

Report on the

Alabama Surface Mining Commission

Jasper, Alabama



Department of Examiners of Public Accounts

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August 18, 2021

Senator Will Barfoot
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Barfoot,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the Alabama Surface Mining Commission in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the Alabama Surface Mining Commission, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in cursive script that reads 'Rachel Laurie Riddle'.

Rachel Laurie Riddle
Chief Examiner

Examiner
Troy A. Eastman

CONTENTS

| | |
|--|-----------|
| PROFILE | 1 |
| Purpose/Authority | 1 |
| Characteristics | 2 |
| Operations | 4 |
| Financial | 5 |
| Licensure | 5 |
| SIGNIFICANT ISSUES..... | 7 |
| STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES | 7 |
| ORGANIZATION | 8 |
| PERSONNEL..... | 9 |
| PERFORMANCE CHARACTERISTICS..... | 9 |
| COMPLAINT HANDLING | 15 |
| REGULATION IN CONJUNCTION WITH OTHER ENTITIES | 16 |
| FINANCIAL INFORMATION..... | 17 |
| Schedule of Fees | 18 |
| Schedule of Receipts, Disbursements and Balances – Fund 0370..... | 19 |
| Operating Receipts vs. Operating Disbursements (Chart) | 20 |
| Schedule of Receipts, Disbursements and Balances – Fund 0427 | 22 |
| QUESTIONNAIRES | 23 |
| Commission Member Questionnaire..... | 23 |
| Licensee Questionnaire | 25 |
| Blaster Questionnaire | 27 |
| Complainant Questionnaire..... | 29 |
| APPENDICES..... | 31 |
| Applicable Statutes..... | 31 |
| Professional Services by Vendor | 91 |
| Commission Members | 93 |

PROFILE

Purpose/Authority

The State of Alabama first addressed the problem of un-reclaimed surface mine sites by writing into law the “Alabama Surface Mining Act of 1969” (Act No. 399, Acts of Alabama 1969, Sec. 1-18), which provided for reclamation and re-vegetation of land affected by surface mining and required the Alabama Department of Industrial Relations (renamed the Department of Labor) to issue permits for surface mining operations.

In 1975, the Legislature, anticipating additional federal legislation, repealed the 1969 act and passed the “Alabama Surface Mining Reclamation Act of 1975.” (Act No. 551, Acts of Alabama 1975, Sections 1-28). Section 4 of the new act created the Alabama Surface Mining Reclamation Commission (SMRC) to regulate surface coal mining and made it independent of the Alabama Department of Industrial Relations, with Commission members being appointed by the Governor.

The Federal Surface Mining Control and Reclamation Act (Public Law 95-87 became law in 1977) mandated federal oversight of surface mining. Subsequently, the “Alabama Surface Mining Control and Reclamation Act of 1981” (Act No. 435 Acts of Alabama 1981, Sections 1-40) became law and renamed the Alabama Surface Mining Reclamation Commission the Alabama Surface Mining Commission (The “Commission”). The Commission acts as the federal government’s agent in carrying out the federal oversight mandate with respect to surface coal mining in Alabama.

The Commission is charged with the administration of Part V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), a federal regulatory program. The Commission’s regulatory jurisdiction extends to mine opening, coal stockpile areas, waste disposal areas, sediment ponds, water discharges, coal washing facilities, etc., and includes excavation of coal using surface mining techniques and the surface effects of underground mining.

The regulatory program operated by the Commission is a federally mandated program assigned to the United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement. If Alabama decides to discontinue its operation of the program, the program will revert to federal control.

The Alabama Surface Mining Commission operates under authority of the *Code of Alabama 1975*, Section 9-16-1 through 9-16-107. The Commission licenses and regulates surface coal mining in Alabama and ensures the reclamation of land that has been surface mined for coal or that has suffered from the effects of underground coal mining since passage of the Surface Mining Control and Reclamation Act of 1977. Reclamation of lands surface mined for coal before the federal act became effective are now the responsibility of the Alabama Department of Labor.

To achieve its purpose, the Commission licenses qualified surface coal mine operators, requires persons engaged in or directly responsible for the use of explosives to be certified as blasters, and issues permits to mine specific sites. The Commission inspects surface mining operations to determine compliance with applicable laws and regulations and can deny, suspend, or revoke licenses and permits for noncompliance. The Commission requires surety bonds from surface coal miners to guarantee reclamation of mined land and can cause forfeiture of the bonds if the miner does not reclaim the land. The Commission uses the proceeds from forfeited bonds to reclaim mined land.

| <u>Characteristics</u> | |
|-------------------------------|--|
| Members and Selection | <p>Seven members appointed by the Governor, with the advice and consent of the Senate.</p> <p>Six members are currently serving.</p> <p><i>Code of Alabama 1975</i>, Section 9-16-73(b)</p> |
| Term | <p>Members serve five-year staggered terms and may not serve more than two full consecutive terms.</p> <p><i>Code of Alabama 1975</i>, Section 9-16-73(a)(b)</p> |
| Qualifications | <p>No member may have direct or indirect financial interest in underground or surface mining operations.</p> <p>All must be residents of Alabama.</p> <p>Members must be qualified as follows:</p> <ul style="list-style-type: none"> • One member appointed from one of the three counties in Alabama which produce the greatest number of tons of surface mined coal, in the most recent complete fiscal year preceding appointment as indicated by state records. • Two members appointed from any of the coal-producing counties in Alabama, in the most recent complete fiscal year preceding appointment as indicated by state records. • One member appointed from the state at large. • One professional forester duly registered pursuant to the laws of the State of Alabama with not less than 10 years' experience in professional forestry. |

| | |
|------------------------------------|---|
| | <ul style="list-style-type: none"> • One professional civil or mining engineer duly registered pursuant to the laws of the State of Alabama with not less than 10 years' experience in professional engineering in surface mining or technologically related fields. • One attorney duly licensed to practice law in the State of Alabama having not less than 10 years' experience in the active practice of law, the majority of whose years in practice shall have been in one of the three counties in Alabama which produced the greatest number of tons of surface mined coal as indicated by the records of the State of Alabama in the complete fiscal year immediately preceding that appointment. <p><i>Code of Alabama 1975</i>, Section 9-16-73(b)(c)</p> |
| Consumer Representation | No statutory requirement. |
| Racial Representation | No statutory requirement. Two black members currently serving. |
| Geographical Representation | <ul style="list-style-type: none"> • One Commission member shall be appointed from one of the three counties in Alabama which produce the greatest number of tons of surface mined coal, as indicated by the records of the State of Alabama in the complete fiscal year immediately preceding that appointment. • Two Commission members shall be appointed from any of the coal-producing counties in Alabama, as indicated by the records of the State of Alabama in the complete fiscal year immediately preceding that appointment. • One Commission member appointed from the state at-large. <p><i>Code of Alabama 1975</i>, Section 9-16-73(b)(1)</p> |
| Other Representation | The Commission shall be composed of fair and reasonable citizens of the state and who shall reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. <i>Code of Alabama 1975</i> , Section 9-16-73(b) |

| | |
|---------------------------------------|---|
| Compensation | <p>Commission members receive \$75.00 per day for each day of official business as approved and validated by the chair.</p> <p>The chair receives \$100.00 per day for each full day occupied with business of the Commission.</p> <p>Members are also entitled to travel and per diem as paid to state employees.</p> <p><i>Code of Alabama 1975</i>, Section 9-16-73(f)</p> |
| Attended Board Member Training | <p>Executive Director Four commission members Five staff members</p> |
| <u>Operations</u> | |
| Administrator | <p>Kathy Love, Director Appointed by and serves at the pleasure of the Commission. The Commission sets the director's salary, currently \$138,288 annually.</p> <p><i>Code of Alabama 1975</i>, Section 9-16-73(e)</p> |
| Location | <p>1811 Second Avenue Jasper, AL 35501</p> <p>Office Hours: 7:00 AM – 5:30 PM, Monday-Friday</p> <p>The Commission's principal office is statutorily required to be located in Jasper, AL.</p> <p><i>Code of Alabama 1975</i>, Section 9-16-73(h)</p> |
| Employees | 22 |
| Legal Counsel | G. Milton McCarthy, Jr. Deputy Attorney General, Commission employee |
| Subpoena Power | <p>Yes, persons and records</p> <p><i>Code of Alabama 1975</i>, Section 9-16-78(c)</p> |

| | | | | | | | | | |
|-------------------------------|--|--------------------------|----|------------------------|----|----------|-----------|--------------|------------|
| Internet Presence | http://surface-mining.alabama.gov/ <ul style="list-style-type: none"> • Commission Information • Commissioner Listing • Licensee directory (miners only) • Permit applications & decisions • Technical manual • Administrative Rules (link) • Rulemaking activity • Geospatial data | | | | | | | | |
| <u>Financial</u> | | | | | | | | | |
| Source of Funds | Licensing and permitting fees, General Fund appropriations, federal funds, fines, and penalties, and forfeited reclamation bonds. <i>Code of Alabama 1975</i> , Section 9-16-103 | | | | | | | | |
| State Treasury | Yes. Special Revenue Funds 0370, 0427, 0530. <i>Code of Alabama 1975</i> , Section 9-16-103 | | | | | | | | |
| Required Distributions | No statutory requirement. | | | | | | | | |
| Unused Funds | The Commission retains unused funds at year end. <i>Code of Alabama 1975</i> , Section 9-16-103 | | | | | | | | |
| <u>Licensure</u> | | | | | | | | | |
| Licensees | As of March 8, 2021 <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Surface Mining Operators</td> <td style="text-align: right;">45</td> </tr> <tr> <td>Blaster Certifications</td> <td style="text-align: right;">59</td> </tr> <tr> <td>Permits*</td> <td style="text-align: right;"><u>49</u></td> </tr> <tr> <td style="text-align: center;">Total</td> <td style="text-align: right;">153</td> </tr> </table> <p>*Permits are issued for a period of up to five years.</p> <p><i>Source:</i> Commission Staff</p> | Surface Mining Operators | 45 | Blaster Certifications | 59 | Permits* | <u>49</u> | Total | 153 |
| Surface Mining Operators | 45 | | | | | | | | |
| Blaster Certifications | 59 | | | | | | | | |
| Permits* | <u>49</u> | | | | | | | | |
| Total | 153 | | | | | | | | |

| <p>Licensure Qualifications</p> | <p><u>Blasters:</u></p> <ul style="list-style-type: none"> • Satisfactory completion of state-approved training and certification program. • Pass a comprehensive examination with a score of 70% or better • Have one year of blasting experience <p><i>Administrative Rule</i> 880-X-12A-.07</p> <p><u>Licensees:</u></p> <ul style="list-style-type: none"> • A U.S. Citizen or legally present • Demonstrate sufficient technical skill to assure statutory and regulatory compliance • Demonstrate sufficient financial responsibility to assure the Commission the applicant’s financial ability to execute statutory and regulatory requirements • Certify under oath the applicant is fully familiar with the provisions of the statute and all reclamation requirements contained in Commission regulations. • Certify that the applicant will obtain and will furnish the Commission evidence of having such permits as may be required by other governmental agencies prior to commencing mining operations. <p><i>Code of Alabama 1975</i> Section 9-16-81(b) and (D)(1-4)</p> | | | | | | | | | | | | |
|--|--|----------|----------|----------|----------|------|---|---|------|------|---|---|-----|
| <p>Examinations</p> | <p>Blasters are required to take a written examination. The Commission teaches, prepares, administers, and grades the examinations at their office in Jasper Alabama.</p> <table border="1" data-bbox="662 1283 1425 1398"> <thead> <tr> <th>Year</th> <th># Taken</th> <th># Passed</th> <th>% Passed</th> </tr> </thead> <tbody> <tr> <td>2018</td> <td>8</td> <td>8</td> <td>100%</td> </tr> <tr> <td>2020</td> <td>4</td> <td>3</td> <td>75%</td> </tr> </tbody> </table> <p><i>Code of Alabama 1975</i>, Section 9-16-74(4) <i>Administrative Rules</i> 880-X-12A-.07</p> | Year | # Taken | # Passed | % Passed | 2018 | 8 | 8 | 100% | 2020 | 4 | 3 | 75% |
| Year | # Taken | # Passed | % Passed | | | | | | | | | | |
| 2018 | 8 | 8 | 100% | | | | | | | | | | |
| 2020 | 4 | 3 | 75% | | | | | | | | | | |
| <p>Reciprocity</p> | <p>The Commission may grant blaster certification to persons holding valid certifications issued by another state, providing the requirements for certification in such state are substantially equivalent to those of Alabama.</p> <p>The Commission does not have reciprocal agreements with any other states.</p> <p><i>Administrative Rule</i> 880-X-12A-.07(3)</p> | | | | | | | | | | | | |

| | |
|------------------------------|---|
| Renewals | <p>Surface Mine Operator Licenses must be renewed annually prior to March 1. Notification from the Commission is required on or before January 1.</p> <p>Surface Mining Permits must be renewed at least 120 days prior to the expiration of the valid permit.</p> <p>Blasters are certified for a three-year period. To maintain uninterrupted certification each certified blaster must apply for recertification no later than 90 days prior to expiration of certification.</p> <p>Online licensure renewal is not available.</p> <p><i>Code of Alabama 1975</i>, Sections 9-16-81(f)(1) and 9-16-82(c)(3) <i>Administrative Rule</i> 880-X-12A-.07(4)(a) and (5)(a)</p> |
| Licensee Demographics | Data not collected by the agency. |
| Continuing Education | <p>Blasters must acquire 12 hours of continuing education every three years to re-certify or pass the certification examination within the twelve-month period immediately prior to renewal.</p> <p><i>Code of Alabama 1975</i>, Section 9-16-74(4) <i>Administrative Rules</i> 880-X-12A-.07(5)(b)</p> |

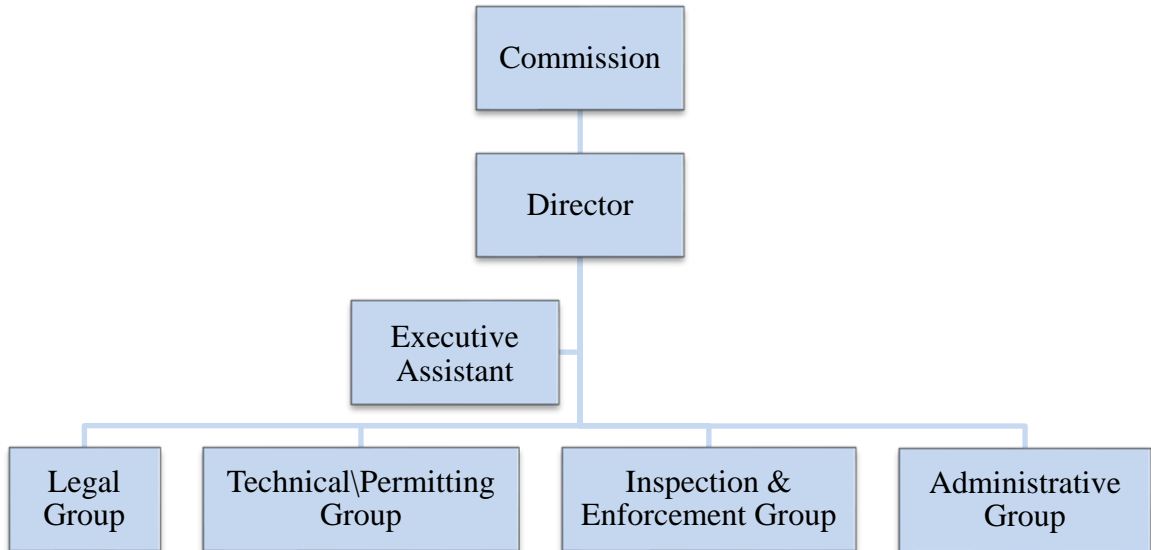
SIGNIFICANT ISSUES

There are no new significant issues.

STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES

All prior findings/significant issues have been resolved.

ORGANIZATION



PERSONNEL

| Schedule of Employees By Merit System Classification/Sex/Race | | | | | |
|--|-----------|------------|------------|------------|-----------------------------------|
| | # | W/M | B/F | W/F | Salary or Salary Range |
| <u>Merit System</u> | | | | | |
| Director (Unclassified) | 1 | | | 1 | \$138,288 |
| Chief, Division of Surface Mining & Reclamation (Unclassified) | 1 | 1 | | | \$110,530 |
| Legal Counsel (Part time) | 1 | 1 | | | \$30,000 |
| Accounting Manager | 1 | | 1 | | \$74,474.40 |
| Geologist | 1 | | | 1 | \$78,247.20 |
| Executive Secretary | 1 | | | 1 | \$41,277.60 |
| Accountant | 1 | | 1 | | \$65,695.20 |
| IT Specialist | 1 | 1 | | | \$74,474.40 |
| GIS Specialist | 1 | | | 1 | \$67,320.00 |
| Inspector IV (One part-time) | 5 | 5 | | | \$27,000- \$76,365.60 |
| Inspector V | 4 | 4 | | | \$78,247.20- 84,350.40 |
| Inspector I | 1 | 1 | | | \$42,290.40 |
| Clerk (Part time) | 1 | | | 1 | \$10,872 |
| ASA III | 1 | | | 1 | \$41,277.60 |
| ASA II | 1 | | | 1 | \$33,081.30 |
| Total | 22 | 13 | 2 | 7 | |

W/M=white male, B/F=black female, W/F=white female

The commission maintains 13 vehicles in a motor pool for use by inspectors and other staff members. These vehicles are used primarily for travel to and from mine sites. They are also used for occasional travel required for other office staff. The vehicles are not used for personal commuting.

Legal Counsel

Grady Milton McCarthy, Jr., Deputy Attorney General, employed by the Commission, serves as legal counsel.

PERFORMANCE CHARACTERISTICS

Number of Licensees/Permits/Certifications per Employee - 7

Number of Licenses\Permits for the Past Four Fiscal Years

| Type of Licenses | FISCAL YEARS | | | |
|-----------------------|--------------|------|------|------|
| | 2017 | 2018 | 2019 | 2020 |
| Miner | 50 | 47 | 45 | 45 |
| Blaster | 72 | 63 | 65 | 58 |
| Permits | | | | |
| Surface, Active | 24 | 24 | 25 | 23 |
| Surface, Inactive | 83 | 86 | 84 | 77 |
| Underground, Active | 10 | 10 | 10 | 9 |
| Underground, Inactive | 5 | 4 | 4 | 5 |
| Other, Active | 1 | 1 | 1 | 6 |
| Other, Inactive | 7 | 8 | 8 | 7 |

Operating Disbursements per Licenses/Permits/Certifications (FY 20) - \$10,978.93

Fines/Penalties as a Percentage of Operating Receipts

| | FY 2020 | FY 2019 | FY 2018 | FY 2017 |
|-------------------|----------------|----------------|----------------|----------------|
| Total Receipts | \$2,485,076.41 | \$2,381,286.11 | \$2,532,866.83 | \$2,083,383.49 |
| Fines | 180,000.00 | 58,300.00 | 315,354.46 | 275,880.00 |
| Percentage | 7.24% | 2.45% | 12.45% | 13.24% |

The Commission is charged with implementation of the regulatory aspect (Title V.) of the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA). In this capacity, the Commission is subject to federal oversight by the U.S. Department of Interior’s Office of Surface Mining Reclamation and Enforcement (OSMRE). The Birmingham Field Office (BFO) of OSMRE conducts annual evaluations of the Commission’s operations. Copies of the reports are available on the OSMRE website.

The Commission’s administration of its responsibilities under SMCRA includes the following activities:

Permitting Licensed Operators to Mine Specific Acreage

Permitting is based on an approved mining operation plan. Mine operation plans address the sequencing and methodology of the mining operation from start through reclamation. Operation plans include when specific areas will be mined, how the mining will occur, where and how coal spoils will be processed and disposed of, treatment of potentially toxic coal spoils, how other environmental concerns are to be addressed, preparation and maintenance of impoundments, berm for diverting toxic\caustic runoff, construction and maintenance haulage roads (roads built to connect mines sites to public roads).

In addition to a mining operation plan, the application approval process considers factors such as: the qualifications of mine operators, land ownership\lease, hydrology, geology, historic significance of the area to be mined, and the ecological impact on the surrounding environment.

The Commission is also responsible for the surface area associated with nine underground mines currently permitted in Alabama.

Permits are issued to mine operators to mine specific geographic areas. Mine permits are issued for up to five years.

| Permit Activity | | | | |
|-------------------------|-------------|-------------|-------------|-------------|
| Fiscal Year | 2017 | 2018 | 2019 | 2020 |
| New Licenses Issued | 9 | 8 | 4 | 4 |
| License Renewals | 41 | 38 | 41 | 41 |
| Permits Issued | 1 | 1 | 5 | 4 |
| Acreage Permitted | 199 | 535 | 1,376 | 502 |
| Permit Revisions Issued | 78 | 50 | 43 | 61 |
| Permit Renewals Issued | 11 | 20 | 11 | 13 |
| Permit Transfers Issued | 5 | 8 | 11 | 15 |

Source: ASMC Staff

| Schedule of Active Permits September 30, 2020 | |
|--|-----------|
| DeKalb County | 1 |
| Jefferson County | 18 |
| Shelby County | 1 |
| Tuscaloosa County | 7 |
| Walker County | 8 |
| Total | 35 |

Source: ASMC Staff

Reclamation of Mined Lands

The Commission ensures reclamation of land on which mining operations have ceased after completion of coal removal and reclamation of the mined land has been started either by the mine operator or by the mine operator's surety. Commission inspections of reclamation operations are made at least quarterly. As of March 17, 2021, the Commission's staff was overseeing one reclamation project. At the cessation of mining operations, the Commission seeks to ensure that coal mining related damage to land and water resources is repaired and that accompanying safety hazards are removed or abated.

If a mine operator fails to reclaim damaged land or water resources, the Commission notifies the mine operator's surety, the operator's bond is forfeited, and the Commission uses the proceeds to pay for reclamation. The Commission has thus far reclaimed only surface mines; however, its jurisdiction extends to the surface effects of underground mines. The Commission would be responsible for reclamation of an underground mine that ceases operations in the future without reclaiming damage to the land and for which reclamation bond proceeds become available.

For illegal mining operations, the Commission’s policy is to pursue recovery of the reclamation costs through litigation.

| Forfeited Bond Mine Site Permits | |
|---|-----------|
| Blount County | 3 |
| Fayette County | 1 |
| Jackson County | 3 |
| Jefferson County | 1 |
| Marion County | 3 |
| Marshall County | 1 |
| Shelby County | 1 |
| Tuscaloosa County | 7 |
| Walker County | 12 |
| Winston County | 1 |
| Total | 33 |

Source: ASMC Staff

| Alabama Surface Mining Commission Bond Forfeiture Reclamation Projects | | | | |
|---|--------------------|---------------------------|-----------------|--------------------------|
| Fiscal Year | Number of Projects | Number of Acres Reclaimed | Amount Expended | Amount of Funds Received |
| 2017 | 3 | 41 | \$127,500 | \$0.00 |
| 2018 | 1 | 70 | \$574,500 | \$0.00 |
| 2019 | 0 | 0 | \$0.00 | \$0.00 |
| 2020 | 1 | 93 | \$500,000 | \$500,000 |

Source: ASMC Staff

Average Cost Per Acre \$ 5,892.16

Inspections

The Commission’s staff conducts inspections of mine sites and the surrounding area for compliance with mine operations plan, and to respond to complaints and the concerns of citizens. Each permitted mining operation receives a partial inspection monthly and a complete inspection quarterly.

Notices of Violation are issued during a general inspection upon discovery of the operator being in violation of the rules. Cessation Orders are issued upon discovery that the operator has failed to abate a previous violation issued at the mining site.

| Schedule of Inspectable Active and Inactive Permits As of September, 2020 | | |
|--|---------------|---------------------|
| Type | Status | Total Number |
| Surface Permits | Active | 18 |
| | Inactive | 17 |
| Underground Permits (1) | Active | 9 |
| | Inactive | 1 |
| Processing Facilities | Active | 2 |
| | Inactive (TC) | 2 |
| Exploration Notice of Intent | Active | 6 |
| Exemption (2) | Active | 4 |

Source: ASMC Staff

(TC) = Temporary Cessation

(1) ASMC is responsible for inspecting the surface area above underground mines.

(2) Mines producing coal as a byproduct where the coal production is less than 1/6 of total production are eligible for an exemption from ASMC inspection. Example: A clay pit that has some producible coal.

**Schedule of Inspections and Violations Issued
October 1, 2016 through February 28, 2021**

| Fiscal Year | Number of Inspectors | Inspections Conducted | Cessation Orders Issued | Violation Notices Issued |
|----------------------|-----------------------------|------------------------------|--------------------------------|---------------------------------|
| 2017 | 5 | 2,079 | 7 | 90 |
| 2018 | 5 | 2,061 | 10 | 70 |
| 2019 | 5 | 2,014 | 3 | 57 |
| 2020 | 7 | 1,849 | 5 | 58 |
| As of 2/2021* | 6 | 803 | 1 | 15 |

Source: ASMC Staff

Protection from Off-site Impacts

The Commission, under federal statutes, is charged with protecting the environment and the public from offsite impacts. An offsite impact is defined as any result from coal mining that negatively effects resources (people, land, water, structures). To be defined as an impact, the negative result must fall within the regulatory scope of an applicable state program, must be coal mine related, and must occur outside the area authorized by permit for conducting mining and reclamation activities. Offsite impacts are classified as major, moderate, or minor. Not all offsite impacts result in notices of violation, such as, shaking of structures caused by blast within regulatory limits.

Major offsite impacts include incidents where there is a(n):

- Large amount of disturbance outside the permit or authorized area
- Large amount of sediment, flyrock, or erosion outside of the permit or authorized area
- High volume or long duration water discharge of poor quality enters a high-quality stream
- Impact that interferes with land usage

- Impact that jeopardizes public safety or causes personal injury
- Impact that causes damage to uncontrolled structures or restricted areas
- Mining operation without a permit

**Schedule of Major Offsite Impacts
October 1, 2016 through March 25, 2021**

| # of Violations | Violation |
|------------------------|--------------------------------------|
| 1 | Failure to meet effluent limitations |
| 1 | Uncontrolled runoff |

Source: ASMC Staff

Moderate offsite impacts are those not classified as major or minor.

**Schedule of Moderate Offsite Impacts
October 1, 2016 through March 25, 2021**

| # of Violations | Violation |
|------------------------|---|
| 6 | Failure to meet effluent limitations |
| 2 | Sediment control measures |
| 1 | Conducting mining activities outside of permitted and bonded area |

Source: ASMC Staff

Minor offsite impacts include incidents where there is a(n):

- Small amount of disturbance outside of permitted or bonded area
- Small amount of sediment, flyrock, or erosion outside of the permit or authorized area
- Low volume or short duration water discharge that marginally exceeds effluent limits and has a marginally negative impact on receiving streams
- Impact does not interfere with land usage
- Impact does not jeopardize public safety or cause personal injury
- Impact does not cause damage to uncontrolled structures or restricted areas

**Schedule of Minor Offsite Impacts
October 1, 2016 through March 25, 2021**

| # of Violations | Violation |
|------------------------|---|
| 5 | Conducting mining activities outside of permitted and bonding areas |
| 46 | Failure to meet effluent limitations |
| 4 | Failure to construct or maintain diversions properly |
| 2 | Failure to maintain sediment control along roads |
| 4 | Sediment control measures |
| 1 | Failure to file a Notice of Intent |
| 1 | Failure to maintain sediment basin |
| 3 | Uncontrolled runoff |
| 1 | Failure to stabilize or repair rills and/or gullies |

Source: ASMC Staff

Notification of Commission decisions to Amend Administrative Rules

The *Code of Alabama 1975*, Section 9-16-75 states, “In adopting, amending, or repealing any rule, including any regulation or standard, the commission shall observe the requirements of the Alabama Administrative Procedure Act (Section 41-22-1 et seq).”

“Any person may request written notification of the commission’s rule-making activities by make such request in writing to the commission.”

COMPLAINT HANDLING

The *Code of Alabama 1975*, Section 9-16-77 through 9-16-79 and *Administrative Rules* 880-X-5A-.01 through 880-X-5A-.36 authorizes a Division of Hearings and Appeals, within the Alabama Surface Mining Commission to enforce the laws of Alabama Surface Mining. In addition, *Administrative Rule* 880-X-2A-.09 deals with citizen suits and *Administrative Rule* 880-11B-.03(6) deals with complaints regarding blasting.

| | |
|---|--|
| Initial Contact/Documentation | Any person can file a complaint. All complaints must be in writing; however, signatures are not required. The Commission notifies complainants in writing regarding receipt of complaint. |
| Anonymous Complaints Accepted | Yes |
| Investigative Process / Probable Cause Determination | The legal department reviews and assigns each complaint to the appropriate department, including agency specialists, for investigation. Investigating personnel review Commission records, licensee records, personal property, and mine sites, as needed. The Commission also notifies the effected licensee and requires the licensee to answer the complaint within fifteen days. Commission staff uses information gathered during the investigative process, including external reports, to determine whether probable cause exists that a violation occurred. |
| Negotiated Settlements | No |
| Notification of Resolution to the Complainant | Yes, in writing. |

Source: ASMC Staff

| Schedule of Complaints Resolved 2017 through 2020 (FY) | | | | | |
|---|-----------------------------|-------------|-------------|-------------|----------------|
| Year/Number Received | Year/Number Resolved | | | | Pending |
| | 2017 | 2018 | 2019 | 2020 | |
| 2017 / 19 | 18 | 1 | 0 | 0 | - |
| 2018 / 11 | | 10 | 1 | 0 | - |
| 2019 / 5 | | | 4 | 1 | - |
| 2020 / 8 | | | | 8 | - |
| <i>Source:</i> ASMC Staff | | | | | |

Average Time to Resolve Complaints 18 business days

Disposition of Resolved Complaints

| # of Complaints | Resolution |
|------------------------|-------------------|
| 30 | Unfounded |
| 12 | Undetermined |
| 1 | Withdrawn |

Source: ASMC Staff

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

The federal Surface Mining Control and Reclamation Act of 1977”, (30 U.S.C. §§ 1201 et seq.) known as SMCRA, is administered by the United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement. In Alabama, Parts IV and V of the act, which address surface coal mining, are administered on behalf of the Office of Surface Mining and Enforcement by two state agencies, the Department of Labor (Part IV) and the Surface Mining Commission (Part V). The Alabama Department of Industrial Relations – Mining & Reclamation Division, is responsible for reclamation of surface land areas affected by coal mining that occurred before August 3, 1977. For surface land areas affected by coal mining that occurred after August 3, 1977, reclamation is administered by the Surface Mining Commission. The Surface Mining Commission regulates, licenses, and permits ongoing surface coal mining, also under SMCRA. The Department of Labor – Mining and Reclamation Division also regulates ongoing non-coal surface mining and non-coal surface mine reclamation, under a separate state program.

Surface mine operators must obtain a separate National Pollution Discharge Elimination System permit from the Alabama Department of Environmental Management, which administers federal programs under the federal Environmental Protection Agency. The permit is issued upon the presence of a satisfactory system for water pollution prevention and abatement. The Surface Mining Commission is also charged under federal statutes with protecting the environment and the public from offsite impacts. Offsite impacts can include anything resulting from coal mining that negatively affects resources, including water resources.

FINANCIAL INFORMATION

Source of funds

Licensing, permitting, and certification fees, state General Fund appropriations, federal funds, fines, and penalties, and forfeited bonds.

Funds

Fund 0370 - Alabama Surface Mining Operating Fund – For receipt and disbursement of funds used for the general operations of the Commission. The fund balance at the end of each fiscal year is retained in the fund. The fund is subject to the state’s normal budgeting procedures.

Fund 0427 - Bond Forfeiture - Reclamation Project Fund – For receipt and disbursement of proceeds arising from forfeiture of reclamation surety bonds by miners who did not reclaim the mined lands for which the bonds were posted. Balances in the fund are reserved for use by the Commission to reclaim mined lands. The fund balance at the end of each fiscal year is retained in the fund.

Fund 0530 - Cash Reclamation Performance Bonds Fund – Holds cash posted by miners in lieu of bonds to guarantee reclamation of mined lands. Balances in the fund are the property of the miners and are not available for the Commission’s operations. Amounts posted for mined lands that are not reclaimed are transferred to the Commission’s Bond Forfeiture Fund 0427 to be expended by the Commission in reclaiming the land. The fund balance at the end of each fiscal year is retained in the fund. Fund balances at September 30, 2019 and September 30, 2020 were \$1,559,268.00 and \$1,579,418.00 respectively. The fund is not included in the Commission’s financial schedules presented in this report.

Schedule of Fees

| Fee Type/Purpose | Statutory Authority | Rule | Amount Authorized | Amount Collected |
|---|-------------------------------------|------------------|--------------------------|-------------------------|
| Initial License Fee | 9-16-81(f)(1) | 880-X-6A-.07 | Set by Rule | \$2,500 |
| License Update Fee | 9-16-81(f)(1) | 880-X-6A-.08 | Set by Rule | \$500 |
| New Blaster Certification | 9-16-74(4) | 880-X-12A-.09(a) | Set by Rule | \$100 |
| Blaster Renewal | 9-16-74(4) | 880-X-12A-.09(b) | Set by Rule | \$50 |
| Blaster Reciprocal | 9-16-74(4) | 880-X-12A-.09(c) | Set by Rule | \$50 |
| Permit | 9-16-83(a), 9-6-74, AGO 87-00073 | 880-X-8B-.07 | ≥\$1,000 | \$5,000 |
| Permit Update | 9-16-83(a), 9-6-74, AGO 87-00073 | 880-X-8B-.07 | Set by Rule | \$2,500 |
| Permit Transfer | 9-16-83(a), 9-6-74, AGO 87-00073 | 880-X-8B-.07 | Set by Rule | \$500 |
| Permit Revisions: | | | | |
| Insignificant | 9-16-83(a), 9-6-74, AGO 87-00073 | 880-X-8B-.07 | Set by Rule | \$1,500 |
| Significant | 9-16-83(a), 9-6-74, AGO 87-00073 | 880-X-8B-.07 | Set by Rule | \$3,000 |
| Incidental Boundary | 9-16-83(a), 9-6-74, AGO 87-00073 | 880-X-8B-.07 | Set by Rule | \$500 |
| Coal Exploration Permit | 9-16-83(a), 9-6-74, AGO 87-00073 | 880-X-8B-.07 | Set by Rule | \$2,500 |
| Acreage Fee | 9-16-83(a), 9-6-74, AGO 87-00073 | 880-X-8B-.07 | Set by Rule | \$75 per acre |
| Expired Permit Acreage | 9-16-83(a) | 880-X-8B-.07 | Set by Rule | \$15 per acre |
| Cash Bonds | 9-16-89(a) | 880-X-9B-.02 | ≥\$10,000 | As assessed |
| Civil Penalties | 9-16-94(a) | 880-X-11D | ≤\$5000 | As assessed |
| Failure to Correct Violation (1) | 9-16-94(h) | 880-X-11D-.07(2) | ≥\$750 | \$750 |

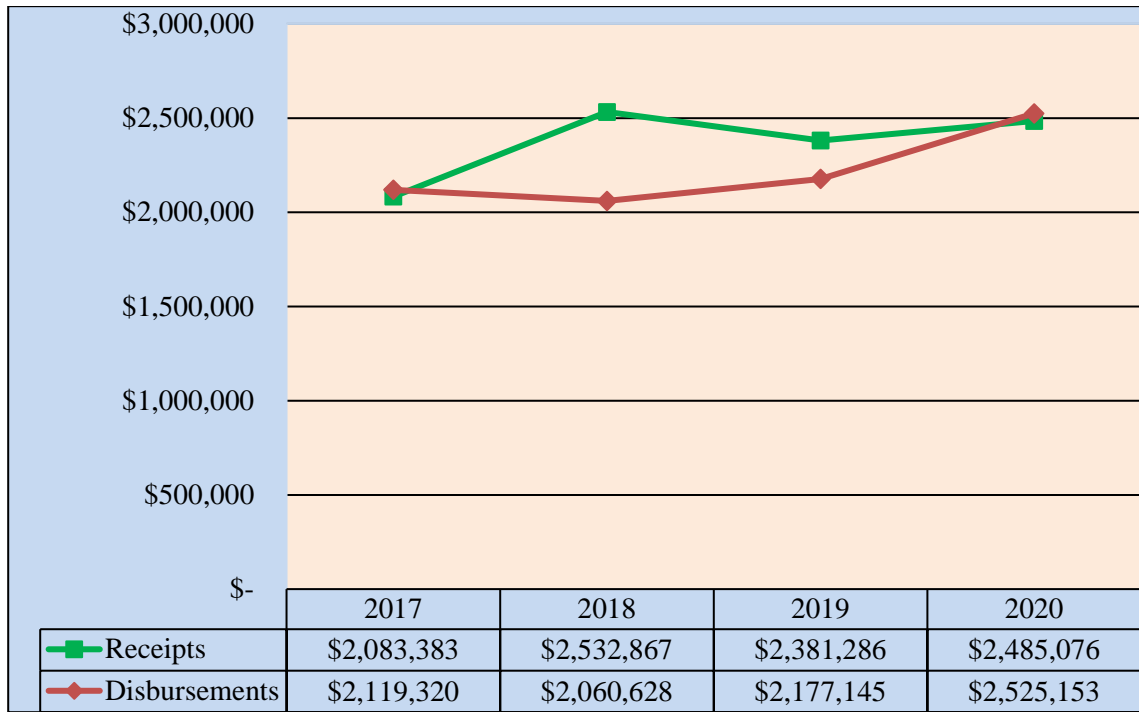
(1) Per day up to 30 days

Schedule of Receipts, Disbursements and Balances – Fund 0370

October 1, 2016 through September 30, 2020

| <u>Receipts</u> | 2019-2020 | 2018 - 2019 | 2017 - 2018 | 2016-2017 |
|--|----------------------|----------------------|----------------------|---------------------|
| Blasting Permits and Licences | \$ 750.00 | \$ 1,600.00 | \$ 1,150.00 | \$ 1,050.00 |
| Surface Mining Fees | 526,515.00 | 675,125.00 | 653,890.00 | 401,345.00 |
| Legal Violations | 180,000.00 | 58,300.00 | 315,354.46 | 275,880.00 |
| Publication sales | 1,309.86 | 2,633.54 | 3,552.59 | 3,273.08 |
| Salvage | 6,473.21 | 15,610.00 | 14,420.00 | 7,700.00 |
| Interagency Transfer from Fund 427 | - | - | - | 151,185.39 |
| Transfer from State's General Fund | 487,217.00 | 357,816.00 | 157,816.00 | 155,719.00 |
| Federal Operating Reimbursement | 1,282,497.42 | 1,014,666.00 | 1,065,322.07 | 1,049,689.43 |
| Coal Severance Tax | 313.92 | 255,535.57 | 321,361.71 | 37,541.59 |
| Total | <u>2,485,076.41</u> | <u>2,381,286.11</u> | <u>2,532,866.83</u> | <u>2,083,383.49</u> |
| | | | | |
| <u>Disbursements</u> | | | | |
| Personnel Costs | 1,432,327.45 | 1,296,850.58 | 1,274,846.32 | 1,323,869.87 |
| Employee Benefits | 536,099.44 | 477,341.05 | 480,392.13 | 484,530.62 |
| Travel-In-State | 13,282.46 | 14,377.02 | 10,721.89 | 14,139.06 |
| Travel-Out-of-State | 2,078.74 | 1,244.54 | 2,321.58 | 2,688.60 |
| Repairs and Maintenance | 12,844.84 | 1,546.00 | 2,813.00 | 3,395.03 |
| Rentals and Leases | 192,187.13 | 123,286.68 | 122,492.93 | 125,245.88 |
| Utilities and Communications | 23,670.32 | 22,051.45 | 26,381.70 | 27,217.89 |
| Professional Services | 46,361.52 | 28,986.24 | 69,286.54 | 70,773.15 |
| Supplies, Materials and Operating Expenses | 52,490.78 | 35,734.60 | 33,808.64 | 33,653.65 |
| Transportation Equipment Operations | 26,780.53 | 22,171.86 | 29,090.79 | 33,521.00 |
| Transportation Equipment Purchases | 140,838.98 | 106,681.37 | - | - |
| Other Equipment Purchases | 46,191.25 | 46,873.97 | 8,472.31 | 285.70 |
| Total | <u>2,525,153.44</u> | <u>2,177,145.36</u> | <u>2,060,627.83</u> | <u>2,119,320.45</u> |
| | | | | |
| Excess (Deficiency) of Receipts Over Disbursements | (40,077.03) | 204,140.75 | 472,239.00 | (35,936.96) |
| | | | | |
| Cash Balances at Beginning of Year | <u>766,262.38</u> | <u>562,121.63</u> | <u>89,882.63</u> | <u>125,819.59</u> |
| | | | | |
| Cash Balances at End of Year | 726,185.35 | 766,262.38 | 562,121.63 | 89,882.63 |
| | | | | |
| Reserve for Unpaid Obligations | <u>(46,480.44)</u> | <u>(181,003.69)</u> | <u>(23,380.98)</u> | <u>(25,255.92)</u> |
| | | | | |
| Available Cash Balance at Year End | <u>\$ 679,704.91</u> | <u>\$ 585,258.69</u> | <u>\$ 538,740.65</u> | <u>\$ 64,626.71</u> |

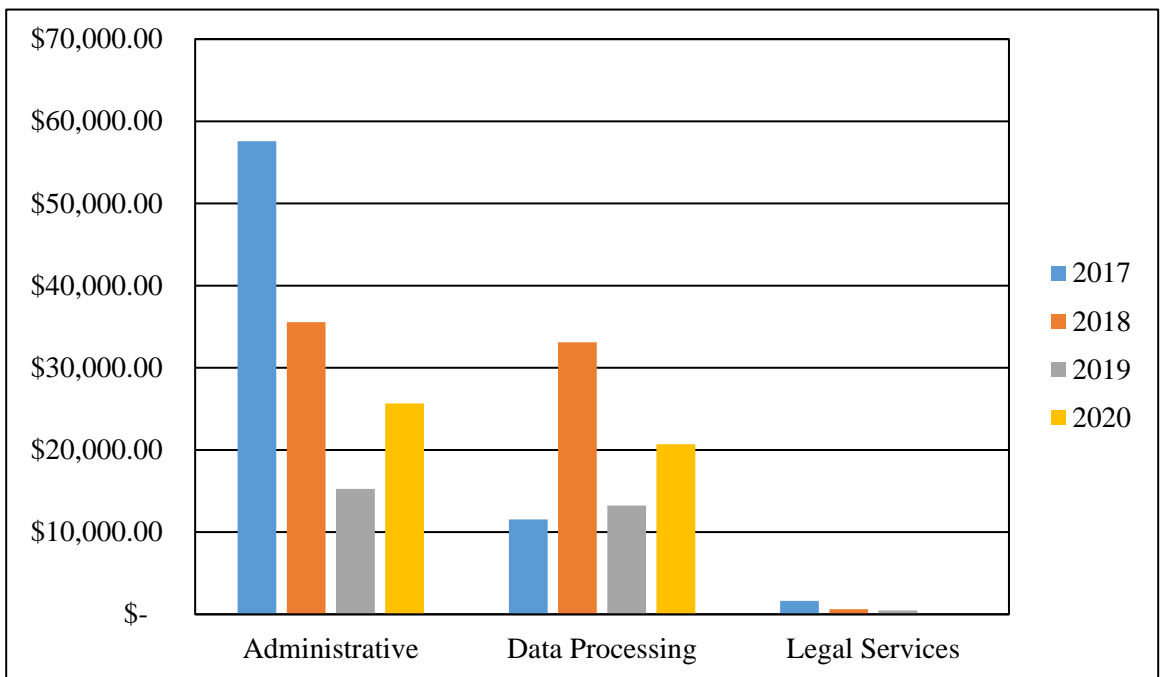
Operating Receipts vs. Operating Disbursements (Chart)



| SUMMARY SCHEDULE OF PROFESSIONAL SERVICE DISBURSEMENTS* | | | | |
|--|--------------------|--------------------|--------------------|--------------------|
| Fund 370 – Operating Fund | | | | |
| As of September, 30 | | | | |
| Type of Service | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Administrative | \$ 57,582.93 | \$ 35,554.79 | \$ 15,271.63 | \$ 25,669.18 |
| Data Processing | \$ 11,552.85 | \$ 33,103.82 | \$ 13,246.61 | \$ 20,692.34 |
| Legal Services | \$ 1,637.37 | \$ 627.93 | \$ 468.00 | \$ 0.00 |
| Total | \$70,773.15 | \$69,286.54 | \$28,986.24 | \$46,361.52 |

*Detailed information presented in the appendix

Professional Service Disbursement Chart



Schedule of Receipts, Disbursements and Balances – Fund 0427

October 1, 2016 through September 30, 2020

| <u>Receipts</u> | <u>2019-2020</u> | <u>2018 - 2019</u> | <u>2017 - 2018</u> | <u>2016-2017</u> |
|--|-------------------------|---------------------------|---------------------------|-------------------------|
| Surety Bond Proceeds | \$ - | \$ 737,208.00 | \$ - | \$ 337,806.00 |
| Interagency Fund Transfer from Fund 0530 | - | - | 638,480.00 | - |
| Total | - | 737,208.00 | 638,480.00 | 337,806.00 |
| | | | | |
| <u>Disbursements</u> | | | | |
| Professional Services (800) | - | 239,500.00 | 335,000.00 | 432,830.00 |
| Transfer to Fund 370 | - | - | - | 151,185.39 |
| Total | - | 239,500.00 | 335,000.00 | 584,015.39 |
| | | | | |
| Excess of Receipts Over Disbursements | - | 497,708.00 | 303,480.00 | (246,209.39) |
| | | | | |
| Cash Balances at Beginning of Year | 6,638,010.59 | 6,638,010.59 | 6,334,530.59 | 6,580,739.98 |
| | | | | |
| Cash Balances at End of Year | 7,135,718.59 | 7,135,718.59 | 6,638,010.59 | 6,334,530.59 |
| | | | | |
| Reserve for Unpaid Obligations | - | - | (239,500.00) | - |
| | | | | |
| Available Cash Balance at Year End | \$ 7,135,718.59 | \$ 7,135,718.59 | \$ 6,398,510.59 | \$ 6,334,530.59 |

QUESTIONNAIRES

Commission Member Questionnaire

A letter was sent to all six members of the Surface Mining Commission requesting participation in our survey. Five participated in the survey. The percentages, where shown, are based on the number who responded to the question.

1. What are the most significant issues currently facing the Surface Mining Commission and how is the Commission addressing these issues?

Commission Member #1 – “The reduction of demand in coal mines in Alabama. The commission has reduced staffing to meet the current demand and budget shortfalls while still fulfilling federal requirements and permitting.”

Commission Member #2 – “Striking a balance between the mining interest and properly protecting the environment. This is being done by the hard-working dedicated employees who are carrying out the requirements of Federal and state laws and regulations.”

Commission Member #3 – “Coverage of permit sites in a pandemic. Staffing has done a good job of monitoring and reporting on sites and addressing issues.”

Commission Member #4 – “Paying for reclamation projects, we are trying to get federal and state funds to cover projects.”

Commission Member #5 – “Permitting property near communities. we are addressing the issue by making certain that State and Federal Laws are followed as well as addressing all environmental issues that pertain to properties.”

2. What, if any, changes to the Commission’s laws are needed?

Commission Member #1 – “Possibly reducing the amount of required commission meetings. Currently monthly to every other month or as required to review a new permit application.”

Commission Member #2 – “I think that the commission could have meetings every other month instead of monthly.”

Commission Member #3 – “None”

Commission Member #4 – “No changes are needed.”

Commission Member #5 – “No changes to the law are necessary. The commission is mandated to render fair evaluations and judgements based on state law and this is done after much discussion and using all resources available to render said judgement.”

Commissioner Member Questionnaire

3. Is the Commission adequately funded?

| | | |
|------------|---|-----|
| Yes | 2 | 40% |
| No | 1 | 20% |
| No Opinion | 1 | 20% |
| Other | 1 | 20% |

Commission Member #2 – “It could use a slight increase especially if mining keeps dwindling and fees and Federal funds become inadequate.”

4. Is the Commission adequately staffed?

| | | |
|-----|---|------|
| Yes | 5 | 100% |
|-----|---|------|

5. Does the Commission receive regular reports on its operations from the Director?

| | | |
|-----|---|------|
| Yes | 5 | 100% |
|-----|---|------|

6. Has the Commission experienced any significant changes to its operations?

| | | |
|---------|---|-----|
| No | 3 | 60% |
| Unknown | 1 | 20% |
| Other | 1 | 20% |

Commission Member #2 – “The current director has done some reorganization that helps the commission operate more efficiently.”

7. Does the Commission plan any significant changes in its operations?

| | | |
|---------|---|-----|
| No | 4 | 80% |
| Unknown | 1 | 20% |

8. Do you have any other comments you would like to make?

Commission Member #1 – “The commission is meeting on a monthly basis as required by law. This could be changed to every other month or as needed to save money and staff time. This would only apply if current permit application stays at the level of the past 2 years.”

Commission Member #2 – “Alabama Surface Mining Commission must exist otherwise OSM would be required to do the job and it would be less efficient and not accountable directly to the State of Alabama.”

Commission Member #3 – “No”

Commission Member #4 – “I really enjoy serving on the commission.”

Commission Member #5 – “no comments”

Licensee Questionnaire

A letter was sent to all forty-five licensees requesting participation in our survey. Eleven participated in the survey. The percentages, where shown, are based on the number who responded to the question.

1. What do you think is the most significant issue(s) currently facing your profession in Alabama?

Respondent #1 – “Adverse impacts to the mining industry resulting from political agendas.”

Respondent #2 – “Further coal sales”

Respondent #3 – “EPA Rules for carbon emissions and waters of the U.S.”

Respondent #4 – “Economy”

Respondent #5 – “Regulations”

Respondent #6 – “Coal Regulations”

Respondent #7 – “political misunderstanding of the mining industry”

Respondent #8 – “Job Security”

Respondent #9 – “Democrats”

Respondent #10 – “The decline of the coal industry”

Respondent #11 – “SURVIVAL OF THE COAL INDUSTRY IN GENERAL”

2. Do you think regulation of your profession by the Surface Mining Commission is necessary to protect the public welfare?

| | | |
|------------|----------|------------|
| Yes | 6 | 55% |
| No | 3 | 27% |
| No Opinion | 1 | 9% |
| Other | 1 | 9% |

Respondent #5 – “Yes, but do not overregulate.”

3. Do you think any of the Commission’s laws, rules, or policies are an unnecessary restriction on the practice of your profession?

| | | |
|------------|----------|------------|
| Yes | 4 | 36% |
| No | 4 | 36% |
| Unknown | 1 | 9% |
| No Opinion | 2 | 19% |

4. Are you adequately informed by the Commission of changes to and interpretations of the Board/Commission’s positions, policies, rules, and laws?

| | | |
|------------|----------|------------|
| Yes | 9 | 82% |
| No | 2 | 18% |

Licensee Questionnaire

5. Does the Commission respond to your inquiries in a timely manner?

Yes 11 100%

6. Has the Commission performed your licensing and renewal in a timely manner?

Yes 11 100%

Blaster Questionnaire

A letter was sent to fifty-seven blaster licensees requesting participation in our survey. Nine participated in the survey. The percentages, where shown, are based on the number who responded to the question.

1. What do you think is the most significant issue(s) currently facing your profession in Alabama?

Respondent #1 – “Government regulations”

Respondent #2 – “Population proximity to mining activities, degradation of coal markets.”

Respondent #3 – “Lack of resource and interest”

Respondent #4 – “The decline of the coal market.”

Respondent #5 – “lawyers”

Respondent #6 – “I cannot think of anything other than we need more people interested in the field.”

Respondent #7 – “Local regulations”

Respondent #8 – “political misunderstanding of the mining industry”

Respondent #9 – “coal and rock quarries go by different rules”

2. Do you think regulation of your profession by Surface Mining Commission is necessary to protect the public welfare?

| | | |
|-------------------|----------|------------|
| Yes | 7 | 78% |
| No Opinion | 2 | 22% |

3. Do you think any of the Commission’s laws, rules, or policies are an unnecessary restriction on the practice of your profession?

| | | |
|-------------------|----------|--------------|
| Yes | 4 | 44.5% |
| No | 4 | 44.5% |
| No Opinion | 1 | 11% |

4. Are you adequately informed by the Commission of changes to and interpretations of the Commission’s positions, policies, rules, and laws?

| | | |
|-------------------|----------|------------|
| Yes | 6 | 67% |
| No | 2 | 22% |
| No Opinion | 1 | 11% |

5. Do you consider mandatory continuing education necessary for the competent practice of your profession?

| | | |
|------------|----------|-------------|
| Yes | 9 | 100% |
|------------|----------|-------------|

6. Does the Commission respond to your inquiries in a timely manner?

| | | |
|------------|----------|------------|
| Yes | 6 | 67% |
| No | 2 | 22% |
| Unknown | 1 | 11% |

7. Has the Commission performed your licensing and renewal in a timely manner?

| | | |
|------------|----------|------------|
| Yes | 8 | 89% |
| No | 1 | 11% |

Complainant Questionnaire

A letter was sent to forty complainants requesting participation in our survey. Four participated in the survey. The percentages, where shown, are based on the number who responded to the question.

1. Was receipt of your complaint acknowledged?

| | | |
|-----|---|-----|
| Yes | 3 | 75% |
| No | 1 | 25% |

Respondent #3 – “They came back and took more pictures”

2. Approximately how long after filing your complaint did the Commission contact you?

| | | |
|----------------|----------|------------|
| Within 15 days | 1 | 25% |
| Unknown | 2 | 50% |
| Other | 1 | 25% |

Respondent #2 – “Not sure, it took a while.”

3. Did the Commission communicate the results of the investigation into your complaint to you?

| | | |
|----------------|----------|------------|
| Yes | 1 | 25% |
| Unknown | 2 | 50% |
| Other | 1 | 25% |

Respondent #2 – “Not sure who you are calling “the commission”. The lines seemed to be a bit blurred between the “coal companies” doing the blasting and the people who came to my house. The whole thing seemed a little too cozy for my liking and I did not witness true objectivity.”

4. Do you think the Commission did everything it could to resolve your complaint?

| | | |
|----|---|------|
| No | 4 | 100% |
|----|---|------|

5. What, if any, additional comments would you like to make?

Respondent #1 – “INVESTIGATION DID NOT RESOLVE OR FIX DAMAGE TO MY HOME AND PROPERTY.”

Respondent #2 – “Yes, I have additional comments, but I keep getting an error when I try to enter them”

Respondent #3 – “Everyone I spoke with tried to hand it off to someone else.”

Respondent #4 – “In paragraph six of the letter from the State of Alabama Surface

Complainant Questionnaire

Mining Commission dated February 23,2018. It is written that “Even though the blasting records show that the blasting levels is in compliance with the ASMC regulation...” No damage should have occurred at the vibration levels recorded. The operative word there is should. There is no outright assurance on your part that the blast did not cause the damage to my home. You do not state with certainty in your letter that the blast dd not cause damage to my house. When the blast took place, you could hear it and it caused cracks in my walls and ceilings, these blasts did the damage to my home. Secondly the blasting has interfered with the use and enjoyment of my home. The blasting has caused substantial harm because the damage has reduced the value of my home. The blasting is a nuisance. A nuisance is a reoccurring activity and meets the test of a reoccurring activity.

Your letter is filed with assumptions and no outright denials that the blasting did not cause the damage to my home!

You allowed this coal company to come to a residential area and interfered with the enjoyment of my home and community. This is an outright violation of Nuisance laws. For a nuisance you have to show intentional conduct. This mining company came with the intent to mine and blast and damage to houses was foreseeable.

My house is damaged. The proof maybe seen at my house. I want someone with two eyes and the ability to hear to come and look at my house. I am an older woman and because of my age you all think I will just shut up and go away. You are discriminating me because of my age. I will not go away. The problem is many people have filed complaints and come have received compensation. I want to be restored and compensated for this damage. Please send someone else to my home and review my file.

Here me I will not go away until I am made whole.”

APPENDICES

Applicable Statutes

Article 1 Surface Mining Reclamation Generally.

Section 9-16-1 Short title.

This article shall be known and may be cited as the "Alabama Surface Mining Act of 1969."

(Acts 1969, No. 399, p. 773, §1.)

Section 9-16-1.1 Legislative findings.

(a) The Alabama Legislature has found and determined the following:

(1) A 1991 United States Department of the Interior audit report warned that the Non-Fuel Minerals Mining Law of Alabama is outdated and that mine operators are deliberately laying waste to mined land rather than restoring it.

(2) The standards for coal mining reclamation have improved dramatically over the last 25 years.

(3) The citizens of Alabama are endangered by unreclaimed highwalls, water impoundments, and open pits.

(b) In view of these findings, the Legislature deems it necessary to deny the issuance of surface mine permits to operators who have demonstrated a pattern of willfully violating the mining law, and to improve environmental controls by requiring that highwalls be backfilled after mining.

(Act 99-579, p. 1307, §1.)

Section 9-16-2 Definitions.

Unless clearly indicated otherwise by the context, as used in this article, the following terms have the following meanings:

(1) AFFECTED LAND. The area of land from which overburden has been removed or upon which overburden has been deposited after October 1, 1970.

(2) CONTEMPORANEOUS. Occurring at the same time as a surface mining operation and in conjunction with the grading activities at the site.

(3) CONTIGUOUS. In actual contact, touching, as contrasted with being near but not in contact.

(4) DEPARTMENT. The Department of Industrial Relations of the State of Alabama or any department, bureau, or commission as may lawfully succeed to the powers and duties of the department relating to mining operations.

(5) DIRECT SEEDING. The planting of seeds by hand sowing, machine sowing, or aerial seeding.

(6) DIRECTOR. Director of the department or officer, bureau, or commission as may lawfully succeed to the powers and duties of the director.

(7) HIGHWALL. The unexcavated face of exposed overburden or mineral in an opencast mine or the face or bank on the uphill side of a contour surface mine excavation.

(8) INSPECTOR. Any authorized employee of the department under the direction of the director.

(9) OPERATOR. Any person, firm, partnership, association, or corporation engaged in or controlling one or more surface mining operations.

(10) **OVERBURDEN.** All of the earth and other materials which lie above natural deposits of clay, sand, gravel, ores, and other minerals except limestone, marble, and dolomite, and also the earth and other materials disturbed from their natural state in the process of surface mining.

(11) **PEAK.** A projected point of overburden created in the process of surface mining.

(12) **PERMIT PERIOD.** A one-year period commencing on the issuance of a permit to engage in surface mining.

(13) **PERSON.** Any natural person, firm, corporation, association, partnership, joint venture, or representative of any kind or any other group acting as a unit.

(14) **PIT.** A tract of land from which overburden has been or is being removed for the purpose of surface mining.

(15) **RECLAMATION.** The reconditioning or rehabilitation of affected land in accordance with the requirements of this article.

(16) **REFUSE.** All waste material, exclusive of overburden, directly connected with the mining, cleaning, or preparation of substances mined by surface mining.

(17) **RIDGE.** A lengthened elevation of overburden created in the process of surface mining.

(18) **SETBACK.** An undisturbed buffer strip adjacent to watercourses, lakes, easements, adjoining property, perimeter property lines, road rights-of-way, residences, or other features which could be adversely affected by mining.

(19) **SURFACE MINING.** The mining of clay, sand, gravel, ores, and other minerals except chert (or similar type pits from which construction materials are obtained, which involve five acres or less and do not involve excavation below the surrounding area in such a way as to create a pit that will accumulate water), limestone, marble, dolomite, and coal, by removing the overburden lying above natural deposits thereof and mining directly from the natural deposits thereby exposed or by mining directly from deposits lying exposed in their natural state.

(Acts 1969, No. 399, p. 773, §3; Acts 1981, No. 81-676, p. 1100; Act 99-579, p. 1307, §2.)

Section 9-16-3 Purpose of article.

The objective of this article is to provide for the safe and reasonable reclamation of lands upon which surface disturbances will be created by certain types of surface mining so as to protect the taxable value of property and preserve natural resources within the state and to protect and promote the health and safety of the people of this state, consistent with the protection of physical property and with maximum employment and the economic and industrial well-being of the state.

(Acts 1969, No. 399, p. 773, §2.)

Section 9-16-4 Permit for engaging in surface mining operations - Required; exemptions; applicability.

(a) No operator shall engage in any surface mining, as defined in this article, after October 1, 1970, without a valid permit from the department to engage in the surface mining. A separate permit shall be required for each such surface mining operation that is not contiguous to a surface mining operation for which the operator has a valid permit.

(b) Notwithstanding anything to the contrary, this chapter shall not apply to surface mining to extract materials for the use and benefit of the owner of the property being mined or of an interest therein, the lessee of the property or a charitable institution or organization or governmental entity and not for commercial sale. This exemption shall apply to all mining operations which meet the requirements set forth in this section, including those mining operations for which permits had been issued prior to October 1, 1997. Any permits for exempt mining operations issued prior to October 1, 1997, shall become null and void on October 1, 1997. Upon notification of the department by the holder of such a null and void permit that their mining operation meets the requirements set forth herein, the department shall return any bond provided pursuant to this article within 30 days of receipt by the department of said notification.

(c) Notwithstanding anything to the contrary, this chapter shall not apply to surface mining where the area from which overburden is removed together with the area upon which removed overburden is placed does not exceed one acre, not including previously mined areas wherein the placement of removed overburden operates to reclaim the previously mined area.

(d) The provisions of this chapter shall not apply to surface mining operations existing on October 1, 1997, or which may be established or initiated in the future for the extraction of non-fuel minerals to be sold exclusively to county or municipal governments or to be sold by or to a public utility or any parent, subsidiary, or affiliate of a public utility.

(e) The provisions of this chapter shall not apply to extraction of non-fuel minerals as an incidental part of the operations and closure of a public or private landfill permitted and regulated by the United States government or the Alabama Department of Environmental Management, for coalbed methane or for oil and gas exploration activities, or for public utility purposes or activities including specifically any activities in connection with the generation, transmission, or distribution of electric power.

(Acts 1969, No. 399, p. 773, §4; Acts 1995, No. 95-737, p. 1576, §1; Acts 1997, No. 97-641, p. 1171, §1.)

Section 9-16-5 Permit for engaging in surface mining operations - Application; issuance.

(a) Any operator desiring a permit shall file an application with the department upon a form furnished by the department containing all of the following:

(1) A brief description of the tract or tracts of land and the estimated number of acres to be affected by the applicant's surface mining thereon during the permit period. The description shall include the section, township, range, and county in which the land is located and shall otherwise describe the land with sufficient clarity so it may be located and distinguished from other lands. The description shall also include a description of access to the area from the nearest public highway

(2) A statement by the applicant that the applicant has the right and power by legal estate owned to mine by surface mining the land so described. The statement shall set forth by reference the source of the applicant's right and power to so mine.

(3) A statement as to whether the applicant or any person, partnership, or corporation associated with the applicant holds or has held any other permits under this article and an identification of the permits.

(4) The post office address of the applicant.

(5) A comprehensive reclamation plan by the applicant of the manner in which the applicant intends to conduct reclamation of the affected land.

(6) Any other information determined by the department to be necessary in determining whether a permit should be issued.

(b) The application shall be accompanied by a bond or security meeting the requirements of Section 9-16-8 and a filing fee of two hundred fifty dollars (\$250).

(c) Upon the basis of a complete surface mining application and reclamation plan or a revision or renewal thereof, the department shall grant, require modification of, or deny the permit within 30 days and notify the applicant in writing of its action. The department may deny a permit if:

(1) The information contained in the application is incomplete, false, or inaccurate.

(2) The applicant fails to submit a feasible reclamation plan.

(3) The applicant, or the operator specified in the application, controls or has controlled a mining operation with a demonstrated pattern of willful violations of this article.

(4) The applicant, or the operator specified in the application, has forfeited a bond for failure to reclaim under this article at any time after September 1, 1999.

(d) A permit issued by the department shall entitle the applicant to immediately engage in surface mining on the land described in the application for the permit period, provided that all other permits required under other statutes have been obtained.

(Acts 1969, No. 399, p. 773, §5; Act 99-579, p. 1307, §2.)

Section 9-16-6 Permit for engaging in surface mining operations - Amendments.

(a) An operator desiring to amend a permit issued to him to include additional land may file an amended application with the department. Upon receipt of the amended application, such increase in the bond or surety as may be required under the provisions of this article and payment of a \$50.00 fee, the department shall issue an amendment to the original permit covering the additional land described in the amended application for the period of time remaining in the original permit.

(b) An operator desiring to amend a permit issued to him to withdraw land covered by such permit may file an amended application with the department. Upon receipt of the amended application and upon verification by inspection that the land to be withdrawn is not affected land resulting from surface mining of the applicant, the department shall proportionately reduce the bond or the security filed by the applicant pursuant to the provisions of this article and shall issue an amended permit covering such land as has not been withdrawn.

(Acts 1969, No. 399, p. 773, §6.)

Section 9-16-7 Duties of operators.

(a) Every operator to whom a permit is issued pursuant to this article and who engages in surface mining on lands described in the permit shall:

(1) Submit to the department, no later than 90 days after expiration of the permit period, a map or aerial photograph showing the location of the surface mining operation conducted during the permit period by section, township, range, and county with other description to identify the land upon which the operator has conducted surface mining during the permit period. The map or aerial photograph shall include a legend showing the number of acres of affected land and the reclamation to be made in accordance with this section.

(2) Commence contemporaneous reclamation of mined areas as set out in the comprehensive reclamation plan approved by the department. Reclamation bonds shall be adjusted annually to reflect unreclaimed disturbed acreage as well as reclaimed acreage released by the department. Failure to carry out contemporaneous reclamation may result in the suspension of mining, until the department determines that reclamation has been completed in accordance with this subsection.

(3) Conduct surface mining operations in a manner as to leave a minimum 50-foot setback. No clearing or excavation shall be done in setback areas. The operator shall immediately repair any damage to setback areas caused by the mining operation. All setbacks shall have lateral support graded to a 3:1 or flatter slope that shall be stabilized, mulched, fertilized, and planted in permanent native grasses and legumes. Failure to comply with setback requirements shall constitute a violation, and may result in suspension of the surface mining permit and a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) per violation.

(4) Carry on grading of affected land to backfill highwalls to a 3:1 or flatter slope, to reduce spoil peaks and ridges to a rolling topography, and provide soil stabilization and drainage control.

(5) Divert water from the mining operation in a manner designed to reduce siltation, erosion, or other damage to streams and natural watercourses.

(6) Revegetate all disturbed areas by applying lime and fertilizer, as recommended by a comprehensive soil analysis, then mulching and seeding with permanent native grasses and legumes to achieve a minimum 75 percent vegetative cover.

(b) In addition to the requirements of subsection (a) of this section, the operator shall, as a minimum, plant tree-planting stock on or directly seed the affected land with seed or seedlings of native commercial species. Where the operator elects to plant tree-planting stock on all or a portion of the affected land, the planting shall be carried out based on a spacing of 10 feet, approximately 435 trees per acre, and planting methods shall be governed by good planting practices. Where the operator elects to directly seed all or a portion of the affected land, the direct seeding shall be conducted to result in establishment, one year after the sowing, of between 400 and 450 tree seedlings per acre. If direct seeding or planting does not result in establishment within one year of between 400 and 450 tree seedlings per acre, the operator shall conduct additional seeding or planting necessary to result in establishment of 400 to 450 tree seedlings per acre. All seeds to be sown by direct seeding shall be treated with bird and rodent repellent.

(c) An operator with the legal title or right may construct dams of earth or other materials in cuts of all operations where lakes may be formed and may cause lakes to be formed. Notwithstanding the foregoing, the formation of any lakes shall not interfere with underground or other mining operations or cause damage to adjoining property.

(d) On all affected land to be reforested, the operator shall construct fire lanes or access roads, which shall be not less than 12 feet in width and not more than one-fourth section apart at their nearest point. Where the fire lanes and access roads are adjacent to public roads or highways, they shall be constructed to be just inside the boundary of the reforested area.

(e) In substitution for the grading and revegetation requirements set forth in subsections (a) and (b) of this section, the operator may elect to reclaim the land for range, agricultural, horticultural, homesite, recreational, industrial, or commercial use, but no election shall result in grading to a lesser extent than set forth in subsection (a) of this section. The revegetation or other requirements applicable to range, agricultural, horticultural, homesite, recreational, industrial, or commercial use shall be in accordance with rules or regulations prescribed by the department.

(f) The operator shall complete the reclamation of all affected land within two years from the date of expiration of the permit period.

(Acts 1969, No. 399, p. 773, §7; Act 99-579, p. 1307, §2.)

Section 9-16-9 Right of entry upon lands for inspections as to compliance with provisions of article.

Inspectors of the department may enter upon the lands of the landowner at any reasonable time for the purpose of inspection to determine whether the provisions of this article have been complied with.

(Acts 1969, No. 399, p. 773, §8.)

Section 9-16-10 Enforcement of provisions of article - Written notices of violations; hearings; entry of orders by director; appeals from orders of director.

(a) Whenever the director determines that any operator has not complied with the provisions of this article and is therefore in violation of this article, the director may cause to have issued and served upon the person alleged to be committing such violation a written notice which shall specify the provision of this article which such operator allegedly is violating and a statement of the manner in and the extent to which said operator is alleged to violate this article and shall require the person so complained against to answer the charges of such formal complaint at a hearing before the director at a time not less than 30 days after the date of notice. The director shall issue subpoenas at the instance of the department and at the request of the charged operator, requiring the attendance of witnesses and the production of such papers and documents as are relevant to such hearing. The charged operator may appear in person or by representative counsel at such hearing. Testimony shall be taken under oath and recorded stenographically at such hearing, and the charged operator may cross-examine witnesses at such hearing. A copy of the record of such hearing shall be furnished to the charged operator upon payment of the cost of such copy. The director shall enter such order as he deems appropriate to effectuate the purposes of this article and forthwith mail a copy thereof to the charged operator or his attorney of record. If such order of the director is not complied with in the required time, the director may then commence proceedings under Section 9-16-11.

(b) Any operator subjected to any order of the director may institute a civil action to have the order reviewed in the circuit court of the judicial circuit in which the operator has his principal place of business in Alabama or of the judicial circuit where the property affected by the order is located, provided the complaint instituting such civil action is

filed in said court within 30 days following the date of such order. The director shall be made a party to the court proceeding, and service shall be made upon the director, whose domicile for the purpose of service shall be deemed to be the office of the director in Montgomery, Alabama. The action shall be tried de novo as an original hearing in said circuit court and shall be a preferred case on the docket thereof. The court shall have jurisdiction to determine the reasonableness and lawfulness of the order of the director. Upon a finding by the court that the order is not reasonable or lawful, the action shall be remanded to the director for further proceedings in accordance with the provisions of this article. The parties shall have all rights of exception and appeal as in other civil actions. On any appeal of an order of the director, the operator may, upon application to the court, stay the execution of any judgment entered on giving such supersedeas bond in the amount the court deems proper and necessary to avoid the likelihood of material damage. Such a bond shall be made payable to the State of Alabama. If a supersedeas bond has been given on appeal to the circuit court as hereinabove provided for, such bond shall continue in force and effect during an appeal to the Supreme Court and until final adjudication of the action, and all the conditions of such bond shall be complied with and no other supersedeas bond need be given by the operator unless the court hearing the action shall determine that the amount of such supersedeas bond is either excessive or inadequate, in which case the court may order such supersedeas reduced or increased as the court may decide.

(Acts 1969, No. 399, p. 773, §10.)

Section 9-16-11 Enforcement of provisions of article - Institution of civil action for enforcement of final order of director; engaging in surface mining without valid permit; willful misrepresentations, etc., in applications; rights of exception and appeal.

(a) Should the director determine that any final order or determination made by him, not then the subject of judicial review, is being violated by any operator, then the director may cause to have instituted a civil action in any court of competent jurisdiction to forfeit the bond of the operator as to land affected by the operator's violation of this article or for injunctive or other appropriate relief to prevent any further or continued violation of such final order or determination.

(b) Any person required by this article to have a permit who engages in surface mining without a valid permit to do so as prescribed by this article shall be deemed guilty of a violation of this article and, upon complaint made by the director in a court of competent jurisdiction and conviction thereof, shall be fined not less than \$500.00 nor more than \$5,000.00 and shall be required to post a bond or surety as provided in Section 9-16-7 and to reclaim the affected land resulting from the operator's surface mining without a permit in accordance with the requirements of Section 9-16-7.

(c) Any person who willfully misrepresents any fact or willfully gives false information in any application or report under this article shall be fined not less than \$100.00 nor more than \$500.00 for each offense.

(d) The parties shall have all rights of exception and appeal.

(Acts 1969, No. 399, p. 773, §11.)

Section 9-16-12 Disposition of fees and penalties.

(a) All fees and penalties collected under the provisions of this article shall be deposited in the General Fund of the State Treasury.

(b) All funds received from the forfeiture of bonds, sureties, cash, or governmental securities shall be placed in the State Treasury and credited to a special agency account created and designated as the Surface Mining Reclamation Fund. The department shall, for each bond, surety, or deposit of cash or securities forfeited, utilize the proceeds of the forfeiture for the reclamation of affected lands. The director may establish and carry out a systematic schedule for the reclamation and revegetation of lands which have been affected by strip mining operations and to which there is no obligation on any person to reclaim or revegetate. The department may cause the reclamation work to be done by employees of other governmental agencies or through contracts with qualified vendors. The department and any contractor shall have the right of access to the land affected to carry out the reclamation.

(c) The department may accept and use any funds, facilities, or personnel available for the purposes of this article.

(Acts 1969, No. 399, p. 773, §12; Act 99-579, p. 1307, §2.)

Section 9-16-13 Administration of article.

Any act authorized to be done by the Director of the Department of Industrial Relations of the State of Alabama may be performed by the inspector, assistant inspector or any employee of the department when designated by the director. The superintendent may adopt and promulgate reasonable rules and regulations respecting the administration of this article and in conformity therewith.

(Acts 1969, No. 399, p. 773, §13.)

Section 9-16-14 Applicability of provisions of article.

The provisions of this article shall not apply to surface mining activities of the State Department of Transportation or any city, county or municipality incident to their activities in constructing, repairing and maintaining the public road system in Alabama. The provisions of this section shall also extend to any person, firm or corporation contracting with the State Department of Transportation or any city, county or municipality to construct, repair and maintain public roads; provided, that such contracts contain standards for the reclamation of all affected surface mining areas; and provided further, that such standards have been approved by the department.

(Acts 1969, No. 399, p. 773, §15.)

Section 9-16-15 Article supplemental; repeal of conflicting laws.

It is intended that this article shall supplement existing law regarding the inspection or regulation of mining, water pollution and water impoundment and that only provisions of such law which directly conflict with or are inconsistent with this article are hereby repealed to the extent of such conflict or inconsistency.

(Acts 1969, No. 399, p. 773, §16.)

Article 3 Surface Mining Control and Reclamation.

Section 9-16-70 Short title.

This article shall be known and may be cited as "The Alabama Surface Mining Control and Reclamation Act of 1981."

(Acts 1981, No. 81-435, p. 682, §1.)

Section 9-16-71 Declaration of public policy and legislative intent; all land surface mined under this article shall be reclaimed.

(a) The objective of this article is to provide for the safe, responsible and reasonable reclamation of lands upon which surface disturbances will be created by surface mining and the surface effects of underground mining so as to protect the taxable value of property and preserve natural resources within the state and protect and promote the health and safety of the people of this state, consistent with the protection of property and with maximum employment and the economic and industrial well-being of the state. The Legislature finds and declares that the extraction of coal by surface mining provides a major present and future source of energy and is an essential and necessary activity which contributes to the economic and material well-being of the state.

(b) The Legislature finds that the unregulated or irresponsible surface mining of coal may cause soil erosion, damage from rolling stones, land slides, and stream pollution, increases the likelihood of floods, reduces the value of land for agricultural purposes, can be detrimental to the conservation of soil, and may create hazards to life and property. It is the intent of the Legislature to assure that surface coal mining operations are not conducted where reclamation as required by this article is not feasible. It is the intent of this article to implement and enforce Public Law 95-87, 30 U.S.C. § 1200 et seq., and the permanent regulations promulgated thereunder, as required for the state to retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, provided, that if any provision of Public Law 95-87 or regulations promulgated thereunder which becomes invalidated or suspended by judicial or legislative act, the commission shall suspend enforcement of this state's corresponding provision to the extent of any such judicial or legislative act.

(c) The Legislature further finds that lands subjected to surface coal mining operations and not reclaimed or rehabilitated constitutes the aforementioned perils to the welfare of the state. It is the purpose of this article to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of this article and which continue in their unreclaimed condition to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

(d) The Legislature further finds that surface mining reclamation technology is now developed so that effective and reasonable regulation of surface coal mining operations by the state in accordance with the requirements of this article is an appropriate and necessary means to reduce adverse, economic and environmental effects of surface coal mining operations.

(e) The Legislature finds that a major impediment to effective enforcement of laws regulating coal surface mining is identifying and locating those acting in violation of the law; therefore, in order to protect the health, safety and well-being of the citizens of the State of Alabama, the Legislature intends by this article to require that certain major purchases and users of and dealers in coal within the State of Alabama be required to

furnish the commission created by this article with certain information which will assist the commission in the performance of its duties hereunder.

(f) In order to safeguard life, health and property of the citizens of the state, the Legislature intends, by this article, to establish certain qualifications for the obtaining of licenses to engage in the business of surface coal mining operations in the State of Alabama.

(g) The Legislature further finds that there are wide variations in the circumstances and conditions resulting from surface mining due to a diversity in terrain, climate, biologic, hydrologic, geologic, vegetative, chemical and other physical conditions in areas subject to mining operations. By reason of this diversity and its complex nature, it is necessary, in order to achieve the most effective, beneficial, economical, and equitable results, that the provisions of this article shall have a statewide application and shall supersede and render void any local, municipal or county regulation or control of surface coal mining operations; provided that regulations shall be promulgated to account for the diverse technical factors as may be applicable for the state as a whole or may vary from area to area, to account for varying local conditions such as may be appropriate to accomplish the policy and intent of this article.

(h) The Legislature further finds that an authority should be created to administer and enforce the regulatory provisions as enacted by the Legislature.

(i) It is the purpose of this article to provide such regulation and control of surface coal mining operations as will reduce injurious effects to the environment and resources of the state and will promote the following objectives:

(1) Establish a statewide program to reduce adverse effects to the environment resulting from surface coal mining operations;

(2) Provide that surface coal mining operations will be encouraged in the manner consistent with judicious utilization of the natural resources of the state;

(3) Provide that adequate measures are undertaken to reclaim surface mined areas promptly according to the provisions of this article;

(4) Exercise the full reach of state constitutional powers to provide protection of the public interest through effective control of surface coal mining operations; and

(5) Encourage the economic development of the coal resources of the state as a source of energy and other uses.

(j) This article shall not be construed to limit or affect any suit, action, or other proceeding brought to invalidate, set aside or modify, in whole or in part, the Federal Surface Mining Act or any rule or regulation promulgated thereunder.

(Acts 1981, No. 81-435, p. 682, §2.)

Section 9-16-72 Definitions.

The following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) APPLICANT. Any person or legal entity who or which applied for a license or a permit to engage in surface coal mining operations.

(2) APPROXIMATE ORIGINAL CONTOUR. That surface configuration achieved by filling 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 high walls and spoil piles eliminated; water impoundments may be permitted where the commission determines that they are in compliance with this article.

- (3) **COAL BROKER and COAL SALES AGENCY.** Those persons whose principal business is the buying and reselling of coal, or the negotiation or soliciting of coal sales between operators and purchasers; where principal business means that at least 25 percent of such person's coal related income is derived from such activities and such activities involve transactions affecting 250 or more tons of coal per year.
- (4) **COMPLETED APPLICATION.** The forms required by this article completely filled out and filed in the director's office, with all questions answered and all required and supporting documents, drawings, maps, schedules, surveys, fees and all other pertinent data required by the rules and regulations of the commission and this article.
- (5) **IMMINENT DANGER TO THE HEALTH AND SAFETY OF THE PUBLIC.** The existence of any condition or practice, or any violation of a permit or other requirement of this article 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 such condition, practice, or violation can 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.
- (6) **LICENSE.** An authorization issued pursuant to Section 9-16-81 which identifies persons eligible to conduct surface coal mining and reclamation operations.
- (7) **OPERATOR.** Any person conducting surface coal mining and reclamation operations and includes permittees and their subcontractors.
- (8) **ORDER.** The grant or denial of any license or permit; the setting, return or refusal to return any bond; or any other official act of the commission, its director or authorized agent thereof.
- (9) **OUTER SLOPE.** The exposed side of the spoil that slopes away from the pit created by the initial mining cut.
- (10) **PERMIT.** An authorization issued pursuant to Sections 9-16-82 through 9-16-89 of this article which allows a licensee to engage in surface coal mining at a particular location.
- (11) **PERMIT AREA.** The area of land indicated on the approved map submitted by the operator with his application which area of land shall be covered by the operator's bond as required by Section 9-16-89 of this article and shall be readily identifiable by appropriate markers on the site.
- (12) **PERSON.** An individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization or any governmental entity and any successor or agency of the foregoing.
- (13) **PRIME FARMLAND.** The same meaning as 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, and which historically have been used for intensive agricultural purposes.
- (14) **RECLAMATION.** The process of converting mined land to its former or other allowable use as required by this article.
- (15) **REGULATORY AUTHORITY or STATE REGULATORY AUTHORITY.** The Alabama Surface Mining Commission acting by and through its director or his designee.
- (16) **REVEGETATION.** Plants or growth which replace, where required, original ground cover following ground disturbance.

(17) SPOIL PILE. A deposit as piled or deposited in mining of overburden or reject materials and minerals which previously was overlying or in between coal deposits.

(18) STATE PROGRAM. The commission acting under a program approved pursuant to Section 503 of Public Law 95-87, 30 U.S.C. § 1200.

(19) SURFACE COAL MINING AND RECLAMATION OPERATIONS. Surface coal mining operations and all activities necessary and incident to the reclamation of such operations.

(20) SURFACE COAL MINING OPERATIONS.

a. Activities conducted on the surface of lands in connection with a surface coal mine extracting coal from the earth by removing the strata or material which overlies or is above or between coal seams or otherwise retrieving it from the surface or 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, mountain-top removal, box cut, open pit, and area mining, the use 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; and

b. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by 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, 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 such activities.

(21) UNWARRANTED FAILURE TO COMPLY. The failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this article due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or this article due to indifference, lack of diligence, or lack of reasonable care.

(Acts 1981, No. 81-435, p. 682, §3.)

Section 9-16-73 Surface Mining Commission - Creation; composition; officers; compensation; meetings; offices; funds; removal of members.

(a) There is continued as previously established the Alabama Surface Mining Reclamation Commission under the name of the Alabama Surface Mining Commission for the purpose of transition in implementing and enforcing this article and carrying out the intent and policy stated in Section 9-16-71. All members of the commission appointed under authority of Section 9-16-33, shall continue their terms as created under that section until all reappointments and filling of vacancies have been filled in the manner as provided in this section. At the expiration of any term, that member shall continue in office until an appointment occurs as provided in this section. After February 25, 1994, no member shall serve more than two full consecutive terms of office.

(b) The commission shall be composed of seven members, who are fair and reasonable citizens of the state and who shall reflect the racial, gender, geographic, urban/rural, and economic diversity of the state, appointed by the Governor, with the advice and consent of the Senate. The Governor shall initially appoint two members of the commission for a

term of five years, two members for four years, two members for three years, and one member for two years. All members appointed subsequently shall be appointed for terms of five years.

(1) One commission member shall be appointed from one of the three counties in Alabama which produce the greatest number of tons of surface mined coal, as indicated by the records of the State of Alabama in the complete fiscal year immediately preceding that appointment; and two commission members shall be appointed from any of the coal-producing counties in Alabama, as indicated by the records of the State of Alabama in the complete fiscal year immediately preceding that appointment. One commission member shall be appointed state at large.

(2) One of the appointees to the commission shall be a professional forester duly registered pursuant to the laws of the State of Alabama with not less than 10 years' experience in professional forestry. One of the appointees to the commission shall be a professional civil or mining engineer duly registered pursuant to the laws of the State of Alabama with not less than 10 years' experience in professional engineering in surface mining or technologically related fields. One appointee to the commission shall be an attorney duly licensed to practice law in the State of Alabama having not less than 10 years' experience in the active practice of law, the majority of whose years in practice shall have been in one of the three counties in Alabama which produced the greatest number of tons of surface mined coal as indicated by the records of the State of Alabama in the complete fiscal year immediately preceding that appointment.

(c) Within 10 days of nomination by the Governor, each nominee shall file with the Secretary of the Senate a verified statement setting forth the following information: The names of all coal companies from whom such nominee has received any income of any sort during the 10 years immediately preceding such nomination, the name or names of all coal companies in which the nominee is or in the 10 years immediately preceding such nomination has been an officer, director, stockholder, or partner; and all the names of all organizations, clubs, and associations of which the nominee is or in the 10 years immediately preceding such nomination has been a member. No commission member may have a direct or indirect financial interest in underground or surface coal mining operations, and may not participate in any proceeding conducted pursuant to Section 9-16-79 in which the commission member is an employee, officer, director, shareholder, or partner or where any organization, club, or association of which the commission member is a member, officer, agent, director, or employee instigated the proceeding, is a defendant, or has any other direct interest in the outcome of the proceeding, other than as a member of the commission.

(d) The commission shall annually elect from among its members a chair, a vice chair, and such other officers as necessary to fulfill its duties. In the event of a vacancy among the commissioners, the Governor, within 90 days of being notified of such vacancy, shall make an appointment to such vacancy, which appointment shall be subject to the advice and consent of the Senate at the next regular or special session of the Legislature. In the event such appointee is confirmed, his or her term shall be for the balance of the vacancy so filled.

(e) The commission shall appoint a Director of the Alabama Surface Mining Commission, who must have a working knowledge of the federal and state surface mining statutes, rules, and regulations, and shall fix his or her compensation. The commission may appoint a deputy director as an unclassified position and the compensation of such deputy director shall be fixed by the commission subject to the state Merit System. The director

shall be the chief operating officer of the commission and shall be charged with exercising such powers, duties, and functions as may be conferred upon him or her by the commission or this article, except the director shall not have the power to promulgate, modify, suspend, or repeal any standards, rules, or regulations provided for or authorized under this article. The director, subject to the approval of the commission, may create such divisions of his or her office as may be necessary to carry out its functions and may employ professional, technical, legal, or clerical personnel as may be necessary to carry out the duties and functions of the commission. The director, with the approval of the commission, may also contract with private persons, firms, or corporations to provide professional or technical assistance or consultant services to assist his or her office in carrying out the purposes of this article.

(f) The members of the commission shall receive as compensation seventy-five dollars (\$75) per day for each day of official business as approved and validated by the chair. The chair shall receive one hundred dollars (\$100) per day for each full day he or she is occupied with business of the commission. The chair may approve and certify expenses of every member of the commission for reimbursement pursuant to Article 2, commencing with Section 36-7-20, Chapter 7 of Title 36.

(g) Five members of the commission shall constitute a quorum, and recusal of a member shall not affect the quorum. The commission shall keep a complete and accurate record of all its meetings, a copy of which shall be kept on file in the office of the commission and open to public inspection. The commission shall meet at least once every month, or at such more frequent occasions as the Governor, the chair, or director determines is necessary to fulfill its duties and obligations.

(h) The commission shall establish and maintain its principal office in Jasper, Alabama, and establish and maintain such field offices in other coal producing counties as it may consider necessary for the proper discharge of its duties.

(i) Funds which are or may become available from any source, appropriations, or otherwise, to accomplish the purposes of this article shall be disbursed by the commission or by the director in accordance with rules prescribed by the commission.

(j) The Governor may remove any member of the commission from office for neglect of duty, malfeasance, or misfeasance, after unanimous consent and agreement by the Lieutenant Governor, Speaker of the House of Representatives, and Attorney General of Alabama, by delivering to the member the charges against him or her in writing with at least 10 days' written notice of the time and place at which the Governor will publicly hear the member, who may appear either in person or by counsel, in defense of the charges against him or her. If the member is removed from office, the Governor shall file with the Secretary of State a complete statement of the charges made against the member and a complete report of the proceedings. The action of the Governor removing a member from office is final.

(Acts 1981, No. 81-435, p. 682, §4; Acts 1986, No. 86-106, p. 113, §3; Acts 1994, No. 94-131, p. 166, §3; Act 2010-498, p. 768, §1.)

Section 9-16-74 Surface Mining Commission - Powers.

In addition to any other powers conferred on it by law, the commission shall have the power to do all of the following:

- (1) Adopt, amend, suspend, repeal, and enforce reasonably necessary rules and regulations, provided such rules and regulations shall not be more stringent than those promulgated by federal law, or rule or regulation, to control surface coal mining

operations consistent with this article including the declaration of public policy and legislative intent contained in Section 9-16-71. Such rules and regulations may be for the state as a whole or may vary from area to area, as may be appropriate to accomplish the policy and intent of this article and in order to take into account varying local conditions.

(2) Hold public hearings as may be specified by law relating to any aspect or matter in the administration of this article and, in connection therewith, administer oaths and compel the attendance of witnesses and the production of evidence. In the event of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to produce evidence or to testify as to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of any court of competent jurisdiction, upon the application of the commission, to compel obedience by proceedings for contempt as if the disobedience occurred in such court.

(3) Issue such orders as may be necessary to effectuate the purposes of this article and enforce the same through appropriate administrative and judicial proceedings.

(4) Promulgate and enforce rules, regulations, and standards requiring the training, examination, and certification of persons engaging in or directly responsible for the use of explosives for the purpose of blasting in surface coal mining. Such rules and regulations shall include, but not be limited to, provisions for establishing and charging reasonable fees for the administration of these rules, regulations, and standards and for the training and examination of applicants for certification, for the renewal of certification, and for continuing education.

(5) Secure through its director necessary scientific, technical, administrative, and operational services, including laboratory facilities by contract or otherwise.

(6) Encourage voluntary cooperation by persons and groups to achieve the purposes of this article.

(7) Encourage and conduct through its director and staff studies, investigations, and research relating to surface mining reclamation.

(8) Establish and enforce coal surface mining reclamation standards for the state which may vary according to appropriate areas, provided they are not inconsistent with this article and the declaration of public policy and legislative intent contained in Section 9-16-71.

(9) Collect and disseminate information and conduct educational and training programs relating to surface coal mining and reclamation of land.

(10) Advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate agencies, and the federal government and with interested persons or groups, especially, but not limited to, achieve one-stop permitting for surface coal mining operations and to transfer funds to carry out reclamation activities.

(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire a surface coal mine, concerning the efficacy of construction, installation, or acquisition of such surface mine. Nothing in any such consultation shall be construed to relieve any person from compliance with this article, rules and regulations in force pursuant to this article, or any other provision of law.

(12) Accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this article. Funds received by the regulatory authority pursuant to this section shall be deposited in the State Treasury to the account of the Alabama Surface Mining Fund.

(13) Employ personnel and consultants, purchase such equipment and supplies, and lease or otherwise acquire through its director such property as may be necessary for the administration of this article. Subject to any applicable restrictions contained in law, any department or agency of the state, from its available resources, may provide the regulatory authority with personnel and services, with or without charge, and the regulatory authority may compensate other agencies for services.

(14) Provide for the performance by its director, deputy director, or staff and employees in the name of the commission, of any act or duty authorized by and consistent with administration of this article, except for the promulgation, modification, suspension, or repeal of standards, rules, and regulations.

(15) Perform other acts and duties consistent with this article as may be necessary to implement the declaration of public policy and legislative intent contained in Section 9-16-71.

(16) Provide for the establishment of advisory committees, appointment and adequate compensation for membership of the committees, scope of study and other duties, periods of duration, and terms of advisory members.

(17) Issue, modify, or revoke orders prohibiting actions which violate this article or the rules, regulations, or standards promulgated pursuant to this article and require affirmative action to bring any surface coal mining operation into compliance with this article.

(18) Issue, continue in effect, revoke, modify, or deny permits through its director and staff for the conduct of surface coal mining operations or explorations which are subject to this article.

(19) Issue warnings and initiate civil or criminal actions through its director and staff as provided for in this article.

(20) Acquire and maintain workers' compensation insurance in the amount prescribed by the workers' compensation laws of Alabama and such general liability insurance as may be reasonably necessary to assure adequate protection of the commission, its director, employees, and agents for lawful acts by them during the course of enforcing and administering this article.

(21)a. Enforce the state program, approved pursuant to Section 503 of the Federal Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, 30 U.S.C. § 1200.

b. The commission shall make every effort to obtain full reimbursement from the Director of the Office of Surface Mining Reclamation and Enforcement for the costs of performing its duties under paragraph a.

c. If P.L. 95-87 or any rules or regulations promulgated thereunder or the federal laws it amends are adjudged unconstitutional or invalid in their application, or stayed pending litigation in any court of competent jurisdiction over surface coal mining operations in Alabama, the Alabama Surface Mining Commission shall suspend the enforcement of this article to the extent of such adjudication, unconstitutionality, inapplicability, or stay.

d. If any of the commission's rules or regulations are adjudged unconstitutional or invalid in their application, or stayed pending litigation in any court of competent jurisdiction, the Alabama Surface Mining Commission shall have the power to enforce any valid, constitutional, and analogous provision of the rules and regulations promulgated under P.L. 95-87.

e. The State of Alabama, by any provision, part, or all of this article, does not waive any rights and powers reserved to it by the Tenth Amendment to the Constitution of the United States, and this subdivision shall not be interpreted so as to prevent the State of Alabama

from protecting any and all of its rights and governmental powers through any legal action as might be determined by duly constituted officials of the State of Alabama.

(22) No commission member, employee of the commission, or any other state employee performing any function or duties under this article shall have a direct or indirect financial interest in underground or surface coal mining operations. Whoever knowingly violates this subdivision, upon conviction, shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment for not more than one year, or both.

(Acts 1981, No. 81-435, p. 682, §5; Acts 1986, No. 86-106, p. 113, §3; Act 2004-484, p. 901, §1; Act 2010-498, p. 768, §1.)

Section 9-16-75 Adoption of rules pursuant to Alabama Administrative Procedure Act; written notification of commission's rulemaking activities.

In adopting, amending or repealing any rule, including any regulation or standard, the commission shall observe the requirements of the Alabama Administrative Procedure Act (Section 41-22-1 et seq.).

Any person may request written notification of the commission's rule-making activities by making such request in writing to the commission.

(Acts 1981, No. 81-435, p. 682, §6; Acts 1983, No. 83-774, p. 1415, §5; Acts 1990, No. 90-107, p. 129, §3.)

Section 9-16-76 Conflict of interest; penalty.

No officer or employee of the commission performing any function or duty under this article, shall have a direct or indirect financial interest in underground or surface coal mining operations. Whoever knowingly violates the provisions of this section shall, upon conviction, be punished by a fine of not more than \$2,500.00, or by imprisonment for not more than one year, or both, and shall relinquish his commission seat.

(Acts 1981, No. 81-435, p. 682, §7.)

Section 9-16-77 Division of Hearings and Appeals.

(a) There is created a Division of Hearings and Appeals within the Alabama Surface Mining Commission to enforce this article. The division shall have such powers and authority as required by law and as delegated by the director.

(b) The commission may hire or contract with hearing officers to hear and determine appeals from regulatory, enforcement, or other activities of the commission. A hearing officer shall be a member of and in good standing with the Alabama State Bar.

(c) No person shall serve as a hearing officer who has any direct or indirect financial interest in an underground or surface coal mining operation or who has been employed by or represented any coal mine operator within the previous 24 months.

(Acts 1981, No. 81-435, p. 682, §8; Act 2010-498, p. 768, §1.)

Section 9-16-78 Hearing officer; powers; witness fees.

(a) No hearing officer shall participate in a hearing if he or she has an interest therein. At any such hearing all testimony shall be given under oath and be recorded, but need not be transcribed unless an appeal is made.

(b) The manner in which hearings before hearing officers shall be presented and the conduct of hearings and appeals before hearing officers shall be in accordance with regulations prescribed by the regulatory authority.

(c) In the discharge of his or her duties under this article, any hearing officer shall have power to administer oaths, certify to official acts, take and cause to be taken depositions of witnesses, issue and serve subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, payrolls, documents, records, and testimony, provide for site inspections or inspections of other operations. In the event of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to produce evidence or to testify as to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of any court of competent jurisdiction or of the judge thereof, upon the application of the hearing officer in the name of the Alabama Surface Mining Commission to compel obedience by proceedings for contempt. Witness fees and other expenses involved in the proceedings under this article shall be paid to the extent necessary at rates specified by the director. Such expenses shall be deemed a part of the expense of administering this chapter.

(d) There shall be no ex parte communications of any kind relating to commission business, or proposed or pending cases, by or with any hearing officer by any party or representative of any party, or by any employee or representative of the commission.

(Acts 1981, No. 81-435, p. 682, §9; Acts 1986, No. 86-106, p. 113, §3; Act 2010-498, p. 768, §1.)

Section 9-16-79 Hearings and appeals procedure.

Procedures for hearings and appeals under this article shall be made as herein provided and in accordance with such general rules and regulations as the regulatory authority may prescribe. These procedures shall take precedence over the Alabama Administrative Procedure Act, which shall in no respect apply to proceedings arising under this article.

(1)a. A determination by the regulatory authority as specified by law shall be made promptly and shall include a statement as to the action to be taken and reasons therefor. Notice of the determination or decision shall be promptly given to the parties involved by delivery or by mailing such notices to their last known addresses. When the regulatory authority gives a notice of determination, unless an appeal is filed by any person having an interest which may be adversely affected with the chief hearing officer within 30 days of such notice such determination shall be deemed final and not subject to appeal;

b. Unless such appeal is withdrawn, the hearing officer shall affirm, modify, or set aside the determination of the regulatory authority in a written decision incorporating therein findings of fact and law. The parties shall be promptly notified in writing of the hearing officers' decision;

c. The decision of a hearing officer shall become final 10 days after notice of such decision has been mailed, postage prepaid, to the parties to the proceedings at the addresses furnished or, if none shall have been furnished, at their last known addresses;

d. Within 30 days from the time a decision of the hearing officer has become final, any party to the proceedings may secure administrative review by filing a petition for review with the commission.

(2) An appeal to a hearing officer of a decision or order of the regulatory authority shall not automatically act as a stay of the decision or order. Pending completion of an appeal taken pursuant to subsection (a) of this section, a written application may be filed with the hearing officer requesting that he or she grant temporary relief from any notice or order issued under Section 9-16-93 together with a detailed statement giving reasons for granting such relief. The hearing officer shall issue an order or decision granting or denying such relief expeditiously: Provided, that where the applicant requests relief from

an order for cessation of coal mining and reclamation operations issued pursuant to Section 9-16-93, the order or decision on such application shall be issued within 5 days of its receipt. The hearing officer may grant such relief, under such conditions as he may prescribe, if:

- a. A hearing has been held in the locality of the permit area on the application for temporary relief in which all parties were given an opportunity to be heard;
- b. The applicant shows that there is substantial likelihood that the findings of the hearing officer will be favorable to him or her; and
- c. Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

Provided further, that where the hearing officer denies temporary relief from a cessation order or fails to act on the application for temporary relief within 5 days, the applicant may apply to the appropriate circuit court for relief pursuant to Rule 65 of the Alabama Rules of Civil Procedure.

(3)a. The commission may grant or deny a petition for review. If the commission takes no action on a petition within 30 days, it shall be deemed denied. If the commission grants a petition for review but fails to act within 90 days of granting the petition, the commission shall be deemed to have entered a final decision affirming the order of the hearing officer.

b. The commission shall make its review of a decision of a hearing officer based on the administrative record, and the hearing officer's decision shall either be affirmed, reversed or referred back to the hearing officer with instructions for further specific inquiry. The commission shall promptly notify the parties in writing of its decision.

c. The manner in which disputed claims before the commission shall be presented and the conduct of hearings and appeals before it shall be in accordance with the regulations prescribed by the commission. At any hearing the parties shall be afforded a reasonable opportunity for fair hearing and all testimony shall be taken down but need not be transcribed unless an appeal is applied for or taken. No person shall participate in the hearing or disposition of any claim as a member of the commission if he or she has an interest therein.

(4)a. Any decision of the commission shall become final 10 days after the date notification thereof shall have been mailed, postage prepaid, to the parties to the proceeding, at their last known addresses. The director shall be deemed to be a party to all such proceedings and to any judicial action involving any such decision.

b. Within 30 days from the time a petition for review is deemed denied or 30 days after the decision of the commission has become final, any party to the proceeding may secure a judicial review thereof by filing a notice of appeal in the circuit court of the county in which the commission maintains its principal office. All parties to the administrative procedure shall be named parties in such an appeal. In such action, the notice of appeal need not be verified but shall state the grounds upon which a review is sought. Service shall be made in accordance with the Alabama Rules of Civil Procedure. The circuit court shall not permit an appeal unless the person filing such appeal has exhausted his administrative remedies as provided by this article. Provided, where an appeal is taken to the commission from a cessation order issued pursuant to Section 9-16-93 and the commission fails or refuses to stay the order pending a final determination on the merits, the affected surface coal mining operator may apply to the appropriate circuit court for relief. The court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending 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 such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and
3. Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(5) Upon notification by the court that notice of appeal has been filed, the regulatory authority shall transmit to the court the entire record of the proceedings under review, including the findings of fact and the decision of the hearing officer or the commission within 30 days or within such additional time as the court may allow. With the permission of the court, the record of the proceedings under review may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal.

The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(6) The cause shall be tried de novo in said circuit court and shall be a preference case on the docket thereof. The court shall have jurisdiction to determine the reasonableness and lawfulness of the order of the regulatory authority. Upon a finding by the court that the order is not reasonable or lawful, or not supported by the clear preponderance of the evidence, the cause shall be remanded to the regulatory authority for further proceedings in accordance with the provisions of this article. The parties shall have all rights of exception and appeal as in other equity cases.

(7) In any appeal from an order of the commission the appellant may, upon application to the circuit court, supersede any order of the commission on giving such supersedeas bond in an amount the court deems proper and necessary to avoid the likelihood of material damage. The court may, under such conditions as it may prescribe, grant such supersedeas as it deems appropriate pending final determination of the proceeding if:

- a. All parties to the proceedings have been notified and given an opportunity to be heard on a request for a supersedeas;
- b. The person requesting the supersedeas shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceedings; and
- c. Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

Such a bond shall be made payable to the respondent appellee. If a supersedeas bond has been given on appeal to the circuit court as hereinabove provided for, such bond shall continue in force and effect during an appeal to the Supreme Court of Alabama and until final adjudication of the case, and all the conditions of such bond shall be complied with, and no other supersedeas bond need be given by the appellant unless the court hearing the case shall determine that the amount of such supersedeas bond is either excessive or inadequate, in which case the court may order such bond reduced or increased as the court may decide.

(8) An appeal may be taken from the decisions of the circuit court in the same manner as provided in civil cases.

(9) Whenever an order is issued under this section or as a result of any administrative proceeding under this article, 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 commission, or, if no appeal is taken to the commission, as determined by the hearing

officer, to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of the commission actions, may be assessed against either party as the court, resulting from judicial review, or the commission or the hearing officer, resulting from administrative proceedings, deems proper.

(10) The procedure provided in this article for hearings and appeals shall be exclusive except as otherwise specified.

(11) Nothing in this article shall prevent the regulatory authority from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means. However, nothing in this section shall be taken to negate the mandatory enforcement of Section 9-16-93.

(Acts 1981, No. 81-435, p. 682, §10; Acts 1983, No. 83-774, p. 1415, §6; Act 2015-383, §1.)

Section 9-16-80 Surface Mining Control and Reclamation Division - Creation; director; chief; transfer of books, records, powers, rights, and personnel.

(a) There is hereby created a Division of Surface Mining Control and Reclamation within the Alabama Surface Mining Commission to enforce the provisions of this article. The division shall have such powers and authority as may be delegated by the director of the commission.

(b)(1) The director shall appoint a chief of the division and shall fix his compensation as an unclassified employee in the state Merit System.

(2) The chief shall be the chief executive officer of the division and shall administer in the name of the division that power and authority delegated to the division by the director. The chief may, with the approval of the director, establish such sections within the division as may be necessary to enforce this article and the rules, regulations and standards promulgated thereunder.

(c) Any books, records, equipment, facilities, notes, accounts receivable, bank accounts, contracts and all property of any kind, tangible or intangible, of the Alabama Surface Mining Reclamation Commission acquired or used in the administration of Article 2, Chapter 16, Title 9, shall be transferred to the reconstituted commission in such manner as the director of the commission deems appropriate. No suit, action, or other proceeding lawfully commenced by or against the Director of the Alabama Surface Mining Reclamation Commission or any other official, officer or employee of the State of Alabama in his official duties under Article 2, Chapter 16, Title 9 shall abate by reason of the taking effect of this article. All power, rights, and duties conferred upon the Alabama Surface Mining Reclamation Commission, its commissioners, director, employees or other officials by Article 2, Chapter 16, Title 9 shall be conferred upon the reconstituted commission as the director may delegate solely for the purposes of winding up, continuing to enforce as may be necessary and concluding all obligations, liabilities, duties, orders, litigation or any other business commenced or incurred under Article 2, Chapter 16, Title 9.

(d) All personnel employed by the Alabama Surface Mining Reclamation Commission shall be transferred to the Alabama Surface Mining Commission.

(Acts 1981, No. 81-435, p. 682, §12.)

Section 9-16-81 Licenses required; application; qualifications; fees.

(a) All surface coal mining operations shall be subject to this article, except as excluded in Section 9-16-99.

(b) No person shall engage in or carry out on lands within the state any surface coal mining operations unless such person is a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government and has first obtained a license in accordance with this section. The term of a license shall be continuous and shall authorize the licensee, subject to the other provisions of this article, to engage in surface coal mining operations unless the license shall be suspended or revoked in accordance with this article. Suspension, revocation, or subcontracting shall in no way relieve the licensee of his or her obligation to comply with the reclamation requirement of this article.

(c) An applicant for a license shall file an application in a format prescribed by and satisfactory to the regulatory authority which shall contain, among other things, all of the following information:

(1) The name of the applicant and whether the applicant is an individual, partnership, corporation, or other legal entity.

(2) The legal address of the applicant for service of legal process or notice.

(3) If known, the names and addresses of the agents, subsidiaries, or independent contractors who may be engaged in surface coal mining on behalf of the applicant on land to be affected. Any agent, subsidiary, or independent contractor engaged by the applicant subsequent to issuance of a permit shall be identified to the regulatory authority within 30 days of its engagement. The utilization of an agent, subsidiary, or subcontractor shall not relieve the licensee of its responsibility under this article.

(4) If the applicant is a partnership, corporation, association, or other business entity, the following where applicable: The names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and address of any person owning of record 10 percentum or more of any class of voting stock of the applicant and 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 preceding the date of submission of the application.

(5) All names under which the applicant and persons listed in the license application previously operated or is engaging in surface coal mining within the State of Alabama, or any other state.

(6) A statement of whether the applicant, any subsidiary, affiliate, or persons controlling, controlled by, or under common control with the applicant, or any partner of the applicant, if the applicant is a partnership, or any principal officer or director, if the applicant is a corporation, has ever held a federal or any state mining permit which in the five-year period 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.

(d) The applicant, as a condition to obtaining a license, shall satisfy the regulatory authority, pursuant to reasonable standards and regulations to be promulgated by it, of the applicant's ability to comply with this article, which standards shall require the applicant to:

(1) Demonstrate that it has available to it sufficient technical skill to assure compliance with this article and the regulations adopted pursuant to this article.

(2) Demonstrate sufficient financial responsibility to reasonably assure the regulatory authority of the applicant's financial ability to execute the requirements of this article pursuant to regulations promulgated by the regulatory authority.

(3) Certify by notarized statement under oath that the applicant has read and is fully familiar with this article and with all reclamation requirements contained in this article and regulations promulgated by the regulatory authority.

(4) Certify that the applicant shall obtain and shall furnish the regulatory authority evidence of having obtained such permits as may be required prior to commencing operation under any permit which may be issued under this article to the applicant.

(e) The regulatory authority shall have 45 days to investigate and to consider the application and issue the license or an order denying its issuance, setting out deficiencies and reasons why the license was not issued and what corrective action should be taken.

(f)(1) The initial fee for a license shall be a reasonable amount as established by rule of the commission and shall be submitted with the application. Licenses shall be updated annually upon payment of an annual license update fee, in a reasonable amount as established by the commission, and compliance with any applicable rules of the commission.

(2) A licensee with a valid license issued by the Alabama Surface Mining Reclamation Commission prior to the effective date of this article and who intends to conduct surface coal mining and reclamation operations pursuant to this article shall reapply to the regulatory authority for a license within 90 days of the effective date of this article. The fee for such application shall be two hundred dollars (\$200) and shall be in lieu of the initial licensing fee. The license shall be granted provided that no prior licensee shall be eligible to receive a license until all outstanding and delinquent fines, fees, penalties, or other debts owed to the Alabama Surface Mining Reclamation Commission by the prior licensee shall have been paid in full to the regulatory authority. Licenses may be granted with specific conditions or restrictions.

(Acts 1981, No. 81-435, p. 682, §13; Act 2010-153, p. 221, §3; Act 2010-498, p. 768, §1.)

Section 9-16-82 Permits - Required; term; successor in interest; termination; renewal; application.

(a) No person shall engage in surface coal mining operations at a particular location except as a subcontractor of the permittee of that location until such person has been issued a permit by the regulatory authority for that location in accordance with the provisions of this section. The term of a permit shall not exceed five years and shall authorize the permittee to engage in surface coal mining operations within the permitted area, unless sooner suspended or revoked in accordance with the provisions of this article. However, if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain the necessary financing for equipment and the opening of the operation and that the application is full and complete for such specified longer term, the regulatory authority may grant a permit for such longer term. A successor in interest of a permittee who applies for a new permit within 30 days of succeeding of such interest and who is able to obtain the equivalent bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied. If a permittee qualified under this article succeeds another at any uncompleted operation by sale, assignment, lease or otherwise, the director may release the first permittee from all liability for permit and bond requirements of this article after

the successor permittee has posted adequate bond and the successor permittee assumes full liability for mining and reclamation procedures established herein.

(b) A permit shall terminate prior to its expiration date if the permittee has not commenced the surface coal mining operations covered by such permit within 3 years of the issuance of the permit; provided, that the regulatory authority may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such commencement 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; provided further for the purposes of this section, that with respect to 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 such time as the construction of the synthetic fuel or generating facility as initiated.

(c) Any valid permit issued pursuant to this article shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit.

(1) The holders of the permit may apply for renewal and such renewal shall be issued (provided that on application for renewal the burden shall be on the opponents of renewal), subsequent to fulfillment of the public notice requirements unless it is established that and written findings by the regulatory authority are made 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 the environmental protection standards of this article; or
- c. The renewal requested substantially jeopardizes the permittee's or operator's continuing responsibility on existing permit areas;
- d. The permittee has not provided evidence that the performance bond in effect for said operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the regulatory authority might require; or
- e. Any additional revised or updated information required by the regulatory authority has not been provided. Prior to the approval of any renewal of a permit, the regulatory authority shall provide notice to the appropriate public authorities.

(2) 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 which addresses any new land areas shall be subject to the full standards applicable to new applications under this article.

(3) Any permit renewal shall be for a term not to exceed the period of the original permit established by this article. Application for permit renewal shall be made at least 120 days prior to the expiration of the valid permit.

(d) Not later than two months following the approval of the state regulatory program pursuant to Section 503 of Public Law 95-87, 30 U.S.C. § 1253, regardless of litigation contesting that approval, all operators of surface coal mines in expectation of operating such mines after the expiration of eight months from the approval of a state regulatory program shall file an application for a permit with the regulatory authority. Such application shall cover those lands to be mined after the expiration of eight months from the approval of a state regulatory program. The regulatory authority shall process such applications and grant or deny a permit within eight months after the date of approval of the state regulatory program, unless specially enjoined by a court of competent jurisdiction, but in no case later than 42 months from the effective date of this article.

Section 9-16-83 Permits - Contents of application; reclamation plan; copy of application filed for public inspection; insurance; blasting plan.

(a) Each application for a surface coal mining reclamation permit under this article shall be accompanied by a fee as determined by the regulatory authority, but not to exceed the anticipated cost of reviewing, administering, and enforcing the permit. In no event shall the permit fee be less than one thousand dollars (\$1,000). The regulatory authority shall develop procedures to enable the cost of the fee to be paid over the life of the mine. The life of the mine means the term of the permit and the time required to successfully complete all surface coal mining and reclamation activities and obtain a full release of the performance bond for each bonded area.

(b) The permit application shall be submitted in a format prescribed by and satisfactory to the regulatory authority and shall contain, among other things, all of the following:

(1) The names and addresses of each of the following:

a. The permit applicant.

b. Every legal owner of record of the property (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 he or she is a person different from the applicant.

f. If any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent.

(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 of each pending application.

(4) Any information which has changed from that submitted from the license application or renewal.

(5) 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 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 may be located by local residents, and the location of where the application is available for public inspection.

(6) 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.

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

(8) The applicant shall file with the regulatory authority on an accurate map or plan, to an appropriate scale, prepared by or under the direction of and certified by a registered professional engineer or registered land surveyor clearly showing the land to be affected as of the date of the application, the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations and shall provide to the regulatory authority a statement of those documents upon which the applicant bases his or her legal right to enter and commence surface mining operations on the area affected and whether that right is the subject of pending court litigation. Nothing in this article shall be construed as vesting in the regulatory authority the jurisdiction to adjudicate property title disputes.

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

(10) 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 ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mining site and surrounding areas so that an assessment can be made by the regulatory authority of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. This determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency and the permit shall not be approved until such information is available and is incorporated into the application.

(11) When requested by the regulatory authority, 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.

(12) Accurate maps to an appropriate scale prepared by or under the direction of and certified by a registered professional engineer or registered land surveyor 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. The map or plan shall among other things specified by the regulatory authority 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 1,000 feet of the permit area.

(13) 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. a qualified registered professional engineer, or b. a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information: the nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; existing or previous surface mining limits; the location and extent of known workings of any underground mines, including mine openings to the surface; the location of aquifers; the estimated elevation of the water table; the location of spoil, waste, or refuse areas and topsoil preservation areas; the location of all impoundments for waste or erosion control; any settling or water treatment facility; 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 profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan.

(14) A statement of the result of the test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found, an analysis of the chemical properties of such coal; the sulfur content of any coal seam; chemical analysis

of potentially acid or toxic forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined except that the provisions of this subdivision may be waived by the regulatory authority with respect to the specific application by a written determination that such requirements are unnecessary.

(15) For those lands in the permit application which a reconnaissance inspection suggests may be prime farm lands, a soil survey shall be made or obtained according to standards established by the Secretary of Agriculture in order to confirm the exact location of such prime farm lands, if any.

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

(c)(1) If the regulatory authority finds that the probable total annual production at all locations of any surface coal mining operator will not exceed 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 regulatory authority, shall be assumed by the regulatory authority upon the written request of the operator in connection with a permit application, provided that funds are made available to the regulatory authority for such purposes by the Secretary of the United States Department of the Interior:

a. The determination of probable hydrologic consequences required by subdivision (10) of subsection (b), including the engineering analyses and designs necessary for the determination.

b. The development of cross-section maps and plans required by subdivision (13) of subsection (b).

c. The geologic drilling and statement of results of test borings and core samplings required by subdivision (14) of subsection (b).

d. The collection of archaeological information required by subdivision (12) of subsection (b) and any other archaeological and historical information required by the regulatory authority, and the preparation of plans necessitated thereby.

e. Pre-blast surveys required by paragraph e. of subdivision (15) of subsection (b) of Section 9-16-90.

f. The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the regulatory authority under this article.

(2) The regulatory authority shall provide or assume the cost of training coal operators that meet the qualifications stated in subdivision (1) concerning the preparation of permit applications and compliance with the regulatory program, and shall ensure that qualified coal operators are aware of the assistance available under this subsection. Funds for such purposes shall be made available to the regulatory authority by the Secretary of the United States Department of the Interior.

(d) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a reclamation plan which shall meet the requirements of this article.

(e) Each applicant for a surface coal mining and reclamation permit shall file a copy of his or her application for public inspection with the recorder at the courthouse of the

county or an appropriate public office approved by the regulatory authority where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

(f) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a certificate issued by an insurance company authorized to do business in the state certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other state self-insurance requirements. The 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 use of explosives and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(g) Each applicant for a surface coal mining and reclamation permit shall submit to the regulatory authority as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of subdivision (15) of subsection (b) of Section 9-16-90.

(h) A coal operator that has received assistance pursuant to subdivision (1) or (2) of subsection (c) shall reimburse the regulatory authority for the cost of the services rendered if the program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

(Acts 1981, No. 81-435, p. 682, §15; Act 98-140, p. 212, §3; Act 2017-394, §1.)

Section 9-16-84 Reclamation plans; contents.

(a) Each reclamation plan submitted as part of a permit application pursuant to the provisions of this article shall include, in the degree of detail necessary to demonstrate that reclamation required can be accomplished, a statement of:

(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 sub-areas 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; and

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 Section 9-16-83(b)(15); and

c. The productivity of the land prior to mining, including appropriate classification as prime farm lands, 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 which 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 and owner of the surface, state and local governments or agencies thereof which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

- (4) A detailed description of how the proposed post-mining land use is to be achieved and the necessary support activities which 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 for prime farm lands; 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 Section 9-16-90;
 - (6) The consideration which has been 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 which has been 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 regulations and any applicable health and safety standards;
 - (10) The consideration which has been 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 which 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 regulatory authority, including the location of subsurface water, and an analysis of the chemical properties including acid forming properties of the mineral and overburden; provided, that information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental contents which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record;
 - (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 ground water systems, both on and offsite, 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 ground water systems, both on and offsite, from adverse effects of the mining and reclamation process or to provide alternative sources of water where such protection of quantity cannot be assured;
 - (14) Such other requirements as the regulatory authority shall prescribe by regulations.
- (b) Any information required by this section shall be kept on file by the regulatory authority pursuant to Section 9-16-100.
- (Acts 1981, No. 81-435, p. 682, §16.)*

Section 9-16-85 Permits - Approval or denial by authority; filing of violation schedule; issuance to mine on prime farm land.

(a) Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this article, following public notification and opportunity for a public hearing as required by Section 9-16-88, the regulatory authority shall grant, require modification of, or deny the permit within 30 days and notify the applicant in writing of its action. The applicant for a permit, or revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of this article. Within 10 days after the granting of a permit, the regulatory authority 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.

(b) No permit or revision application shall be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicant, that:

(1) The permit application is accurate and complete and that all the requirements of this article have been complied with;

(2) The applicant has demonstrated that reclamation as required by this article can be accomplished under the reclamation plan contained in the permit application;

(3) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in Section 9-16-83(b) has been made by the regulatory authority and the proposed operation thereof has been designed to prevent material damage to hydrologic balance outside the permit area;

(4) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to Section 9-16-96 or is not within an area under study for such designation in an administrative proceeding commenced pursuant to Section 9-16-96(a)(4)c or Section 9-16-96(b) (unless in such an area as to which an administrative proceeding has commenced pursuant to Section 9-16-96(a)(4)c, the operator making the permit application demonstrates that, prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit);

(5) In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the regulatory authority:

a. The written consent of the surface owner to the extraction of coal by surface mining methods; or

b. A conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

c. If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law; provided, that nothing in this article shall be construed to authorize the regulatory authority to adjudicate property right disputes.

(c) The applicant shall file with his permit application a schedule listing any and all notices of violations of this article and 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 prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the

schedule or other information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this article or such other laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation and no permit shall be issued to an applicant after a finding by the regulatory authority, after opportunity for 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 article of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article.

(d)(1) In addition to finding the application in compliance with subsection (b) of this section, if the area proposed to be mined contains prime farm land identified as such pursuant to Section 9-16-83(b), the regulatory authority shall, after consultation with the Secretary of Agriculture and pursuant to regulations issued by the Secretary of Interior with the concurrence of the Secretary of Agriculture, grant a permit to mine on prime farm land if the regulatory authority finds in writing that the operator has the technological capability to restore such mined area within a reasonable time, to equivalent or higher levels of yield as nonmined prime farm land in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards of Section 9-16-90(b)(7). Except for compliance with subsection (b) of this section, the requirement of this subdivision shall apply to all permits issued after the date of August 3, 1977.

(2) Nothing in this subsection shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or any existing surface mining operations for which a permit was issued prior to the date of August 3, 1977.

(Acts 1981, No. 81-435, p. 682, §17; Acts 1986, No. 86-106, p. 113, §3.)

Section 9-16-86 Permits - Revisions; application; revision or modification by authority.

(a)(1) During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the regulatory authority.

(2) An application for a revision of a permit shall not be approved unless the regulatory authority finds that reclamation as required by this article can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a period of time established by the regulatory authority's regulations. The regulatory authority 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, shall apply; provided, that any revisions which 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 article shall be made without the written approval of the regulatory authority.

(c) The regulatory authority shall within a time limit prescribed in regulations promulgated by the regulatory authority review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of such

permit; provided, that such revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by this article.
(*Acts 1981, No. 81-435, p. 682, §18.*)

Section 9-16-87 Permits - Coal exploration.

(a) Coal exploration operations including the removal of coal samples for testing, assaying or other associated non-commercial purposes which substantially disturb the natural land surface may be conducted after filing a notice of intention to explore, including a description of the exploration area, the period of proposed exploration and provisions for reclamation in accordance with Section 9-16-90.

(b) Information submitted to the regulatory authority pursuant to this section as confidential concerning 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 shall not be available for public examination.

(c) Any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the enforcement provisions of this article.

(d) No operator shall affect more than one-half acre in any one location or remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the regulatory authority. The written approval may be conditioned upon specific performance standards, reclamation standards, and a reclamation bond as required by regulations promulgated hereunder.

(*Acts 1981, No. 81-435, p. 682, §19; Acts 1983, No. 83-774, p. 1415, §7.*)

Section 9-16-88 Permits - Review and appeal of applications.

(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 article, the applicant shall submit to the regulatory authority a copy of his advertisement of the ownership, precise location, and boundaries of the land to be affected. At the time of submission such advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks. The regulatory authority 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 regulatory authority on the mining applications with respect to the effect of the proposed operation on the environment which are within their area of responsibility. Such comments shall immediately be transmitted to the applicant by the regulatory authority and shall be made available to the public at the same locations as are the mining applications.

(b) 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 shall have 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 regulatory authority within 30 days after the last publication of the above notice. Such objections shall immediately be

transmitted to the applicant by the regulatory authority and shall be made available to the public. If written objections are filed and an informal conference requested, the regulatory authority 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. The date, time and location of such informal conference shall be advertised by the regulatory authority in a newspaper of general circulation in the locality at least two weeks prior to the scheduled conference date. The regulatory authority 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. An electronic or stenographic record shall be made of the conference proceeding unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. In the event all parties requesting an informal conference stipulate agreement prior to the requested informal conference and withdraw their request, such informal conference need not be held.

(c) If an informal conference has been held pursuant to subsection (b) of this section, the regulatory authority shall issue and furnish the applicant for a permit and persons who are parties to the administrative proceedings with the written finding of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor within the 30 days of said hearings.

(d) If there has been no informal conference held pursuant to subsection (b) of this section, the regulatory authority shall notify the applicant for a permit within a reasonable time as determined by the regulatory authority and set forth in regulations, 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.

(e) If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within 30 days after the applicant is notified of the final decision of the regulatory authority on the permit application, the applicant or any person with an interest which is or may be adversely affected may request a hearing before a hearing officer on the final decision of the regulatory authority. The hearing officer shall hold a hearing within 30 days of such request and provide notification to all interested parties at the time that the applicant is so notified. Such hearing shall be conducted pursuant to Sections 9-16-78 and 9-16-79, and a decision shall be rendered within 15 days after the hearing.

(f) Where a hearing is requested pursuant to subsection (e) of this section, the hearing officer may, under such conditions as he may prescribe, grant such temporary relief as he deems appropriate pending 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 such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

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

(Acts 1981, No. 81-435, p. 682, §20; Acts 1986, No. 86-106, p. 113, §3.)

Section 9-16-89 Performance bonds and bond releases.

(a) After a surface coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond for performance payable to the state and conditioned upon faithful performance of all the requirements of this article and the permit. The bond shall cover all lands disturbed by the surface coal mining operation and the amount of the initial bond shall be such to cover that 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 permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit, shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the regulatory authority. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.00.

(b) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for the period coincident with operator's responsibility for revegetation requirements in Section 9-16-90. The bond shall be executed by the operator and a corporate surety licensed to do business in the state, except that the operator may elect to deposit cash, negotiable bonds of the United States government or state, or negotiable certificates of deposit of any bank organized or transacting business in the United States. 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.

(c) The regulatory authority may accept the bond of the applicant itself without separate surety when the applicant demonstrates pursuant to regulations of the regulatory authority 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 such amount or the regulatory authority may approve an alternative system pursuant to regulations that will achieve the objectives and purposes of the bonding program pursuant to this section.

(d) Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.

(e) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the regulatory authority from time to time as the acreage in the permit area is revised, methods of mining operation change, standards of reclamation change or when the cost of future reclamation, restoration or abatement change. The regulatory authority shall notify the permittee of any proposed bond adjustment and provide the permittee an opportunity for an informal conference on the adjustment, with notice to the landowner and surety, if any.

(f) The permittee may file a request with the regulatory authority for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the regulatory authority, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a

newspaper of general circulation in the locality of the surface coal mining operation. Such advertisement shall be 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 and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, local governmental 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 his intention to seek release from the bond.

(g) Upon receipt of the notification and request, the regulatory authority shall within 30 days conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution. The regulatory authority shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond or deposit within 60 days from the filing of the request, or, if a public hearing has been held pursuant to subsection (k) of this section, within 30 days thereafter.

(h) The regulatory authority may release in whole or in part said bond or deposit if the authority is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this article according to the following schedule:

(1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, 60 per centum of the bond or collateral for the applicable permit area may be released.

(2) When determining the amount of bond to be released after successful revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, the regulatory authority 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 Section 9-16-90 of reestablishing revegetation. No part of the bond or deposit shall be released under this subdivision so long as the lands to which the release would be applicable are contributing settleable solids to streamflow or runoff outside the permit area in excess of the requirements set by applicable state or federal law or regulations, or until soil productivity for prime farm lands 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 Section 9-16-83(b)(15). Where a silt dam is to be retained as a permanent impoundment pursuant to Section 9-16-90(b)(8), the portion of bond may be released under this subdivision so long as provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.

(3) When the operator has completed successfully all surface coal mining and reclamation activities, the remaining portion of the bond may be released, but not before the expiration of the period specified for operator responsibility in Section 9-16-90, provided, however, that no bond shall be fully released until all reclamation requirements of this article are fully met.

(i) If the regulatory authority disapproves the application for release of the bond or portion thereof, the regulatory authority shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.

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

(k) Any person with a valid legal interest which might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law 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 shall have the right to file written objections to the proposed release from bond with the regulatory authority within 30 days after the last publication of the above notice. If written objections are filed, and a hearing requested, a hearing shall be held before a hearing officer pursuant to Sections 9-16-78 and 9-16-79. The hearing officer 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 within 30 days of the request for such hearing. The hearing officer shall advertise the date, time, and location of such public hearings, in a newspaper of general circulation in the locality for two consecutive weeks, and shall hold a public hearing in the locality of the surface coal mining operation proposed for bond release or at the office of the regulatory authority, at the option of the objector, within 30 days of the request for such hearing.

(l) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the regulatory authority pursuant to this section, the regulatory authority may establish an informal conference as provided in Section 9-16-88(b) to resolve such written objections. (*Acts 1981, No. 81-435, p. 682, §21; Acts 1983, No. 83-774, p. 1415, §10.*)

Section 9-16-90 Environmental protection performance standards.

(a) Any permit issued pursuant to this article to conduct surface mining operations shall require that such surface coal mining operations will meet all applicable performance standards of this article, and such other requirements as the regulatory authority shall promulgate.

(b) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operation as a minimum to:

(1) Conduct surface coal mining operations so as 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, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state, or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface coal mining operations backfill, compact (where advisable to insure 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 article); provided, however, that in surface coal mining which is carried out at the same location over a substantial period of time where the operation transacts 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 provided further, that in surface coal mining 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 original 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 article;

(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 plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of 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 which 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 farm lands as identified in Section 9-16-83 (b)(15) to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction shall be established by the 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 paragraph b. above with proper compaction and uniform depth over the regarded spoil material; and
- d. Redistribute and grade in a uniform manner the surface soil horizon described in paragraph 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 purpose;
- 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 Public Law 83-566 (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 regulatory authority determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety; provided, that the permitting authority 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 ground water 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:
 - 1. Preventing or removing water from contact with toxic producing deposits;

2. Treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;
3. Casing, sealing, or otherwise managing boreholes, shafts, and wells and keep acid or other toxic drainage from entering ground and surface waters;
- b.1. Conducting surface coal mining operations so as to prevent to the extent possible using the best technology currently available, additional contributions of suspended or settleable 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.
2. Constructing any siltation structures pursuant to subparagraph b.1. of this subdivision prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;
- c. Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways except those approved pursuant to subdivision (b)(8) of this section after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the regulatory authority;
- d. Restoring recharge capacity of the mined area to approximate premining condition;
- e. Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;
- f. Such other actions as the regulatory authority 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 article;
- (12) Refrain from surface coal mining within 500 feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners; provided, that the regulatory authority 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 regulatory authorities concerned with surface mine regulation and the 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 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, in accordance with regulations developed by the regulatory authority consistent with the requirements of Section 515(f) of P.L. 95-87;
- (14) Insure 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) Insure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the regulatory authority; 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 of the proposed blasting site and by providing daily notice or audible warnings to resident/occupiers in such areas prior to any blasting;
- b. Maintain for a period of at least three 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, 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 as certified by the regulatory authority;
- e. Provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half mile 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 regulatory authority and a copy to the resident or owner making the request. The area of the survey shall be decided by the regulatory authority.

(16) Insure 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 such other mining operations to assure maximum practical recovery of the mineral resources, the regulatory authority may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit such other mining operations prior to reclamation:

- a. If the regulatory authority finds in writing that:
 - 1. The applicant has presented, as part of the permit application, specific, feasible plans for the proposed such other operations;
 - 2. The proposed such other mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;
 - 3. The applicant has satisfactorily demonstrated that the plan for such other mining operations conforms to requirements for such other mining in the jurisdiction and that permits necessary for such other mining operations have been issued by the appropriate authority;
 - 4. The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed such other mining operations;
 - 5. No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article;
 - 6. Provisions for the off-site storage of spoil will comply with subdivision (b)(22);
- b. All specific regulations governing the granting of such variance have been complied with;

c. The variance granted under the provisions of this subsection are to be reviewed by the regulatory authority not more than three years from the date of issuance of the permit; and

d. If liability under the bond filed by the applicant with the regulatory authority shall be for the duration of such other mining operations and until the requirements of Section 9-16-89 and subsection (b) of this section have been fully complied with.

(17) Insure that the construction, maintenance, and post-mining 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 of 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 post-mining land use plan;

(20) Assume the responsibility for successful revegetation, as required by subdivision (19) above, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assume compliance with subdivision (19) above; provided, that when the regulatory authority approves a long-term intensive agricultural post-mining land use, the applicable five-year period of responsibility for revegetation shall commence at the date of initial planting for such long-term intensive agricultural post-mining land use; provided further, that when the regulatory authority issues a written finding approving a long-term, intensive, agricultural post-mining land use as part of the mining and reclamation plan, the authority may grant exception to the provisions of subdivision (19) above;

(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 regulatory authority, the spoil could be placed in compliance with all the requirements of this article, 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 article are met.
- (23) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological, and other characteristics of the site; and
- (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 value, and achieve enhancement of such resources where practicable;
- (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 regulatory authority shall determine shall be retained in place as a barrier to slides and erosion.
- (c)(1) The regulatory authority shall promulgate regulations which shall include procedures pursuant to which the regulatory authority may permit surface mining operations for the purposes set forth in subdivision (3) of this subsection.
- (2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection a permit without regard to the requirement to restore to approximate original contour set forth in subdivisions (b)(3) or (d)(2) and (3) of this section 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 subparagraph (c)(4)a. hereof) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting post-mining uses in accord with the requirements of this subsection.
- (3) In cases where an industrial, commercial, agricultural, residential or public facility (including recreational facilities) use is proposed or the post-mining use of the affected land, the regulatory authority may grant a permit for a surface mining operation of the nature described in subdivision (c)(2) where:
- a. After consultation with the appropriate land use planning agencies, if any, the proposed post-mining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use;
 - b. The applicant presents specific plans for the proposed post-mining land use and appropriate assurances that such use will be:
 - 1. Compatible with adjacent land uses;
 - 2. Obtainable according to data regarding expected need and market;
 - 3. Assured of investment in necessary public facilities;
 - 4. Supported by commitments from public agencies where appropriate;
 - 5. Practicable with respect to private financial capability for completion of the proposed use;
 - 6. Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the post-mining land use; and
 - 7. 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 regulatory authority provides the governing body of the unit of general-purpose government in which the land is located and any state or federal agency which the regulatory authority in its discretion, determines to have an interest in the proposed use, an opportunity of not more than 60 days to review and comment on the proposed use;
- e. All other requirements of this article will be met.

(4) In granting any permit pursuant to this subsection, the regulatory authority 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 outslopes except at specified points;
- d. No damage will be done to natural water-courses;
- e. Spoil will be placed on the mountaintop bench as is necessary to achieve the planned post-mining 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) of this section;
- f. Insure stability of the spoil retained on the mountaintop and meet the other requirements of this article;

(5) The regulatory authority shall promulgate specific regulations to govern the granting of permits in accord with the provisions of this subsection, and may impose such additional requirements through those regulations.

(6) All permits granted under the provisions of this subsection shall be reviewed not more than three 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 shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section; provided, however, that the provisions of this subsection 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 plan or predominately flat area or where an operator is in compliance with provisions of subsection (c) hereof:

(1) Insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be 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 subdivision (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 regulatory authority 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.

(4) For the purposes of this subsection, the term "steep slope" is any slope above 20 degrees, or any lesser slope which may be defined pursuant to the regulatory authority's regulations based upon considerations of soil, terrain, geology and other characteristics of a region or the state.

(e)(1) The regulatory authority may promulgate regulations which shall include procedures pursuant to which the regulatory authority may permit variances for the purposes set forth in subdivision (3) of this subsection, provided that the watershed control of the area is improved; and further provided complete backfilling with spoil material shall be required to cover completely the highwall which material will maintain stability following mining and reclamation.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection a variance from the requirement to restore to approximate original contour set forth in subdivision (d)(2) of this section may be granted for the surface mining of coal where the owner of the surface knowingly requests in writing, as a part of the permit application that such 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 accord with the further provisions of subdivisions (3) and (4) of this subsection.

(3)a. After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use;

b. Is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

c. And after approval of the appropriate state environmental agencies, the watershed of the affected land is deemed to be improved.

(4) In granting a variance pursuant to this subsection the regulatory authority 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, insure stability of the spoil retained on the bench, meet all other requirements of this article, and all spoil placement off the mine bench must comply with subdivision (b)(22) of this section.

(5) The regulatory authority shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.

(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from 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.

(f) Upon the request of a municipality or 15 citizens of a municipality who are being affected by blasting operations of a surface coal mine, the regulatory authority shall solicit and consider public comments from those being affected in determining the necessity for more stringent standards. The final written determination of the regulatory authority, including any proposed standards, or the failure of the regulatory authority to act within a reasonable time, shall be reviewed by the commission. The commission, if requested by the municipality, 25 citizens of the municipalities or any affected licensee, shall hold a public hearing in the manner specified in Section 9-16-79 of this article. The commission shall affirm or reverse the written determination or refer it to the regulatory authority for further specific inquiries.

(Acts 1981, No. 81-435, p. 682, § 22; Acts 1983, No. 83-774, p. 1415, § 11.)

Section 9-16-91 Surface effects of underground coal mining; requirements; remedies.

(a) The regulatory authority shall promulgate rules and regulations directed toward the surface effects of underground coal mining operations, and embodying the following requirements. In adopting any rules and regulations, the regulatory authority shall consider all distinct differences between surface coal mining and underground coal mining.

(b) Each permit issued pursuant to this article and relating to underground coal mining shall require the operator to:

(1) Adopt measures consistent with available 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 methods used requires planned subsidence in a predictable and controlled manner. Nothing in this subsection shall be construed to prohibit 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 waters below water quality standards established pursuant to applicable federal and state law surface or ground waters 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 the regulatory authority's regulations, 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 which may result from such mining operations.

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

(9) Minimize the disturbances of the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quantity of water in surface ground water systems both during and after coal mining operations and during reclamation by doing each of the following activities:

- a. Avoiding acid or other toxic mine drainage by such measures as, but not limited to, the following:
1. Preventing or removing water from contact with toxic producing deposits.
 2. Treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses.
 3. Casing, sealing, or otherwise managing boreholes, shafts, and wells to keep 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 such contributions be in excess of requirements set by applicable state or federal law), and avoiding channel deepening or enlargements in operations requiring the discharge of water from mines.
- (10) With respect to other surface impacts not specified in this subsection 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 Section 9-16-90 for such effects which result from surface coal mining operations. The regulatory authority shall make modifications in the requirements imposed by this subdivision as are necessary to accommodate all distinct differences 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.
- (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.
- (c) In order to protect the stability of the land, the regulatory authority 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 it finds imminent danger to inhabitants of the urbanized areas, cities, towns and communities.
- (d) The provisions of this article relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate all distinct differences between surface and underground coal mining. The regulatory authority shall promulgate such modifications in accordance with the rulemaking procedures established in Section 9-16-75.
- (e) Underground coal mining operations conducted after July 1, 1998 shall comply with each of the following requirements:
- (1) Promptly repair or compensate for material damage to any occupied residential dwelling and related structures or any noncommercial building caused by surface subsidence resulting from underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and related structures or noncommercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and related structures or noncommercial building which shall be in the full amount of the diminution in value

resulting from subsidence caused damage. Compensation may be accomplished by the purchase, prior to mining, of a non-cancelable premium-prepaid insurance policy.

(2) Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations.

(3) Promptly correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence.

The regulatory authority shall issue such notices or orders and take such actions as necessary to compel compliance with these requirements.

(f) Notwithstanding any other provision in this chapter to the contrary, the remedies prescribed in this section or any rule promulgated under authority of this chapter pertaining to repair or compensation for subsidence damage and replacement of water shall be the sole and exclusive remedies available to the owner for such damage and its effects. Neither punitive damages nor, except as specifically prescribed in this section or any rule promulgated under authority of this chapter pertaining to repair or compensation for subsidence damage and replacement of water, compensatory damages shall be awarded for subsidence damage caused by longwall mining or other mining process employing a planned subsidence method and conducted in substantial compliance with a permit issued under authority of this chapter. Nothing in this chapter shall prohibit agreements between the surface owner and the mineral owner or lessee that establish the manner and means by which repair or compensation for subsidence damage is to be provided. However, the remedies prescribed for subsidence damage shall not be diminished or waived by contrary provisions in deeds, leases, or documents, other than such subsidence damage agreements, which leave the owner without such prescribed remedies. Provided, however, the provisions of this subsection do not apply to any actions brought for, and in which the trier of the fact finds, intentional, willful, or wanton conduct; provided further, that conduct in substantial compliance with applicable mining permits may not be deemed to be intentional, willful, or wanton.

(Acts 1981, No. 81-435, p. 682, §23; Act 98-140, p. 212, §3; Act 99-593, p. 1359, §1.)

Section 9-16-92 Inspections; authority to inspect records, equipment, premises; etc.; violations; maintenance of records, etc., by permittee; authority to enter upon all lands of the state.

(a) For the purpose of developing or assisting in the development, administration, and enforcement of this article or in the administration and enforcement of any permit under this article, or of determining whether any person is in violation of any requirement of this article:

(1) The regulatory authority shall require any permittee to (i) establish and maintain appropriate records, (ii) make monthly reports to the regulatory authority, (iii) install, use, and maintain any necessary monitoring equipment or methods, (iv) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as the regulatory authority shall prescribe, and (v) provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems reasonable and necessary;

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

- a. Monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence;
- b. Monitoring sites to record level, amount, and samples of ground water 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.

The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the regulatory authority in order to assure their reliability and validity; and

(3) The authorized representatives of the regulatory authority, without advance notice and upon presentation of appropriate credentials, (i) shall have the right of entry to, upon or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under subdivision (1) of this subsection are located; and (ii) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this article.

(4) In order to carry out the provisions of this article, it shall be lawful for any person or persons who are commission members, employees of the regulatory authority or any law enforcement officer who accompanies an authorized representative of the regulatory authority in the performance of his functions or duties under this article, to enter upon and cross all lands in the state, provided that in so doing no damage is done to private property.

(b) The inspections by the regulatory authority shall (1) occur on an irregular basis averaging not less than one partial inspection per month and one 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 his agents or employees except for necessary onsite 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 article.

(c) Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

(d) Each inspector, upon detection of each violation of any requirement of this article, shall forthwith inform the operator in writing, and shall report in writing any such violation to the regulatory authority.

(e) Copies of any records, reports, inspection materials, or information obtained under this article by the regulatory authority shall be made 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.

(f)(1) Any person who is or may be adversely affected by a surface mining operation may notify the regulatory authority or any representative of the regulatory authority responsible for conducting the inspection, in writing, of any violation of this article which he has reason to believe exists at the surface mining site. The regulatory authority shall, by regulation, establish procedures for informal review of any refusal by a representative

of the regulatory authority to issue a citation with respect to any such alleged violation. The regulatory authority shall furnish such persons requesting the review a written statement of the reasons for the regulatory authority's final disposition of the case.

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

(Acts 1981, No. 81-435, p. 682, §24; Acts 1983, No. 83-774, p. 1415, §8.)

Section 9-16-93 Violations; inspection by authority; remedial actions; hearing; action by Attorney General.

(a) Whenever, on the basis of any information available to it, including receipt of information from any person, the regulatory authority has reason to believe that any person is in violation of any requirement of this article or any permit condition required by this article, the regulatory authority shall immediately order an inspection of the surface coal mining operation at which the alleged violation is occurring unless the same information is available to the regulatory authority as a result of a previous inspection. When the inspection results from information provided to the regulatory authority by any person, the regulatory authority shall notify such person when the inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection. The regulatory authority shall consult with all state and federal agencies charged with the enforcement of mine safety regulations and shall ensure that the person accompanying the inspector complies with appropriate safety standards and regulations. The regulatory authority shall provide that the person accompanying the inspector assumes the risk of personal injury where such injury results from conduct of the operator which is neither negligent nor intentional and where the person accompanying the inspector fails to comply with appropriate safety standards and regulations.

(b) When on the basis of an inspection by an authorized representative of the regulatory authority, the regulatory authority or its authorized representative determines that any condition or practice exists or that any permittee is in violation of any requirement of this article or any permit condition required by this article, and such violation, condition, or practice also creates an imminent danger to the health or 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 regulatory authority or its authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation of this article. Such cessation order shall remain in effect until the regulatory authority or its authorized representative determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the regulatory authority or its authorized representative pursuant to subsection (e) or by the hearing officer. Where the regulatory authority finds that the ordered cessation of surface coal mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to the health or safety of the public or the significant, imminent environmental harm to land, air, or water resources, the regulatory authority, in addition to the cessation order, shall impose affirmative obligations on the operator requiring him or her to take whatever steps

the regulatory authority deems necessary to abate the imminent danger or the significant, imminent harm.

(c) When on the basis of an inspection by an authorized representative of the regulatory authority, the regulatory authority or its authorized representative determines that any permittee is in violation of any requirement of this article, including any permit condition required by this article, but such 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 regulatory authority or its authorized representative shall issue a notice to the permittee or his or her agent fixing a reasonable time, but not more than 90 days, for the abatement of the violation and providing opportunity for an informal conference. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written findings of the regulatory authority or its authorized representative, the regulatory authority or its authorized representative finds that the violation has not been abated, a cessation order shall immediately be issued for the relevant portion of the surface coal mining and reclamation operation including the entire operation, if relevant. Such cessation order shall remain in effect until modified, vacated, or terminated by the regulatory authority or its authorized representative pursuant to subsection (e) or until the regulatory authority or its authorized representative determines that the violation has been abated. In the order of cessation the regulatory authority shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order. Actions taken by the regulatory authority under this subsection may be reviewed by a hearing officer pursuant to Sections 9-16-78 and 9-16-79.

(d) When, on the basis of an inspection, the regulatory authority or its authorized representative determines that a pattern of violations of any requirements of this article or any permit conditions exists or has existed, and if the regulatory authority or its authorized representative also find that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this article or any permit conditions, or that such violations are willfully caused by the permittee, the regulatory authority or its authorized representative shall forthwith issue an order to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing before a hearing officer pursuant to Sections 9-16-78 and 9-16-79. If a hearing is requested, the hearing officer shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the hearing officer shall forthwith suspend or revoke the permit. If the hearing officer revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the hearing officer or the hearing officer shall declare as forfeited the performance bonds for the operation.

(e) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his or her agent by the regulatory authority or its authorized representative who issues such notice or order and all such notices and orders shall be in writing and shall be signed by the regulatory authority or such authorized representative. Any notice or order issued pursuant to this

section may be modified, vacated, or terminated by the regulatory authority or its authorized representative. Provided, that any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator or his or her agent, unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the public hearing.

(f)(1) The regulatory authority may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court for the county in which the surface coal mining and reclamation operation is located or in which the permittee thereof has his or her principal office, whenever such permittee or his or her agent does any of the following:

a. Violates or fails or refuses to comply with any order or decision issued by the regulatory authority under this article.

b. Interferes with, hinders, or delays the regulatory authority or his or her authorized representatives in carrying out this article.

c. Refuses to admit such authorized representative to the mine.

d. Refuses to permit inspection of the mine by such authorized representative.

e. Refuses to furnish any information or report requested by the regulatory authority in furtherance of this article .

f. Refuses to permit access to, and copying of, such records as the regulatory authority determines necessary in carrying out this article.

(2) Such court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with Rule 65 of the Alabama Rules of Civil Procedure as amended. Any relief granted by the court to enforce an order under paragraph a. shall continue in effect until the completion or final termination of all proceedings for review of such order under this article, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it.

(Acts 1981, No. 81-435, p. 682, §25; Acts 1983, No. 83-774, p. 1415, §1; Act 2010-498, p. 759, §1.)

Section 9-16-94 Penalties.

(a) Any permittee or operator who violates any permit condition or who violates any other provision of this article, may be assessed a civil penalty by the regulatory authority, except that if such violation leads to the issuance of a cessation order under Section 9-16-93, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000.00 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operations; the seriousness of the violation, including any irreparable harm to the environment and any hazard 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) A civil penalty shall be assessed by the regulatory authority only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing before a hearing officer pursuant to Sections 9-16-78 and 9-16-79. Where such a public hearing has been held, the hearing officer shall make findings of fact, and he shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an

order therein requiring that the penalty be paid. When appropriate, the hearing officer shall consolidate such hearings with other proceedings under Section 9-16-93 of this article. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the regulatory authority after the regulatory authority has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

(c) Upon the issuance of a notice or order charging that a violation of the article has occurred, the regulatory authority shall inform the operator within 30 days of the proposed amount of said penalty. The person charged with the penalty shall then have 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 regulatory authority 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 regulatory authority shall within 30 days remit the appropriate amount to the person, with interest at the rate of six percent, or at the prevailing Department of the Treasury rate, whichever is greater. Failure to forward the money to the regulatory authority within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) Civil penalties owed under this article may be recovered in a civil action brought by the Attorney General at the request of the regulatory authority in any appropriate circuit court of this state.

(e) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this article or fails or refuses to comply with any order issued under Section 9-16-79 or Section 9-16-93 of this article or any order incorporated in a final decision issued by the regulatory authority under this article, except an order incorporated in a decision issued under subsection (b) of this section, shall, upon conviction be punished by a fine of not more than \$10,000.00, or by imprisonment for not more than one year or both. Any person who willfully and knowingly engages in surface coal mining operations without a license and permit as required by this article shall upon conviction be punished by a fine of not more than \$10,000.00 per day for each and every day during which such violation continues, and shall be subject to imprisonment for not more than one year or both. In addition to any criminal penalty issued hereunder any person who affects land in violation of this subsection shall be required to post a bond in accordance with that of Section 9-16-89 and to reclaim the affected land.

(f) Whenever a corporate permittee violates a condition of a permit issued pursuant to this article or fails or refuses to comply with any order issued under Section 9-16-93 of this article, or any order incorporated in a final decision issued by the regulatory authority under this article except an order incorporated in a decision issued under subsection (b) of this section, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section.

(g) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this article or any order or decision issued by the regulatory authority under this article, shall

upon conviction, be punished by a fine of not more than \$10,000.00, or by imprisonment for not more than one year or both.

(h) Any operator who fails to correct a violation for which a citation has been issued under Section 9-16-93 within the period permitted for its correction (which period shall not end until the entry of a final order or the conclusion of the appeals process), shall be assessed a civil penalty of not less than \$750.00 for each day during which such failure or violation continues, but not to exceed 30 days.

(i) Any operator who forfeits his bond for willful failure to reclaim the affected land shall not be issued a new permit for any operation in which he owns any interest until he has paid to the regulatory authority for deposit to the Alabama Surface Mining Fund the sum equal to the amount of coverage of the forfeited bond. This repayment will not affect the previous bond forfeiture of the operator.

(j) Any person who shall, except as permitted by law, willfully resist, prevent, impede, or interfere with the regulatory authority or any of its agents in the performance of duties pursuant to this article shall be punished by a fine of not more than \$10,000.00 or by imprisonment for not more than one year, or both.

(Acts 1981, No. 81-435, p. 682, §26; Acts 1983, No. 83-774, p. 1415, §§2, 9.)

Section 9-16-95 Citizens' actions; attorneys, etc., fees allowed as damages.

(a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected, (or any citizen of this state having knowledge that any of the provisions of this article are willfully or deliberately not being enforced and who files a statement with the regulatory authority in writing and under oath with facts set forth specifically stating the nature of the failure to enforce the provisions of this article), may commence a civil action on his own behalf to compel compliance with this article:

(1) Against any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution of the United States which is alleged to be in violation of the provisions of this article or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this article; or

(2) Against the regulatory authority to the extent permitted by the Eleventh Amendment to the Constitution of the United States where there is alleged a failure of the regulatory authority to perform any act or duty under this article which is not discretionary with the regulatory authority.

In a civil action brought pursuant to this subsection, the cause shall be tried in the circuit court with jurisdiction over the location of the regulatory authority's principal office, except that in a civil action brought against any person pursuant to subdivision (1) of this subsection, the cause shall be tried in the circuit court of the county where the alleged violation occurred and the action in either case shall be prosecuted in the name of the real party in interest.

(b) No action may be commenced:

(1) Under subdivision (a) (1) of this section:

a. Prior to 60 days after the plaintiff has given notice in writing of the violation (i) to the regulatory authority, (ii) to the Secretary of the Interior, and (iii) to any alleged violator; or

b. If the Secretary of the Interior, or the regulatory authority, has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this

article, or any rule, regulation, order, or permit issued pursuant to this article. In any such action in a court of the United States any person may intervene as a matter of right; or (2) Under subdivision (a) (2) of this section prior to 60 days after the plaintiff has given notice in writing of such action to the regulatory authority in such manner as the regulatory authority by regulation shall prescribe except that such action may be brought immediately after such notification in the case where 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.

(c) In such action under this section, the regulatory authority or the Secretary of the Interior if not parties, may intervene as a matter of right.

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

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any of the provisions of this article and the regulations thereunder, or to seek any other relief, including relief against the regulatory authority, as permitted by the Constitution and laws of this state.

(f) Any person who is injured in his person or property through the violation by any operator of any rule, regulation, order, or permit issued pursuant to this article may bring an action for damages in the venue available under Alabama law. The court may award reasonable attorney and expert witness fees to the prevailing party. Nothing in this subsection shall affect the rights established by or limits imposed under state workers' compensation laws.

(Acts 1981, No. 81-435, p. 682, §27; Acts 1983, No. 83-774, p. 1415, §3.)

Section 9-16-96 Designation of areas unsuitable for surface coal mining; right to petition; review and public hearing; areas exempt from mining operations.

(a)(1) The regulatory authority shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of the state are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in subdivisions (2) and (3) of this subsection but such designation shall not prevent the mineral exploration pursuant to the article of any area so designated.

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

(3) Upon petition pursuant to subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will:

- a. Be incompatible with existing state or local land use plans or programs; or
- b. Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems; or

c. Affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

d. Affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(4) To comply with this section, the regulatory authority, which is the state agency responsible for surface mining lands review, must develop a process which includes:

a. A data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations;

b. A method or methods for implementing land use planning decisions concerning surface coal mining operations; and

c. Proper notice, 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, as provided for in this section, 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) The requirements of this section shall 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 article, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

(b) Any person having an interest which is or may be adversely affected shall have the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the regulatory authority 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 person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within 60 days after such hearing, the regulatory authority shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

(c) Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal.

(d) Within 30 days of the final decision of the regulatory authority, any party to the proceedings before the regulatory authority may petition the commission to review the decision. Upon request, the commission shall hold a public hearing after appropriate notice in the manner specified in Section 9-16-79 of this article at such location as the commission deems appropriate. At the hearing, any person may appear and be heard on the record. Documentary or other evidence may be received for inclusion in the record. Within 30 days of the hearing, the commission shall issue a written decision affirming or

reversing the decision of the regulatory authority or referring the decision back to the regulatory authority for further specific inquiry.

(e) After the enactment of this article and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this article shall be 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 Section 5(a) of the Wild and Scenic Rivers Act, National Recreation Areas designated by act of Congress; and any state park;

(2) On any federal lands within the boundaries of any national forest; provided, however, that surface coal mining operations may be permitted on such lands if the Secretary of Interior finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and 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 regulatory authority and the federal, state, or local agency with jurisdiction over the park or the historic site;

(4) Within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or the area affected to lie within 100 feet of such 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 landowners affected thereby will be protected; or

(5) Within 300 feet from any occupied dwelling, unless waived by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building, public park, or within 100 feet of a cemetery;

(6) Within 1,000 feet horizontally of the mean high water level of Lewis Smith Lake (which mean high water level shall be a topographic contour line corresponding to the spillway elevation of the Lewis Smith Lake Dam); 1,000 feet horizontally of the rim of Little River Canyon; 1,000 feet horizontally on either side of the Little River and the east, middle and west forks of the Little River.

(Acts 1981, No. 81-435, p. 682, §28.)

Section 9-16-97 Water rights.

(a) Nothing in this article shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.

(b) The operator of a surface coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such surface coal mine operation.

(Acts 1981, No. 81-435, p. 682, §29.)

Section 9-16-98 Experimental practices.

In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, or public use (including recreational facilities), the regulatory authority with approval by the Secretary of Interior may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under Sections 9-16-90 and 9-16-91 of this article. Such departures may be authorized if (i) the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by promulgated standards; (ii) the mining operations approved for particular land use or other purposes are no larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and (iii) the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

(Acts 1981, No. 81-435, p. 682, §30.)

Section 9-16-99 Surface mining operations not subject to this article.

The provisions of this article shall not apply to any of the following activities:

- (1) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;
- (2) For surface mining operations affecting two acres or less, the regulatory authority may waive certain requirements of this article where those requirements will not affect the reclamation of the affected lands;
- (3) The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction under regulations established by the regulatory authority;
- (4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for commercial use or sale pursuant to regulations established by the regulatory authority.

(Acts 1981, No. 81-435, p. 682, §31; Acts 1983, No. 83-774, p. 1415, §4.)

Section 9-16-100 Confidentiality of records.

Any record, report or information required to be submitted to the regulatory authority by a licensee or permittee pursuant to this article shall be available to the public, except as provided elsewhere in this article and except that upon a verified representation to the regulatory authority by an applicant, licensee or permittee that a record, report or information, or particular part thereof, to which the regulatory authority has access under this article, if made public, would divulge production or financial data or methods, processes or production unique to the person or would otherwise tend to affect adversely the competitive position of the person, the regulatory authority shall treat the record, report or information or particular portion thereof as confidential in the administration of this article.

(Acts 1981, No. 81-435, p. 682, §32.)

Section 9-16-101 Leases of certain lands.

The regulatory authority is hereby vested with the authority and responsibility for consulting with all institutions of this state which own lands or mineral interests relating to all coal leases proposed to be entered into by such institutions. The regulatory authority is hereby designated as the agency of the State of Alabama for reviewing and approving

such coal leases. Upon submission of any such proposed lease, the regulatory authority shall, within 45 days, by order approve or disapprove such proposed lease; upon failure of the regulatory authority to act within such time, such lease shall be conclusively presumed approved. In any case in which the regulatory authority refuses to approve the execution of such a lease, the proposed lessee may demand a hearing before a hearing officer pursuant to the provisions of Section 9-16-78 and 9-16-79 of this article with all rights of appeal as set forth.

(Acts 1981, No. 81-435, p. 682, §33.)

Section 9-16-102 Reports of certain coal sales.

Any person engaged in the business of coal brokering or operating a coal sales agency in the State of Alabama and each and every person, corporation or other legal entity operating an electric system for the sale of electric energy for resale, sale to the public or sale to its members and each and every industrial purchaser of coal in the State of Alabama shall report, on a form to be furnished by the regulatory authority, at intervals of not less than 60 days, the name, address, license number and permit number of the producer of all coal purchased by it since its last reporting period. In the event that any person named in the preceding sentence purchases coal mined outside of the State of Alabama, such facts shall be so noted on the form described above. Failure of the persons described in this section to render such reports shall constitute a misdemeanor punishable by fine of not more than \$5,000.00; provided, that prior to instituting any such action, the regulatory authority, in the case of a first offense only, shall notify such person by certified or registered mail of the failure to comply with this provision of this article and shall afford such person not more than 10 days to furnish such report. Officers, employees and agents of the regulatory authority shall be permitted to inspect the records and books of the persons specified above to determine the accuracy of such reports, such inspection to take place at reasonable times. In no event shall the regulatory authority require disclosure of the amounts of any purchase or the purchase price paid for such coal or of any information other than that set forth above, except by specific subpoena in preparation for hearing or other enforcement action.

(Acts 1981, No. 81-435, p. 682, §34.)

Section 9-16-103 Alabama Surface Mining Fund.

(a) All sums received through the payment of fees, the forfeiture of bonds, the recovery of civil penalties or appropriations by the Legislature shall be placed in the State Treasury and credited to an open account designated as the Alabama Surface Mining Fund. This fund, which shall include the Alabama Surface Mining Reclamation Fund established by Act No. 551, 1975 Regular Session, shall be available to the regulatory authority for expenditure in the administration and enforcement of this article, and training, reclamation and research programs; provided, that the proceeds from the forfeiture of any bond shall be used to the extent required by law in completing reclamation and revegetation of the area with respect to which the bond applies. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse, but shall be carried forward for the purposes of this article until expended.

(b) There is authorized to be appropriated to the Alabama Surface Mining Fund initially the current balance of the Alabama Surface Mining Reclamation Fund at the effective date of this article and such other sums as may thereafter be appropriated by the Legislature.

(Acts 1981, No. 81-435, p. 682, §35.)

Section 9-16-104 Reimbursement and funding.

The regulatory authority shall make every effort to obtain maximum reimbursement from the Director of the Office of Surface Mining Reclamation and Enforcement for the costs of performing its duties under this article. The regulatory authority is authorized to accept, administer and expend such funds or grants as it may receive, including such funds as may be appropriated by the Legislature.

(Acts 1981, No. 81-435, p. 682, §36.)

Section 9-16-105 Constitutionality and validity of article.

(a) If Public Law 95-87, or any rule or regulation promulgated thereunder or any part of such Public Law 95-87, is adjudged unconstitutional or invalid for any reason, then such provisions of this article, or such rules or regulations as were adopted in order to comply with the provisions of Public Law 95-87 which correspond to such constitutional or invalid provisions shall become void and be of no further force and effect, and any regulations adopted by the commission implementing such provisions, or corresponding to any federal rules or regulations which are declared unconstitutional or invalid shall become void and be of no further force or effect. In the event Public Law 95-87 or any part thereof or any rule or regulation promulgated thereunder is enjoined, suspended or the enforcement thereof is stayed pending litigation, then the commission shall immediately suspend the enforcement of the corresponding section or sections of this article, or any rules and regulations promulgated hereunder; such suspension to exist for a period of time coextensive with the suspension and enforcement of such provisions of Public Law 95-87 or the rules or regulations adopted thereunder. In the event the Congress of the United States repeals any provision of Public Law 95-87 then any corresponding provision of this article shall upon such repeal be of no further force and effect; in the event the Congress of the United States amends Public Law 95-87 or the Secretary of the Interior amends any regulation adopted thereunder by lessening or in any way making the requirements of such act or regulations less restrictive on the state or on those engaged in the surface mining industry then such amendment shall be deemed to have amended this article in like manner, or, in the case of regulations, such modified regulation shall be adopted by the regulatory authority.

(b) The State of Alabama, by any provision, part or all of this article, does not waive any rights and powers reserved to it by the Tenth Amendment to the Constitution of the United States, and this article shall not be interpreted so as to prevent the State of Alabama from protecting any and all of its rights and governmental powers through any legal action as might be determined by duly constituted officials of the State of Alabama.

(Acts 1981, No. 81-435, p. 682, §37; Acts 1983, No. 83-774, p. 1415, §12.)

Section 9-16-106 Provisions cumulative; certain laws not repealed.

This article is cumulative and is intended to preempt local, municipal, county and state regulation of surface coal mining operations and to supplement existing state law and no part hereof shall be construed to repeal or supersede an existing state law specifically enacted for the control, abatement or prevention of water or air pollution. The Alabama Surface Mining Act of 1969 (Act 399, Regular Session 1969) now appearing as Sections 9-16-1 through 9-16-15, is not repealed as to the regulation of the surface mining of clay, sand, gravel, ores, limestone, marble, dolomite, and other minerals. The Little River Canyon Preservation Acts, Act 227, H. 49 and Act 524, H. 1225 of the 1976 Regular

Session (Acts of Alabama pages 243 and 669 respectively) are not repealed. All other laws or parts of laws which are inconsistent with this article are hereby repealed.
(*Acts 1981, No. 81-435, p. 682, §38.*)

Section 9-16-107 Effective date.

This article shall become effective immediately upon:

- (1) Its passage and approval by the Governor, or upon its otherwise becoming a law; and
- (2) Upon the approval of the state regulatory program by the Secretary of Interior pursuant to Section 503 of P. L. 95-87, 30 U.S.C. §1253 (1977). However upon the passage and approval by the Governor of this article, or upon its otherwise becoming a law the Alabama Surface Mining Commission shall have the authority to promulgate those regulations necessary for the state to retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations pursuant to Section 503 of Public Law 95-87, 30 U.S.C. §1253 et seq. Any proceedings currently being taken or previously taken by the Alabama Surface Mining Reclamation Commission for the purpose of promulgating the necessary regulations shall be continued and considered actions of the reconstituted commission.

(*Acts 1981, No. 81-435, p. 682, §40.*)

Professional Services by Vendor

| | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
|--|------------------|------------------|------------------|------------------|
| Administrative Services | | | | |
| Advertising-Professional | | | | |
| Daily Mountain Eagle | \$ - | \$ - | \$ 59.76 | \$ - |
| Home Town Publications | 25.75 | - | - | - |
| Legislative Reference Service | 100.00 | 60.00 | - | - |
| Legislative Services Agency | - | 100.00 | - | - |
| Shelby County Reporter Community Classific | 173.99 | - | - | - |
| Comptroller Services | | | | |
| Department of Finance | 3,707.89 | 3,539.99 | 4,025.01 | 4,352.61 |
| Education/Training Consultants-Professional | | | | |
| AGA Montgomery Chapter | 199.00 | - | - | - |
| Skillpath Seminars/NST Seminar | - | - | 597.00 | - |
| Finance and IT Planning/Oversight | | | | |
| Department of Finance | 1,381.25 | 197.50 | - | - |
| Office Of Information Tech | - | 1,076.30 | 1,237.06 | 1,485.99 |
| Interfund Contract Programs | | | | |
| Department of Finance | 44,000.00 | 22,000.00 | - | - |
| Media Monitoring Services | | | | |
| Magnolia Clipping & Broadcast Montioring Se | 291.05 | - | - | - |
| Moving Services | | | | |
| Delta Transfer Lines Llc | - | - | - | 11,557.18 |
| Personnel Services | | | | |
| Department of Personnel | 7,568.00 | 8,221.00 | 7,730.00 | 7,800.00 |
| Sanitation Services | | | | |
| Axios Solutions Inc | - | 240.00 | 240.00 | - |
| Vital Records Control of AL | 136.00 | 120.00 | - | - |
| Vital Records Holdings, LLC | - | - | 1,382.80 | 473.40 |
| Total Administrative Services | 57,582.93 | 35,554.79 | 15,271.63 | 25,669.18 |

| | FY 2017 | FY 2018 | FY 2019 | FY2020 |
|---|---------------------|---------------------|---------------------|---------------------|
| Data Processing | | | | |
| Data Processing Personnel Services- Professional | | | | |
| Department of Finance | 6,992.83 | 25,219.01 | | |
| Office Of Information Tech | - | 7,096.28 | 9,658.84 | 13,872.43 |
| Data Processing-Professional | | | | |
| Department of Finance | 2,185.16 | - | - | - |
| Frms Services | | | | |
| Department of Finance | 2,374.86 | 788.53 | 121.96 | - |
| SBS billing | | | | |
| Department of Finance | - | - | 3,465.81 | 6,819.91 |
| Total Data Processing | 11,552.85 | 33,103.82 | 13,246.61 | 20,692.34 |
| Legal | | | | |
| Court Reporter Services - Professional | | | | |
| Birmingham Reporting Src Inc | - | 377.93 | - | - |
| Court Reporter Serv-Profess | | | | |
| Birmingham Reporting Service Inc | 1,487.37 | - | - | - |
| Court Services-Professional | | | | |
| Clerk, Supreme Court Of Alabama | - | 150.00 | - | - |
| Court of Civil Appeals | 150.00 | - | 150.00 | - |
| Rhonda G Woods | - | 100.00 | 318.00 | - |
| Total Legal | 1,637.37 | 627.93 | 468.00 | - |
| Total Professional Services | \$ 70,773.15 | \$ 69,286.54 | \$ 28,986.24 | \$ 46,361.52 |

Commission Members



STATE OF ALABAMA
SURFACE MINING COMMISSION
P.O. BOX 2390 - JASPER, ALABAMA 35502-2390
(205) 221-4130 - FAX: (205) 221-6077

March 9, 2021

ALABAMA SURFACE MINING COMMISSION
MEMBER ROSTER

| COMMISSIONER | CITY | EXPIRATION OF TERM |
|-------------------------|------------|--------------------|
| 1. Mr. Kenneth Russell | Dora | June 30, 2025 |
| 2. Mr. Edward White | Jasper | June 30, 2022 |
| 3. Ms. Carol Farrell | Birmingham | June 30, 2025 |
| 4. Mr. Bobby Humphrey | Hoover | June 30, 2021 |
| 5. Mr. James Jeter | Gordo | June 30, 2025 |
| 6. Mr. Steven A. Thomas | Jasper | June 30, 2022 |
| 7. Vacant | | |

Sincerely,

A handwritten signature in blue ink that reads "Kathy H. Love".

Kathy H. Love
Director