ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1933 SRES SB 843

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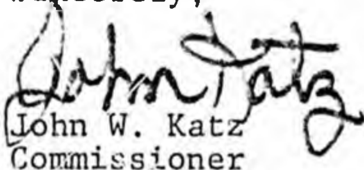
provision. We are in the process of discussing this issue with the coal operators and developing satisfactory language to present to you on Friday.

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

Alaska Surface Coal Mining Program

By
Pedro Denton

Introduction

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

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

Federal Act and Regulation

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

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

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

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

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

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

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

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

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

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

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

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

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

Program Development Progress

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

The program development grant provided for accomplishing the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Summary

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

Proposed Significant Modifications to Federal Surface Coal Mining Regulations

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

Federal Reg No.	Summary of Change to Federal Concept
816.22(e)(1)	To allow exception from requirement to seek out and separate "best" material even if other material is adequate for revegatation.
816.22(e)(1)(ii)	To not require trials and tests of topsoils being certified by a laboratory unless required by the state.
816.22(e)(1)(iii)	To allow the state to use practices proven in other areas as guide in approving use of topsoil substitutes.
816.22(f) 816.71(c)	To allow leaving topsoil and vegetative cover in place where needed as insulating layer.
816.42(a)	To allow alternate sediment control methods to sedimentation ponds and rely on federal and state water quality standards rather than OSM effluent standards.
816.42(c)	To allow exception from treating all waters as "acid water" where natural conditions are less than a pH of 6.
816.57(a)	To allow exception from the requirement to restore all streams to original channel without regard to importance.
816.[illegible]4(a)	Remove the requirement to publish blasting schedule and rely on notice to residents and agencies.
816.65(a)	To relate blasting time to time of day rather than "sunrise" and "sunset".
816.71(a)	To allow excess spoil to be placed in mined area to limit disturbed area.
816.83(a) 816.89(b)	Allow alternative to the requirement to make all waste banks imper[illegible]us.
816.97(b)	To allow discretion in reporting requirements for eagles because of numbers of eagles in some areas.
816.97(d)(2)	To clarify that some interference with wildlife is inherent in any structure in remote areas and allow recognition of this in Alaska.
816.104(a)	Remove the numerical relationship of final thickness to initial thickness because of difficulty in determining in permafrost areas.
816.104(b)	To prevent redisturbance of storage areas in permafrost areas where material condition is not adaptable to temporary storage methods.

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

CHUGACH NATIVES, INC.
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:

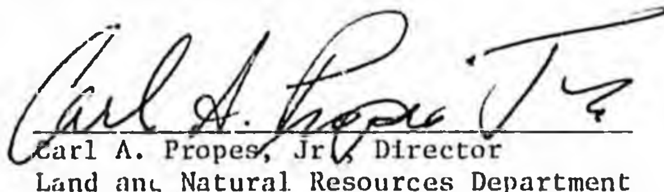
Thank you very much for your letter of March 10 regarding Senate Bill 843, relating to surface coal mining and the surface effects of underground coal mining in Alaska. Unfortunately, we will not be able to be in Juneau on March 19 to testify on this bill. For that reason I am sending you a copy of our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

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

January 18, 1982

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

Dear Commissioner Katz:

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

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

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

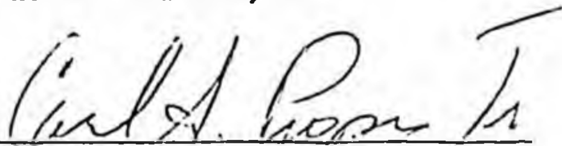
Chugach's greatest concern with the proposed statute is that it errs on the side of going too far in the area of public participation. The proposed regulation is inconsistent in that it recognizes "any person who is or may be adversely affecred" in certain clauses and in others the language reads "any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

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

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

Sincerely,

CHUGACH NATIVES, INC.



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

CAP/ls

Attachment

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

Specific Comments

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

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

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

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

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

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

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

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

Alaska Department of Environmental Conservation

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

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

Reclamation and Revegetation Not Defined

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

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

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

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

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

Forfeiture of Performance Bonds

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

DEC vs. DNR Jurisdiction on Water Quality Issues Remains Unclear

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

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

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

Additional Concerns

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

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

APPENDIX

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

Alaska Department of Environmental Conservation

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

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

Reclamation and Revegetation Not Defined

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

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

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

Forfeiture of Performance Bonds

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

DEC vs. DNR Jurisdiction on Water Quality Issues Remains Unclear

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

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

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

Additional Concerns

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

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

APPENDIX

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

CATEGORY **NATURAL RESOURCES** 6/1/80

Mining & Minerals

ID CODE NR/MM/ST

TITLE

Strip Mine Reclamation

SUMMARY

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

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

- Coordination of the a[illegible]ities of federal and state agencies;
- Public participation in the development of reclamation legislation and regulations;
- Successful renegotiation of lease contracts with the Co[illegible]il of Energy Resource Tribes (CERT).

BACKGROUND

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

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

Environmental Impacts of Strip Mining

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

Reclamation Technologies

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

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

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

KEY QUESTIONS

Policy Uncertainties

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

Technical Uncertainties

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

LEGISLATIVE ISSUES

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

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

The strip mine reclamation program incl[illegible] $.3[illegible] per ton charge as a reclamation fee. 50 % of the funds collected will be directly returned to the state; 50 % will be held in a national pool and distributed by priority. The funds in the national pool will be used to mitigate coal mining impacts and other mineral extraction damages. Excess funds will be directed towards research and energy impact assistance.

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

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

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

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

Institutional:

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

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

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

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

State Reactions to OSM Activities:

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

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

POLICY ACTIONS

State:

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

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

Federal:

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

RESOURCES

State

Alabama
Virgil Willett
Director
Alabama Surface Mining Reclamation Commission
P.O. Box 2390
Jasper, AL 35501
(205) 221-4130

Colorado
H.J. (Chips) Barry
Deputy Director
Department of Natural Resources
1313 Sherman Street, Room 718
Denver, CO 80203
(303) 839-3311

Iowa
Ken Tow
Assistant Director
Department of Soil Conservation
Wallace State Office Building
Des Moines, IA 50319
(515) 281-5774

Kentucky
Elmore Grim
Commissioner, Bureau of Surface Mining Reclamation and Enforcement
Department of Natural Resources and Environmental Protection
Capitol Plaza Tower
Frankfort, KY 40601
(502) 564-6940

Montana
Brace Hayden
Administrator
Reclamation Division
Department of State Lands
Capitol Station
Helena, MT 59601
(406) 449-4560

Virginia
Danny Brown
Commissioner
Division of Mined Land Reclamation
Department of Conservation and Economic Development
P.O. Drawer U
Big Stone Gap, VA 24219
(703) 523-2925

West Virginia
David C. Callaghan
Director, Department of Natural Resources
Capitol Complex
Building 3, Room 669
Charleston, WV 25305
(304) 348-2754

Jurisdiction On Indian Lands
John North
Chief Legal Counsel
Department of State Lands
Capitol Station
Helena, MT 59601
(406) 449-2074

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Author: Holly Higgins
Office of Science and National Resources
National Conference of State Legislatures

Senator Fahrenkamp
SB843

Alaska State Legislature

SENATOR
ARLISS STURGULEWSKI

COMMITTEES
CHAIRMAN
Legislative Budget & Audit

Community & Regional Affairs
Finance
Resources

Senate

MAR 17 1982

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99504
DISTRICT 10-H

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3818

M E M O R A N D U M

March 15, 1982

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senator Arliss Sturgulewski
Senate Resources Committee

RE: Beluga Coal Development

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

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

Attachment

cc: Senate Resources Committee Members

REVISED

Beluga CIP

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

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

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

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

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

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

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

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

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

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

Task I - Fisheries Resources Assessment

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

Objectives

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

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

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

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

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

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

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

Task II - Wildlife Resources Assessment

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

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

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

Objectives

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

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

Task III - Habitat Impact Assessment and Permit Management

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

Objectives

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

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

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

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

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

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

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

Task IV - Subsistence Use Assessment

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

Objective

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

Project Management Responsibility

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

Beluga CIP
PROJECT COST SUMMARY
(in thousands of dollars)

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

Note: Budget costs do not include administrative overhead.

Task I: Fisheries resource assessment

Task II: Wildlife resources assessment (includes funds for mitigation evaluation subcontract)

Task III: Habitat impact assessment and permit management (includes funds for engineering subcontract)

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

FISCAL NOTE
BELUGA PROJECT

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

FY 84: Total for all tasks $300.0

FY 85: Total for all tasks $356.0

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

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

March 3, 1982

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

Dear Mr. Harris:

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

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

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

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

Received 3/17/82

1:20 pm 3/22/82

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

FEBRUARY 28, 1982

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

DEAR JAY:

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

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

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

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

OBSERVATIONS AND QUESTIONS CAN BE OF SOME USE TO YOU.

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

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

QUESTIONABLE ASSUMPTIONS:

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

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

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

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

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

VAGUE PHRASING:

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

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

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

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

FAILURE TO SPECIFY DEGREE OF ENVIRONMENTAL PROTECTION SOUGHT:

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

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

LACK OF MECHANISMS PROTECTING INDIVIDUALS...

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

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

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

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

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

<u>INADEQUATE ATTENTION TO EXPLORATION</u>:

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

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

MINING PERMIT AND REGULATION INADEQUACIES:

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

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

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

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

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

INADEQUATE PUBLIC DISCLOSURE LANGUAGE:

WHILE FOR THE MOST PART THE BILL PROVIDES FOR

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

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

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

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

EXCESSIVE DISCRETIONARY LANGUAGE:

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

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

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

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

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

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

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

SINCERELY, [signature]

Alaska State Legislature

SENATE
Resources Committee

Offical Business

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

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

MEMBERS PRESENT

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

March 26, 1982 — Beltz Room
1:40 p.m. — Room 211 - Capitol

Hearing:

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

SB 772

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

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

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

Senator Sturgulewski moved SB 772 with individual recommendations.

SB 803 and SB 804

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

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

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

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

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

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

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

SB 843

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

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

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

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

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

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

SB 697

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

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

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

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

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

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

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

Senator Fischer moved the acceptance of Committee Substitute #3.

Senator Sturgulewski moved CSSB 697 with individual recommendations.

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

Alaska State Legislature

SENATE
Resources Committee

Offica' Business

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

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

March 19, 1982
1:35 p.m.

Beltz Room
Capitol - 211

MEMBERS PRESENT

Senator Fahrenkamp
Senator Gilman
Senator Mulcahy
Senator Sturgulewski
Representative Sutcliffe

Hearing:

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

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

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

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

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

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

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

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

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

Alaska State Legislature

SENATE
Resources Committee

Offical Business

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

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MEMBERS PRESENT

Senator Fahrenkamp
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

March 22, 1982
1:35 p.m.

Beltz Room
Room 211 - Capitol

Hearing:

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

pg. 2

SB 731

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

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

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

SB 769

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

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

SB 843

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

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

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

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

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

SJR 70

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

SJR 79

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

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

Alaska Environmental Lobby, Inc.

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

SB -843

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

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

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

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

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

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

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

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

- -TO STRESS THE NEED FOR REVEGETATION WITH NATIVE PLANT SPECIES
- -TO DESIGNATE HIGHLY BIOLOGICALLY PRODUCTIVE AREAS AS UNSUITABLE FOR SURFICIAL COAL MINING
- -TO CLEARLY RECOGNIZE FISHERIES AS A MAJOR ECONOMIC ACTIVITY IN THIS STATE WORTHY OF SPECIAL PROTECTION

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

THE ALASKA ENVIRONMENTAL LOBBY APPRECIATES THIS OPPORTUNITY TO ADDRESS

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

1:20 pm
3/22/82

Alaska Environmental Lobby, Inc.

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

Amendent 1

Sec. 41.45.100

Page 9 line 15

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

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

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

Amendment 2

Sec. 41.45.120

Page 10 line 8-17

Delete this section.

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

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

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Southeast Alaska Conservation Council • Northern Alaska Environmental Center • Kenai Conservation Council
National Audubon Society • National Wildlife Federation • Sitka Conservation Society • Lynn Canal Conservation

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Amendment 3

Sec. 41.45.170 (c) (1)

Page 15 line 3

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

Sec. 41.45.170 (c) (2)

Page 15 line 6

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

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

Alaska Environmental Lobby, Inc.

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Amendent 4

Sec. 41.45.180

Page 20 line 12

Delete "wilful"

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

Alaska Environmental Lobby, Inc.

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

Amendent 5

Sec. 41.45.250

Page 32 line 11

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

Reason: The sum of $5000 as a maximum fine is clearly too small a sum to be an effective enforcement tool against multibillion dollar companies. The maximum fine of $5000 hardly amounts to a slap on the wrist for a 500 million dollar export mining operation. Furthermore, the declining real value of the dollar will make the figure even less significant over time.
A maximum fine is presumeably for a "worst case" situation and should reflect the seriousness the state will attach to grave permit violations.

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Amendment 6

Sec. 41.45.910

Page 43 line 17-18

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

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

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Amendent 7

Sec. 41.45.920

Page 44 line 8

Delete "reduce", insert "significantly degrade"

Page 44 line 9-10

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

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

Alaska Environmental Lobby, Inc.

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Amendment 8

Sec. 41.45.990

Page 48 line 29

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

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

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

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Amendment 9

Sec. 41.45.990

Page 48 line 3

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

Page 48 line 4

Strike the word "substantial"

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

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

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

To members of the Senate Resources Committee

Re: SB-843

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

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

Thank you for your consideration.

Paul Allison

Executive Director

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MEMORANDUM State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS AND ENERGY MANAGEMENT

TO: Mark Wittow
Special Assistant
to the Commissioner

DATE: March 2, 1982

FILE NO:

TELEPHONE NO: 276-2653

FROM: Howard A. Roitman, Howard

SUBJECT: Surface Mining Program
Regulation Development

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

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

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

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

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

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

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

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

7. Small operator assistance program.

8. Abandoned mine land reclamation program.

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

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE:

February 15, 1982

To: Representative Bob Bettisworth

From: Mark Wittow MW

Re: Summary of proposed Alaska Surface Coal Mining Program

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

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

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

Contents of the legislation

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

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

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

2. A performance bond covering the costs of completing reclamation operations must be provided by the permit applicant. Some substitutes for the bond are acceptable. Before the bond is released, the applicant's reclamation work must be inspected and evaluated.

3. A process for designating lands "unsuitable" for all or certain types of coal mining is established.

4. Procedures for a program to rehabilitate abandoned mine lands are established; this program is financed by a federal fund.

5. In general, the bill provides for inspection and enforcement powers necessary to carry out the act; for public notice and comment; and for recognition of Alaska's unique conditions in determining substantive requirements.

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

Other elements of the program

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

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

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 23 1981

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

Dear Senator Stevens:

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

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

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

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

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

Sincerely,

Donald Paul Hodel

Acting SECRETARY

United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

MAR 19 1982

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

Dear Mr. Katz:

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

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

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

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

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

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

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

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

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

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

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

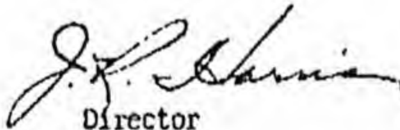
8. Section 41.45.~~410~~ 950. This section omits litigation costs, which was subsection (e) in the previous draft of the legislation. This must be included in the bill.

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

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

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

Sincerely,



Director

ARTICLE 5. PROCESS FOR IDENTIFYING LANDS UNSUITABLE FOR MINING.

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

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

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

Authority: AS 41.45.260

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

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

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

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

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

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

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

Authority: AS 41.45.260

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

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

(1) other interested government agencies;

(2) native corporations and villages;

(3) the petitioner;

(4) intervenors; and

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

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

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

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

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

(3) an identification of the petition;

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

Authority: AS 41.45.260

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

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

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

(1) the coal resources of Alaska;

(2) the demand for Alaskan coal;

(3) the supply of Alaskan coal;

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

(5) the environment and natural resources of Alaska.

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

Authority: AS 41.45.260

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

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

Authority: AS 41.45.100
AS 41.45.260

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

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

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

(2) the petitioner and the intervenors;

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

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

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

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

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

Authority: AS 41.45.260

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

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

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

(3) relevant information provided by other governmental agencies.

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

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

Authority: AS 41.45.260

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

Authority: AS 41.45.260

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

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

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

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

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

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

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

Authority: AS 41.45.260

ARTICLE 6. PERMIT APPLICATION REVIEW

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

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

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

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