



HOUSE BILL 90

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 4; Title 10; Title 50; Title 59; Title 60; Title 67; Title 68; Title 69 and Chapter 839 of the Public Acts of 2018, relative to coal mining and reclamation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 59-8-112(d), is amended by deleting the language "new amendment" and substituting instead the language "new application".

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. \_\_\_\_\_

\_\_\_\_\_  
Signature of Sponsor

<b>FILED</b>
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

**AMEND Senate Bill No. 742**

**House Bill No. 90\***

by deleting all language after the enacting clause and substituting:

SECTION 1. Chapter 839 of the Public Acts of 2018, is amended by deleting sections 1  
– 43.

SECTION 2. Tennessee Code Annotated, Section 59-8-132, is amended by deleting the  
section.

SECTION 3. Tennessee Code Annotated, Title 59, Chapter 8, is amended by adding  
the following language as a new part:

**59-8-101.**

(a) This part shall be known and may be cited as the "Primacy and Reclamation  
Act of Tennessee."

(b) The general assembly finds and declares that:

(1) Coal is an integral component of the nation's energy requirements  
and that there is a need to strike a balance between protection of the  
environment, agricultural productivity, and economic development and the  
nation's need for coal as a source of energy;

(2) The unregulated exploration for and surface mining of coal can cause  
soil erosion and landslides, water and air pollution, and accumulation and  
seepage of contaminated water, and may contribute to floods, impair the value of  
land, adversely affect fish and wildlife and their habitats, counteract efforts for the  
conservation of soil, water, and other natural resources, adversely affect cultural  
resources, impair neighboring owners' property rights, create fire hazards, and in



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general create conditions inimical to life, property, and the public welfare, so as to require the exercise of the state's police power in the regulation of, exploration for, and surface mining of coal; and

(3) There are wide variations in the circumstances and conditions surrounding and arising out of the exploration for and surface mining of coal, due primarily to differences in topographical, geological, and soil conditions, which make it necessary, in order to provide the most effective, beneficial, and equitable solution to the problem, that broad discretion be placed in the authority designated to administer and enforce the regulatory provisions enacted by the general assembly.

(c) It is the purpose of this part to:

(1) Assume for this state exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within this state under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.);

(2) Develop, implement, and enforce a program which, at a minimum, will achieve the purposes of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.) and the regulations promulgated thereunder;

(3) Assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are fully protected from those operations;

(4) Assure that surface coal mining operations are not conducted where reclamation as required by this part is not feasible;

(5) Assure that surface coal mining operations are conducted in a manner protective of the environment;

(6) Assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations;

(7) Assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of rules, standards, reclamation plans, or programs established by the state under this part;

(8) Assure that the coal supply integral to the energy requirements of the nation and to its economic and social well-being is provided, and to strike a balance between protection of the environment, agricultural productivity and economic development and the need of the nation for coal as an integral component of the nation's energy requirements; and

(9) To, wherever necessary, exercise the full reach of state constitutional powers to ensure the protection of the public interest through effective control of surface coal mining operations.

**59-8-102.** As used in this part:

(1) "Affected area":

(A) Means any land or water surface area that is used to facilitate, or is physically altered by, surface coal mining and reclamation operations; and

(B) Includes:

(i) The disturbed area;

(ii) Any area upon which surface coal mining and reclamation operations are conducted;

(iii) Any adjacent lands, the use of which is incidental to surface coal mining and reclamation operations;

(iv) All areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations;

(v) Any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks,

dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, or shipping areas;

(vi) Any areas upon which are sited structures, facilities, or other property or materials on the surface resulting from, or incidental to, surface coal mining and reclamation operations; and

(vii) The area located above underground workings;

(2) "Alluvial valley floors" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits;

(3) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining, and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the commissioner determines that the water impoundments comply with § 59-8-110(b)(8);

(4) "Commissioner" means the commissioner of environment and conservation or the commissioner's designee;

(5) "Department" means the department of environment and conservation;

(6) "Federal lands" means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian land; provided, that for the purposes of this part, lands or mineral interests east of the one hundredth meridian west longitude owned by the United States and entrusted to

or managed by the Tennessee Valley Authority are not subject to 30 U.S.C. §§ 1304 and 1305;

(7) "Federal program" means a program established by the secretary pursuant to 30 U.S.C. § 1254 to regulate surface coal mining and reclamation operations on lands within a state in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.);

(8) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this part in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation could be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement;

(9) "Lands eligible for re-mining" means those lands that would otherwise be eligible for expenditures under 30 U.S.C. §§ 1232(g)(4) or 1234;

(10) "Locality" means the county where all or the majority of a surface coal mining and reclamation operation is located;

(11) "Office" means the office of surface mining reclamation and enforcement, established by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.);

(12) "Operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred fifty (250) tons of coal from the earth by coal mining within twelve (12) consecutive months in any one (1) location;

(13) "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value

excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals that occur naturally in liquid or gaseous form;

(14) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commissioner;

(15) "Permit applicant" or "applicant" means a person applying for a permit;

(16) "Permit area" means the area of land indicated on the approved map submitted by the operator with the operator's application, which area of land is covered by the operator's bond as required by § 59-8-108 and shall be readily identifiable by appropriate markers on the site as required by § 59-8-112(j);

(17) "Permittee" means a person holding, or required by this part or rules promulgated by the commissioner to hold, a permit;

(18) "Person" means an individual, partnership, association, society, governmental agency or entity, joint stock company, firm, company, corporation, or other business organization;

(19) "Prime farmland" has the same meaning as that previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics; which historically has been used for intensive agricultural purposes; and as published in 7 CFR 657.5;

(20) "Reclamation plan" means a plan submitted by an applicant for a permit under § 59-8-109, that sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to § 59-8-109;

(21) "Secretary" means the secretary of the interior;

(22) "Spoil bank" means the overburden as it is piled or deposited in the process of mining;

(23) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of surface coal mining operations occurring on and after the effective date of this act;

(24) "Surface coal mining operations" means:

(A) Activities conducted on the surface of lands in connection with a surface coal mine or subject to § 59-8-111 relative to surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, cross ridge, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching, or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 2/3%) of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to § 59-8-105; and

(B) The areas upon which the activities described in subdivision (24)(A) occur or where the activities disturb the natural land surface. Such areas also include any adjacent land, the use of which is incidental to any of the activities described in subdivision (24)(A); all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of any of the activities described in subdivision (24)(A) and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or



other property or materials on the surface, resulting from or incident to any of the activities described in subdivision (24)(A);

(25) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of a permit or this part due to indifference, lack of diligence, or lack of reasonable care; and

(26) "Willful" or "willfully" means that a person acted:

(A) Intentionally, voluntarily, or consciously; and

(B) With intentional disregard or plain indifference to legal requirements.

**59-8-103.**

(a) The commissioner shall:

(1) Administer the programs for controlling surface coal mining operations that are required by this part and enforce this part, and rules, permits, and orders promulgated or issued under this part;

(2) Conduct and obtain investigations, research, experiments, training programs, and demonstrations, and collect and disseminate information relating to exploration, surface coal mining, reclamation of disturbed lands, and control of pollution of water and soil affected by exploration and surface coal mining;

(3) Examine and either approve, request modification of, or disapprove applications for permits, maps, bonds, mining and reclamation plans, revegetation plans, and after-use plans submitted by applicants;

(4) Conduct those investigations and inspections necessary to ensure compliance with this part, including the authority to enter at any time upon a suspected affected area or an affected area for investigations and inspections and the right of ingress and egress across intervening properties;

(5) Employ and commission qualified individuals as surface coal mining personnel as provided in § 11-1-101. When properly qualified and commissioned, surface coal mining personnel shall enforce all laws, rules, permits, and orders administered by the commissioner under this part, including, but not limited to, authorization to serve process;

(6) Conduct hearings, administer oaths, issue subpoenas, and compel the attendance of witnesses and production of written or printed material as provided for in this part;

(7) Issue cease-and-desist orders and other orders as authorized by this part, in the office or on-site, requiring the adoption by a person of remedial measures necessary for carrying out this part or permits issued under this part;

(8) Order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions of this part or any rules adopted pursuant this part;

(9)

(A) Promulgate rules in accordance with title 4, chapter 5, as may be necessary to carry out the purposes of this part, including obtaining and maintaining the state's status as a regulatory authority under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.);

(B) The rules may take proper account of mining conditions and practices in this state and differences in topography, geology, and soil conditions, and established use patterns of neighboring lands as recognized by local or state planning agencies;

(C) The rules may include federal program regulations promulgated specifically for this state under 30 CFR part 942, if the

commissioner determines that such regulations are necessary to carry out the purposes of this part;

(D) Unless otherwise specifically authorized by this part, no rule promulgated under this subdivision shall impose a requirement that is more stringent than any existing federal regulation promulgated under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.);

(E) Any person may petition the commissioner to initiate a proceeding for the issuance, amendment, or repeal of a rule promulgated pursuant to this part. This subdivision (a)(9)(E), and not § 4-5-201, shall apply to rules promulgated pursuant to this part;

(i) The petition must be filed with the commissioner and must state the facts that support the issuance, amendment, or repeal of a rule promulgated pursuant to this part;

(ii) The commissioner may hold a public hearing or may conduct such investigation or proceeding as the commissioner considers appropriate in order to determine whether the petition should be granted or denied; and

(iii) Within ninety (90) days after the filing of a petition described in subdivision (a)(9)(E)(i), the commissioner shall either grant or deny the petition. If the commissioner grants the petition, the commissioner shall promptly commence rulemaking in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. If the commissioner denies the petition, the commissioner shall notify the petitioner in writing setting forth the reasons for the denial;

(10) Administer the program for the purchase and reclamation of abandoned and unreclaimed mined areas as provided in part 3 of this chapter; and

(11) Perform such other duties as may be provided by law and relate to the purposes of this part.

(b) The commissioner may, to effectuate the purposes of this part:

(1) Enter into contracts or other agreements; and

(2) Apply for, accept, administer, and utilize loans and grants from the federal government, state government, and from any other sources.

**59-8-104.**

If any provision of this part or the application of any provision of this part to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the part that can be given effect without the invalid provision or application, and to that end, the provisions of this part are declared to be severable.

**59-8-105.**

(a)

(1) Coal exploration operations that substantially disturb the natural land surface shall be conducted in accordance with exploration rules promulgated by the commissioner.

(2) The rules for coal exploration operations shall include, but not be limited to, requirements that:

(A) Any person planning to conduct exploration operations obtain an exploration permit from the commissioner before conducting those operations;

(B) The applicant submit:

(i) A description of the exploration area and the period of supposed exploration and any other information as the commissioner may require in the permit application; and

(ii) A fee as established by rule and a performance bond or other financial assurance in an amount at least as much as is necessary to reclaim the proposed disturbance as described in subdivision (a)(2)(C); and

(C) Reclamation in accordance with the performance standards in § 59-8-110 of all lands disturbed in exploration, including excavations, roads, drill holes and the removal of necessary facilities and equipment.

(b) Any person who conducts any coal exploration activities that substantially disturb the natural land surface in violation of this part or rules promulgated pursuant to this part is subject to the penalties in § 59-8-117.

(c) No operator shall remove more than two hundred fifty (250) tons of coal pursuant to an exploration permit without the specific written approval of the commissioner.

(d) Information submitted to the department and the commissioner pursuant to this section as confidential trade secrets or privileged commercial or financial information, which relates to the competitive rights of the person or entity intended to explore the described area, is not available for public examination under title 10, chapter 7.

**59-8-106.**

(a)

(1) No person shall engage in surface coal mining operations without having first obtained a permit from the commissioner. All permits issued under this part must be issued for a term not to exceed five (5) years; however, if the applicant demonstrates that a specified longer term is reasonably needed to

allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for the specified longer term, the commissioner may issue a permit for the longer term.

(2) A successor in interest to a permittee who submits a complete application for a new permit within thirty (30) days of succeeding to the interest, and who is able to obtain the bond coverage of the original permittee may, with the written approval of the commissioner, continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor's application for a new permit and plan is granted or denied; provided, that operations under the original permit must not exceed the termination date of the original permit.

(b) The issuance of permits shall be subject to payment of any required fee, posting the performance bond required by this part, and submission to the department of an application, in a manner satisfactory to the commissioner, containing any information that is necessary to assure compliance with this part as prescribed in the rules promulgated by the commissioner, including but not limited to, the following:

(1) The names and addresses of:

- (A) The permit applicant;
- (B) Every legal owner of record of the property, both surface and mineral, to be mined;
- (C) The holders of record of any leasehold interest in the property;
- (D) Any purchaser of record of the property under a real estate contract;
- (E) The operator, if the operator is a person different from the applicant; and

(F) If any person identified in subdivisions (b)(1)(A)-(E) is a business entity other than a single proprietor, the names and addresses of the principals, officers, and resident agent of the business entity;

(2) The names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area;

(3) A statement of any current or previous surface coal mining permits in the United States held by the applicant and the permit identification and each pending application;

(4) If the applicant is a partnership, corporation, association, or other business entity, the following where applicable:

(A) The names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant;

(B) The name and address of any person owning, of record ten percent (10%) or more of any class of voting stock of the applicant; and

(C) A list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation within the United States within the five-year period immediately preceding the date of submission of the application;

(5) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever held a federal or state mining permit which in the five-year period immediately prior to the date of submission of the application has been suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) A copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four (4) successive weeks, and which includes the ownership, a

description of the exact location and boundaries of the proposed site sufficient so that the proposed operation is readily locatable by local residents, and the location of where the application is available for public inspection as provided in § 59-8-112(a);

(7) A description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used;

(8) The anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(9) The area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations identified on an accurate map or plan, to an appropriate scale, clearly showing the land to be affected as of the date of the application and a statement of those documents upon which the applicant bases the applicant's legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation; provided, however, that nothing in this part vests in the commissioner the jurisdiction to adjudicate property title disputes;

(10) The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(11) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the commissioner of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability; provided, however, no determination



shall be required until the time hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. No permit shall be issued until the information required by this subdivision (b)(11) is available and is incorporated into the application;

(12) When requested by the commissioner, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(13) Accurate maps to an appropriate scale clearly showing:

(A) The land to be affected as of the date of application; and

(B) All types of information set forth on topographical maps of the United States Geological Survey of a scale of 1:24,000 or 1:25,000 or larger, including all manmade features and significant known archeological sites existing on the date of application. Such a map or plan must, among other things specified by the commissioner, show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within one thousand feet (1,000 ft.) of the permit area;

(14) Cross-section maps or plans of the land to be affected including the actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevations and locations of test borings or core samplings and depicting the following information:

(A) The nature and depth of the various strata of overburden;

(B) The location of subsurface water, if encountered, and its quality;

(C) The nature and thickness of any coal or rider seam above the coal seam to be mined;

(D) The nature of the stratum immediately beneath the coal seam to be mined;

(E) All mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected;

(F) Existing or previous surface mining limits;

(G) The location and extent of known workings of any underground mines, including mine openings to the surface;

(H) The location of aquifers;

(I) The estimated elevation of the water table;

(J) The location of spoil, waste, or refuse areas and top-soil preservation areas;

(K) The location of all impoundments for waste or erosion control;

(L) Any settling or water treatment facility;

(M) Any constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and

(N) Profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(15)

(A) A statement of the result of test borings or core samplings from the permit area, including:

(i) Logs of the drill holes;

(ii) The thickness of the coal seam found and, an analysis of the chemical properties of such coal;

(iii) The sulfur content of any coal seam;

(iv) Chemical analysis of potentially acid or toxic forming sections of the overburden; and

(v) Chemical analysis of the stratum lying immediately underneath the coal to be mined;

(B) The provisions of this subdivision (b)(15) may be waived by the commissioner with respect to the specific application by a written determination that such requirements are unnecessary; and

(16) For those lands in the permit application that a reconnaissance inspection suggests may be prime farmlands, a soil survey shall be made or obtained according to standards established by the United States secretary of agriculture in order to confirm the exact location of such prime farmlands, if any.

(c) Information pertaining to coal seams, test borings, core samplings, or soil samples required by this section shall be made available to any person with an interest that is or may be adversely affected; however, information that pertains only to the analysis of the chemical and physical properties of the coal, except that information regarding any mineral or elemental content, which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record under title 10, chapter 7.

(d) Each applicant for a surface coal mining and reclamation operation permit shall submit a reclamation plan that meets the requirements of this part, to the commissioner as part of the permit application.

(e) Each applicant for a surface coal mining and reclamation permit shall submit, as part of the permit application, a blasting plan that outlines the procedures and standards by which the applicant will meet the requirements of § 59-8-110(b)(15).

(f) Each applicant for a surface coal mining permit shall submit, as part of the permit application, a certificate issued by an insurance company authorized to do business in this state, certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought, or evidence that the applicant is self-insured. The public liability insurance policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including the use of explosives, and entitled to compensation under the applicable provisions of law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal period, including the length of all reclamation operations.

(g) In any case when the private mineral estate has been severed from the private surface estate, the applicant for a permit shall submit one (1) of the following to the commissioner:

(1) The written consent of the surface owner to the extraction of coal by surface mining methods;

(2) A copy of a conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract coal by surface mining methods, documentation that the applicant has the legal authority to extract the coal by surface mining methods. The surface-subsurface legal relationship shall be determined in accordance with the laws of this state.

Nothing in this part authorizes the commissioner to adjudicate property rights disputes.

(h) The applicant for a permit shall submit a schedule listing any and all notices of violations of this part, the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.), or any law, rule, or regulation of the United States, or of any

department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period immediately prior to the date of application. The schedule must also indicate the final resolution of any such notice of violation.

(i)

(1) If the commissioner finds that the probable total annual production at all locations of an operator will not exceed three hundred thousand (300,000) tons, the cost of the following activities, which shall be performed by a qualified public or private laboratory or such other public or private qualified entity designated by the commissioner, shall be assumed by the commissioner, subject to the availability of federal or other special funds specified for that purpose, upon the written request of the operator in connection with a permit application:

(A) The determination of probable hydrologic consequences required by subdivision (b)(11), including the engineering analyses and designs necessary for the determination;

(B) The development of cross-section maps and plans required by subdivision (b)(14);

(C) The geologic drilling and statement of results of test borings and core samplings required by subdivision (b)(15);

(D) The collection of archaeological information required by subdivision (b)(13) and any other archaeological and historical information required by the commissioner, and the preparation of plans necessitated thereby;

(E) Pre-blast surveys required by § 59-8-110(b)(15); and

(F) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife

habitats and other environmental values as required by the commissioner under this part.

(2) An operator that has received assistance pursuant to subdivision (i)(1) shall reimburse the department for the cost of the services rendered if the commissioner finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand (300,000) tons during the twelve (12) months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

(j) The commissioner shall promulgate rules implementing exemption from this part for the following activities:

(1) Extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; and

(2) Extraction of coal by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner.

**59-8-107.**

(a) The commissioner shall establish fees determined after careful consideration of the direct and indirect costs incurred by the department in performing its various functions and services under this part. The fees may include, but are not limited to, an exploration permit fee, an application fee, and a maintenance acreage fee taking into account the acreage permitted. In no instance shall a permit application fee exceed the actual or anticipated cost of reviewing, administering, and enforcing the permit.

(b) Prior to promulgating any fee increase, the commissioner shall review the basis for the fee increase and make a determination that the fee increase is warranted. The factors used in the determinations must include, if relevant: staffing needs, ability to attract and retain quality staff, feasible cost containment measures, comparisons with salaries paid by other governments and the private sector, levels of federal grants and

state appropriations, and the ability of the program to maintain or improve its performance in carrying out its duties.

(c) Fees collected pursuant to this section shall be deposited in the coal mining protection fund, created in § 59-8-132.

**59-8-108.**

(a) After a surface coal mining and reclamation permit application is approved, but prior to issuance of the permit, the applicant shall file with the commissioner, on a form prescribed and furnished by the commissioner, a bond for performance payable to this state and conditioned on the faithful performance of this part and the permit. The bond shall cover the area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the commissioner an additional bond or bonds to cover those increments in accordance with this section. The commissioner shall determine the amount of the bond required for each bonded area based upon the reclamation requirements of the approved permit and the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential. The amount of the bond must be sufficient to assure the completion of the reclamation plan if the work had to be performed by the commissioner in the event of forfeiture and in no case shall the bond for the entire area under one (1) permit be less than ten thousand dollars (\$10,000).

(b)

(1) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with operator's responsibility for revegetation requirements in § 59-8-110. The bond must be executed by the operator and a corporate surety licensed to do business in this

state, except that, subject to the approval of the commissioner, the operator may elect to deposit cash, negotiable bonds of the federal government or this state, negotiable certificates of deposit of any bank organized or transacting business in the United States, or any other collateral bonding method authorized by regulations promulgated by the secretary under such conditions as prescribed by the secretary. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area. Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited.

(2) The commissioner may approve an alternative bonding system if the system will achieve the objectives and purposes of the bonding program pursuant to this section.

(c) The commissioner may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the commissioner the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond. The commissioner may promulgate rules more stringent than the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.), or regulations promulgated pursuant to such act, implementing this subsection (c) to ensure the objectives and purposes of the bonding program pursuant to this section.

(d) The commissioner shall adjust the amount of the bond or deposit required and the terms of each acceptance of the operator's bond from time to time as affected land acreages are amended and increased or decreased, as plans are changed, or when the cost of future reclamation changes.

**59-8-109.**

(a) Each permit application shall include a reclamation plan that meets the requirements prescribed by the commissioner and contains the information in the degree



of detail necessary to demonstrate that reclamation required by this part can be accomplished, including but not limited to:

(1) The identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought;

(2) The condition of the land to be covered by the permit prior to any mining, including:

(A) The uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining;

(B) The capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover, and, if applicable, a soil survey prepared pursuant to § 59-8-106(b)(16); and

(C) The productivity of the land prior to mining, including appropriate classification as prime farmlands, as well as the average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management;

(3) The use that is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface and state and local governments, or agencies or subdivisions of such governments, that would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation;

(4) A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve the proposed land use;

(5) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for backfilling, soil stabilization, and compacting, grading, and appropriate revegetation; a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in § 59-8-110(b)(7)(A)-(D), for those food, forage, and forest lands identified in § 59-8-110(b)(7); an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in § 59-8-110;

(6) The consideration given to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future can be minimized;

(7) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(8) The consideration given to making the surface mining and reclamation operations consistent with surface owner plans, and applicable state and local land use plans and programs;

(9) The steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards;

(10) The consideration given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;

(11) All lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(12) The results of test boring that the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the commissioner, including the location of subsurface water, and an analysis of the chemical properties, including acid forming properties of the mineral and overburden. Information that pertains only to the analysis of the chemical and physical properties of the coal, excepting information regarding such mineral or elemental contents that is potentially toxic in the environment, shall be kept confidential and not made a matter of public record; and

(13) A detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:

(A) The quality of surface and groundwater systems, both on- and off-site, from adverse effects of the mining and reclamation process;

(B) The rights of present users to such water; and

(C) The quantity of surface and groundwater systems, both on- and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where such protection of quantity cannot be assured.

(b) Any information required by this section that is not required to be open for public inspection by this part shall be held in confidence by the commissioner and not made available for public inspection under title 10, chapter 7.

**59-8-110.**

(a) Any permit issued under this part to conduct surface coal mining and reclamation operations must require the operations to meet all applicable performance

standards of this part and such other requirements as the commissioner shall promulgate.

(b) General performance standards apply to all surface coal mining and reclamation operations and must require the operation, at a minimum, to:

(1) Conduct surface coal mining operations to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining can be minimized;

(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as such use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicants' declared proposed land use following reclamation is not deemed to be impractical or unreasonable or inconsistent with applicable land use policies and plans, involve unreasonable delay in implementation, or violate federal, state, or local law;

(3)

(A) Except as provided in subsection (c) with respect to all surface coal mining operations backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this part;

(B) Notwithstanding subdivision (b)(3)(A), in surface coal mining:

(i) Which is carried out at the same location over a substantial period of time where the operation transects the coal

deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region; and

(ii) Where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion,

and water pollution and is revegetated in accordance with the requirements of this part;

(4) Stabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick-growing plants or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner such other strata that is best able to support vegetation;

(6) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) For all prime farmlands as identified in § 59-8-106(b)(16) to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction shall be established by the United States secretary of agriculture, and the operator shall, as a minimum, be required to:

(A) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed

protection from wind and water erosion or contamination by other acid or toxic material;

(B) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(C) Replace and regrade the root zone material described in subdivision (b)(7)(B) with proper compaction and uniform depth over the regraded spoil material; and

(D) Redistribute and grade in a uniform manner the surface soil horizon described in subdivision (b)(7)(A);

(8) Create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

(A) The size of the impoundment is adequate for its intended purposes;

(B) The impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the Watershed Protection and Flood Prevention Act of 1954 (16 U.S.C. § 1006);

(C) The quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the

impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;

(D) The level of water will be reasonably stable;

(E) Final grading will provide adequate safety and access for proposed water users; and

(F) Such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(9) Conduct any augering operation associated with surface mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the commissioner determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety. The commissioner may prohibit augering if necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources or to protect against adverse water quality impacts;

(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface coal mining operations and during reclamation by:

(A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(i) Preventing or removing water from contact with toxic producing deposits;



(ii) Treating drainage to reduce toxic content that adversely affects downstream water upon being released to water courses; and

(iii) Casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(B) Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(C) Constructing any siltation structures pursuant to subdivision (b)(10)(B) prior to commencement of surface coal mining operations. Such structures must be certified by a qualified registered engineer, or a qualified registered professional land surveyor if authorized by this state to prepare and certify such maps or plans, to be constructed as designed and as approved in the reclamation plan;

(D) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized; and depositing the silt and debris at a site and in a manner approved by the commissioner;

(E) Restoring recharge capacity of the mined area to approximate premining conditions;

(F) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(G) Preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the state; and

(H) Such other actions as the commissioner may prescribe;

(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this part;

(12) Refrain from surface coal mining within five hundred feet (500 ft.) from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners; provided, that the commissioner shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(A) The nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the commissioner and the federal and state regulatory authorities concerned with health and safety of underground miners; and

(B) Such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public;

(13) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to rules promulgated by the commissioner, all existing and new coal

mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments. Such standards and criteria shall conform to the standards and criteria established by the secretary and used by the chief of engineers to ensure that flood control structures are safe and effectively perform their intended function. In addition to engineering and other technical specifications, the standards and criteria must include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal, or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices for required remedial or maintenance work;

(14) Ensure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the commissioner, which shall include provisions to:

(A) Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile (0.5 mi.) of the proposed blasting site and by providing daily notice to resident/occupiers in such areas prior to any blasting;

(B) Maintain for a period of at least three (3) years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(C) Limit the type of explosives and detonating equipment, the size, and the timing and frequency of blasts based upon the physical conditions of the site so as to prevent:

(i) Injury to persons;

(ii) Damage to public and private property outside the permit area;

(iii) Adverse impacts on any underground mine; and

(iv) Change in the course, channel, or availability of ground or surface water outside the permit area;

(D) Require that all blasting operations be conducted by trained and competent persons certified by the commissioner; and

(E) Provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half mile (0.5 mi.) of any portion of the permitted area the applicant or permittee shall conduct a pre-blasting survey of such structures and submit the survey to the commissioner and a copy to the resident or owner making the request. The area of the survey shall be decided by the commissioner and shall include such provisions as the commissioner shall promulgate in accordance with regulations promulgated by the secretary;

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations; provided, however, that where the applicant proposes to combine surface mining operations with underground mining operations to

assure maximum practical recovery of the mineral resources, the commissioner may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the commissioner finds in writing that:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbances of the surface;

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this part; and

(vi) Provisions for the off-site storage of spoil will comply with subdivision (b)(22);

(B) If the commissioner has promulgated specific rules to govern the granting of such variances in accordance with the provisions of this

subdivision (b)(16), and has imposed such additional requirements as the secretary deems necessary;

(C) If variances granted under the provisions of this subdivision (b)(16) are to be reviewed by the commissioner not more than three (3) years from the date of issuance of the permit; and

(D) If liability under the bond filed by the applicant with the commissioner pursuant to § 59-8-108 shall be for the duration of the underground mining operations and until the requirements of this subsection (b) and § 59-8-115 have been fully complied with;

(17) Ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property;

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(19) Establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan;

(20)

(A) Assume the responsibility for successful revegetation, as required by subdivision (b)(19), for a period of five (5) full years after the last year of augmented seeding, fertilizing, irrigation, or other work in

order to assure compliance with subdivision (b)(19), except where the annual average precipitation is twenty-six inches (26 in.) or less, then the operator's assumption of responsibility and liability will extend for a period of ten (10) full years after the last year of augmented seeding, fertilizing, irrigation, or other work; provided, that when the commissioner issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan:

(i) The applicable five- or ten-year period of responsibility for revegetation shall commence at the date of initial planting for the long-term intensive agricultural postmining land use; and

(ii) The commissioner may grant exception to subdivision (b)(19);

(B) On lands eligible for remining, assume the responsibility for successful revegetation for a period of two (2) full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards, except in those areas or regions of the state where the annual average precipitation is twenty-six inches (26 in.) or less, then the operator's assumption of responsibility and liability will be extended for a period of five (5) full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards;

(21) Protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(22) Place all excess spoil material resulting from surface coal mining and reclamation activities in such a manner that:

(A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(B) The areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(C) Appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(D) The disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

(E) If placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the commissioner, the spoil could be placed in compliance with all the requirements of this part and the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.) and shall be placed, where possible, upon, or above, a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

(F) Where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed;

(G) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(H) Design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and

(I) All other provisions of this part and the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.) are met;



(23) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this part and the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.), taking into consideration the physical, climatological, and other characteristics of the site;

(24) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable; and

(25) Provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the commissioner shall determine shall be retained in place as a barrier to slides and erosion.

(c)

(1) Where an applicant meets the requirements of subdivisions (c)(2) and (c)(3), a permit without regard to the requirement to restore to approximate original contour set forth in subdivision (b)(3) or subdivisions (d)(2) and (d)(3) may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subdivision (c)(3)(A)) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses pursuant to this subsection (c).

(2) In cases where an industrial, commercial, agricultural, residential, or public facility use, including use as a recreational facility, is proposed for the postmining use of the affected land, the regulatory authority may grant a permit for a surface mining operation of the nature described in subdivision (c)(1) where:

(A) After consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with pre-mining use;

(B) The applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be:

(i) Compatible with adjacent land uses;

(ii) Obtainable according to data regarding expected need and market;

(iii) Assured of investment in necessary public facilities;

(iv) Supported by commitments from public agencies where appropriate;

(v) Practicable with respect to private financial capability for completion of the proposed use;

(vi) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(vii) Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(C) The proposed use would be consistent with adjacent land uses, and existing state and local land use plans and programs;

(D) The commissioner provides the governing body of the local government in which the land is located and any state or federal agency that the commissioner, in the commissioner's discretion, determines to

have an interest in the proposed use, an opportunity of not more than sixty (60) days to review and comment on the proposed use; and

(E) All other requirements of this part will be met.

(3) In granting any permit pursuant to this subsection (c) the commissioner shall require that:

(A) The toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) The reclaimed area is stable;

(C) The resulting plateau or rolling contour drains inward from the out slopes except at specified points;

(D) No damage will be done to natural watercourses;

(E) Spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use; provided, that all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subdivision (b)(22); and

(F) Ensure stability of the spoil retained on the mountaintop and meet the other requirements of this part.

(4) The commissioner shall promulgate specific rules to govern the granting of permits under this subsection (c), and may impose additional requirements that the commissioner determines to be necessary.

(5) All permits granted under the provisions of this subsection (c) shall be reviewed not more than three (3) years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) The following performance standards apply to steep-slope surface coal mining and are in addition to the general performance standards required by this section;

provided, however, that this subsection (d) shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with subsection (c):

(1) Ensure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter is placed on the downslope below the bench or mining cut; provided, that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of subdivisions (b)(3) or (d)(2) shall be permanently stored pursuant to subdivision (b)(22);

(2) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation;

(3) The operator may not disturb land above the top of the highwall unless the commissioner finds that such disturbance will facilitate compliance with the environmental protection standards of this section; provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate said compliance; and

(4) For the purposes of this subsection (d), the term "steep slope" means any slope above twenty degrees (20°) or such lesser slope as may be defined by the commissioner after consideration of soil, climate, and other characteristics.

(e)

(1) The commissioner may grant variances for the purposes set forth in this subsection (e); provided, that the watershed control of the area is improved and that complete backfilling with spoil material shall be required to cover completely the highwall, which material will maintain stability following mining and reclamation.

(2) If an applicant meets the requirements of subdivision (e)(3), the commissioner may grant a variance from any requirement to restore the area to the approximate original contour in subdivision (d)(2) if the owner of the surface knowingly requests in writing, as a part of the permit application, that a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities, in accordance with subdivision (e)(3) and the following:

(A) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land shall constitute an equal or better economic or public use;

(B) The backfilling and regrading shall be designed and certified by a registered engineer or a licensed professional geologist in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

(C) After approval by the commissioner, the watershed of the affected land is deemed to be improved.

(3) In granting a variance under this subsection (e), the commissioner shall require that only such amount of spoil will be placed off the mine bench as is necessary to achieve the planned post-mining land use, ensure stability of the spoil retained on the bench, meet all other requirements of this part, and all spoil placement off the mine bench must comply with subdivision (b)(22).

(4) The commissioner shall promulgate specific rules to govern the granting of variances in accordance with this subsection (e), and may impose such additional requirements as the commissioner determines to be necessary.

(5) All variances granted under this subsection (e) shall be reviewed within three (3) years of the date of issuance of the permit, unless the permittee

affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

**59-8-111.**

(a) No person shall conduct underground coal mining operations until that person obtains a permit limiting and controlling the surface effects of the mining, pays the fees required by § 59-8-107, and posts a performance bond conditioned on satisfactory reclamation of the surface disturbances of the underground coal mining operations under § 59-8-108.

(b) The commissioner shall promulgate rules that are designed to minimize the surface effects of underground coal mining operations; however, in adopting rules, the commissioner shall consider the distinct difference between surface coal mining and underground coal mining. The rules shall not conflict with nor supersede the federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. § 801 et seq.), or any regulation issued pursuant to that act.

(c) Each permit issued under this part and relating to underground coal mining shall require the operator to:

(1) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner; provided, that nothing in this subdivision (c)(1) prohibits the standard method of room and pillar mining;

(2) Seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations;

(3) Fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations;

(4) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure that the leachate will not degrade surface or ground waters below water quality standards established pursuant to applicable federal and state law and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) Design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria developed pursuant to § 59-8-110, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(6) Establish on regraded areas and all other lands affected, a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area;

(7) Protect offsite areas from damages that may result from such mining operations;

(8) Eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(9) Minimize the disturbances of the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quantity of water in surface and groundwater systems both during and after coal mining operations and during reclamation by:

(A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(i) Preventing or removing water from contact with toxic producing deposits;

(ii) Treating drainage to reduce toxic content that adversely affects downstream water upon being released to water courses; and

(iii) Casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters; and

(B) Conducting surface coal mining operations to prevent, to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area (but in no event shall such contributions be in excess of requirements set by applicable state or federal law), and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(10) With respect to other surface impacts not specified in this subsection (c), including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards



established under § 53-3-110 for such effects which result from surface coal mining operations; provided, that the commissioner shall make modifications in the requirements imposed by this subdivision (b)(10) that are necessary to accommodate the distinct difference between surface and underground coal mining;

(11) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable; and

(12) Locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(d) In order to protect the stability of the land, the commissioner shall suspend underground coal mining under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or permanent streams, if the commissioner finds an imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(e) The requirements of this part relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall apply to surface operations and surface impacts incidental to an underground coal mine with modifications to permit application requirements, permit approval or denial procedures, and bond requirements that are necessary to accommodate the distinct difference between surface coal mining and underground coal mining. The commissioner shall promulgate rules for the modifications for underground coal mines.

**59-8-112.**

(a)

(1)

(A) At the time of submission of an application for a surface coal mining and reclamation permit, or revision of an existing permit, pursuant to the provisions of this part the applicant shall:

(i) Submit to the commissioner a copy of the applicant's advertisement of the ownership, precise location, and boundaries of the land to be affected; and

(ii) Place the advertisement submitted in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four (4) consecutive weeks.

(B) The commissioner shall notify various local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the proposed surface mining will take place, notifying them of the operator's intention to surface mine a particularly described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies may submit written comments within a reasonable period established by the commissioner on the mining applications with respect to the effect of the proposed operation on the environment that are within their area of responsibility. Such comments shall immediately be transmitted to the applicant by the commissioner and shall be made available to the public at the same locations as are the mining applications.

(C) Each applicant for a surface coal mining and reclamation permit shall file a copy of the applicant's application for public inspection with the recorder at the courthouse of the county or an appropriate public

office approved by the commissioner where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

(2)

(A) Any person having an interest which is, or may be, adversely affected or the officer or head of any federal, state, or local governmental agency or authority has the right to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the commissioner within thirty (30) days after the last publication of the notice published pursuant to subdivision (a)(1). The objections shall immediately be transmitted to the applicant by the commissioner and shall be made available to the public.

(B) If written objections are filed and an informal conference requested, the commissioner shall then hold an informal conference in the locality of the proposed mining, if requested within a reasonable time of the receipt of such objections or request.

(i) The commissioner shall advertise the date, time and location of the informal conference in a newspaper of general circulation in the locality at least two (2) weeks prior to the scheduled conference date.

(ii) The commissioner may arrange with the applicant, upon request by any party to the administrative proceeding, access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(iii) An electronic or stenographic record shall be made of the conference proceeding, unless waived by all parties. The record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond.

(iv) In the event all parties requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their request, the informal conference need not be held.

(3) Where the lands included in an application for a permit are the subject of a federal coal lease in connection with which hearings were held and determinations were made under 30 U.S.C. §§ 201(a)(3)(A), (B), and (C), the hearings shall be deemed as to the matters covered to satisfy the requirements of this subsection (a) and subsections (e) and (f) and the determinations shall be deemed to be a part of the record and conclusive for purposes of subsections (b), (e), and (f) and this subsection (a).

(b)

(1)

(A) Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this part, including public notification and an opportunity for a public hearing as required by this section, the commissioner shall grant, require modification of, or deny the application for a permit in a reasonable time set by the commissioner by rule and notify the applicant in writing.

(B) The applicant for a permit, or revision of a permit, shall have the burden of establishing that the application complies with all the requirements of this part.

(C) Within ten (10) days after the granting of a permit, the commissioner shall notify the local governmental officials in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

(2) The commissioner shall not approve a permit or revision application unless the application affirmatively demonstrates, and the commissioner makes a written finding based on the information in the application or information otherwise available that is documented in the approval and made available to the applicant, that:

(A) The permit application is accurate and complete and that all the requirements of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.) and this part have been complied with;

(B) The applicant has demonstrated that reclamation, as required by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.) and this part, can be accomplished under the reclamation plan contained in the permit application;

(C) The commissioner has assessed the probable cumulative impact of all anticipated surface coal mining in the area on the hydrologic balance as specified in § 59-8-106(b), and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area;

(D) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining and reclamation pursuant to 30 U.S.C. § 1272 or § 59-8-125, or is not within an area under study for that designation in an administrative proceeding commenced pursuant to § 59-8-125, unless the applicant demonstrates that, prior to January 1, 1977, the applicant made substantial legal and financial commitments in relation to a mining operation for which the applicant is applying for a permit; and

(E) In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the regulatory authority the documentation prescribed by § 59-8-106(g).

(c)

(1) When the schedule submitted as prescribed by § 59-8-106(h) or other information available to the commissioner indicates that any surface coal mining and reclamation operation owned or controlled by the applicant is currently in violation of this part, the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.), or any law, rule, or regulation of the United States, or of any department or agency in the United States pertaining to air or water environmental protection in connection with any surface coal mining operation, the commissioner shall not issue the permit until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the commissioner, department, or agency that has jurisdiction over the violation.

(2) The commissioner shall not issue a permit to an applicant after a finding by the commissioner, after opportunity for a hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this part of a nature and duration with resulting irreparable damage to the environment as to indicate an intent not to comply with this part. The hearing held pursuant to this subdivision (c)(2) shall be conducted as a contested case under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, except to the extent that this part or rules promulgated by the commissioner pursuant to this part are inconsistent, in which case this part or the rules promulgated by the commissioner apply.

(3) The prohibitions of this subsection (c) do not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application.

(4) As used in this subsection (c), "unanticipated event or condition" means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit.

(d)

(1) In addition to finding the application in compliance with subdivision (b)(2), if an area proposed to be mined for coal contains prime farmland, the commissioner shall, after consultation with and the concurrence of, the United States secretary of agriculture, and pursuant to the rules promulgated by the commissioner that are consistent with regulations promulgated by the secretary with the concurrence of the United States secretary of agriculture, grant a permit to surface mine for coal on prime farmland if the commissioner finds in writing that the operator has the technological capability to restore the mined area within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in this part. Except for compliance with subdivision (b)(2), the requirements of this subdivision (d)(1) shall apply to all permits issued after August 3, 1977.

(2) Nothing in this subsection (d) applies to any permit issued prior to August 3, 1977, or to any revisions or renewals to those permits, or to any existing surface coal mining operations for which a permit was issued prior to August 3, 1977.

(e)

(1) If an informal conference is held under subdivision (a)(2), the commissioner shall issue and furnish to the applicant and other persons who are parties to the administrative proceedings the commissioner's written findings, granting or denying the permit in whole or in part, and stating the reasons for the grant or denial, within sixty (60) days of the informal conference.

(2) If an informal conference is not held under subdivision (a)(2), the commissioner shall notify the applicant for a permit within a reasonable time as determined by the commissioner by rule, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed, whether the application has been approved or disapproved in whole or in part.

(f)

(1) If the application is approved, the permit shall be issued upon the posting of the required bond.

(2) If the application is disapproved, the commissioner shall state the specific reasons for the disapproval in the notification.

(3)

(A) Within thirty (30) days after the applicant is notified of the final decision of the commissioner on the permit application, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination.

(B)

(i) The commissioner shall hold a hearing conducted as a contested case under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, except to the extent that this part or rules promulgated by the commissioner pursuant to this part are inconsistent, in which case this part or the rules promulgated by



the commissioner apply. The hearing shall be held within thirty (30) days of the request and the commissioner shall provide notification to all interested parties at the time that the applicant is so notified. No person that presided at the conference held pursuant to subdivision (a)(2) shall either preside at the hearing or participate in the decision arising from the hearing.

(ii) Within thirty (30) days after the hearing the commissioner shall issue and furnish the applicant, and all persons who participated in the hearing, with the commissioner's written decision granting or denying the permit in whole or in part and stating the reasons for the approval or denial.

(C) Where a hearing is requested pursuant to this subsection (f), the commissioner may, under such conditions as the commissioner may prescribe, grant such temporary relief as the commissioner deems appropriate pending final determination of the proceedings if:

(i) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(ii) The person requesting such relief shows that there is a substantial likelihood that the person will prevail on the merits of the final determination of the proceeding; and

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

(D)

(i) For the purpose of the hearing, the commissioner has the powers and authorities as provided in this part and title 4, chapter 5, including but not limited to the power and authority to

administer oaths, subpoena witnesses or written or printed materials, compel attendance of the witnesses or production of the materials, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation.

(ii) A verbatim record of each public hearing required by this part shall be made, and a transcript made available on the motion of any party or by order of the commissioner.

(E) Any applicant or any person with an interest which is or may be adversely affected who has participated in the hearing under this subsection (f), and who is aggrieved by the decision of the commissioner, or if the commissioner fails to act within the time limits specified in this part, shall have the right to petition for judicial review as provided in § 59-8-121.

(g)

(1) A permit terminates if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the date of issuance of the permit; however, the commissioner may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding commencement of operations or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee.

(2) In the case of a coal lease issued under the federal Mineral Leasing Act (30 U.S.C. § 181 et seq.), extensions of time may not extend beyond the period allowed for diligent development in accordance with 30 U.S.C. § 207.

(3) In the case of coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(h)

(1) Any valid permit issued pursuant to this part carries with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holder of the permit may apply for renewal, and a renewal shall be issued subsequent to fulfillment of the public notice requirements of this section. In the determination of whether to approve or deny a renewal of a permit, the burden of proof is on the opponents of renewal. The commissioner shall grant a permit renewal, unless the commissioner makes written findings that:

(A) The terms and conditions of the existing permit are not being satisfactorily met;

(B) The present surface coal mining and reclamation operation is not in compliance with this part or rules or orders issued or promulgated by the commissioner pursuant to this part, including the environmental protection standards of this part and the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.);

(C) The renewal requested substantially jeopardizes the permittee's continuing responsibility on existing permit areas;

(D) The operator has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application, as well as any additional bond the commissioner might require under § 59-8-108; or

(E) Any additional revised or updated information required by the commissioner has not been provided.

(2) Prior to the approval of any permit renewal, the commissioner shall provide notice to the appropriate public authorities.

(3) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit that addresses any new land areas is subject to the full standards applicable to new applications under this part.

(4) The term of a permit renewal shall not exceed the term of the original permit. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the current permit.

(i) On or after the effective date of this act, and subject to valid existing rights, no surface coal mining and reclamation operations, except those which existed on August 3, 1977, are permitted:

(1) On any lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under 16 U.S.C. § 1276(a), and national recreation areas designated by an act of congress;

(2) On any federal lands within the boundaries of any national forest; however, surface coal mining and reclamation operations may be permitted if the secretary finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining and reclamation operations, and the surface operations and impacts are incident to an underground coal mine;

(3) Which will adversely affect any publicly owned park or places included in the National Register of Historic Sites, unless approved jointly by the commissioner and the federal, state, or local agency with jurisdiction over the park or the historic site;

(4) Within one hundred feet (100') of the outside right-of-way line of any public road, except where mine access roads or haulage roads join a right-of-way line; however, the commissioner may permit the roads to be relocated or the area affected to lie within one hundred feet (100') of a road, if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the affected landowners are protected;

(5) Within three hundred feet (300') from any occupied dwelling, unless waived by the owner, nor within three hundred feet (300') of any public building, school, church, community, institutional building, or public park; or

(6) Within one hundred feet (100') of a cemetery.

(j) The permit area shall be readily identifiable by appropriate markers on the site.

**59-8-113.**

(a)

(1) During the term of the permit, the permittee may submit to the commissioner an application for a revision of the permit, together with a revised reclamation plan. The commissioner may also require the revision of a permit or a mining or reclamation plan if the present plan is inadequate to protect the public and the environment consistent with this part subject to the requirements of subdivision (a)(2).

(2) The commissioner shall not approve an application for a revision of a permit unless the commissioner finds that the revision meets all the standards of this part and the commissioner's rules including that reclamation as required by

the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.) and this part can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a period of time established by the commissioner. The commissioner shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, apply. Any revisions that propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(b) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this part shall be made without the commissioner's written approval.

(c) In addition to any other review required by federal law or regulations, the commissioner shall, within a time limit prescribed in rules promulgated by the commissioner, review outstanding surface coal mining and reclamation operation permits. The commissioner may require reasonable revision or modification of the permit provisions during the term of the permit; provided, that the revision or modification is based upon a written finding and subject to notice and hearing requirements established by the commissioner.

**59-8-114.**

(a) The commissioner shall make inspections of any surface coal mining and reclamation operation that are necessary to determine whether the operation is in compliance with this part, and all rules promulgated and permits issued pursuant to this part, and has a right of entry to, upon, or through any surface coal mining and reclamation operation in order to conduct the inspections.

(b) For the purposes of administering and enforcing any permit under this part, adequately developing a regulatory program, or determining whether any person is in violation of any requirement of this part or any other requirement of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.):

(1) The commissioner shall require any permittee to:

- (A) Establish and maintain appropriate records;
- (B) Make monthly reports to the commissioner;
- (C) Install, use, and maintain any necessary monitoring equipment or methods;
- (D) Evaluate results in accordance with the methods, at such locations, intervals, and manner that the commissioner prescribes; and
- (E) Provide other information relative to surface coal mining and reclamation operations that the commissioner deems reasonable and necessary.

(2) For surface coal mining and reclamation operations that remove or disturb strata serving as aquifers, which significantly ensure the hydrologic balance of water use, either on or off the mining site, the commissioner shall specify those:

- (A) Monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence;
- (B) Monitoring sites to record level, amount, and samples of groundwater and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seam to be mined;
- (C) Records of well logs and borehole data to be maintained; and
- (D) Monitoring sites to record precipitation.

(c) The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the commissioner to assure their reliability and validity.

(d) The authorized representatives of the commissioner, without advance notice, and upon presentation of appropriate credentials:

(1) Have the right of entry to, upon, or through any surface coal mining and reclamation operation or any premises in which any records required to be maintained under subsection (b) are located; and

(2) May, at reasonable times, and without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required under this part.

(e) The commissioner's inspections shall:

(1) Occur on an irregular basis, averaging not less than one (1) partial inspection per month and one (1) complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit;

(2) Occur without prior notice to the permittee or the permittee's agents or employees, except as necessary for on-site meetings with the permittee; and

(3) Include the filing of inspection reports adequate to enforce the requirements of, and to carry out the terms and purposes of, this part.

(f) Each permittee shall conspicuously maintain at the entrances to each surface coal mining and reclamation operation, a clearly visible sign that states the name, business address, and telephone number of the permittee and the permit number of the surface coal mining and reclamation operation.

(g) If an inspector detects a violation of this part, the inspector shall immediately inform the operator in writing and make a written report of the violation to the commissioner.



(h) The commissioner shall make copies of any records, reports, inspection materials, or information obtained under this part immediately available to the public at central and sufficient locations in the county, multicounty, and state area of mining so that they are conveniently available to residents in the areas of mining.

(i)

(1) Any person who is or may be adversely affected by a surface mining operation may notify the commissioner or any representative of the commissioner responsible for conducting the inspection, in writing, of any violation of this part which the person has reason to believe exists at the surface mining site. The commissioner shall, by rule, establish procedures for informal review of any refusal by a representative of the commissioner to issue a citation with respect to any such alleged violation. The commissioner shall furnish such persons requesting the review a written statement of the reasons for the commissioner's final disposition of the case.

(2) The commissioner shall also, by rule, establish procedures to ensure that adequate and complete inspections are made. Any such person may notify the commissioner of any failure to make such inspections, after which the commissioner shall determine whether adequate and complete inspections have been made. The commissioner shall furnish such persons a written statement of the reasons for the commissioner's determination that adequate and complete inspections have or have not been conducted.

**59-8-115.**

(a) A permittee may file with the commissioner a request for the release of all or part of a performance bond or deposit.

(b)

(1) Within thirty (30) days after an application for bond or deposit release has been initiated and filed with the commissioner, the permittee shall submit a

copy of an advertisement placed at least once a week for four (4) successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement is considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit number and the date that the permit was approved, the amount of the bond filed and the portion of the bond sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as the results relate to the operator's approved plan.

(2) In addition, as part of any bond release application, the bond release applicant shall submit copies of letters that the bond release applicant has sent to adjoining landowners, local government bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the surface coal mining and reclamation activities took place, notifying them of the bond release applicant's intention to seek release from the bond.

(c) Upon receipt of any notification and request under this section, the commissioner shall, within thirty (30) days, inspect and evaluate the reclamation work involved. The evaluation shall consider, but not be limited to, the degree of difficulty to complete any remaining reclamation, whether pollution of surface or subsurface water is occurring, the probability of continuation of the pollution, and the estimated cost of abating the pollution. The commissioner shall notify the permittee in writing of the commissioner's decision to release or not to release all or part of the performance bond or deposit within sixty (60) days from the filing of the request, if no public hearing is held pursuant to subsection (h), and if a public hearing is held pursuant to subsection (h), within thirty (30) days after the hearing date.

(d) The commissioner may release all or part of the bond or deposit when the commissioner is satisfied that the reclamation covered by the bond or deposit, or portion

of the bond or deposit, has been accomplished as required by this part according to the following schedule:

(1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with the operator's approved reclamation plan up to sixty percent (60%) of the bond or deposit for the applicable permit area may be released but the amount of the unreleased portion of the bond or deposit shall not be less than the amount necessary to assure completion of the reclamation work by a third party in the event of default by the operator;

(2) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, the commissioner, when determining the amount of bond to be released after successful revegetation has been established, shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in § 59-8-110 of reestablishing revegetation. No part of the bond or deposit shall be released under this subdivision (d)(2) so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by § 59-8-110(b)(10), or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to § 59-8-106. Where an impoundment, including but not limited to a silt dam, is to be retained permanently pursuant to § 59-8-110(b)(8), the portion of bond may be released under this subdivision (d)(2) so long as provisions for sound future maintenance by the operator or the landowner have been made with the commissioner;

(3) When the operator has completed successfully all surface coal mining and reclamation activities, the remaining portion of the bond or other collateral may be released, but not before the expiration of the period specified for operator responsibility in § 59-8-110. No bond shall be fully released until all reclamation requirements of this part are fully met.

(e) The permittee shall not be denied access to the mining site for the purposes of completing or maintaining reclamation work because of the expiration of the permittee's lease, until the permittee's entire performance bond has been released.

(f) If the commissioner disapproves the application for release of all or part of the bond, the commissioner shall notify the permittee in writing, stating the reasons for disapproval and recommending specific corrective actions necessary to secure the release, and allowing opportunity for a public hearing.

(g) When any application for total or partial bond release is filed with the commissioner, the commissioner shall notify the municipality in which the surface coal mining and reclamation operation is located by certified mail at least thirty (30) days prior to the release of all or a portion of the bond.

(h) Any person with a valid legal interest, which might be adversely affected by release of all or a portion of the bond, or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, has the right to file written objections to the proposed release from bond or deposit to the commissioner within thirty (30) days after the last publication of the newspaper notice provided for in subsection (b). If one (1) or more written objections to a release of bond or deposit is filed, and a hearing requested, the commissioner shall inform all the interested parties of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release, or

at the state capital, at the option of the objector, within thirty (30) days of the request for a hearing. The commissioner shall advertise the date, time, and location of the public hearing in a newspaper of general circulation in the locality for two (2) consecutive weeks.

(i) Without prejudice to the rights of the objectors or the bond release applicant, or the responsibilities of the commissioner, the commissioner may convene an informal conference as provided for in § 59-8-112 to resolve written objections.

(j) For the purpose of the hearing, the commissioner is authorized to administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or production of the materials, and take evidence, including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the bond release applicant in the general vicinity. A verbatim record of each public hearing required by this part shall be made, and a transcript made available on the motion of any party or by order of the commissioner.

(k) The bond release applicant or a person with a valid legal interest, which might be adversely affected by release of all or a portion of the bond, aggrieved by a determination of the commissioner under this section may petition the commissioner for a hearing. The hearing shall be conducted as a contested case under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, except to the extent that this part or rules promulgated by the commissioner pursuant to this part are inconsistent, in which case this part or the rules promulgated by the commissioner apply.

**59-8-116.**

(a) When, on the basis of any information available, including receipt of information from any person, the commissioner has reason to believe that any person is in violation of this part, any rule or order issued or promulgated under this part or any condition of a permit required by this part, the commissioner shall immediately order inspection of the surface coal mining operation at which the alleged violation is occurring

unless the information available is a result of a previous inspection of the surface coal mining operation. When the inspection results from information provided to the commissioner by any person who is not an employee of the department, the commissioner shall notify the person when the inspection is proposed to be carried out and the person shall be allowed to accompany the inspector during the inspection.

(b)

(1) If, on the basis of an inspection, the commissioner determines that any permittee is in violation of this part, any rule promulgated under this part, or any permit condition required by this part, but that violation does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant imminent environmental harm to land, air, or water resources, the commissioner shall issue a notice of violation to the permittee fixing a reasonable time, but not more than ninety (90) days, for the abatement of the violation, and if deemed necessary by the commissioner, ordering an immediate cessation of activities violating or resulting in the violation of this part, the rules promulgated under this part, or any condition of a permit.

(2) The commissioner may promulgate rules that allow for reasonable extensions for abatement or for accomplishment of an interim step in the manner provided by regulations promulgated by the secretary; however, when the abatement time permitted is in excess of ninety (90) days, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(3)

(A) If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the commissioner, the commissioner finds that the violation has not been abated, the commissioner shall immediately order a cessation of

surface coal mining and reclamation operations or the portion of the operations relevant to the violation.

(B) A cessation order remains in effect until the commissioner determines that the violation has been abated, or until modified, vacated, or terminated by the commissioner under subsection (d).

(C) In the cessation order issued under this subsection (b), the commissioner shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the cessation order.

(c)

(1) If, on the basis of any inspection, the commissioner determines that any condition or practice exists, or that any permittee is in violation of this part, any rule promulgated under this part, or any permit condition required by this part, which condition, practice, or violation also creates an imminent danger to the health and safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the commissioner shall immediately order a cessation of surface coal mining and reclamation operations or the portion of the operations relevant to the condition, practice, or violation. The cessation order shall remain in effect until the commissioner determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the commissioner under subsection (d). If the commissioner finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of operations, will not completely abate the imminent danger to the health and safety of the public or the significant, imminent environmental harm to land, air, or water resources, then the commissioner shall, in addition to the cessation order, impose affirmative obligations on the operator requiring the operator, to take whatever

steps the commissioner deems necessary to abate the imminent danger or the significant environmental harm.

(2) The commissioner shall also issue an immediate cessation order to any operator mining without a valid permit or mining an area not covered by a valid permit.

(d)

(1) When, based upon an inspection, the commissioner finds that a pattern of violations of this part, rules promulgated pursuant to this part, or any permit conditions required by this part exists or has existed, and if the commissioner also finds that such violations are caused by an unwarranted failure of the permittee to comply with this part, rules promulgated pursuant to this part, or any condition of a permit, or that such violations are willfully caused by the permittee, the commissioner shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide an opportunity for a public hearing. If permittee fails to show cause as to why the permit should not be suspended or revoked, the commissioner shall suspend or revoke the permit. If the permittee files an answer to the show cause order and requests a hearing, the commissioner shall inform all interested parties of the time, place, and date of the hearing. A written or electronic record shall be kept of any show cause hearing by the commissioner and the hearing shall be conducted as a contested case under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, except to the extent that this part or rules promulgated by the commissioner pursuant to this part are inconsistent, in which case this part or the rules promulgated by the commissioner apply. Within sixty (60) days following a show cause hearing, the commissioner shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the commissioner's findings, concerning suspension or revocation of the permit.



(2) If the permit is revoked, then mining shall immediately cease and reclamation shall be completed within a period specified by the commissioner, or the commissioner shall declare as forfeited the performance bonds for the operation.

(e)

(1) Notices and orders issued pursuant to this section shall set forth with reasonable specificity:

(A) The nature of the violation;

(B) The remedial action required;

(C) The period of time established for abatement; and

(D) A reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies.

(2) The commissioner shall promptly deliver each notice or order issued under this section to the permittee or the permittee's agent.

(3) All notices and orders shall be in writing and shall be signed by the commissioner.

(4) The commissioner may modify, vacate, or terminate any notice or order issued pursuant to this section.

(5) Any notice or order issued pursuant to this section, which requires cessation of active mining, expires within thirty (30) days of actual notice to the operator unless a public hearing is held at the site or within a reasonable proximity to the site where any viewings of the site can be conducted during the course of the public hearing; however, the notice or order shall not expire if the operator waives the hearing. The granting or waiver of a public hearing held under this subdivision (e)(5) does not affect the right of any person to formal review under subsection (d), § 59-8-117, or § 59-8-120.

(f) Nothing in this section eliminates any additional enforcement rights or procedures that are available under state law to a state agency but are not specifically enumerated in this section.

**59-8-117.**

(a) Any permittee who violates this part, rules promulgated pursuant to this part, or any permit condition required by this part, may be assessed a civil penalty by the commissioner, except that if the violation leads to the issuance of a cessation order, a civil penalty shall be assessed. A civil penalty assessed under this subsection (a) shall not exceed five thousand dollars (\$5,000) for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of assessing a civil penalty. In determining the amount of the penalty, the commissioner shall consider the history of previous violations by the permittee at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any danger to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

(b)

(1) A civil penalty shall be assessed by the commissioner only after the person charged with a violation described under subsection (a) has been given notice and an opportunity for a public hearing before the commissioner, unless the public hearing is expressly waived by the person charged.

(2) When a public hearing has been held, the commissioner shall make findings of fact, and the commissioner shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(3) When appropriate, a public hearing held pursuant to this section shall be consolidated with other proceedings under § 59-8-116. Any hearing under

this subsection (b) shall be of record and conducted as a contested case under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, except to the extent that this part or rules promulgated by the commissioner pursuant to this part are inconsistent, in which case this part or the rules promulgated by the commissioner apply.

(4) If the person charged with a violation waives the public hearing, then the commissioner shall issue an order requiring that the penalty be paid after determining that a violation did occur and the amount of the penalty which is warranted.

(c) Within thirty (30) days of issuing a notice or order, the commissioner shall inform the person charged with the penalty of the proposed amount of the penalty. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the commissioner for placement in an escrow account. If, through administrative or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty should be reduced, the commissioner shall, within thirty (30) days of the determination, remit the applicable escrowed amount to the person with interest at the rate of six percent (6%) per annum, or at the prevailing department of treasury rate, whichever is greater. Failure to forward the money to the commissioner within thirty (30) days results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) The commissioner, through the attorney general and reporter, may institute proceedings in the name of the department for the recovery of any assessment or penalty made under this part in any appropriate court. All sums recovered shall be placed in the state treasury and credited to the coal mining protection fund, created by § 59-8-132.

(e) Any person who willfully and knowingly violates this part, rules promulgated pursuant to this part, or any condition of a permit or order issued pursuant to this part, except an order incorporated in a decision issued under subsection (b) or § 59-8-131, commits a Class E felony and, upon conviction, shall be punished by a fine of not more than ten thousand dollars (\$10,000), or incarceration, or both.

(f) Any person who knowingly makes any false statement, representation, or certification, or who knowingly fails to make any statement, representation, or certification, in any application, record, report, plan, or document filed or required to be maintained by this part, rules promulgated under this part, or any permit, order, or decision issued by the commissioner, commits a Class E felony and, upon conviction, shall be punished by a fine of not more than ten thousand dollars (\$10,000), or incarceration, or both.

(g) Any person who knowingly violates the conflict of interest provisions of § 59-8-127 commits a Class E felony and, upon conviction, shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500), or incarceration, or both.

(h) Any person who knowingly engages in surface coal mining and reclamation operations without first obtaining a permit for the mine from the commissioner, commits a Class E felony, and upon conviction, shall be punished by a fine of not more than ten thousand dollars (\$10,000), or incarceration, or both.

(i) Any person who, except as permitted by law, willfully resists, prevents, impedes, or interferes with the commissioner or the commissioner's agents from performing the commissioner's or agent's duty under this part commits a Class E felony, and upon conviction, shall be punished by a fine of not more than ten thousand dollars (\$10,000), or incarceration, or both.

(j) Whenever a corporate permittee commits the violations enumerated in subsections (a) and (e), any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be

subject to the same civil penalties, fines, and imprisonment that may be imposed under subsections (a) and (e). The commissioner shall promulgate rules establishing the procedure provided by 30 CFR part 846 for assessing individual civil penalties under this subsection (j).

(k)

(1) The period for correcting a violation for which a citation has been issued under § 59-8-116 does not end until:

(A) The entry of a final order by the commissioner, in the case of any review proceedings under § 59-8-120 initiated by the person wherein the commissioner orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the person will suffer irreparable loss or damage from the application of those requirements; or

(B) The entry of an order of the court, in the case of any review proceedings under § 59-8-121 initiated by the person wherein the court orders the suspension of the abatement requirements of the citation.

(2) Any person who fails to correct a violation for which a citation has been issued under § 59-8-116 within the period permitted for its correction shall be assessed a civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which the failure to correct or violation continues.

(l) Nothing in this section eliminates any additional enforcement right or procedures which are available under state law to a state agency but are not specifically enumerated in this section.

**59-8-118.**

(a) The commissioner may request the attorney general and reporter to institute a civil action for relief against any permittee including a permanent or temporary injunction, restraining order, or any other appropriate order, and venue and jurisdiction

for the action shall be in the chancery court in the county where the surface mining operation is located or in which the permittee has its principal office, whenever the permittee or the permittee's agent:

(1) Violates or fails or refuses to comply with any order or decision issued by the commissioner under this part;

(2) Interferes with, hinders, or delays the commissioner in carrying out the provisions of this part;

(3) Refuses to admit the commissioner to a surface coal mining and reclamation operation;

(4) Refuses to permit inspection of a surface coal mining and reclamation operation by the commissioner;

(5) Refuses to furnish any information or report requested by the commissioner in furtherance of this part;

(6) Refuses to permit access to, and copying of, records that the commissioner determines to be necessary in carrying out this part; or

(7) Violates or threatens to violate any other provision of this part, the rules promulgated pursuant to this part, or conditions of a permit issued pursuant to this part.

(b) The court has jurisdiction to provide any relief as may be appropriate. Any relief granted by the court to enforce an order under this subsection (b) shall continue in effect until the completion or final termination of all proceedings for review of that order under this part unless, before that time, the court granting the relief sets it aside or modifies it.

(c) Nothing in this section eliminates any additional enforcement rights or procedures that are available under state law to a state agency, but are not specifically enumerated in this section.

**59-8-119.**

(a) Except as provided in subsections (b) and (c), any person having an interest that is or may be adversely affected may commence a civil action to compel compliance with this part:

(1) Against the state or any other governmental instrumentality or agency, which is alleged to be in violation of this part, or any rule promulgated under this part, or order or permit issued pursuant to this part, or against any other person who is alleged to be in violation of this part, or any rule promulgated under this part, or order or permit issued pursuant to this part; or

(2) Against the commissioner when the commissioner is alleged to have failed to perform any act or duty under this part that is not discretionary with the commissioner.

(b) No action may be commenced under subdivision (a)(1):

(1) Until sixty (60) days after the plaintiff has provided written notice of the violation to the secretary, the commissioner, and any alleged violator; or

(2) If the commissioner or the state has commenced and is diligently prosecuting a civil action in a court of this state or the United States to require compliance with this part, or any rule promulgated under this part, or order or permit issued pursuant to this part, but in any such action any person may intervene as a matter of right.

(c) No action may be commenced under subdivision (a)(2) until sixty (60) days after the plaintiff has provided written notice of the violation to the commissioner, in the manner that the commissioner requires by rule, except that an action may be brought immediately after notice of the violation is provided to the commissioner, if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(d)

(1) Any action brought under this section respecting a violation of this part or the rules promulgated thereunder may be brought only in the chancery court of the county in which the greater part of the surface coal mining and reclamation operation complained of is located.

(2) The commissioner, if not a party, may intervene in any civil action brought under this section as a matter of right.

(e) The court, in issuing any final order in any action brought under subsection (a), may award costs of litigation, including reasonable attorney fees and expert witness fees, to any party, whenever the court determines the award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Tennessee Rules of Civil Procedure.

(f) Nothing in this section restricts any right that any person, or class of persons, may have under any statute or common law to seek enforcement of this part and the rules issued pursuant to it, or to seek any other relief, including relief against the commissioner.

(g) Any person who incurs a personal injury or property damage due to an operator's violation of any rule, order, or permit issued pursuant to this part may bring an action for damages against the operator including reasonable attorney and expert witness fees, in the chancery court of the county in which the surface coal mining and reclamation operation complained of is located. Nothing in this subsection (g) affects the rights established by, or limits imposed under, the Workers' Compensation Law, compiled in title 50, chapter 6.

**59-8-120.**

(a)

(1)



(A) A permittee issued a notice or order by the commissioner pursuant to § 59-8-116(b) or § 59-8-116(c), or any person having an interest that is or may be adversely affected by the notice or order or by any modification, vacation, or termination of the notice or order, may apply to the commissioner for review of the notice or order within thirty (30) days of receipt of the order or within thirty (30) days of its modification, vacation, or termination; provided, however, that any person not served with a copy of the document shall file the application for review within forty (40) days of the date of issuance of the document.

(B) Upon receipt of such application, the commissioner shall cause such investigation to be made as the commissioner deems appropriate. The investigation shall provide an opportunity for a public hearing, at the request of the permittee or the person having an interest that is or may be adversely affected, to enable the permittee or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof.

(C) The filing of an application for review under this subsection (a) does not operate as a stay of any order or notice.

(2) The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five (5) days prior to the hearing. Any such hearing shall be conducted as a contested case under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, except to the extent that this part or rules promulgated by the commissioner pursuant to this part are inconsistent, in which case this part or the rules promulgated by the commissioner apply.

(b)

(1) Upon completion of the investigation, the commissioner shall make findings of fact, and shall issue a written decision, incorporating an order vacating, affirming, modifying, or terminating the notice or order, or the modification, vacation, or termination of such notice or order complained of and incorporate the commissioner's findings in the order.

(2) Where the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to § 59-8-116(b) or § 59-8-116(c), the commissioner shall issue the written decision within thirty (30) days of the receipt of the application for review, unless temporary relief has been granted by the commissioner pursuant to subsection (c) or by a court pursuant to § 59-8-121(c).

(c) Pending completion of the investigation and hearing required by this section, the applicant for review may file with the commissioner a written request that the commissioner grant temporary relief from any notice or order, together with a detailed statement giving reasons for requesting the relief. The commissioner shall issue an order or decision granting or denying the relief expeditiously; provided, that, if the applicant for review requests relief from an order for cessation of coal mining and reclamation operations issued pursuant to § 59-8-116(b) or § 59-8-116(c), the order or decision on such a request shall be issued within five (5) days of its receipt. The commissioner may grant the relief requested, under the conditions the commissioner prescribes, if:

(1) All parties to the proceeding have been notified and an informal hearing has been held in the locality of the surface coal mining and reclamation operation on the request for temporary relief in which all parties were given an opportunity to be heard;

(2) The applicant for review shows that there is a substantial likelihood that the final decision of the commissioner in the hearing will be favorable to the applicant for review; and

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

(d) Whenever an order is issued under this section, or as a result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the court or the commissioner to have been reasonably incurred by the person for, or in connection with, the person's participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the commissioner, deems proper.

**59-8-121.**

(a)

(1) Any final order or determination by the commissioner in a contested case proceeding under this part, including a civil penalty proceeding, or as otherwise provided in this part, is subject to judicial review on or before thirty (30) days from the date of such order or decision, and venue and jurisdiction for such action shall be in Davidson County chancery court or the chancery court in the county where the surface mining operation is located. In the case of a proceeding to review an order or decision issued by the commissioner under § 59-8-117, the court shall have jurisdiction to enter an order requiring payment of any civil penalty assessment enforced by its judgment.

(2) The court shall hear such petition or complaint solely on the record made before the commissioner. The findings of the commissioner, if supported by substantial evidence on the record considered as a whole, shall be

conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the commissioner for such further action as it may direct.

(b) In the case of a proceeding to review any order or decision issued by the commissioner under this part, including an order or decision pertaining to any order for cessation of surface coal mining and reclamation operations, the court may, under such conditions as it may prescribe, grant any temporary relief that it deems appropriate pending a final determination of the proceedings if:

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

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

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

(c) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the commissioner.

(d) Except as provided in § 59-8-119, the availability of judicial review under this section shall not limit any rights established under § 59-8-119.

**59-8-122.**

(a) Nothing in this part affects the right of any person to enforce or protect, under applicable law, that person's interest in water resources affected by a mining operation.

(b) The permittee or operator of a surface coal mine shall replace the water supply of an owner of an interest in real property who obtains all or part of that owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an

underground or surface source when the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation.

(c)

(1) Underground coal mining operations conducted in this state after October 24, 1992, shall:

(A) Promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and structures related thereto, or noncommercial building due to underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and structures related thereto, or noncommercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and structures related thereto, or noncommercial building and shall be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancelable premium-prepaid insurance policy; and

(B) Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit that has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

(2) Nothing in this subsection (c) prohibits or interrupts underground coal mining operations.

**59-8-123.**

(a) In order to encourage advances in surface coal mining and reclamation practices, or to allow post-mining land use for industrial, commercial, residential, or

public use, including recreational facilities, the commissioner, with the approval of the secretary, may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under this part.

(b) The departures may be authorized if:

(1) The experimental practices are potentially more environmentally protective, or at least as protective, during and after mining operations, as those required by promulgated standards;

(2) The mining operations approved for a particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and

(3) The experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

**59-8-124.**

Nothing in this part limits or invalidates § 66-5-102.

**59-8-125.**

(a)

(1) The commissioner shall establish a planning process enabling objective decisions to be made based upon competent and scientifically sound data and information as to which, if any, land areas of this state are unsuitable for all or certain types of surface coal mining and reclamation operations pursuant to the standards set forth in this section, but that designation shall not prevent the mineral exploration of any designated area.

(2) Upon petition pursuant to subsection (b), the commissioner shall designate an area as unsuitable for all or certain types of surface coal mining and reclamation operations if the commissioner determines that reclamation pursuant to the requirements of this part is not technologically and economically feasible.

(3) Upon petition pursuant to subsection (b), an area may be designated unsuitable for certain types of surface coal mining and reclamation operations if such operations:

(A) Are incompatible with existing state or local land use plans or programs;

(B) Affect fragile or historic lands in a way that could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems;

(C) Affect renewable resource lands, including, but not limited to, aquifers and aquifer recharge areas, in a way that could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(D) Affect natural hazard lands, including, but not limited to, areas subject to frequent flooding and areas of unstable geology, in a way that could substantially endanger life and property.

(4) The department shall be responsible for surface coal mining lands review and shall assist the commissioner in developing a process that includes:

(A) A database and inventory system that permits proper evaluation of the capacity of different land areas of this state to support and permit reclamation of surface coal mining and reclamation operations;

(B) A method or methods for implementing land use planning decisions concerning surface coal mining and reclamation operations; and

(C) Proper notice and opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(5) Determinations of the unsuitability of land for surface coal mining and reclamation operations shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state, and local levels.

(6) This section does not apply to lands on which surface coal mining operations are being conducted on August 3, 1977, or under a permit issued pursuant to this part, or where substantial legal and financial commitments in the operation were in existence prior to January 4, 1977.

(b) Any person having an interest that is or may be adversely affected shall have the right to petition the commissioner to have an area designated as unsuitable for surface coal mining and reclamation operations, or to have an existing designation terminated. A petition filed pursuant to this subsection (b) must contain allegations of facts with supporting evidence that tends to establish the allegations. Within ten (10) months after receipt of the petition, the commissioner shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a petition has been filed, but before the hearing on it, any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations. In the event that all of the petitioners stipulate agreement prior to the requested hearing, and withdraw their requests, the hearing need not be held.

(c) Prior to designating any land areas as unsuitable for surface coal mining and reclamation operations, the commissioner shall prepare a detailed statement on:

- (1) The potential coal resources of the area;
- (2) The demand for coal resources; and
- (3) The impact of the designation on the environment, the economy, and the supply of coal.



(d) In reaching a decision on whether to designate any land areas as unsuitable for surface coal mining and reclamation operations, the commissioner shall use:

(1) The information contained in the database, records, and inventory system;

(2) Any information that was provided by other governmental agencies or the public; and

(3) The information contained in the detailed statement provided in subsection (c).

(e) The commissioner shall issue a final written decision, including a statement of findings, within sixty (60) days of the completion of the public hearing, or if no public hearing is held, within twelve (12) months of receipt of the complete petition. The commissioner shall simultaneously notify the petitioner, other parties to the hearing, and the regional director of the office of surface mining, of the decision by certified mail.

(f) The decision of the commissioner with respect to a petition, or the failure of the commissioner to act within the time limits set forth in this section shall be subject to judicial review in the same manner as provided for orders or determinations of the commissioner under § 59-8-121. All relevant portions of the information used in subsection (c) shall be considered and included in the record of the administrative proceeding.

**59-8-126.**

The commissioner shall promulgate rules to require the training, examination, and certification of persons engaging in, or directly responsible for, blasting or use of explosives in surface coal mining operations.

**59-8-127.**

No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any underground coal mining operation or surface coal mining and reclamation operation. The commissioner shall promulgate

rules to establish methods by which this section shall be monitored and enforced, including appropriate provisions for the filing by any employees and the review of statements and supplements to such statements concerning any financial interest which may be affected by this section.

**59-8-128.**

(a) This part does not operate to repeal, supersede, amend, or modify any of the laws of this state relating to the pollution of the air or waters, or any environment and conservation or mining laws, or any rules promulgated pursuant to such laws, but shall be held and construed as ancillary and supplemental thereto. Such laws include, but are not limited to:

(1) The Tennessee Air Quality Act, compiled in §§ 68-201-101 – 68-201-121;

(2) The Tennessee Solid Waste Disposal Act, compiled in §§ 68-211-101 – 68-211-124;

(3) The Water Quality Control Act of 1977, compiled in §§ 69-3-101 – 69-3-148; and

(4) Chapters 1 and 4 of this title.

(b) Nothing in this part affects the authority of any agency of this state under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface coal mining and reclamation operations on land under their jurisdiction.

**59-8-129.**

(a) Except as provided in subsection (b), irrespective of the date of issuance of a permit, all permittees shall immediately conform to any statutes enacted relative to surface coal mining and reclamation operations in this state, or rules adopted pursuant to those statutes, on the effective date of such statutes and rules.

(b) Permits issued pursuant to the federal program shall be valid under this part; provided, the federal permittee shall have the right to apply for a permit under this part to supersede the permit issued pursuant to the federal program. The commissioner may review such permits to determine that the requirements of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.) and this part and rules promulgated pursuant to this part are not violated. Should this part or rules promulgated pursuant to this part contain additional requirements not contained in the federal program, the permittee will be provided opportunity for hearing and a reasonable time, within a time limit prescribed in rules promulgated by the commissioner, to conform ongoing surface mining and reclamation operations to the additional state requirements.

**59-8-130.**

Any agency, unit, or instrumentality of state, federal, or local government, including any publicly owned utility or publicly owned corporation of state, federal, or local government, that proposes to engage in exploration or mining operations that are subject to this part, shall comply with this part.

**59-8-131.**

(a) No person shall discharge, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this part or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this part.

(b)

(1) Any employee or a representative of employees who believes that the employee has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty (30) days after such alleged violation occurs, apply to the commissioner for a review of such firing or

alleged discrimination. A copy of the application shall be sent to the person or operator who will be the respondent.

(2) Upon receipt of such application, the commissioner shall cause such investigation to be made as the commissioner deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the hearing at least five (5) days prior to the hearing. Any such hearing shall be a contested case conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, except to the extent that this part or rules promulgated by the commissioner pursuant to this part are inconsistent, in which case this part or the rules promulgated by the commissioner apply.

(3) Upon receiving the report of such investigation, the commissioner shall make findings of fact. If the commissioner finds that a violation did occur, the commissioner shall issue a decision incorporating the commissioner's findings and an order requiring the party committing the violation to take such affirmative action to abate the violation as the commissioner deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to such person's former position with compensation. If the commissioner finds that there was no violation, the commissioner shall issue a finding.

(4) Orders issued by the commissioner under this subsection (b) shall be subject to judicial review in the same manner as provided for orders or determinations of the commissioner under § 59-8-121.

(c) Whenever an order is issued under this section to abate any violation, at the request of the employee or representative applicant a sum equal to the aggregate amount of all costs and expenses, including attorney fees, to have been reasonably

incurred by the employee or representative applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the persons committing the violation.

**59-8-132.**

(a) There is created a segregated account within the state treasury to be known as the "coal mining protection fund."

(b) The fund shall be administered by the commissioner. Unless otherwise provided by this part, all fees, penalties, bond forfeitures and damages collected by the commissioner pursuant to this part and monies received as provided in § 67-7-110, shall be deposited by the state treasurer into the coal mining protection fund, created in subsection (a), and shall be used by the commissioner to defray expenses necessary to administer this part including administration and enforcement of the requirements of this part; provided, however, that:

(1) Penalties shall be segregated in a separate account in the fund to be expended by the commissioner primarily for activities supporting the reclamation of land and water adversely affected by surface coal mining and exploration activities after August 3, 1977, and for conducting and obtaining investigations, research, experiments, training programs, and demonstrations; and collecting and disseminating information relating to exploration, surface mining, reclamation of disturbed lands, and control of pollution of water and soil affected by exploration and surface mining for coal; and

(2) Bond forfeitures shall be segregated in a separate account in the fund and shall be available to the commissioner for expenditure for the reclamation of land and water adversely affected by surface coal mining and exploration activities after August 3, 1977; provided, that the proceeds from the forfeiture of any bond shall first be used to the extent required in completing reclamation of the area with respect to which the bond was posted.

(c) Moneys in the fund shall be invested by the state treasurer for the benefit of the fund pursuant to § 9-4-603. Unexpended and unobligated funds remaining in the fund at the end of any fiscal year shall not revert to the general fund but shall remain available for the purposes set forth in this part. Interest accruing on investments and deposits of the fund shall be returned to the fund and remain a part of the fund.

SECTION 4. Tennessee Code Annotated, Section 59-8-302(e), is amended by deleting the language "TENNESSEE COAL SURFACE MINING LAW OF 1980" and substituting instead the language "TITLE 59, CHAPTER 8, PART 3".

SECTION 5. Tennessee Code Annotated, Section 59-8-302(e), is amended by designating the first sentence as subdivision (1) and the second sentence beginning with the language "The register of deeds" as subdivision (2).

SECTION 6. Tennessee Code Annotated, Section 59-8-304, is amended by deleting the language "in §§ 59-8-304 — 59-8-309" and substituting instead the language "in this part".

SECTION 7. Tennessee Code Annotated, Section 59-8-304, is amended by deleting subdivisions (1) and (4) in their entirety.

SECTION 8. Tennessee Code Annotated, Title 59, Chapter 8, Part 3, is amended by deleting §§ 59-8-305(a)(1) and 59-8-307 in their entirety.

SECTION 9. Tennessee Code Annotated, Section 59-8-308, is amended by deleting the section in its entirety and substituting instead the following:

**59-8-308.**

The commissioner has the authority to:

- (1) Employ and commission qualified persons as provided in § 11-1-101;
- and
- (2) Make such investigations or inspections as are necessary to ensure compliance with any provisions of this part, including the right to enter at any time upon a suspected affected area or affected area for such purposes and the right of ingress and egress across intervening properties.

SECTION 10. Tennessee Code Annotated, Title 59, Chapter 8, Part 4, is amended by deleting the part in its entirety.

SECTION 11. Tennessee Code Annotated, Section 59-10-102, is amended by deleting the language "board of water quality, oil and gas, established by § 59-8-321, the "Tennessee Surface Mining Law,"" and substituting instead the language "board of water quality, oil, and gas, created by § 69-3-104,".

SECTION 12. Tennessee Code Annotated, Section 59-10-102, is amended by deleting the language "meaning of § 59-8-321" and substituting instead the language "meaning of § 69-3-105".

SECTION 13. Tennessee Code Annotated, Section 67-7-104, is amended by designating the existing language as subsection (a) and adding the following as a new subsection:

(b)

(1) On or after the effective date of this act, in addition to the tax payable under subsection (a)(3), each operator shall remit an assessment in the following amount:

(A) For coal that is severed from the ground in underground mining operations, the assessment shall be four cents (\$0.04) per ton; and

(B) For coal that is severed from the ground in surface coal mining and reclamation operations, the assessment shall be nine cents (\$0.09) per ton.

(2) The assessment shall be due and payable in the same manner as the coal severance tax under § 67-7-106.

SECTION 14. Tennessee Code Annotated, Section 67-7-110, is amended by adding the following language as a new, appropriately designated subsection:

( ) All of the moneys received from the payment of the assessment levied by § 67-7-104(b) shall be transferred to the treasurer for deposit in the coal mining protection fund, created by § 59-8-132, to be used for the administration and enforcement of the requirements of the Primacy and Reclamation Act of Tennessee, compiled in title 59, chapter 8, part 1.

SECTION 15. Tennessee Code Annotated, Section 68-105-120, is amended by adding the following language as a new, appropriately designated subdivision:

( ) The use of explosives in surface coal mining and reclamation operations to the extent the use is regulated by the department of environment and conservation pursuant to the Primacy and Reclamation Act of Tennessee, compiled in title 59, chapter 8, part 1, and title 30 of the Code of Federal Regulations.

SECTION 16. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 17. For the purpose of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. Sections 1-12, 16, and designated §§ 59-8-103(a)(9)(A)-(D) and 59-8-132 in Section 3 of this act take effect upon becoming a law, the public welfare requiring it. All other provisions of this act take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries, the public welfare requiring it.