

LEG. FINANCE - BILLS 1981 - 1982 1734

CSSB 843 cont.

1734

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

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

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

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

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STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE:

April 5, 1982

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

Dear Senator Bennett:

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

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

The funding contained in the fiscal note for SB 843 will enable that finding to be made. Once the State has an approved program, we are entitled to 50% reimbursement from the federal government for expenditures in regulating surface mining on non-federal lands in the State, and 100% funding for regulation of such operations on federal lands.

The Honorable Don Bennett
Page Two
April 5, 1982

SB 843 also establishes an Abandoned Mine Lands (AML) Program and a Small Operator Assistance Program (SOAP), both of which are funded entirely by the federal government. The money for these programs comes from a severance tax that has been paid by coal operators to the federal government since 1977. In part, then, we will be receiving back money which has been paid by the Usibelli mine since 1977, and will be paid by other operators as new coal mines are developed in the State. I should also note that AML funds are only available to the State if the Secretary of the Interior approves our Surface Mining Regulatory Program. These funds are available for reclaiming abandoned mine lands which were left in an inadequate reclamation status prior to passage of the 1977 federal law. At present, 18 such sites have been identified, and we anticipate many more such sites will be discovered upon more thorough investigation.

The approximately \$290,000 of State and federal funding requested in FY83 to run the Surface Mining Regulatory Program contrasts with the following amounts estimated by other western states for the same period: Colorado, \$1,520,000; Montana, \$1,531,000; New Mexico, \$908,000; Wyoming, \$2,357,000. Our contemplated staff of four people contrasts with 29, 16, 16, and 49, respectively, for those states. This staffing level should be adequate to handle regulatory activities until there are four or more operations in the State, at which point we predict the need for one additional staff person (in Fiscal Year 1985). The four positions requested would also constitute the staff for the AML program and SOAP.

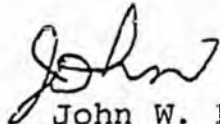
The positions projected for the program are a geologist, environmental engineer, land management officer, and clerk-typist, which we deem to be the minimum necessary to run the various programs. Present mining personnel in the Department are already overtaxed, due, in part, to the record number of mining claims which were filed this year and our initiation of a Coal Leasing Program. We anticipate that a fair amount of the technical analysis required by SB 843 programs will be handled through contracts to private consultants, since a program of our size does not justify employment of the broad spectrum of disciplines required by the federal law. The geologist will be the manager of the Surface Mining Program. His primary duties will include supervision of contracts for review of permit applications, abandoned mine lands work, small operator assistance, and review of petitions to designate lands unsuitable for mining; making initial departmental

The Honorable Don Bennett
Page Three
April 5, 1982

decisions or recommendations on permit applications, bond release, enforcement actions, petitions to designate lands unsuitable, etc.; and preparing and negotiating grant requests and agreements with the Department of the Interior. The environmental engineer will be the primary inspector under the program, as well as assisting and complementing the geologist in the above tasks. The duties of the land management officer will focus on compliance with the myriad public participation requirements, record-keeping, and general review and response regarding different new responsibilities under this program (i.e., reviewing exploration permits and notice of intent). The clerk-typist will provide secretarial support.

In summary, the funds requested constitute what we believe is the minimum funding level necessary for the Department to fulfill its new duties under SB 843, as well as to obtain approval of our program by the federal government. In addition, approval of SB 843 and this funding should result in a better than 2:1 federal match of funds for these programs.

Sincerely,



John W. Katz
Commissioner

cc: The Honorable Al Adams
The Honorable Robert H. Bettisworth
The Honorable Ed Dankworth
The Honorable Bettye Fahrenkamp
Keith Specking
Ron Lehr
Phil Holdsworth, Coal Association

MEMORANDUM

State of Alaska

TO: The Honorable John Sackett
Alaska State Senate

DATE: April 13, 1982

FILE NO:

TELEPHONE NO: 465-2400

FROM: John W. Katz *JK*
Commissioner
Depart. of Natural Resources

SUBJECT: Fiscal Note,
CSSB 843

Attached is the detailed breakout of expenditures and funding categories for the fiscal note to CSSB 843 which you requested this morning. I have also attached a letter to Senator Bennett of April 5, which details the rationale for the fiscal note. Please do not hesitate to call me if you require any additional material.

cc: Senator Bennett
Senator Dankworth
Senator Eliason
Senator Ferguson
Senator Stimson
Senator Sturgulewski
Senator Fahrenkamp

with attachment

DETAILED BREAKOUT OF COSTS CONTAINED IN FISCAL NOTE TO CSSB 843

The expenditure and funding categories for Fiscal Year 1983 are composed of the following:

100 Personal Services \$ 157,100.00

Each position includes a standard formula for benefits and inflation.

Geologist IV	\$ 51,579.00
Environmental Engineer III	46,911.00
Land Management Officer II	34,091.00
Clerk-Typist III	24,519.00

200 Travel \$ 19,800.00

Field inspections of each operation or coal development area. \$ 6,600.00

Meetings with Department of Interior (DOI) officials in Washington, Denver, and Casper, Wyoming, regarding program development, approval, implementation; and negotiation of a cooperative agreement for regulation on federal lands. 7,200.00

In-state meetings and hearings of the Department and its advisory committee on regulation drafting, regulation and program development and implementation, and the Office of Surface Mining (OSM) approval process. 6,000.00

300 Contractual \$ 375,000.00

Abandoned mine land program development. This figure represents the low end of the range of costs incurred by other western states, and includes such items as identification, inventory, and prioritization of potential sites, program development, and submission to the DOI. This amount is 100% federally funded. \$ 200,000.00

Review of permit applications. This figure is based on OSM contractor costs for a completeness review, technical and environmental assessment, with additional costs of increased site travel and analyzing unique Alaska problems under a new regulatory program, plus an inflation factor. 60,000.00

Small operator assistance. Based on OSM costs, with above-mentioned factors added. This amount is 100% federally funded. 40,000.00

Program development. Continued development of program submission, including regulations, inter-agency agreements, data base and inventory system, training of new staff, development of forms and manuals, cooperative agreement 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.

April 9, 1982

Proposed ALASKA SURFACE COAL MINING CONTROL
and RECLAMATION ACT

Section-by-Section Analysis

CS Senate Bill No. 843

Section 1 of the bill enacts a new AS 41.45 entitled "Alaska Surface Coal Mining Control and Reclamation Act", consisting of the following sections:

AS 41.45.010 states the basic finding that the state is best able to regulate surface coal mining and reclamation under the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA), and lists the purposes of new AS 41.45, which include assuring responsible extraction of coal, reclamation of coal mining areas, protecting the rights of surface owners, minimizing degradation of land and water, and assuring appropriate public participation in the regulatory process.

AS 41.45.020 vests jurisdiction over surface coal mining and reclamation operations in the state in the commissioner of natural resources.

AS 41.45.030 enumerates general powers, including adoption of regulations, issuing permits, holding hearings, issuing orders, inspections, receiving funds, participating in the federal abandoned mine land program, coordination and cooperation with other agencies.

AS 41.45.040 specifies that individual provisions of regulations or permits may vary depending on local conditions so long as the provisions are consistent with the purposes of the chapter. This flexibility is necessary to accommodate the different environmental conditions encountered in the three major geographical areas of potential or actual coal development in Alaska.

AS 41.45.050 prohibits conflicts of interest in employees and contractors who administer the new chapter and prescribes a criminal penalty for violation of this prohibition. This provision is required by SMCRA, sec. 517(g) and 30 CFR 732.15(b)(11).

AS 41.45.060 requires coal mine operators to apply for a permit to conduct surface coal mining and reclamation operations.

AS 41.45.070 sets a basic permit term of five years, unless a longer initial period is necessary to obtain financing. A permittee is required to commence operations within 3 years after the permit is issued, subject to some exceptions.

AS 41.45.080 provides that permits carry a right of successive renewal unless an opponent of renewal demonstrates that the operation is not in compliance with regulatory requirements. Renewals involving new land areas require the same procedures and standards as apply to new permit applications.

AS 41.45.090 authorizes the commissioner to set a fee schedule for permit applications, not to exceed the costs of processing the applications.

AS 41.45.100 requires public filing of permit applications and other materials, except for designated confidential information including information relating to the competitive rights of the applicant.

AS 41.45.110 requires the commissioner to adopt regulations relating to the contents of permit applications, consistent with the requirements of the federal program, but taking into account the unique mining and environmental conditions in Alaska.

AS 41.45.120 establishes small operator assistance for certain laboratory work required as part of the permit application for operations which will produce under 100,000 tons of coal annually. This is required by SMCRA, sec. 507(c) and 30 CFR 732.15(b)(13).

AS 41.45.130 provides for public notice of pending applications for surface coal mining and reclamation permits.

AS 41.45.140 allows government agencies and persons who may be adversely affected by the proposed operation to file written comments and objections to the application, and to request an informal conference with the department. The commissioner is required to issue a decision regarding the permit application within 60 days of the informal conference, or as provided in AS 42.45.180.

AS 41.45.150 provides for a formal hearing on a permit application at the request of the applicant or any person who may be adversely affected. The commissioner may grant temporary relief pending his final decision when circumstances warrant it.

AS 41.45.160 requires that, before a permit can be issued, the applicant must furnish a performance bond conditioned on faithful performance of the requirements of the chapter and the permit. The bond must be sufficient to assure completion of the applicant's reclamation plan by the department in the event of a forfeiture. In lieu of a bond, the commissioner may accept cash, a self-bond, or negotiable bonds or certificates of deposit, upon which the department must pay interest annually. The amount of the bond may be adjusted for good cause, including changes in affected land areas and costs of reclamation.

AS 41.45.170 provides for release of performance bonds at the request of a permittee after notice, inspection and evaluation of the reclamation work involved. A schedule for staged release of a bond is established, depending on work completed and the commissioner's evaluation. Government agencies and persons whose legal interests may be adversely affected may file objections to the release of bond and request a hearing, as may an applicant whose request for bond release has been denied.

AS 41.45.180 requires the commissioner to make a decision on a permit application within 120 days after receipt, which may be extended by an additional 60 days after receipt of additional information required

for a decision. This section sets out the basic criteria for approval of an application. A permit may not be issued if the applicant is in violation of environmental standards regarding surface coal mining operation in the United States or if the applicant has demonstrated a pattern of wilful violations of this chapter.

AS 41.45.190 provides for revision and transfer of permits.

AS 41.45.200 requires notice to the commissioner before commencement of coal exploration. Exploration would be governed by regulations based on the degree of disturbance and amount of coal to be removed. Coal exploration operations are required to conform to the general requirements of the surface mining program.

AS 41.45.210 requires the commissioner to propose regulations consistent with the environmental performance standards of SMCRA, with adjustments for the special conditions of Alaska. SMCRA, sec. 503(a)(7) requires consistency with these standards, which apply to all permits.

AS 41.45.220 requires regulation of the surface effects of underground coal mining in a manner similar to the regulation of surface coal mining operations. The commissioner is given the power to suspend underground coal mining activities in populated areas if there is an imminent danger to inhabitants.

AS 41.45.230 authorizes the department to inspect and monitor surface coal mining and reclamation operations. The commissioner can require various forms of reporting and monitoring by operators, and must inspect operations on an irregular basis. Although inspections occur without prior notice to the permittee, the inspector must notify the permittee's representative on the site upon his arrival and invite the representative to accompany the inspector during the inspection. The inspector is required to file an inspection report. Procedures are set out for individuals to trigger inspections and for the commissioner to review failures to inspect adequately. This section is mandated by SMCRA, sec. 517(b).

AS 41.45.240 sets out the department's basic enforcement authority. SMCRA, sec. 518(i) and 521(d) require that state programs contain sanctions that are no less stringent than those of the federal law and that state programs contain the same or similar procedural requirements. There are two basic enforcement mechanisms. A violation of the chapter or permit which causes imminent danger to public health or safety, or which threatens significant, imminent environmental harm, requires the inspector to issue a cessation order. The order remains in effect for 30 days unless an informal conference is held and further action taken. If a violation does not cause the sort of imminent danger noted above, a notice of violation is issued. Failure to comply with a notice of violation gives rise to a cessation order as well. Cessation orders and notices of violation are subject to appeals and full due process hearings for persons who may be adversely affected by them. Temporary relief is also

available. The commissioner may issue a show cause order based on a pattern of unwarranted violations of the program. The commissioner may also request the attorney general to institute a civil action for relief. All of these actions are subject to judicial review.

AS 41.45.250 provides for civil and criminal sanctions for violations of the chapter and permits. Civil penalties are mandatory for cessation orders, but discretionary for notices of violation. Wilful and knowing violations, including those of a corporate officer, are class C felonies, as is wilful interference with the department's employees. Failure to correct a violation during the period of time allowed in a notice or an extension requires a \$750 per day penalty. Operators wishing to contest a violation must either post a bond or set up an escrow to cover the amount of the proposed penalty, as required by sec. 518(c) of SMCRA.

AS 41.45.260 allows persons with an interest which may be adversely affected to petition the commissioner to designate areas as unsuitable for all or certain types of coal mining. An area must be so designated if the commissioner determines that reclamation in the area is not technologically feasible. There are also four discretionary criteria for designation of unsuitable areas, as well as an outright prohibition of mining in certain protected areas, such as near dwellings, schools, and churches. These provisions are required by SMCRA, sec. 522 and 30 CFR 732.15(b)(9).

AS 41.45.270 -- 41.45.340 contain provisions regarding abandoned mine lands, and are necessary for the state to implement a program through which it receives funds from the Federal Abandoned Mine Reclamation Fund for the reclamation of land adversely affected by past coal mining practices. After all coal lands have been reclaimed, the funds may be used for reclamation of non-coal lands and for community impact assistance in areas affected by coal mining operations.

AS 41.45 270 contains the administrative powers necessary to establish priorities, designate eligible lands, submit program elements to the Interior Department and administer funds received.

AS 41.45.280 defines eligible lands as those which were mined or affected by coal mining, left in an inadequate reclamation status, and for which there is no continuing reclamation responsibility.

AS 41.45.290 gives the department the power to enter property for reclamation purposes.

AS 41.45.300 authorizes the commissioner, under limited circumstances, to acquire abandoned mine areas for reclamation purposes, and to dispose of them.

AS 41.45.310 requires the commissioner to place a lien on property for an increase in fair market value because of the abandoned mine land reclamation efforts.

AS 41.45.320 authorizes filling voids and sealing tunnels with money from the Abandoned Mine Reclamation Fund.

AS 41.45.330 authorizes emergency entry without prior notice onto land to abate an emergency which constitutes a danger to the public health and safety.

AS 41.45.340 contains miscellaneous powers by SMCRA, sec. 412.

AS 41.45.900 specifies that the requirements of the chapter apply to government agencies, including publicly-owned utilities.

AS 41.45.910 exempts commercial coal operations which affect two acres or less from the chapter, as well as coal extraction as part of government-financed construction, and extraction of coal for the non-commercial use of the land owner or lessee.

AS 41.45.920 authorizes departures from the environmental performance standards for experimental practices of limited size which do not downgrade the environmental or public health or safety standards of the program.

AS 41.45.930 provides that this chapter does not affect water rights, and that any impairment of water supply must be remedied by the operator.

AS 41.45.940 provides authority for the commissioner to require certification of blasters, a power required by 30 CFR 732.15(b)(12).

AS 41.45.950 creates a civil cause of action against state agencies and alleged violators for persons who may be adversely affected by a failure to comply with the chapter. This provision is required by 30 CFR 732.15.(b)(10).

AS 41.45.960 provides that any provision of this chapter which the Secretary of the Interior determines to be inconsistent with the federal act is invalid. This provision merely recognizes that since the Interior Secretary has the power to declare inconsistent state provisions invalid for purposes of federal program approval, the provision should become ineffective as a matter of state law, as well. The second part of this section requires the commissioner to review all changes made in the federal act or regulations, and to make appropriate recommendations as to whether or not the state program should be changed.

AS 41.45.970 clarifies that this chapter does not modify any state agency's powers in law, except as specifically provided by this chapter and the implementing regulations. This section also makes the requirements of the chapter applicable to lands conveyed out of federal ownership, and, with Section 7, exempts the Act from the requirements of permit reform legislation, due to inconsistencies with federal law.

AS 41.45.975 is a severability clause.

AS 41.45.980 makes the Administrative Procedure Act (AS 44.62) applicable to this chapter unless otherwise provided.

Section 2 of the bill requires applications to be submitted under this chapter within two months after the date the state program is approved by the Secretary of the Interior, and requires the Commissioner to process such an application within eight months after the Secretary's approval. These time frames are mandated by SMCRA, sec. 502(d).

AS 41.45.998 is a definitions section.

AS 41.45.999 cites the short title of the chapter, the "Alaska Surface Coal Mining Control and Reclamation Act."

Section 3 provides timeframes for initial applications and decisions on them.

Section 4 of the bill reserves the right of the state to contest the constitutional or statutory validity of any of the regulations issued under the federal act.

Section 5 of the bill authorizes the immediate adoption of regulations to implement new AS 41.45 although the regulations will not take effect until the effective date of the rest of the bill.

Section 6 provides that the rest of the bill becomes effective upon approval of the state program by the Interior Secretary.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE:

To: Senator Ed Dankworth
Alaska State Senate

April 12, 1982

From: Mark Wittow
Special Assistant
to the Commissioner
Dept. of Natural Resources



Re: Summary of CSSB 843 (Alaska Surface Coal Mining
Control and Reclamation Act)

David Rogers has asked me to provide you with a short summary of CSSB 843. The bill establishes the statutory basis for state assumption of responsibility for coal mining and reclamation activities on all lands in Alaska. I will also provide a bit of context for the legislature.

In early 1977, President Carter signed the federal Surface Mining Control and Reclamation Act into law (SMCRA). That law established a detailed set of standards and procedures for coal mining operations, and provided for their enforcement by the Secretary of Interior. The Federal law allows for state conduct of the program, if the state laws and regulation are as effective as the federal requirements. During the past two years, this Department circulated several drafts of a proposed state statute, resulting in the introduction this session of SB 843. As introduced and amended by the Senate Resources Committee, the bill is supported by the State's coal industry, and satisfies virtually all of the concerns raised by interested parties during the comment period. Frankly speaking, the bill enjoys this widespread support because of the severity of the federal law, and the belief that state conduct of a surface coal mining program would likely be considerably more enlightened than a program directed from Washington, D.C.

The key components of CSSB 843 are as follows:

1. A permit, issued by DNR, is required to conduct surface coal mining operations in the State. The contents of the permits are to be set out in regulation, with special assistance provided for small operators.

Senator Ed Dankworth
April 12, 1982
Page 2

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

A sectional analysis of CSSB 843 is attached.

Other elements of the program

If this bill is passed, the Department will rapidly move to adopt regulations to satisfy the additional requirements for the State's assumption of responsibility for surface mining operations. A draft set of regulations was circulated for comment a year ago; another draft is being reviewed in sections this spring by the coal industry, regional corporations, environmental groups and other interested parties.

The Department is continuing work on the steps necessary to continue to receive federal funding for development and implementation of a State program. The attached fiscal note provides a general indication of the scope of a State program, and the sources of funds for it. Our letter of April 5 to Senator Bennett, also attached, further details the funding requirements for the state coal mining program.

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



5138-13

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 1982

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. II, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to surface coal mining and the surface effects of underground coal mining. The bill is an edited and corrected version of HB 762, introduced at my request February 12, 1982.

This bill is a response to the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87 (SMCRA), which provides for the establishment of a nationwide program for the regulation of surface coal mining and reclamation. That regulation is to be carried out by the Secretary of the United States Department of the Interior unless he approves a state program which would vest exclusive authority for that regulation in the state. This bill is designed to provide the authority necessary for the state to submit such a program and assume regulation.

The program proposed in this bill is both complicated and comprehensive. Most of its contents are mandated by federal law and regulations, although some improvements on the federal law have been made, and the bill is considerably shorter than its federal counterpart.

The most compelling reason for the state to undertake this program is to assure that surface coal mining and reclamation is conducted in accordance with Alaskan needs, conditions, and concerns. With the present and potential vast future development of Alaska coal, it is essential that the state tailor a program which meets the needs of both local coal development and deals effectively with the conservation concerns of our citizens and the unique Alaskan environment. This bill is the tool to do this.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

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

II. FISCAL DETAIL

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		157.1	157.1	200.2	200.2	200.2
200 TRAVEL		19.8	20.9	42.1	49.5	54.5
300 CONTRACTUAL		375.0	490.3	393.3	428.7	467.3
400 COMMODITIES		1.0	1.1	1.5	1.6	1.8
500 EQUIPMENT		12.0	10.0	2.8	3.0	3.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		565.9	679.4	642.3	684.4	728.2

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		161.0	200.0	100.7	202.5	212.0
FEDERAL FUNDS		402.0	477.6	449.6	479.8	513.2
OTHER (Specify Source)						

POSITIONS

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

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

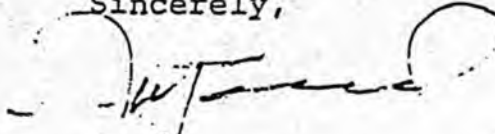
See Attachment

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

If the state does not assert its jurisdiction in this area, the Office of Surface Mining in the Department of the Interior is required to become the regulatory authority to administer a program for the regulation of Alaskan surface coal mining and reclamation operations.

A section-by-section analysis of the bill is attached.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay S. Hammond", with a large, stylized flourish extending from the end of the signature.

Jay S. Hammond
Governor

III. ANALYSIS

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

A. Personal Services

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

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

B. Travel

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

C. Contractual

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

D. Funding Sources

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

3/82
DNR
(JA)

STATE SURFACE COAL MINING PROGRAM

Public Law 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, was enacted after lengthy consideration of the impacts and past abuses wrought by the surface mining of coal. The purpose of the Act is set forth in the statute as, "to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining." Furthermore the Act states that the purpose is, "to assure that surface coal mining operations are not conducted where reclamation as required by the Act is not feasible.." and "that the operations are conducted so as to protect the environment."

The Surface Mining Act requires that states develop acceptable programs for carrying out the federal standards. If this is not accomplished, the Act requires the Secretary of Interior to develop a federal program to regulate surface coal mining within the state. To implement the Act, the Office of Surface Mining (OSM) of the Department of Interior has promulgated detailed regulations. Though these regulations have yet to be finalized and are currently under review by the Administration, the regulations that are currently in effect can provide a reasonable indication of the emerging regulatory program that will be implemented in Alaska.

There are essentially four major program elements. They are: permitting and enforcement of surface mining and exploration, establishing reclamation bonds, the reclamation of abandoned mined lands, and the designation of areas as unsuitable for surface mining. Each of these program elements will be outlined in varying detail below. The state programs are also to include: the development of appropriate state law and regulations to implement the program, a reasonable permit fee structure, inspection and enforcement personnel and practices, civil penalties for non-compliance, state and federal consultation, public participation, program administration, and judicial review.

It should be noted that the discussion will reference only the surface mining of coal. The provisions of the Act are essentially the same for regulating the surface effects of underground mining.

Permitting and Enforcement

The permitting process includes several major features, including the submission of mining permit applications which incorporate both a mining plan and a reclamation plan, as well as several opportunities for public participation. The permit application is required to include baseline information on the following:

- general environmental resources, with specific consideration to cultural and historic resources;
- fish and wildlife resources, including a baseline study and coordination with appropriate governmental bodies;
- vegetation, including an analysis of the potential for reestablishing vegetation on the mined land;
- soil resources;
- the hydrology and geology of the area;
- groundwater and alternative water supplies for public consumption
- surface water characteristics;
- climatology; and
- land use information, including land capability and productivity before mining.

In the permit application, the proposed operator must also supply a detailed mining operation plan. This covers not only the earth moving and extraction details but also procedures or plans to minimize impacts on or from:

- existing structures, particularly dwellings,
- air pollution,
- blasting, and
- fish and wildlife resources.

Additionally the application must include an acceptable reclamation plan. It should be noted that reclamation is to occur simultaneous with the mining operation and the regulations provide specifics on the practices, sequencing, and time periods. The following are some of the key components of the reclamation plans:

- detailed time schedule for reclamation;
- detailed estimate of the cost of reclamation;
- plan for backfilling, soil stabilization, compacting, and grading;
- plan for removal, storage, and redistribution of topsoil, subsoil, and other material;
- a revegetation plan including schedule, species, planting techniques, mulching, soil testing, and other measures;
- techniques for maximizing the recovery of the coal resources;
- a plan for controlling and disposing of all acid and toxic-forming materials, and materials which constitute a fire hazard;
- techniques for monitoring and maintaining the hydrologic balance of the area;
- assurance of compliance with the Clean Air Act, the Clean Water Act, Health and Safety Standards, and other applicable state and federal laws.
- reclamation or continued use plans for sediment basins, impoundments, dams and embankments;
- a post mining land use plan including the relationship of the proposed land use to existing land use policies and plans.

Through the series of plans and data requirements of the application, detailed information is transmitted from the operator to state agency personnel. These personnel will be required to review the material to insure that it meets the standards to be established under the state surface mining program. Permit applications will be submitted for each increment of mining. Permits will generally include area increments that can be successfully mined in less than five years and additional mining would be subject to additional permits or to amendments to the permits.

Citizen participation in the permitting process is required. Several provisions provide this opportunity:

- The permit applicant is required to provide notice of his intention to explore or to request a permit and the notice is to be both published in a newspaper and posted in the Department's offices.
- Any person whose interests are or may be adversely affected has the right to file a written objection or to request an informal conference.
- The permit data is to be made available by the state regulatory authority for inspection and copying at reasonable times and costs.
- Any person having an interest that is or may be adversely affected can utilize the appropriate administrative and judicial appeals.

The inspection and enforcement processes give the state the right of entry to examine mining and reclamation practices at the mine site. It

requires the regulatory agency to conduct partial inspections on a monthly basis and at least one complete inspection of the mine area in each calendar quarter. The agency is required to issue violation orders for non-compliances to the permit and the performance standards. Fines are to be assessed for violations following a specified administrative procedure. The inspector may issue an order of cessation of surface mining and reclamation operations if the cited violation creates an imminent danger to the health or safety of the public or is causing significant imminent environmental harm. A permit can be suspended or revoked if the agency establishes that a pattern of violations exist because of an operator's willfully or unwarranted failure to comply with conditions or requirements of the permitting authority.

The public also has been given the right to request that an inspection be made of a particular mining operation if there is reason to believe that a violation in mining or reclamation practices exists. The citizen has the right to accompany the state inspector to the mine site. In addition if the state fails to respond in a timely fashion, the citizen can request that DSM undertake the inspection.

Reclamation Bonds

The Federal Act also establishes the requirement that a bond be posted to cover the cost of reclamation if the operator fails to adequately reclaim the mined land. The bond amount is to be established by the state regulatory authority. The bond would be forfeited if the operator fails to reclaim the land in the manner described in the approved reclamation plan. The forfeiture of the bond does not preclude civil penalties from being sought by the state for the non-compliance.

The general standard for determining the bond amount is that the performance bond is to include all costs to the state regulatory authority for performing the reclamation, restoration, and abatement work if the applicant fails to achieve compliance for revegetation or an approved post mining land use.

Specifically, these costs are to include:

- The estimated costs as submitted by the permittee (these are to be included in the permit application.)
- Additional costs that may accrue to the state because of applicable public contracting costs or the need to bring personnel and equipment to the permit area.
- Any additional estimated costs necessary, expedient, and incident to meeting the reclamation requirements.
- An additional amount reflecting anticipated cost changes for a five year period.

Several other requirements are also applicable They are:

- In no case will the performance bond be less than \$10,000 for the entire area under one permit.
- The amount of the bond shall be adjusted periodically as the acreage is increased or decreased, when the costs of future reclamation, restoration, or abatement has changed substantially. or the operator requests a reduction after establishing that his method of operation or other circumstances reduce the potential costs of reclamation by the state.

Abandoned Mined Land Reclamation Program

The federal act establishes a program for the reclamation of abandoned

mined land (AML). It is funded by a coal severance tax. The details of the program include:

- creation of an abandoned mine land reclamation fund and a fee collection and coal production reporting system.
- guidelines and priorities for the expenditure of AML funds.
- specification of reclamation requirements for both coal and non-coal abandoned mine lands.
- procedures and rights of entry for private lands.
- acquisition, management, and disposition of lands and water acquired in conjunction with reclamation actions.
- establishing requirements for state reclamation plans.

The state has the option of establishing an AML program or deferring to OSM. In this latter case the state would lose control of how the AML funds, accruable to the state reclamation fund, would be spent by OSM. The reclamation fund is supported by a federal severance tax of 35¢ per ton of strip mined coal and 20¢ per ton of deep mined coal. The state receives 50% of the funds collected from operations in the state as well as a similar share from monies recaptured from liens and direct charges to private landowners for reclamation undertaken on their property. The Usabelli operation has been assessed the severance tax for several years and as of January 1, 1982 the State AML fund contained over \$500,000 with a current annual income of approximately \$150,000. Annual income levels will exceed \$2.5 million per year assuming the minimum levels of production proposed for the Beluga field.

Lands Unsuitable for Mining

The Surface Mining Act also includes provisions for designating lands as unsuitable for all or certain types of surface coal mining. The designations are to be triggered by interested individuals and organizations in advance of permitting so as to provide the coal industry with guidance on which lands are not currently perceived as being suitable for coal mining activities.

The program for designating lands as unsuitable for surface coal mining consists of three principal components; 522 petition process, 522 permit review process, and a 522 exploration review process. (The 522 nomenclature is derived from the Section creating the program in the federal statute). Each required process, as specified by the federal law and regulations, sets forth elements of an analysis and findings that must be based on a comprehensive set of criteria which in turn warrant the use of interrelated and standardized analytical procedures.

The 522 petition process allows a person or organization to present allegations to the regulatory authority, suggesting that an area be designated unsuitable for all or certain types of surface coal mining. These allegations may be based on environmental, public safety, or planning considerations, outlined in the 522 discretionary criteria, or relate to reclamation technologies, defined as mandatory criteria. The process also allows a person to present allegations to support termination of a designation for areas which were previously designated.

The mandatory criteria require a review of the technologic feasibility of reclaiming a surface coal mining site pursuant to the performance standards for mining and reclamation. Should such an allegation be substantiated by the regulatory agency, the area must, by law, be designated.

A petition may also allege that surface coal mining will;

- be incompatible with existing state, areawide, or local land use plans and policies.
- affect natural hazard lands.
- affect renewable resource lands.

- affect fragile or historic lands.

Should one or more of these allegations be substantiated, the regulatory agency has the discretion to designate the area.

The federal law establishes a process for considering the petition. It involves public hearings, coordination with other governmental agencies, and up to a year to carry out the necessary analysis. Prior to the designation of an area, the regulatory authority must also prepare an economic and coal supply analysis.

Lands exempt from designation include lands which were being mined on or before August 3, 1977, lands on which permits have been issued, and lands where substantial legal and financial commitments were made prior to January 4, 1977.

The 522 permit review process is required to insure that permits are not granted for areas designated by the state or congressionally designated. Congressionally designated areas include:

- lands within the boundaries of the National Park System, the National Wildlife Refuge System, The National System of Trails, the National Wilderness Preservation System, including Wild and Scenic Rivers, National Recreation Areas, and in some cases, the National Forest System;
- lands within 300 feet of any public building, school, church, community or institutional building or public park;
- lands within 100 feet of a cemetery;
- publicly owned parks and publicly owned places included on the National Register of Historic Places (unless approved by the management agency);
- lands within 300 feet of any occupied dwelling (subject to waivers);
- lands within 100 feet of a public road right of way (subject to approval by the management agency).

There is a grandfather clause exempting Congressional designations if all permits were held prior to August 3, 1977 or if the applicant can demonstrate to the regulatory authority that the coal is both needed for and adjacent to an on-going operation for which all permits were held prior to August 3, 1977. These provisions are called "Valid Existing Rights".

The 522 exploration review process assesses the compatibility of proposed coal exploration operations within areas which have been designated. Rather than prohibiting all exploration on designated lands, the process evaluates compatibility of the exploration with the values for which the land was originally designated.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMLID, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE:

April 5, 1982

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

Dear Senator Bennett:

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

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

The funding contained in the fiscal note for SB 843 will enable that finding to be made. Once the State has an approved program, we are entitled to 50% reimbursement from the federal government for expenditures in regulating surface mining on non-federal lands in the State, and 100% funding for regulation of such operations on federal lands.

The Honorable Don Bennett
Page Two
April 5, 1982

SB 843 also establishes an Abandoned Mine Lands (AML) Program and a Small Operator Assistance Program (SOAP), both of which are funded entirely by the federal government. The money for these programs comes from a severance tax that has been paid by coal operators to the federal government since 1977. In part, then, we will be receiving back money which has been paid by the Usibelli mine since 1977, and will be paid by other operators as new coal mines are developed in the State. I should also note that AML funds are only available to the State if the Secretary of the Interior approves our Surface Mining Regulatory Program. These funds are available for reclaiming abandoned mine lands which were left in an inadequate reclamation status prior to passage of the 1977 federal law. At present, 18 such sites have been identified, and we anticipate many more such sites will be discovered upon more thorough investigation.

The approximately \$290,000 of State and federal funding requested in FY83 to run the Surface Mining Regulatory Program contrasts with the following amounts estimated by other western states for the same period: Colorado, \$1,520,000; Montana, \$1,531,000; New Mexico, \$908,000; Wyoming, \$2,357,000. Our contemplated staff of four people contrasts with 29, 16, 16, and 49, respectively, for those states. This staffing level should be adequate to handle regulatory activities until there are four or more operations in the State, at which point we predict the need for one additional staff person (in Fiscal Year 1985). The four positions requested would also constitute the staff for the AML program and SOAP.

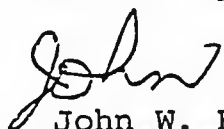
The positions projected for the program are a geologist, environmental engineer, land management officer, and clerk-typist, which we deem to be the minimum necessary to run the various programs. Present mining personnel in the Department are already overtaxed, due, in part, to the record number of mining claims which were filed this year and our initiation of a Coal Leasing Program. We anticipate that a fair amount of the technical analysis required by SB 843 programs will be handled through contracts to private consultants, since a program of our size does not justify employment of the broad spectrum of disciplines required by the federal law. The geologist will be the manager of the Surface Mining Program. His primary duties will include supervision of contracts for review of permit applications, abandoned mine lands work, small operator assistance, and review of petitions to designate lands unsuitable for mining; making initial departmental

The Honorable Don Bennett
Page Three
April 5, 1982

decisions or recommendations on permit applications, bond release, enforcement actions, petitions to designate lands unsuitable, etc.; and preparing and negotiating grant requests and agreements with the Department of the Interior. The environmental engineer will be the primary inspector under the program, as well as assisting and complementing the geologist in the above tasks. The duties of the land management officer will focus on compliance with the myriad public participation requirements, record-keeping, and general review and response regarding different new responsibilities under this program (i.e., reviewing exploration permits and notice of intent). The clerk-typist will provide secretarial support.

In summary, the funds requested constitute what we believe is the minimum funding level necessary for the Department to fulfill its new duties under SB 843, as well as to obtain approval of our program by the federal government. In addition, approval of SB 843 and this funding should result in a better than 2:1 federal match of funds for these programs.

Sincerely,



John W. Katz
Commissioner

cc: The Honorable Al Adams
The Honorable Robert H. Bettisworth
The Honorable Ed Dankworth
The Honorable Bettye Fahrenkamp
Keith Specking
Ron Lehr
Phil Holdsworth, Coal Association



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

WASHINGTON, D.C. 20240

MAR 19 1982

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

Dear Mr. Katz:

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

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

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

1. Section 41.45.050. This section is acceptable if the penalty for a Class A misdemeanor is at least a fine of not more than \$2,500 or imprisonment of not more than one year, or both.
2. Section 41.45.170(b). The phrase, "or such longer period as field conditions require," is not in accordance with Section 519(b) of SMCRA, which permits only a 30 day period to inspect and prepare an evaluation. If, however, it is explained in the State program submission that the above phrase refers only to the impossibility to inspect because of weather conditions during the long winter, this section should be acceptable.
3. Section 41.45.230(b). In this section, the word "may" appears in regard to what the commissioner requires of a permittee. SMCRA Section 517(b) uses the word "shall". If the specific requirements of permittees are contained in the State program regulations, this section will be acceptable.
4. Section 41.45.240. (a) This section does not state that the commissioner shall "immediately" issue a cessation order if, at the end of the abatement period, the violation has not been abated. This deficiency can be cured by regulation. (b) This section allows the

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

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

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

7. Section 41.45.250(h). The last sentence of this section erroneously refers to AS 41.45.260. The reference should be to AS 41.45.250(1).

8. Section 41.45.410. This section omits litigation costs, which was subsection (e) in the previous draft of the legislation. This must be included in the bill.

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

10. Section 41.45.420(15). The definition of "significant imminent environmental harm to land, air or water resources" is in conflict with the Federal definition at 30 CFR 701.5, by using the term "irreparable" instead of "reparable". Under the State definition, it would be meaningless to issue an order requiring abatement in an imminent harm situation since any reclamation would be to no avail.

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

Sincerely,



Director



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 23 1981

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

Dear Senator Stevens:

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

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

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

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

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

Sincerely,

Donald Paul noel

Acting SECRETARY

Howard Roitman

Attorney
Surface Mining Consultant

*David
Rogers*

April 1, 1982

(This is not, however, an April Fool's joke.)

MEMORANDUM

TO: Mark Wittow
Laurel Murphy

Per a telephone conversation with Walt Morris (Assistant Solicitor for Enforcement, Division of Surface Mining, Washington, D.C.) this date, the Settlement Agreement regarding implementation of a surface mining program in Alaska provides as follows:

If the state submits a program by September 1, the Department will act expeditiously to reach a decision on it. In the event that the state fails to submit a program by that date, the Department agrees to publish a proposed program in the Federal Register by November 1, 1982 and a final program by March 1, 1983. If the state legislature adjourns without having passed the requisite bill, the Department schedule for proposing and implementing a federal program is moved up to require publishing a proposed program within 120 days of the legislature's adjournment.

This is, of course, probably an impossibly short timeframe for Interior to meet. This timeframe would ensure at least two undesirable results: First, a federal program would certainly be implemented before the 1983 session of the legislature could make another try at a bill, thereby triggering a permit application requirement for Usibelli, and conceivably an EIS. The worst-case scenario which we've joked about, that Usibelli could be shut down, becomes a little closer to reality given the present backlog of federal mine plan approvals and the uncertainty as to whether Usibelli is permitted according to the federal interim program. Second, this timeframe ensures that the federal program would not reflect unique Alaskan conditions since the time would allow only publication of a "generic" type federal program, probably similar to that already published for Georgia.

cc: J. Antenucci

Howard

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE:

March 25, 1982

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

Dear Senator Fahrenkamp:

Re: Amendments to SB 843

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Honorable Bettye Fahrenkamp
March 25, 1982
Page 3

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

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

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

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

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

These are typographical errors.

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

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

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

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

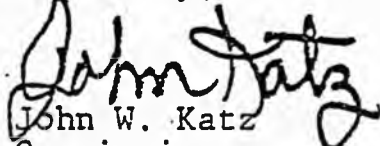
The Honorable Bettye Fahrenkamp
March 25, 1982
Page 4

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

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

Thank you for your hard work on this important legislation.

Sincerely,


John W. Katz
Commissioner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

March 26, 1982

To: Senate Resources Ct.

From: Mark Wittow ^{MW} and Howard Roitman ^{HR}

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

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

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

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

LEGISLATIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- .150 Provides for formal hearings regarding the Commissioner's decision on the permit application upon request of the applicant or any person who may be adversely affected within 30 days after the request. The Commissioner may grant temporary relief pending his final decision when circumstances warrant.
- .160 Requires that before a permit can be issued, the applicant must furnish a performance bond conditioned on faithful performance of the requirements of this statute and the permit. The bond must be sufficient to assure completion of the applicant's reclamation plan by the Department in the event of a forfeiture. In lieu of a bond, the Commissioner may accept cash or negotiable bonds or certificates of deposit, or the Department may accept a self-bond under future regulations to assure financial solvency. The amount of the bond may be adjusted for good cause, including changes affecting land areas and costs of reclamation.
- .170 Contains provisions governing release of performance bonds. The applicant must give notice of its request for release of bond, and the Department must conduct an inspection and evaluation of the reclamation work involved. Provides for staged release of the bond, depending on the degree of reclamation work completed and the Commissioner's evaluation. Persons whose legal interests may be adversely affected, and governmental agencies, may file objections to the release of bond and request a hearing, as may an applicant whose request for bond release has been denied.
- .180 Requires the Commissioner to make a decision on a permit application within 120 days after receipt, which may be extended by an additional 60 days upon receipt of additional information required for a decision. This section sets out the basic criteria for approval of an application. A permit may not be issued if the applicant is currently in violation of environmental standards regarding surface coal mining operation which it operates in the United States or if the applicant has had a demonstrated pattern of willful violations of this chapter.
- .190 Deals with revisions and transfers of permits. The Commissioner is required to establish guidelines for determining the extent of revision for all permit application requirements and procedures, including notice of hearing.

A permit can not be transferred, assigned or sold without written approval of the Commissioner. A successor may continue the operation until the transfer application is granted or denied and meets the requirements of this section.
- .200 Requires exploration activity to be conducted only according to regulations adopted by the Commissioner. The regulations must include provisions for reclamation of excavations, roads, drill holes, and the removal of facilities and equipment.

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

- .210 Within 120 days after the effective date of this chapter, the Commissioner is required to propose regulations consistent with the environmental performance standards of the Federal law. The regulations promulgated under this chapter for both surface coal mining and reclamation operations and surface effects of underground mining must include appropriate adjustment to meet the conditions in Alaska.
- .220 Requires the surface effects of underground mining be regulated in a similar fashion to surface coal mining operations. The Commissioner can suspend underground coal mining activities in populated areas if there is an imminent danger to the inhabitants.
- .230 Provides the basic authority for the Department to inspect and monitor operations. The Commissioner may require a permittee to: make monthly reports, install, use and maintain necessary monitoring equipment or methods and other information relating to the operation as the Commissioner considers reasonable and necessary. The Commissioner can inspect the operation. The inspections are to occur on an irregular basis. Inspections are to occur without prior notice, the inspector must notify the permittee's representative, on the site, upon his arrival and invite the representative to accompany him during the inspection. The inspector is required to file a report about the inspection.
- .240 Sets forth the Department's basic enforcement authority. A violation of this chapter or permit which causes imminent danger to public health or safety or which threatens significant, imminent environmental harm, requires the inspector to issue a cessation order for the whole operation or that portion causing harm. The order remains in effect until further Departmental action. If a violation cited does not cause imminent danger, a notice of violation is issued.

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

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

- .260 Requires the Commissioner to use competent and scientifically sound data in determining lands unsuitable for all or certain types of surface coal operations. It allows a person with a legal interest which may be adversely affected to petition the Commissioner to have areas designated unsuitable for all or certain types of coal mining. Areas must be designated unsuitable if the Commissioner determines that reclamation in the area in question is not technologically feasible. There are four discretionary criteria for designating land unsuitable: Mining is prohibited in protected areas (subject to existing rights); National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, National Recreation Areas, publicly owned parks, historic sites, 100 feet of public roads, 300 feet of occupied dwelling, public building, school, church, community or institutional building, public park or 100 feet of a cemetery.
- .270 Provision regarding abandoned mine lands in order to ensure state participation in the federal Abandoned Mine Reclamation Fund. The Fund is for the reclamation of land adversely affected by past coal mining practices. Contains the administrative authority to establish priorities, designate eligible lands, submit reclamation plans and annual projects to the Department of Interior and administer funds received.
- .280 Defines eligible lands as those which were mined or affected by coal mining, left in an inadequate reclamation status, and for which there is no continuing reclamation responsibility under law.
- .290 Gives the Department power to enter onto property for reclamation purposes. Does not create new rights of action or eliminate existing immunities.
- .300 Authorizes the Commissioner to acquire abandoned mine areas for reclamation purposes and to dispose of such property when it is necessary for successful reclamation, in the public interest, serve recreational, historic, conservation, open space, and to meet emergency situations. The Commissioner shall pay the fair market value of the property. The Commissioner can sell the property if it is suitable for industrial, commercial, residential or recreational development. The sale has to be consistent with any state and local land use plans.
- .310 Requires the Commissioner to place a lien upon state funded reclaimed property for the increase in fair market value. Exempted are properties owned before May 2, 1977, the owner did not consent to, participate in, or exercise control over the surface operation which necessitated the project. A person affected by this section may petition for a hearing within 60 days after the lien is recorded.
- .320 Authorized the filling of voids and sealing tunnels with money from the Abandoned Mine Land Fund.
- .330 Authorized emergency entry without prior notice onto land to

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

- .340 The Commissioner may request the Attorney General to initiate action for an injunction to restrain any interference with the exercise of the right to enter or work described in .270 - .340. Authorizes the State to construct and operate plants for control and treatment of water pollution from mine drainage in compliance with the Federal Water Pollution Control Act.
- .900 Specifies that the requirements of this chapter apply to government agencies, including publicly-owned utilities.
- .910 Exempts from this chapter extraction of coal for non-commercial use of the land owner or lessee, commercial coal operations which affect 2 acres or less and coal extraction as part of government-financed construction.
- .920 Authorizes departures from the environmental performance standards for experimental practices of limited size and which do not down grade the environmental, public health or safety standards of the program. This provision needs approval of the U. S. Department of Interior.
- .930 Provides that this chapter does not affect a person's water rights and that any impairment of water supply must be remedied by the operator.
- .940 Provides authority for the Commissioner to require training, examination and certification of blasters.
- .950 Creates a civil cause of action on behalf of persons who may be adversely affected by a failure to comply with the chapter against both the state agencies and alleged violators. A person commencing action under this section must give 60 days notice and the action can only be filed in the judicial district in which the operation is located.
- .960 Provides that any provision of this chapter which the Secretary of Interior determines to be inconsistent with the federal Act is invalid. Also, requires the Commissioner to review all changes made in the federal Act or regulations, and to make appropriate recommendations as to whether or not the State program should be changed.
- .970 Provides that this chapter is not to be interpreted to modify any existing state agency's powers over coal leases and exploration permits, except as specifically provided by this chapter and implementing regulations. This section also requires that the provisions of this chapter are applicable to lands conveyed out of federal ownership.

- .975 Is the severability clause.
- .980 Makes the Administrative Procedure Act applicable to this chapter unless otherwise provided.
- .985 Cites the short title of the chapter as the "Alaska Surface Coal Mining Control and Reclamation Act."
- .990 Is the definitions section.

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

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

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

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

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



Alaska State Legislature

SENATE Resources Committee

Office: Business

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

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

March 19, 1982
1:35 p.m.

Beltz Room
Capitol - 211

MEMBERS PRESENT

Senator Fahrenkamp
Senator Gilman
Senator Mulcahy
Senator Sturgulewski
Representative Sutcliffe

Hearing:

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

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

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

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

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

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

Senate Resources Committee
March 19, 1982
Page 2

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

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

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



Alaska State Legislature

SENATE Resources Committee

Official Business

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

MEMBERS PRESENT

Senator Fahrenkamp
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

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

March 22, 1982
1:35 p.m.

Beltz Room
Room 211 - Capitol

Hearing:

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

SB 731

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

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

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

SB 769

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

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

SB 843

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

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

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

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

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

SJR 70

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

SJR 79

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

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



Alaska State Legislature

SENATE Resources Committee

Official Business

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

MEMBERS PRESENT

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

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

March 26, 1982
1:40 p.m.

Beltz Room
Room 211 - Capitol

Hearing:

- SB 772 Making a special appropriation to the Department of Natural Resources for construction of a plant quarantine station at the plant material center operated in cooperation with the Institute of Agricultural Sciences.
- SB 803 Establishing the land clearing account in the agricultural revolving loan fund.
- SB 804 Making a continuing appropriation of repayments of the principal and interest on loans made by the Alaska Agriculture Action Council for land clearing to the land clearing account in the agricultural revolving loan fund.
- SB 843 Relating to surface coal mining and the underground effects of underground coal mining.
- SB 697 An Act relating to the Alaska Renewable Resources Corporation.

SB 772

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

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

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

Senator Sturgulewski moved SB 772 with individual recommendations.

SB 803 and SB 804

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

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

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

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

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

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

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

SB 843

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

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

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

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

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

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

SB 697

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

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

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS AND ENERGY MANAGEMENT

TO: Mark Wittow
Special Assistant
to the Commissioner

DATE: March 2, 1982

FILE NO:

TELEPHONE NO: 276-2653

FROM: Howard A. Roitman *Howard*

SUBJECT: Surface Mining Program
Regulation Development

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

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

1. General administrative provisions, including restrictions on financial interests of state employees; exemptions from the requirements of the program, and definitions.
2. Permitting. Under the program, permits will be required for surface coal mines, surface effects of underground mines, and exploration operations which remove more than 250 tons of coal or substantially disturb the natural land surface. These regulations will detail the permit application requirements for legal, financial, compliance and environmental information; the contents of the required reclamation and operation plans; the procedures for review of applications, public participation, and decisions on applications, including administrative and judicial review; and procedures for revisions, renewal and transfer of permits.
3. Bonding and insurance. The program will require liability insurance and a performance bond adequate to ensure sufficient funds for the state to complete reclamation of any site for which the operator fails to fulfill his reclamation obligations. These regulations will detail the requirements for performance bonds and the procedures, criteria and scheduling for bond release or forfeiture.
4. Environmental performance standards. Performance standards will cover such concerns as casing and sealing of drilled holes; topsoil; hydrologic balance; coal recovery; use of explosives; disposal of excess spoil; coal processing waste; protection of fish and wildlife; backfilling and grading; revegetation; postmining land use; and roads.

March 2, 1982

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:

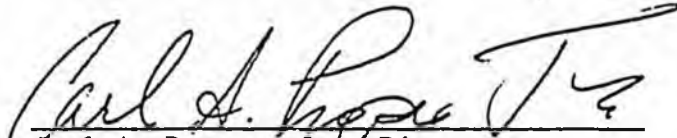
Thank you very much for your letter of March 10 regarding Senate Bill 843, relating to surface coal mining and the surface effects of underground coal mining in Alaska. Unfortunately, we will not be able to be in Juneau on March 19 to testify on this bill. For that reason I am sending you a copy of our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

3/18/82

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

Original sponsor: Rules/Governor

Offered: 4/1/82
Referred: Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 843 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

11 CHAPTER 45. ALASKA SURFACE COAL

12 MINING CONTROL AND RECLAMATION ACT.

13 ARTICLE 1. LEGISLATIVE FINDINGS AND PURPOSE.

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

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

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

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

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

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

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

19 (b) The purposes of this Act are

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

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

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

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

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

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

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

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

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

23 ARTICLE 2. SURFACE MINING.

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

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

29 (1) in accordance with the Administrative Procedure Act

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

3 (2) issue permits;

4 (3) conduct hearings and conferences;

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

8 (5) issue orders modifying previous orders;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 Sec. 41.45.050. CONFLICT OF INTEREST. An employee of the depart-
5 ment or a private contractor performing a function or duty unde. 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 immediat-
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 41.45.2.0. The bond shall be executed by
14 the applicant and, except as provided in (d) of this section, a corpo-
15 rate surety licensed to do business in the state.

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

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

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

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

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

1 lations to implement this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (1) the commissioner may require a permittee to

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

19 (B) make monthly reports to the commissioner;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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