Land Reclamation* (1978), the *Cost Reference Guide for Construction Equipment* (1980), a handbook of basic engineering principles published by the International Harvester Company (1975), a basic excavation principles text by Drevdahl (1961), and a study of coal-mining cost models directed by Stinnett for the NUS Corporation (1977). Equipment requirements are calculated for moving the necessary volume of material or performing other specific mining tasks under a set of assumed mining conditions, operating speeds, and equipment efficiencies.[4]

We assume that overburden stripping operations are performed using draglines in each mining situation. Although shovel-truck (or truck-haulback) techniques are used in some U.S. area mines, costs of this mining method were not developed for this paper for two reasons: (1) dragline stripping accounts for the vast majority of overburden excavation in recently opened large-scale mines, and (2) land reclamation costs are not easily estimated even on an incremental basis for the shovel-truck mining case because spoil placement can be coordinated with overburden excavation, leaving little grading or recontouring to be done by reclamation equipment. Other studies indicate that the savings in direct reclamation costs associated with this mining method only partially offset the higher overburden excavation expenses when the method is used in area mines on relatively flat terrain.[5] For other mining tasks, we likewise assume that conventional surface mining equipment is used: power shovels or front-end loaders for coal loading, off-highway trucks for hauling, bulldozers for grading and contouring, and self-loading scrapers for topsoil removal and replacement.

Equipment selection formulas were verified through simulation of several operating surface mines in Alabama and through replication of several published surface mine scenarios, including four area mines described in the Fluor Utah/Bonner and Moore (hereafter, FUBM) study. A comparison of equipment selected by our model with that specified in the FUBM analysis is presented in Table 1. Differences in equipment are slight and are attributed in part to differences in the structure of the two models, which require us to make certain assumptions concerning the magnitudes of parameters

[4] The basic equations used in the model and a set of tables listing ranges of realistic values for equipment operation factors and digging and earth-moving conditions are presented in the report "Analysis of Bituminous Coal Production Costs in the Warrior Coal Field: Economic Analysis of the 1977 Reclamation Law" by W. S. Misiolek and J. E. Bailey, which is available on request from the School of Mines and Energy Development at the University of Alabama.

[5] See Fluor Utah/Bonner and Moore (1977) and Bertoldi (1977).

TABLE 1
COMPARISON OFOR EQUIPMENT SELECTION FOR DRAGLINE MINING SCENARIOS DESED IN FLUOR UTAH/BONNER AND MOORE (1977)

	Illinois Basin Mine	Texas Gulf Mine	Ft. Union (Montana) Mine	Four Corners (New Mexico) Mine
Overburden depth (ft.)	71	35	42	58.32
Coal seam thickness (ft	4	10	12	12
Annual production (M t	5,451	9,318	9,160	7,261
Topsoil saved (ft.)	1	.83	1.25	.33
*Dragline size (cu. yd.)				
FUBM	126	45	45	45
our results	110	37	36	40
*Coal loader size (cu. yd.				
FUBM	16	16	16	16
our results	11	18	18	14
Coal truck size (tons)				
FUBM	180	180	180	180
our results	110	125	120	100
Number of trucks				
FUBM	9	12	12	12
our results	14	19	19	19
Scraper size (cu. yd.)				
FUBM	32	32	32	32
our results	31	31	31	31
Number of scrapers for reclamation				
FUBM	14	6	9	3
our results	15	9	11	3
Bulldozer size (horsepower)				
FUBM	410	410	410	410
our results	410	410	410	410
Number of bulldozers for reclamation				
FUBM	11	8	5	5
our results	10	7	6	5

* Three draglines and coal loaders are used at each mine, one of each for each of three working pits.

that have no direct counterpart in the FUBM model.

Labor and support equipment requirements in our model are based on primary equipment requirements for each mining scenario. Costs of equipment, labor, and support facilities are in constant 1980 dollars. Equipment prices and operating and maintenance cost estimates were obtained directly from manufacturers, including the Bucyrus Erie Company and the Caterpillar Tractor Company, and from cost reference guides published by the Equipment Guidebook Company. When a variety of different equipment sizes were available

from several manufacturers for performing certain tasks, as for example, for coal-hauling, linear regression analysis was used to estimate the price-size relationship.[6] Costs of support facilities were provided by representatives of a local mining company in June 1980 and were estimated in accordance with guidelines suggested in the NUS study directed by Stinnett. Labor cost estimates were made using United Mine Workers wage scales effective during the second quarter of 1980.

The cost per ton of mined coal is determined through the uniform annual series method of discounted cash-flow analysis.[7] The required annual cash flow (RCF) for a prospective new mining operation is the stream of equal annual net cash receipts whose discounted present value equals the discounted present value of investments (PV). These investments include initial equipment and structures, preproduction expenses, working capital requirements, and replacement equipment as required under assumed depreciation rates. With all costs specified in constant dollars and i representing the real discount rate (real required rate of return), RCF is calculated according to

$$PV = RCF \sum_{t=1}^{N} \frac{1}{(1+i)^t} \qquad [1]$$

or

$$RCF = PV / \sum_{t=1}^{N} \frac{1}{(1+i)^t} \qquad [2]$$

This required cash flow is also defined as equal to annual sales revenues less operating expenses adjusted for income-tax liabilities. Required annual sales revenues (SR) are, thus, calculated from the expression

$$RCF = (SR - OPEXP) - \tau[(1-d)SR - \text{OPEXP}] + NCEXP \qquad [3]$$

where $NCEXP$ is annual noncash operating expense, consisting primarily of straight-line depreciation allowances; $OPEXP$ is the sum of $NCEXP$ and annual cash operating expenses, which consist of equipment operating and maintenance expenses, annual payroll costs, and nonincome taxes; τ is the corporate income-tax rate; and d is the coal depletion allowance for tax purposes.[8] Solving [3] for SR and combining with [2] yields the expression

$$SR = \frac{\left(PV / \sum_{t=1}^{N} \frac{1}{(1+i)^t}\right) + OPEXP(1-\tau) - NCEXP}{1-\tau(1-d)} \qquad [4]$$

In the absence of royalty payments, the price per ton of coal received by the mine operator (p) is determined by dividing SR by the annual output (Q),

$$pQ = SR \qquad [5]$$

$$p = SR/Q \qquad [6]$$

We express royalties as a percentage of sales revenues so that the gross sales price (P) is determined as

$$P = \frac{p}{1-r} \qquad [7]$$

[6] Multiple correlation coefficients for this group of equations ranged from .818 to .996, exceeding .95 in the majority of the cases.

[7] See Haley and Schall (1979) or Grant and Ireson (1960).

[8] Refer to section 613 of the Internal Revenue Code for calculation of coal depletion allowances, which are currently 10% of sales revenues to a maximum of 50% of gross profit. We assume the 50% limit does not apply to cases analyzed in this paper.

where r is the royalty rate. Combining expressions [6] and [7] yields the minimum acceptable gross selling price of coal for the prospective mine

$$P = \frac{SR}{(1-r)Q} \qquad [8]$$

This price covers all costs of operation including taxes and royalties and allows for a normal rate of return on the operator's capital investment and is, therefore, interpreted as the cost per ton of mined coal. Land reclamation costs are estimated through measurement of the effect of land reclamation operations on the gross sales price.

Reclamation cost estimates prepared according to this procedure for the four area mine scenarios developed in the FUBM study are compared with the FUBM cost estimates in Table 2. We assumed a 7% required real rate of return on capital in our calculations.[9] Sensitivity analysis revealed that our cost estimates were not greatly affected by modest variations in the discount rate. An increase or decrease of one percentage point in the discount rate (from 7% to either 8% or 6%) increased or decreased the estimated cost of land reclamation by approximately 2% to 2½% for each of the FUBM mine simulations.

The FUBM costs reported in Table 2 were adjusted for inflation using the Producers Price Index for Construction Machinery and Equipment. Even so, considerable disparity exists between the estimates. We attribute this difference primarily to the method of calculation of reclamation costs in the FUBM study.[10] Impacts of taxes, opportunity costs, and royalties on the selling price of coal are determined in the FUBM study subsequent to the calculation of "direct operating cost" for each mining function. Opportunity costs and other indirect costs are not apportioned back to the individual mining operations. Likewise, reclamation cost estimates developed by Skelly and Loy, Evans and Bitler, and Persse, Lockard, and Lindquist fail to account for investment opportunity costs and other indirect costs of mining. The incremental cost approach taken in this study effectively apportions the relevant share of opportunity cost, property taxes, royalty payments, secondary equipment requirements, maintenance facility requirements, and other nondirect costs (all of which are functions of either coal price or primary equipment requirements) back to the land reclamation activities.

Our analysis of the FUBM sample mines indicates that topsoiling activities account for approximately half of total reclamation costs when one foot of topsoil is segregated. This is consistent with the findings by FUBM and by Persse, Lockard, and Lindquist and with the findings of a study by a committee of the National Academy of Sciences and the National Academy of Engineering (1974, p. 87), which reported that the replacement of topsoil will usually be the largest single expense of reclamation. It is interesting that Nephew and Spore and Lin, Spore, and Nephew report that the

[9] This figure is somewhat lower than that used in some recent coal industry studies, as for example, in the NUS study directed by Stinnett which assumes a 10% cost of capital. We selected the 7% figure because we felt it represented a reasonable sum of the pure rate of time preference plus a risk premium appropriate to coal surface-mining operations given the high current growth potential for the industry.

[10] This difference may also be due in part to the use of the Producer Price Index for Construction Machinery and Equipment for the inflation adjustment. This index undoubtedly understates the effect of inflation on mining costs because operating and maintenance costs have increased more rapidly than equipment prices since 1975.

TABLE 2
COMPARISON OF RECLAMATION COST ESTIMATES
(1980 Constant Dollars)

	Illinois Basin Mine	Texas Gulf Mine	Ft. Union (Montana) Mine	Four Corners (New Mexico) Mine
Overburden depth (ft.)	71	35	12	12
Coal seam thickness (ft.)	4	10	42	58.32
Topsoil saved (ft.)	1	0.83	1.25	0.33
Topsoiling cost ($)				
per ton of coal				
FUBM*	.39	.12	.14	.03
our results	.47	.16	.21	.07
per acre disturbed				
FUBM*	2,506	1,747	2,551	676
our results	3,113	2,576	4,057	1,391
Grading cost ($)				
per ton of coal				
FUBM*	.30	.13	.09	.09
our results	.37	.15	.13	.13
per acre disturbed				
FUBM*	1,935	1,935	1,445	1,695
our results	2,451	2,415	2,512	2,583
Revegetation cost ($)				
per ton of coal				
FUBM*	.05	.02	.02	.02
our results	.10	.04	.03	.07
per acre disturbed				
FUBM*	326	326	326	490
our results	662	644	580	1,391
Total reclamation cost ($)				
per ton of coal				
FUBM*	.75	.27	.25	.14
our results	.94	.35	.37	.27
per acre disturbed				
FUBM*	4,767	4,009	4,322	2,861
our results	6,226	5,635	7,148	5,365

* Results were adjusted to 1980 constant dollars using the Producers Price Index for Construction Machinery and Equipment.

incremental cost of topsoiling accounts for only approximately 4% of total reclamation costs in Appalachian contour-mining operations. The topsoil layer is often thin or nonexistent on the steep slopes of the Appalachian region and the grading and recontouring costs for unsegregated soil are higher than on flat terrain, leaving the incremental cost of topsoil segregation and replacement relatively small. Several studies, however, have applied the Nephew and Spore topsoiling cost estimates directly to the estimation of land reclamation costs in

other regions of the country. This includes the study by ICF, Inc., which uses a topsoiling cost estimate for non-Appalachian mines of $350 per acre in 1978 dollars or approximately $435 per acre when converted to 1980 dollars, a figure considerably below both our estimate and the FUBM estimate for the Four Corners Mine in which only four inches of topsoil is segregated.

Persse, Lockard, and Lindquist estimate the total cost of land reclamation at an average of $3,563 per acre in first-quarter 1976 dollars (approximately $5,400 in 1980 dollars) for Great Northern Plains Mines at which topsoil is segregated; a figure that falls about midway between the FUBM estimate and ours for the Fort Union Mine. The frequently quoted study by Evans and Bitler estimates an average cost of $7,649 per acre in 1975 dollars (approximately $12,000 in 1980 dollars) for area mines in the eastern United States. This figure exceeds our highest cost estimates by a considerable margin. On the basis of the methods used by Evans and Bitler to calculate costs and because of the absence of top-soiling activity from some of their sample cases, we anticipated that our cost estimates would greatly exceed theirs. We found, however, that the data reported by Evans and Bitler reveal that they estimate between 20,000 and 60,000 cubic yards of spoil are moved per acre during backfilling and topsoiling operations. (For area mines the average is 38,245 cubic yards.) We believe these figures are implausibly high. Mining companies that cooperated with our study estimate that 7,000 to 8,000 cubic yards are moved during backfilling per acre and 1,000 to 2,000 cubic yards during topsoiling. Our calculations for the four FUBM sample mines indicate a range of 9,704 to 11,176 cubic yards of material moved during backfill and topsoiling, which includes an adjustment for 20% rehandling or stockpiling during both operations. Furthermore, when 40 feet of overburden exists at a site, calculations reveal the presence of only about 64,000 total cubic yards of overburden per acre. We believe, therefore, that a realistic estimate of reclamation costs would be substantially less than the average figure reported by Evans and Bitler.

INTERREGIONAL ANALYSIS

In the 1976 Federal Energy Administration report, *National Energy Outlook*, coal-producing states in the contiguous United States are grouped into eleven coal-supply regions on the basis of similarities in coal and overburden characteristics. These regions are illustrated in Figure 1. In two of these regions (regions 6 and 7), the primary product is lignite, which is not strictly substitutable for bituminous coals in most uses, due to differences in physical properties. Lignite mining situations, therefore, were excluded from our analysis. In a third region (region 2), most coal is produced using contour mining methods, which are generally more costly than the area mining operations simulated by our model. Because it was not possible with our data sources to determine the likely extent of area mining in this region or to specify probable geologic conditions for area mining operations, we were forced to omit the three states included in this region from analysis. From the eight remaining regions, we included in our sample all states whose 1979 production of bituminous and/or subbituminous coal exceeded four-million tons.[11] The states

[11] The annual production survey published in the 1979 *Keystone Coal Manual* was consulted to insure that we had not failed to analyze any state in which significant expansions of large-scale surface mining activity were planned for the 1980's. None were found.

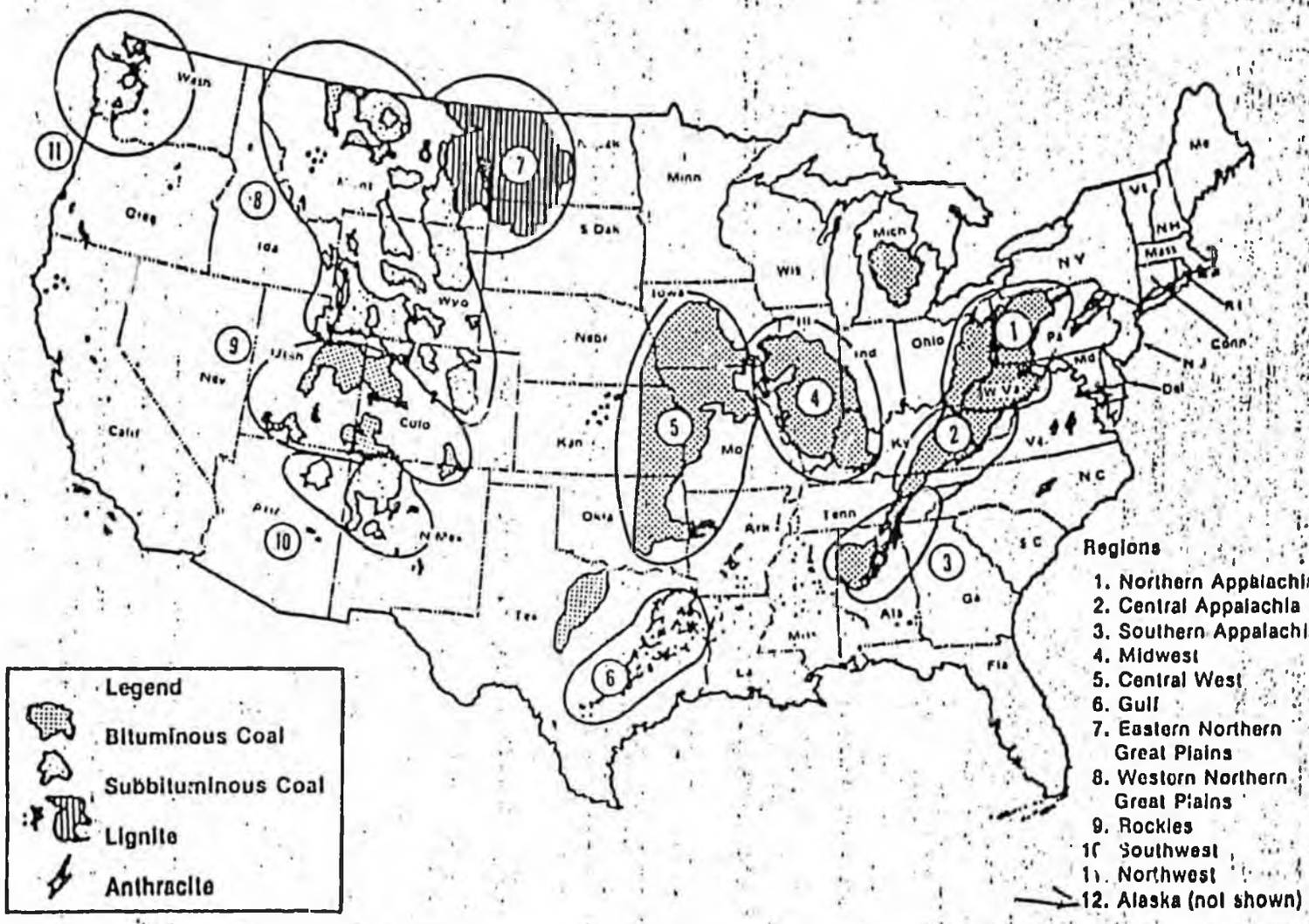

FIGURE 1
U.S. COAL PRODUCING REGIONS
(Adapted from the Federal Energy Administration, National Energy Outlook, 1976)

selected for analysis were: Ohio, Pennsylvania, Alabama, Illinois, Indiana, Missouri, Oklahoma, Montana, Wyoming, Colorado, Arizona, New Mexico, and Washington. For each of these states, probable coal-seam and overburden characteristics were determined from published sources.[12] Probable mine sizes were set in accordance with existing mines and projected new mines in each state as reported in the 1979 *Keystone Coal Manual*, and with the goal of specifying mining situations that would employ draglines of the most efficient size range, which industry sources report to be approximately 40 to 80 cubic yard bucket capacity, and coal-loading equipment of efficient sizes and types. The end result of this procedure was that probable mine sizes in each state were related to probable coal-seam thicknesses. The typical new mine size was set at one-million tons per year for states whose coal-seam thickness was less than five feet, increasing in steps of one-million tons for each five-foot increment in seam thickness to a maximum size of five-million tons per year for states whose probable coal-seam thickness exceeded twenty feet.

Considerable variation in severance, income, and property taxes exists across the states studied. This variation is associated in part with differences in objectives of taxation which may in some cases include attempts to encourage or discourage production. These differences, if reflected in simulation analysis, would result in a distortion of pure production costs for comparison purposes. To avoid this effect we estimated what the cost of coal production would be in each state if taxes were the same as in our home state, Alabama. In the same vein, we assumed that royalties were calculated in each state as 12% of sales price.

Variations in topsoil thicknesses across regions would undoubtedly result in some variation in topsoiling requirements. Again, however, for purposes of comparison we assumed that one foot of topsoil would be segregated in each state analyzed. This seems to be a reasonable figure for area mining operations on flat terrain, except for some western mines at which topsoil may be virtually nonexistent and for cases in which prime farm lands may be mined.[13] Although differences in plant species used in revegetation exist among the regions, we found little evidence of significant variations in seed, mulch, and soil amendment costs except between arid and nonarid regions (particularly for the desert Southwest in comparison with other regions). We assumed therefore that per-acre revegetation supply costs and the basic nature of revegetation operations would be the same in all states except for the desert states of region 10. While this assumption is somewhat restrictive, we do not believe it significantly distorts cost comparisons because revegetation is by far the least costly of the three basic reclamation operations analyzed.

Assumed mining conditions and the results of the mining and land reclamation cost simulation analysis for each of the thirteen states are presented in Table 3. Required dragline and coal-

[12] Coal-seam thickness and overburden-depth estimates for new mines in each state were adapted from the ICF, Inc., report to the Council on Environmental Quality and the Environmental Protection Agency. Coal and overburden density estimates were obtained from U.S. Bureau of Mines data and from Fluor Utah/Bonner and Moore.

[13] Federal law requires 48 inches of topsoil reconstruction on prime farm lands. The cost of this practice is anticipated to be a significant deterrent to mining affected areas. We consider this to be a special case which might apply in any region and do not include prime farmland mining as typical for any of the states analyzed. We do, however, consider here the cost effect of a reduction in topsoil segregation requirements for some western states.

TABLE 3
MINING CONDITIONS AND RECLAMATION COSTS FOR TYPICAL REGIONAL MINES
(1980 Constant Dollars)

Region	Ohio 1	Pennsylvania 1	Alabama 3	Illinois 4	Indiana 4
Assumptions					
Annual production (million tons)	1	1	1	1	1
Overburden depth (feet)	69	54	50	69	68
Coal-seam thickness (feet)	3.5	3.2	2.3	4.7	3.7
Coal density (tons per acre foot)	1,800	1,800	1,800	1,800	1,800
Results					
Acres mined per month	14.70	16.08	22.37	10.94	13.90
Dragline size (cubic yards)	67	57	74	50	63
Coal loader size (cubic yards)	12	12	12	12	12
Bulldozer size (horsepower)	620	620	410	410	410
Bulldozers used in reclamation	2	2	4	2	2
Scraper size (cubic yards)	44	44	31	44	31
Scrapers used in reclamation	3	3	5	2	3
Minimum acceptable selling price ($)	16.65	15.33	18.27	13.56	16.19
Topsoiling cost ($)					
per ton of coal	.734	.750	1.003	.502	.608
per acre disturbed	4,159	3,885	3,737	3,827	3,642
Grading cost ($)					
per ton of coal	.532	.546	.785	.390	.420
per acre disturbed	3,016	2,830	2,924	2,972	2,516
Revegetation cost ($)					
per ton of coal	.141	.149	.184	.120	.137
per acre disturbed	800	771	687	913	818
Total reclamation cost ($)					
per ton of coal	1.407	1.445	1.973	1.012	1.164
per acre disturbed	7,975	7,486	7,348	7,711	6,976
percent of minimum price	8.45	9.43	10.80	7.46	7.19

Region	Missouri 5	Oklahoma 5	Montana 8	Wyoming 8
Assumptions				
Annual production (million tons)	1	1	5	5
Overburden depth (feet)	45	35	44	92
Coal-seam thickness (feet)	2.0	1.5	23.3	32.2
Coal density (tons per acre foot)	1,800	1,800	1,770	1,770

TABLE 3, continued

Region	Missouri 5	Oklahoma 5	Montana 8	Wyoming 8
Results				
Acres mined per month	25.72	34.29	11.23	8.12
Dragline size (cubic yards)	76	78	33	50
Coal loader size (cubic yards)	12	1[illegible]	26(2)	26(2)
Bulldozer size (horsepower)	410	410	410	520
Bulldozers used in reclamation	4	5	2	1
Scraper size (cubic yard)	44	44	44	31
Scrapers used in reclamation	4	6	2	2
Minimum acceptable selling price ($)	18.73	19.97	5.22	5.64
Topsoiling cost ($)				
per ton of coal	1.049	1.318	.101	.078
per acre disturbed	3,399	3,202	3,751	4,018
Grading cost ($)				
per ton of coal	.818	1.044	.079	.055
per acre disturbed	2,652	2,538	2,916	2,812
Revegetation cost ($)				
per ton of coal	.203	.307	.024	.021
per acre disturbed	659	746	902	1,067
Total reclamation cost ($)				
per ton of coal	2.071	2.669	0.204	.154
per acre disturbed	6,710	6,487	7,569	7,897
percent of minimum price	11.06	13.37	3.91	2.73

Region	Colorado 9	Arizona 10	New Mexico 10	Washington 11
Assumptions				
Annual production (million tons)	2	4	3	3
Overburden depth (feet)	47	50	65	41
Coal-Seam thickness (feet)	6.7	16.2	31.7	11.4
Coal density (tons per acre foot)	1,800	1,770	1,770	1,770
Results				
Acres mined per month	15.36	12.92	13.41	13.77
Dragline size (cubic yards)	47	43	58	40
Coal loader size (cubic yards)	21	42	32	32
Bulldozer size (horsepower)	620	410	410	410
Bulldozers used in reclamation	2	2	2	2
Scraper size (cubic yard)	44	31	31	31
Scrapers used in reclamation	3	3	3	3
Minimum acceptable selling price ($)	8.60	5.73	7.40	6.22
Topsoiling cost ($)				
per ton of coal	.371	.149	.201	.202
per acre disturbed	4,021	3,847	3,742	3,667

TABLE 3, continued

Region	Colorado 9	Arizona 10	New Mexico 10	Washington 11
Grading cost ($)				
per ton of coal	.269	.102	.138	.139
per acre disturbed	2,923	2,642	2,576	2,531
Revegetation cost ($)				
per ton of coal	.072	.052	.071	.045
per acre disturbed	786	1,334	1,320	821
Total reclamation cost ($)				
per ton of coal	.712	.303	.410	.387
per acre disturbed	7,730	7,822	7,638	7,019
percent of minimum price	8.28	5.29	5.54	6.22

loader sizes were calculated through the production equations of the model. Bulldozer size was restricted to two options; 410 and 620 horsepower, and likewise, scraper size was restricted to two options, 31 or 44 cubic yards, which are popular conventional sizes for land reclamation equipment. Total reclamation cost reported in Table 3 is the sum of topsoiling, grading (including recontouring), and revegetation costs. Bonding and other legal costs are included in calculating the minimum acceptable selling price but are not included as part of reclamation cost as defined for our purposes.

On a per-acre basis, simulated land reclamation costs are relatively uniform across regions, ranging from about $6,500 to $8,000. On a per-ton basis and as a percentage of selling price, reclamation costs are much lower in the West than in the East or Midwest due to significant differences in coal-seam thickness. Costs per acre estimated for Arizona and New Mexico are among the highest reported due to the high revegetation costs for region 10. If the depth of topsoil segregated is reduced to six inches for these states, however, estimated costs per acre fall to about $6,000. This would lower reclamation costs by about 7¢ per ton in Arizona and 10¢ per ton in New Mexico, giving mine operators in these states an even greater cost advantage over their eastern counterparts.

Land reclamation costs estimated by the model are somewhat sensitive to the number of acres disturbed per month. This appears due in large part to equipment and labor indivisibilities, which are likely to have a proportionately more significant effect on cost when the number of pieces of equipment in use is small. Although we found no mention of this effect in any of the studies cited in this paper, we presume that this same phenomenon occurs in most analyses of this type, which implies that estimates of land reclamation costs found in the literature may be sensitive to the sizes of mines analyzed.

To investigate the significance of this effect, we derived conditions for a typical western mine (10.46′ coal-seam, 45′ overburden) at which 200,000 ton increments in required annual output are associated with one-acre increments in land area disturbed per month. As with the simulation analysis reported on Table 3, we restricted the choice of bulldozers and scrapers used in reclamation to two

options and examined the pattern of land reclamation costs for each reclamation task with each type of equipment. This procedure was followed for mining operations ranging from 5 to 35 acres disturbed per month (i.e., 1 million to 7 million tons of coal produced per year). Sensitivity of topsoiling and grading costs to variations in the number of acres reclaimed per month are illustrated in Figure 2 and Figure 3, respectively. The discontinuities of the average cost curves in both figures occur with successive ... tions to the fleet of land reclamation equipment. The second 44-cubic-yard scraper, for example, which is needed when the number of acres reclaimed per month increases from 7 to 8, may only be required for a few hours per week. Although fuel and maintenance costs are functions of hours of operation, there are significant fixed costs associated with acquisition and operation of the second scraper, including the cost of the driver

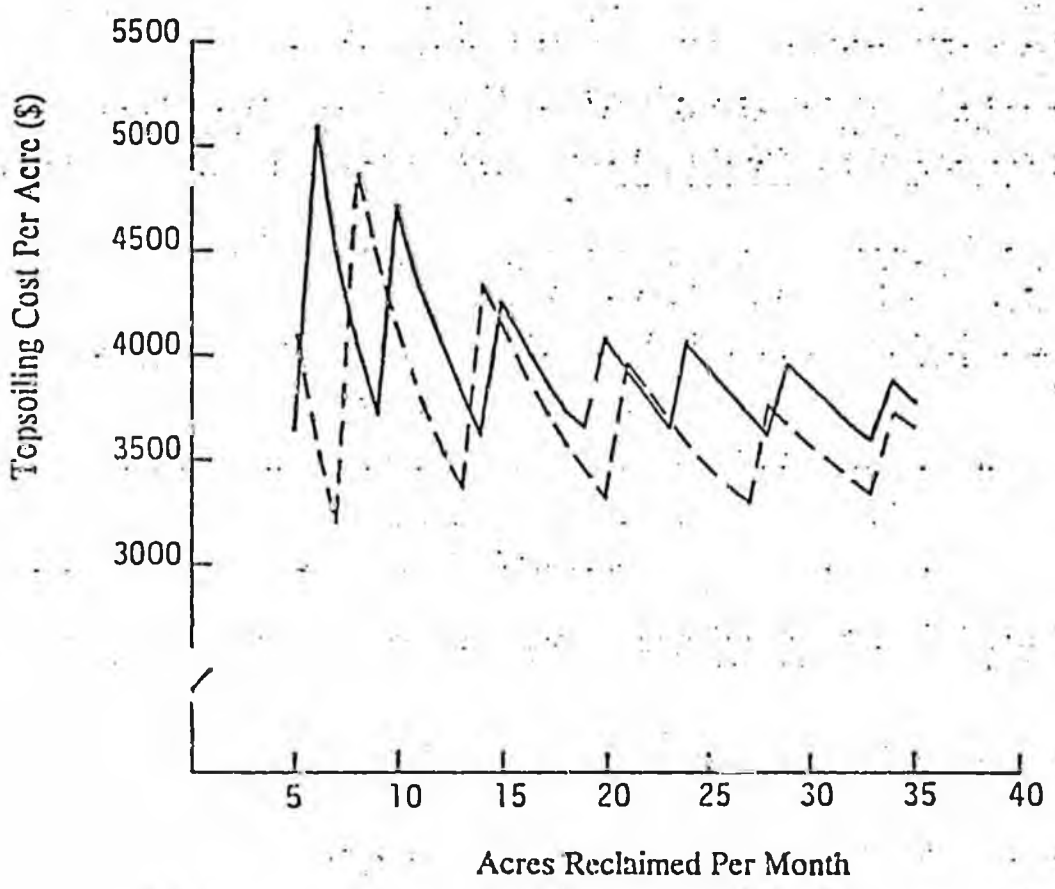

FIGURE 2
VARIATION OF T... SOILING COST WITH SCALE OF OPERATION

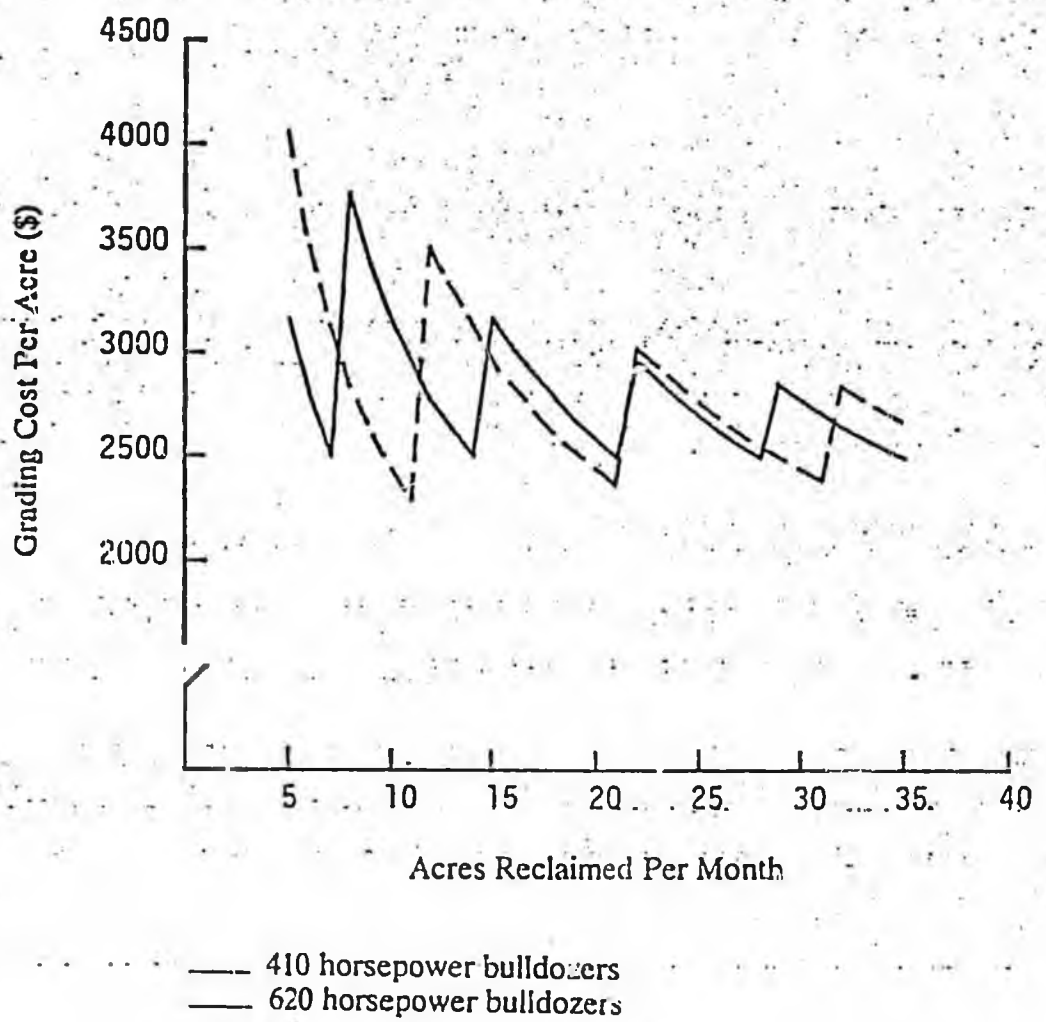

FIGURE 3
VARIATION OF GRADING COST WITH SCALE OF OPERATION

who must be paid a full-week's wage. Variations in average cost associated with this phenomenon are, as anticipated, relatively greater when the number of pieces of equipment over which the effect is spread is small. Minimum average cost points attained prior to addition of each piece of equipment do not appear to show any significant trend with respect to output levels. We conclude from this exercise that topsoiling costs of approximately $3,500 per acre and grading and recontouring costs of approximately $2,500 per acre may be achievable at various output levels depending on the points at which discontinuities exist under different mining conditions.

Revegetation costs reported in Table 3 display a more pronounced relationship to total acres reclaimed than do grading and topsoiling costs. Again this effect is due to indivisibilities in equipment. Average costs per acre at the Wyoming

mine are considerably greater than in Alabama because precisely the same equipment is used at both locations. Equal fixed costs are thus spread over fewer acres per month in the Wyoming case. With subcontracting of this task at smaller mines, it may be possible at most locations, except for the desert Southwest, to achieve revegetation costs in the neighborhood of $650 per acre.

Land reclamation costs per ton of coal and minimum acceptable selling prices, which are reported in Table 4, were calculated on the assumption that with modest variations in output levels these standardized topsoiling, grading, and revegetation costs ($3,500, $2,500, and $650, respectively) could be achieved in each state, except for those of region 10 for which we assume a revegetation cost of $1,300 per acre (approximately the same as that reported for these states in Table 3). Land reclamation costs and minimum acceptable selling prices so calculated do not differ substantially from those reported in Table 3 for most states. The largest difference occurred for Ohio where minimum costs were approximately 15% below those reported in Table 3.

From both tables 3 and 4 it can readily be seen that simulated land reclamation costs on a per-ton of coal basis, are considerably higher in the East than in the West. The average reclamation cost per ton of coal reported in Table 4 is $1.263 for regions 1–4, $2.430 for region 5, and $.332 for regions 8–11. As a percent of minimum acceptable selling price, the averages are 7.9%, 12.5%, and 4.9% respectively. Because of high coal extraction costs in region 5, little new mining activity is occurring there. This leaves the major cost comparison to be made between the eastern states of regions 1–4 and the western states of regions 8–11.

Surface-mine coal production data reported in Table 5 indicate that substantial change in mining patterns occurred between 1977 and 1979, with some western states showing very large increases in production while output declined in most eastern states. Differences in sulfur and ash contents have undoubtedly contributed to these shifts, and scale factors may have contributed as well. The importance of differences in land reclamation costs may be quite significant however. Costs of land reclamation appear responsible for nearly a $1 per-ton difference between the cost of mining eastern and western coals, with much of this difference associated with the controversial topsoiling requirement.

SUMMARY AND CONCLUSIONS

This study has estimated land reclamation costs in the neighborhood of $6,500 to $8,000 per acre (in 1980 dollars) for large-scale, area mines in the United States. This estimate is higher than those found in most previous studies, a difference which we attribute primarily to differences in the definition of the cost of reclamation. Our estimates include opportunity costs and indirect effects of taxes, secondary equipment requirements, and royalties in calculating the effect of land reclamation activities on the minimum acceptable selling price of surface mined coal. We maintain that other studies that fail to consider such nondirect costs tend to underestimate costs of land reclamation.

We have also found that reclamation costs may be influenced by equipment selection and size. Labor and equipment indivisibilities may result in excess capacity under certain circumstances, affecting estimates of the cost of land reclamation. We found that topsoiling and grading costs totaling approximately

TABLE 4

LAND RECLAMATION COSTS WHEN STANDARDIZED COSTS PER ACRE ARE ASSUMED

Region	Ohio 1	Pennsylvania 1	Alabama 3	Illinois 4	Indiana 4	Missouri 5	Oklahoma 5	Montana 8	Wyoming 8	Colorado 9	Arizona 10	New Mexico 10	Washington 11
Topsoiling Cost ($) per ton of coal	.635	.695	.966	.473	.600	1.111	1.481	.097	.070	.332	.140	.193	.193
Grading cost ($) per ton of coal	.441	.482	.671	.328	.417	.772	1.029	.067	.049	.230	.097	.134	.138
Revegetation cost ($) per ton of coal	.115	.125	.174	.085	.108	.201	.267	.018	.013	.060	.050*	.070*	.036
Total reclamation cost ($) per ton of coal	1.191	1.302	1.812	.886	1.126	2.083	2.777	.182	.132	.622	.287	.397	.372
Minimum acceptable selling price ($)	16.43	15.19	18.11	13.43	16.15	18.74	20.08	5.20	5.62	8.51	5.71	7.39	6.21
Total reclamation cost ($) percent of minimum price	7.25	8.57	10.00	6.60	6.97	11.11	13.83	3.50	2.35	7.30	5.03	5.37	5.99

* Revegetation cost assumed to be $1,300 per acre, compared to $650 per acre in other regions.

TABLE 5
SURFACE MINE PRODUCTION BITUMINOUS COAL AND LIGNITE PRODUCTION
(thousand short tons)

	1979	1977	% Change
Alabama	15,682	14,949	4.9
Arizona	11,389	11,059	3.0
Colorado	12,259	7,704	59.1
Illinois	26,844	24,082	11.5
Indiana	26,669	27,294	− 2.3
Kentucky	73,108	84,590	−13.6
Missouri	6,487	6,366	1.9
Montana	32,451	27,226	19.2
New Mexico	14,203	10,343	37.3
North Dakota	14,963	12,028	24.4
Ohio	29,825	33,742	−11.6
Oklahoma	4,781	5,978	−20.0
Pennsylvania	45,816	46,266	− 0.1
Texas	26,634	15,865	67.9
Virginia	8,495	14,567	−41.7
Washington	5,050	5,057	− 0.1
West Virginia	21,141	21,924	− 3.6
Wyoming	71,093	45,378	56.7
Total U.S.	455,978	425,394	7.2

Source: U.S. Department of Energy, Energy Information Administration

$6,000 per acre were achievable under a wide range of mining conditions, and we suggest that this estimate may be more realistic than those obtained for individual mining scenarios.

Our regional reclamation cost analysis indicates that the minimum acceptable selling price of coal is more greatly affected by federal land reclamation requirements in the East and Midwest than in the Far West, due to significant differences in coal-seam thickness. This cost impact may be a factor contributing to current shifts in regional mining patterns. Our study also reveals the significant share of total reclamation cost that is associated with topsoiling operations. Costs of removing and replacing topsoil appear to constitute approximately 50% of total reclamation cost when one foot of topsoil is segregated. Given the significance of this effect, it is not surprising that many mine operators have resisted compliance with the topsoiling provisions of the federal regulations. In a future study we plan to focus on the topsoiling question in particular, analyzing whether it may be possible to attain the same or greater environmental benefits at lower cost through a reduction in the amount of topsoil segregated coupled with an increase in erosion control, land management, or revegetation measures.

As a final comment, we would like to emphasize that our estimates are based on current surface mining techniques which utilize standard construction industry machinery for land reclamation operations. Given the strong market incentives to minimize the cost of compliance with land reclamation regulations, entirely new surface mining practices or forms of equipment may emerge. Our experience is, however, that mine operators seem to regard current land reclamation equipment and practices as proven, reliable, and relatively cost effective and do not anticipate radical changes in technique in the near future.

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