

LEG. FINANCE - BILLS 1981 - 1982 1732  
SB 843 cont. - CSSB 843 1732



# Alaska State Legislature

## SENATE Resources Committee

### Official Business

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

### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Bradley  
Senator Eliason  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski

POUC  
STATE CAPITOL  
JUNEAU, ALASKA 99801  
(907) 465-3111  
(907) 465-3112

March 26, 1982  
1:40 p.m.

Beltz Room  
Room 211 - Capitol

### Hearing:

- SE 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.

# 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: 276-2113

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.



**CHUGACH NATIVES, INC.**

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

March 18, 1982

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

Dear Senator Fahrenkamp:

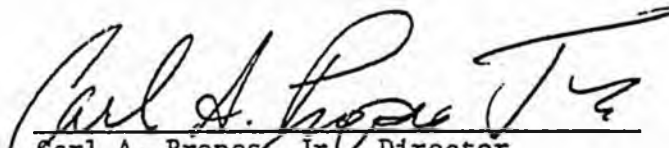
Thank you very much for your letter of March 10 regarding Senate Bill 843, relating to surface coal mining and the surface effects of underground coal mining in Alaska. Unfortunately, we will not be able to be in Juneau on March 19 to testify on this bill. For that reason I am sending you a copy of our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

(5)

3/18

TELETYPE

#

02259 ANCHORAGE ALASKA 26 03-17 1237P AST  
PMS SENATE BETTE FAHRENKAMP  
JUNEAU

I HAVE REVIEWED SB843 AND FEEL IT IS A GOOD RESPONSE TO FEDERAL  
MANDATE I SUPPORT PASSAGE OF THE BILL. THANK YOU FOR CONTACTING  
ME, REGARDS

DAVE HEATWOLE ALASKA MINERS 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 *gwk*  
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 CSFB 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 submission, 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.

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

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 843

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

11 CHAPTER 45. ALASKA SURFACE COAL

12 MINING CONTROL AND RECLAMATION ACT.

13 ARTICLE 1. LEGISLATIVE FINDINGS AND PURPOSE.

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

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

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

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

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

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

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

19 (b) The purposes of this Act are

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

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

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

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

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

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

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

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

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

23 ARTICLE 2. SURFACE MINING.

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

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

29 (1) in accordance with the Administrative Procedure Act

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

3 (2) issue permits;

4 (3) conduct hearings and conferences;

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

8 (5) issue orders modifying previous orders;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (c) Information

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ary relief pending his final decision if

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

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

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

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

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

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

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

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

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

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

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

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

1 lations to implement this section.

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

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

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

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

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

1 sit has been accomplished as required by this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 formation if the information is a

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

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

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

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

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

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

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

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

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

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

15 (1) the commissioner may require a permittee to

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

18 (B) make monthly reports to the commissioner;

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

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

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

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

1 the operation, the commissioner may specify

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 commissioner.

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

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

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

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

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

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

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

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

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

1 chapter is guilty of a class C felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 cultural, scientific and aesthetic values and natural systems;

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

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

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

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

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

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

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

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

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

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

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

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

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

### 22 ARTICLE 3. ABANDONED MINES.

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

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

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

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

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

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

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

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

1 nate existing immunities.

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

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

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

14 (2) making written findings that

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

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

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

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

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

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

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

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

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

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

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

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

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

1 which necessitated the project.

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

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

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

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

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

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

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

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

7 ARTICLE 4. GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 under it.

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

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

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

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

14 Sec. 41.45.990. DEFINITIONS. In this chapter

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (17) "surface coal mining operations" means

12 (A) an activity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23  
24  
25  
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Original sponsor: Rules/Governor

Offered: 4/1/82  
Referred: Finance TEB

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 843 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

11 CHAPTER 45. ALASKA SURFACE COAL

12 MINING CONTROL AND RECLAMATION ACT.

13 ARTICLE 1. LEGISLATIVE FINDINGS AND PURPOSE.

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

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

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

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

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

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

14 (5) because of unique environmental conditions that the state  
15 is best equipped to understand, the state intends to assume exclusive  
16 jurisdiction over the regulation of surface coal mining and reclamation  
17 operations in the state under the Surface Mining Control and Reclamation  
18 Act of 1977.

19 (b) The purposes of this Act are

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

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

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

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

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

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

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

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

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

23 ARTICLE 2. SURFACE MINING.

24 Sec. 41.45.020. JURISDICTION. The commissioner of natural re-  
25 sources has exclusive jurisdiction over surface coal mining and reclama-  
26 tion operations in the state.

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

29 (1) in accordance with the Administrative Procedure Act

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

3 (2) issue permits;

4 (3) conduct hearings and conferences;

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

8 (5) issue orders modifying previous orders;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (c) Information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 lations to implement this section.

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

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

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

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

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

1 bond or deposit has been accomplished as required by this chapter:

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

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

11 (3) if the permittee successfully completes all of the sur-  
12 face coal mining and reclamation activities required by this chapter and  
13 the terms of the permit, the commissioner shall release the remaining  
14 portion of the bond after expiration of the period of time of the per-  
15 mittee's responsibility under the performance standards established by  
16 regulation under AS 41.45.210; however, a bond or deposit may not be  
17 fully released until all reclamation requirements are fully met.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (f) The commissioner may not approve an application under this  
8 section if the commissioner finds, after providing the applicant with an  
9 opportunity for a hearing in accordance with the procedures established  
10 in AS 41.45.150, that the applicant, or the operator specified in the  
11 application, controls or has controlled mining operations with a  
12 demonstrated pattern of wilful violations of this chapter of such nature  
13 and duration and with such resulting irreparable damage to the environ-  
14 ment as to indicate an intent not to comply with this chapter.

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

19 (b) The commissioner may not approve an application for revision  
20 of a permit unless the commissioner finds that reclamation required by  
21 this chapter and the regulations adopted under it can be accomplished  
22 under the necessary revisions to the reclamation plan. The commissioner  
23 shall establish guidelines for determining the extent of revision for  
24 which all permit application requirements and procedures, including  
25 notice and hearing, shall apply. A revision which, in the commissioner's  
26 determination, requires significant revisions to the applicant's reclama-  
27 tion plan must, at a minimum, be subject to a notice and hearing require-  
28 ment.

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

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

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

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

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

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

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

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

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

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

- 3 (1) trade secret or relates to a trade secret; or  
4 (2) privileged competitive right of the applicant for the  
5 coal exploration permit.

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

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

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

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

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

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

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

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

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

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

# **CORRECTION**

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

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

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

16 (1) the commissioner may require a permittee to

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

19 (B) make monthly reports to the commissioner;

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

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

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

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