



State of Tennessee

PUBLIC CHAPTER NO. 839

SENATE BILL NO. 686

By Yager

Substituted for: House Bill No. 571

By Powers, Ragan, Sparks, Marsh, Keisling, Tillis, McCormick, Rogers, Calfee, Lollar, Zachary, Hulsey, Butt, Travis, Moody, Byrd, Farmer, Halford, Matlock, Sherrell, Mark White, Carr, Holt, Reedy, Weaver, Kevin Brooks, McDaniel, Gant, Howell, Littleton, Forgety, Curcio, Jerry Sexton, Daniel, Dawn White, Terry, Doss, Matheny

AN ACT to amend Tennessee Code Annotated, Title 4; Title 10; Title 50; Title 59; Title 60; Title 66; Title 67; Title 68; Title 69 and Title 70, relative to enabling this state to obtain primacy over the regulation of surface coal mining and reclamation within its territorial jurisdiction.

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

SECTION 1. Tennessee Code Annotated, Title 59, Chapter 8, is amended by adding the following language as a new part:

59-8-101. This part shall be known and may be cited as the "Primacy and Reclamation Act of Tennessee."

59-8-102. As used in this part, unless the context otherwise requires:

(1) "Affected area":

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

(B) Includes:

(i) The disturbed area;

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

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

(iv) All areas covered by new or existing roads used to gain access to, or for hauling coal to or from, coal surface mining and reclamation operations, unless the road is a maintained public road;

(v) Any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, or shipping areas;

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

(vii) The area located above underground workings;

(2) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any

terracing or access roads, closely resembles the general surface configuration of the land prior to mining, and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated;

(3) "Board" means the Tennessee board of energy and natural resources, established by § 69-3-104;

(4) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several states or between a state and any other place outside it, or between points in the same state which directly or indirectly affect interstate commerce;

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

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

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

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

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

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

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

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

(13) "Permit area" means the area of land indicated on the approved map submitted by the permit applicant with the applicant's application, which area of land is covered by the operator's bond as required by this part;

(14) "Permittee" means a person holding a permit;

(15) "Person":

(A) Means an individual, partnership, association, society, governmental agency or entity, joint stock company, firm, company, corporation, or other business organization; and

(B) Does not mean the board, department, and their officials and employees acting in their official capacity;

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

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

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

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

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

(21) "Surface coal mining operations" means:

(A)

(i)

(a) Activities conducted on the surface of lands in connection with a surface coal mine; or

(b) Surface operations and surface impacts incident to an underground coal mine that are subject to § 59-8-111;

(ii) The activities:

(a) Include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, cross ridge, box cut, open pit, and area mining; the uses of explosives and blasting; and in situ distillation or retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; and

(b) Do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 2/3%) of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to § 59-8-105; and

(B) The areas upon which the activities described in subdivision (21)(A) occur or where the activities disturb the natural land surface. "Areas" include:

(i) Any adjacent land, the use of which is incidental to any of the activities described in subdivision (21)(A);

(ii) All lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of any of the activities described in subdivision (21)(A) and for haulage; however, maintained public roads are not "areas"; and

(iii) Excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to any of the activities described in subdivision (21)(A); and

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

59-8-103.

(a)

(1) The commissioner shall:

(A) Administer and enforce this part and rules, permits, and orders promulgated or issued under this part;

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

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

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

(E) Make investigations and inspections that are necessary to ensure compliance with this part, with the authority to enter at any time upon a suspected or affected area for investigations and inspections and the right of ingress and egress across intervening properties;

(F) Employ and commission qualified individuals as surface mine reclamation personnel; provided, when properly qualified and commissioned, surface mine reclamation personnel shall enforce all laws, rules, permits, and orders administered by the department, including, but not limited to, authorization to serve process; and

(G) Establish a process whereby a single set of forms and information, submitted in multiple copies to the division of water resources and the commissioner under § 59-8-106(a), shall contain sufficient mutually needed information to serve as a basic application for the permits issued by the division and the commissioner; provided, the evaluation of applications is made cooperatively, and decisions to grant or deny the permits are made simultaneously.

(2) The commissioner may:

(A) To the extent permitted by federal law and regulations, grant a continuation of an existing permit for a maximum of sixty (60) days in order for the operator to complete the mining phases of the operation;

(B) Enter into contracts or other agreements for reclamation of sites pursuant to this chapter, or to otherwise further the purposes of this part;

(C) In addition to the powers authorized to the commissioner under § 59-8-326, expend or cause to be expended money from the Tennessee surface mine reclamation fund, created by § 59-8-326, for purposes of this chapter; and

(D) Permit water impoundments when the commissioner determines that the water impoundments are in compliance with this part.

(b) The board shall:

(1)

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

(B) Within ninety (90) days after the effective date of this act, promulgate emergency rules that conform to the corresponding federal regulations promulgated under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201, et seq.);

(C) Within sixty (60) days of the promulgation, amendment, modification, repeal, or determination of invalidity of any federal regulation promulgated under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201, et seq.), promulgate rules to conform the board's rules to the current federal regulation;

(D) Use emergency rulemaking in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to promulgate any of the rules required by subdivisions (b)(1)(A)-(C). Prior to the expiration of rules promulgated as emergency rules, the board shall promulgate permanent rules in accordance with title 4, chapter 5, part 2; and

(E) Unless otherwise specifically authorized by this part, not promulgate a rule under this subdivision (b)(1) that imposes a requirement that is more restrictive than, or inconsistent with, any existing federal regulation promulgated under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201, et seq.). In any year in which the board has not promulgated rules that are substantively similar to the corresponding federal regulations because a provision of this part is more stringent than the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201, et seq.), the board shall make a written report that identifies any state or federal law that conflicts with the pertinent state rules or federal regulations to the chair of the agriculture and natural resources committee of the house of representatives and the chair of the energy, agriculture and natural resources committee of the senate prior to January 1 of the immediately succeeding year;

(2) Promulgate rules under subdivision (b)(1) for the establishment of standards for acceptable mining and reclamation of affected areas; provided, the rules are designed to achieve soil stabilization, control soil erosion, obliterate the scars of the mining operation, ensure quick revegetation, and ensure that the operation meets applicable soil and water quality standards;

(3) To the extent permitted by federal law and regulations, promulgate rules for the establishment of a process whereby the commissioner may grant a continuation of an existing permit under subdivision (a)(2)(A); and

(4) Hear appeals consistent with § 59-8-120 from mineral rights owners, permittees, operators, property owners, or other aggrieved persons who are or may be adversely affected by orders, determinations, rules, permit terms, or rulings of the commissioner that in any way affect surface coal mining and reclamation operations in this state.

59-8-104.

(a) In addition to the powers authorized to the commissioner under § 59-8-326, the commissioner may expend monies from the Tennessee surface mine reclamation fund, created by § 59-8-326, for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of surface coal mining practices, on eligible lands, if the commissioner finds that:

(1) An emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effect of surface coal mining practices.

(b)

(1) The commissioner may enter upon any land where an emergency as described in subsection (a) exists, and upon any other land, to have access to the land where the emergency exists; to restore, reclaim, abate, control, or prevent the adverse effects of surface coal mining practices; and to do all things necessary to protect the public health, safety, or general welfare.

(2) An entry made under this subsection (b) is an exercise of the police power, and is not an act of condemnation of property nor of trespass.

(3) The money expended for the commissioner's work and the benefits accruing to the land shall mitigate or offset any claim in or any action brought by any owner of any interest in the land for alleged damages by virtue of the entry. This subdivision (b)(3) does not create new rights of action or eliminate existing immunities.

59-8-105.

(a)

(1) Coal exploration operations that substantially disturb the natural land surface shall be conducted in accordance with exploration rules promulgated by the board under § 59-8-103(b)(1).

(2) The rules for coal exploration operations shall include:

(A) A requirement that prior to conducting any coal exploration, a person shall file a notice of intention to explore with the commissioner, which shall include a description of the exploration area and the period of supposed exploration; and

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

(3) Coal exploration operations shall not begin until:

(A) Twenty-one (21) days after the person files a notice of intention to explore with the commissioner; and

(B) The person filing the notice of intention to explore files with the commissioner a performance bond in the amount of five hundred dollars (\$500) per acre disturbed by the coal exploration operations, payable to this state and conditioned upon the faithful performance of reclamation in accordance with the notice of intention and the performance standards in § 59-8-110. The performance bond shall be released immediately upon inspection and completion of initial reclamation in accordance with the notice of intention and the performance standards in § 59-8-110, without regard to the time or other requirements in § 59-8-115. If the notice of intention to explore is deficient, the department shall inform the person who filed the notice of the deficiency within twenty-one (21) days of the date that the notice was filed with the department.

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

(c) No person shall remove more than twenty-five (25) tons of coal under the authority of exploration activities without obtaining a coal exploration permit from the commissioner pursuant to rules promulgated by the board under § 59-8-103(b)(1).

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

(e)

(1) The commissioner shall notify a person who files a notice of intention to explore with the department that the proposed exploration shall not occur if the commissioner makes a written finding of fact and delivers the finding to the person who filed the notice of intention to explore during the twenty-one-day period after the notice of intention to explore is filed with the department that the proposed exploration will either:

(A) Be conducted on an environmentally fragile area and cause significant environmental harm; or

(B) Cause irreparable environmental harm.

(2)

(A) If the commissioner does not permit exploration under subdivision (e)(1), the person filing the notice of intention to explore shall have the right to appeal the commissioner's decision to the board and the board shall hold a hearing within thirty (30) days of receipt of the appeal.

(B) The commissioner shall bear the burden of proof at an appeal hearing.

(C) The board shall render its decision concerning an appeal within ten (10) days of the hearing.

59-8-106.

(a)

(1) No person shall engage in surface coal mining and reclamation operations without having first obtained from the commissioner a permit for each surface mine. All permits issued under this part shall be issued for a term not to exceed five (5) years; however, if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for a specified longer term, the commissioner may issue a permit for the longer term. The commissioner shall issue a permit for a term longer than five (5) years only if the requirements of this part are satisfied, and only upon the submission by the applicant and approval by the commissioner of a bond, permit fee, and acreage fees for all acres permitted, a mining and reclamation plan, and any other information required by this part.

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

(b) The issuance of permits shall be subject to payment of the fee, posting the performance bond required by this part, and submission to the department of any information that is necessary to assure compliance with this part as prescribed in the rules promulgated by the board under § 59-8-103(b)(1).

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

(d) Each applicant for a surface coal mining and reclamation operation permit shall submit a reclamation plan that meets the requirements of § 59-8-109, to the commissioner as part of the permit application. The board shall specify in rules promulgated under § 59-8-103(b)(1), the requirements for the contents, processing, and publication of an application.

(e) Within five (5) days of submitting an application for a coal surface mining permit to the commissioner, the applicant shall file a complete copy of the application for public inspection with the register of deeds of the county, or an appropriate public office approved by the commissioner, in the locality where the mining is proposed to occur, except for information pertaining to the coal itself.

(f) Each applicant for a coal surface mining and reclamation permit shall submit, as part of the permit application, a blasting plan that outlines the procedures and standards by which the applicant will meet the requirements of this part.

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

(h) The holder of a valid permit issued under this part may apply to continue the operation beyond the original permit expiration date by submitting a renewal application at least one hundred twenty (120) days prior to the expiration date of the permit. The time length of a permit renewal shall not exceed the time length of the original permit.

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

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

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

(3) If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with the laws of this state. Nothing in this part authorizes the commissioner or board to adjudicate property right disputes.

(j)

(1) Any operator who is a permittee may subcontract any part, or all, of the mining of the lands covered by the permit to a subcontractor if the subcontractor is not in violation of this part with regard to the subcontractor's own operations, or if the subcontractor submits proof that any violation by the subcontractor has been corrected or is in the process of being corrected to the satisfaction of the commissioner, department, or agency that has jurisdiction over the violation.

(2) If, after an opportunity for a hearing, the commissioner makes a finding that the subcontractor controls or has controlled mining operations with a demonstrated pattern of knowing violations of this part of a nature and duration, or with resulting irreparable damage to the environment that indicates an intent not to comply with this part, the operator shall not subcontract any part of the mining operation to the subcontractor.

(k) An applicant for a permit shall publish an advertisement in a newspaper of general circulation in the locality of the proposed site, which identifies the ownership, the exact location, and boundaries of the proposed site specifically enough that the proposed operation can be readily located by nearby residents, and the location of the place where the application is available for public inspection. The advertisement shall be published at least once a week for four (4) successive weeks after the filing of an administratively complete application and shall appear in the form and contain the information that is required by the rules promulgated by the board under § 59-8-103(b)(1).

(l) The board may, by rules promulgated under § 59-8-103(b)(1), set criteria for obtaining a permit exemption for the following:

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

(2) Construction operations involving less than one (1) acre in disturbance where coal removal is incidental to the purpose of the construction and not inconsistent with this part.

(m) The commissioner shall make an on-the-ground inspection of a proposed affected area before a new permit is issued; however, an inspection shall not be required for the renewal of any permit.

(n) The applicant shall submit to the commissioner the name, permanent address, and any temporary address to be used in connection with the operation covered by the permit, in addition to the telephone number of any subcontractor to be used in the mining operation.

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

59-8-107.

(a)

(1)

(A) Subject to the exemptions in subsection (b), every application for a surface coal mining and reclamation operation permit or an underground coal mining permit shall be accompanied by a basic application fee and an acreage fee.

(B) The basic application fee shall be:

(i) For a new permit, three thousand eight hundred fifty dollars (\$3,850);

(ii) For a permit revision that proposes significant alterations, two thousand dollars (\$2,000);

(iii) For a permit revision that does not propose significant alterations, seven hundred fifty dollars (\$750);

(iv) For a permit renewal, five hundred dollars (\$500);

(v) For a successor's permit, three hundred fifty dollars (\$350); and

(vi) For an exploration permit, one thousand dollars (\$1,000).

(C) The acreage fee shall be paid annually as prescribed in rules promulgated by the board under § 59-8-103(b)(1). The amount of the acreage fee shall be:

(i) For a site that has not been reclaimed, forty dollars (\$40.00) per permitted acre; and

(ii) For a site that has been reclaimed, twenty dollars (\$20.00) per permitted acre.

(2)

(A)

(i) The fee for an amendment of a coal mining permit shall be two hundred fifty dollars (\$250).

(ii) The fee for an amendment of a coal exploration permit shall be one hundred fifty dollars (\$150).

(B) If the amendment increases the acreage permitted, the acreage fee for the increase in acreage shall be paid at the time of application.

(C) If the amendment decreases the acreage permitted, the refund for the acreage deleted shall be paid by this state to the applicant when the amendment is granted.

(b) Local governments and state agencies are exempt from permit and acreage fees.

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

59-8-108.

(a)

(1) After a permit has been approved, but prior to issuance of the permit, the applicant shall file with the commissioner, on a form prescribed and furnished by the commissioner, a bond for performance payable to this state and conditioned on the faithful performance of this part and the permit. The bond shall cover the area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area, the operator shall file with the commissioner an additional bond or bonds to cover those increments in accordance with this section.

(2) Bonds shall be executed by the operator and a corporate surety who is approved by the commissioner and properly authorized to act as a surety and licensed to do business in this state; however, the operator may elect to deposit cash or negotiable certificates of deposit assigned irrevocably to this state, negotiable United States treasury bonds, or negotiable general obligation municipal or corporate bonds that have the highest rating assigned by Moody's or Standard & Poor's rating services, with the state treasurer in lieu of a bond executed by a corporate surety.

(3) The state treasurer shall receive and hold any security that is deposited in lieu of a performance bond in the name of this state, in trust, for the purposes for which the deposit is made, and shall at all times be responsible for the custody and safekeeping of the deposit. The operator making the deposit may demand and receive from the state treasurer, on the written order of the commissioner, all or any portion of any securities deposited in lieu of a performance bond upon depositing with the state treasurer other negotiable securities of the classes specified in this subsection (a) having a market value at least equal to the sum of the bond, and also to demand and recover the interest income from those securities as it becomes due; however, the state treasurer, at the request of the operator, shall convert the securities into other negotiable securities of the classes specified in this subsection (a) as may be designated by the operator.

(4) The commissioner may accept the operator's performance bond without a separate surety when the operator demonstrates to the satisfaction of the commissioner the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the required amount.

(b)

(1) The amount of the performance bond, cash deposit, or marketable value of the securities deposited by the operator shall be determined by the commissioner and conditioned upon the faithful performance of this part. Liability under each bond shall be continuous until the reclamation requirements of this part have been fulfilled.

(2) The amount of bond required for each bonded area shall be sufficient, as determined by the commissioner, to assure the completion of the reclamation plan as if the work must be performed by the commissioner in the event of bond forfeiture. In no case shall the bond for a mining permit be less than ten thousand dollars (\$10,000).

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

(4) Bond amounts shall depend upon the reclamation requirements of the approved permit and shall reflect the probable difficulty of reclamation, giving consideration to factors such as topography; geology of the site; hydrology; revegetation potential; the permittee's, operator's, and subcontractor's past performance records; and whether or not the permittee, operator, and any subcontractors have operated in this state less than three (3) years.

(c) Local governmental entities and state agencies may execute their own bonds as surety.

59-8-109.

(a) Each permit application shall include a mining and reclamation plan that contains the information that the board, by rules promulgated under § 59-8-103(b)(1), requires as necessary to demonstrate that reclamation required by this part can be accomplished.

(b) The mining and reclamation plan may be changed with the commissioner's approval, at any time upon application of the permittee, to take account of changes in conditions or to correct any previous oversight. The commissioner may also order a change in the mining or reclamation plan for the same reasons.

(c) Any information required by this section that is not on file pursuant to this chapter shall be held in confidence by the commissioner and not available for public inspection under title 10, chapter 7.

59-8-110.

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

(b) General performance standards as prescribed in rules promulgated by the board under § 59-8-103(b)(1) shall apply to all surface coal mining and reclamation operations.

(c) Steep slope surface coal mining and reclamation operations are subject to additional performance standards as prescribed in rules promulgated by the board under § 59-8-103(b)(1).

(d)

(1) The commissioner may grant variances for the purposes set forth in subdivision (d)(2).

(2) If an applicant meets the requirements of subdivisions (d)(3) and (4), the commissioner may grant a variance from any requirement to restore the area to the approximate original contour if the owner of the surface knowingly requests in writing, as a part of the permit application, that a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities.

(3)

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

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

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

(4) In granting a variance under this subsection (d), the commissioner shall only require that amount of spoil placed off the mine bench as is necessary to achieve the planned post-mining land use, that the spoil retained on the bench is designed to be stable, that all spoil placement off the mine bench comply with subsection (b), and that all other requirements of this part are met.

(5) The board shall promulgate specific rules under § 59-8-103(b)(1) to govern the granting of variances in accordance with this subsection (d), and may impose such additional requirements as the board deems necessary.

(6) All variances granted under this subsection (d) shall be reviewed within three (3) years of the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

(e) The commissioner may, under rules promulgated by the board under § 59-8-103(b)(1) and approved by the secretary, permit variances or waivers from the performance standards imposed under this section if that action would allow for reclamation consistent with the requirements of this part and compatible with areas adjacent to the permitted area.

59-8-111.

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

(b) The board shall promulgate rules under § 59-8-103(b)(1), that are designed to minimize the surface effects of underground coal mining operations; however, in adopting rules, the board shall consider the distinct difference between surface coal mining and underground coal mining. The rules shall not conflict with nor supersede the federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. § 801, et seq.), nor any regulation issued pursuant to that act.

(c) Each permit issued under this part and relating to underground coal mining shall require the permittee and operator to meet the standards that the board prescribes by rules promulgated under § 59-8-103(b)(1).

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

(e) The requirements of this part relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall apply to surface operations and surface impacts incidental to an underground coal mine with modifications to permit application requirements, permit approval or denial procedures, and bond requirements that are necessary to accommodate the distinct difference between surface coal mining and underground coal mining. The board shall promulgate rules for the modifications for underground coal mines under § 59-8-103(b)(1).

59-8-112.

(a)

(1)

(A) Within thirty (30) business days of the date of receipt of an application for a permit to conduct surface coal mining and reclamation operations, the commissioner shall notify the applicant in writing, stating whether or not the application is administratively complete. If the application is not administratively complete, the commissioner shall state in the written notice why the application is incomplete and the specific requirements to make the application administratively complete.

(B) Upon discovery of deficiencies in the application, the department shall promptly notify the applicant in writing and allow the applicant to temporarily withdraw the application for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the department for consideration of the application.

(2) The commissioner shall be deemed in receipt of an administratively complete permit application when the earliest of the following events occur:

(A) The permit applicant is notified that the application is administratively complete;

(B) The commissioner's failure to issue acknowledgment of receipt of an administratively complete application to the permit applicant as provided in this section within five (5) business days of receipt by the commissioner of the application; or

(C) Receipt by the commissioner of the specific requirements identified by the commissioner to make the application administratively complete.

(3) Within forty-five (45) business days of the receipt of an administratively complete application, the commissioner shall complete the review of the permit application for technical completeness and notify the permit applicant in writing of any technical deficiencies in the permit application.

(4) Upon receipt of a permit application, the commissioner shall:

(A) Notify applicable local governmental bodies, planning agencies, the county tax assessor, and water and waste-water treatment authorities or companies whose territorial jurisdiction includes the geographic location of the proposed coal surface mine, of the applicant's intent to surface mine a specific tract; and

(B) Inform the entities listed in subdivision (a)(4)(A) where a copy of the proposed mining and reclamation plan may be inspected to allow the entities to submit written comments within a reasonable period of time, established by the board, but not less than thirty (30) days, concerning the effects of the proposed operation on the environment within their areas of responsibility.

(5) Upon the close of the comment period described in subdivision (a)(4)(B), the commissioner shall transmit the comments to the applicant and make the comments available for public inspection at the same location as the mining permit applications.

(b)

(1) Any person may see and review the entire application, except for information that is classified as confidential in this part or § 10-7-504, and any aggrieved person, or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the application for a permit within thirty (30) days after the last publication of the newspaper notice required by § 59-8-106(k).

(2) Upon receipt of any written objections, the commissioner shall transmit the objections to the applicant and make the objections available for public inspection. If any written objections are filed and an informal conference is requested, the commissioner shall hold an informal conference in the locality where the proposed surface coal mining and reclamation operation would be located within forty-five (45) days of the receipt of the request. The commissioner shall advertise the date, time, and location of the informal conference in a newspaper of general circulation that serves the geographic area where the proposed surface coal mining and reclamation operation would be located at least two (2) weeks before the scheduled informal conference date. Upon request by a party to an informal conference, the commissioner may arrange with the applicant access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(3) An electronic or stenographic record shall be made of the informal conference proceedings, unless waived by all parties. The commissioner shall maintain the record and make the record accessible to the parties until final release of the applicant's performance bond.

(4) If all parties requesting the informal conference stipulate to an agreement prior to the time of the informal conference and withdraw their request, the informal conference need not be held.

(c) If an informal conference is held under subsection (b), the commissioner shall issue and furnish to the applicant and other persons who are parties to the administrative proceedings the commissioner's written findings, granting or denying the permit in whole or in part, and stating the reasons for the grant or denial, within sixty (60) business days of the informal conference, and within one hundred fifty (150) business days of the receipt of an administratively complete application.

(d) If an informal conference is not held under subsection (b), the commissioner shall notify the applicant for a permit within sixty (60) business days after the receipt of a technically complete new amendment, or renewal application, but not before thirty (30) business days, whether the application has been approved or disapproved, in whole or in part.

(e)

(1) If the application is approved, the permit shall be issued upon the posting of the required bond. Within ten (10) days after the granting of a permit, the commissioner shall notify the local governmental officials for the political subdivision where the area of land to be affected by the operation is located that a permit has been issued and shall describe the location of the land.

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

(3) Any aggrieved person may appeal the commissioner's decision to grant, deny, or modify any permit application, to the board under § 59-8-120.

(f)

(1) An applicant may submit a complete application containing a mining and reclamation plan and maps in which the mining and reclamation work is separated into clearly identified and defined increments, and may request incremental permitting and bonding. The newspaper notice shall clearly state the plan, sequence, and timetable of mining.

(2) The commissioner shall evaluate the completed application and, if the commissioner approves the application, shall issue a written letter of approval of the mining and reclamation plan to the applicant, and, upon the posting of a bond for the first increment, shall issue a permit for the first increment.

(3) A permittee shall notify the commissioner in writing at least sixty (60) days before beginning operations on the second or a subsequent increment. The commissioner shall then inspect the operation to determine if the operation is in compliance with this part, permit requirements, and the original approved mining and reclamation plan. After inspection, approval, and the necessary bond has been posted, the commissioner shall adjust the permit to include the second or a subsequent increment, without the need for another permit application, newspaper notice, or hearing.

(4) The commissioner shall not require revision of an approved mining and reclamation plan or withdraw a letter of approval unless the commissioner finds that the present plan is not working or is inadequate to protect the public and the environment.

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

(1) The permit application is accurate and complete and that all the requirements of this part are met;

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

(3) The commissioner has assessed the probable cumulative impact of all anticipated coal surface mining in the area on the hydrologic balance, and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(4) The area proposed to be mined for coal is not included within an area designated unsuitable for surface coal mining and reclamation pursuant to § 59-8-125, or is not within an area under study for that designation in an administrative proceeding commenced pursuant to § 59-8-125, unless the applicant demonstrates that, prior to January 4, 1977, the applicant made substantial legal and financial commitments in relation to a mining operation for which the applicant is applying for a permit.

(h)

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

(2) The commissioner shall not issue a permit to an applicant after a finding by the commissioner, after opportunity for a hearing pursuant to § 59-8-120, that the applicant, operator, or subcontractor specified in the application controls or has controlled mining operations with a demonstrated pattern of violations of this part of a nature and duration or with resulting irreparable damage to the environment as to indicate an intent not to comply with this part.

(i)

(1) In addition to finding the application in compliance with this section, if an area proposed to be mined for coal contains prime farmland, the commissioner shall, after consultation with and the concurrence of, the United States secretary of agriculture, and pursuant to the rules promulgated by the board under § 59-8-103(b)(1), grant a permit to surface mine for coal on prime farmland if the commissioner finds in writing that the applicant has the technological capability to restore the mined area within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in this part.

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

(j)

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

(2) In the case of a coal lease issued under the federal Mineral Leasing Act (30 U.S.C. § 181, et seq.), extensions of time may not extend beyond the period allowed for diligent development in accordance with 30 U.S.C. § 187.

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

(k)

(1) Any valid permit issued pursuant to this part may be renewed upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal, and a 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 of § 59-8-106. A permit renewal shall be granted unless the commissioner makes written findings that:

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

(B) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this part;

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

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

(E) Any additional revised or updated information required by the commissioner has not been provided. Prior to the approval of any permit renewal, the commissioner 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 that addresses any new land areas is subject to the full standards applicable to new applications under this part.

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

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

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

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

(3) Which will adversely affect any publicly owned park or places included in the National Register of Historic Sites, unless approved jointly by

the commissioner and the federal, state, or local agency with jurisdiction over the park or the historic site;

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

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

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

(m)

(1) A petition for permit appeal may be filed by:

(A) The permit applicant; or

(B) By any aggrieved person who:

(i) Provided written objections during the time period specified in subsection (b); or

(ii) Provided written or oral objections at an informal conference, whose appeal is based upon any of the issues that were provided to the commissioner in the written objections or in testimony at the informal conference on the permit application.

(2) For permits for which the department gives public notice of a draft permit, any permit applicant or aggrieved person may base a permit appeal on any material change to conditions in the final permit from those in the draft, unless the material change has been subject to additional opportunity for public comment.

(3) Any petition for permit appeal under this subsection (m) shall be filed with the commissioner within thirty (30) days after public notice of the commissioner's decision to issue or deny the permit.

(4) Notwithstanding § 4-5-223 or any other law to the contrary, this subsection (m) is the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a permit. When a petition is timely filed, the procedure for conducting the contested case shall be in accordance with § 59-8-120.

(n) As used in this section, "business day" means any day other than a Saturday, Sunday, or legal holiday.

59-8-113.

(a)

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

(2) The commissioner shall not approve an application for a revision of a permit unless the commissioner finds that the revision meets all the standards of this part and the board's rules. The board shall establish, by rules promulgated under § 59-8-103(b)(1), guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, apply. Any

revisions that propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

(3)

(A) The permittee may modify the approved mining and reclamation plan by submitting a modification of the mining and reclamation plan to the department for approval if:

(i) The surface coal mining operations or reclamation operations actually conducted by the permittee or operator meet the standards of this part and the board's rules, but do not conform with the mining and reclamation plan on file with the department; and

(ii) The deviations do not constitute a significant departure from the method of conduct of surface coal mining and reclamation operations approved by the commissioner.

(B) The commissioner shall approve the modification upon finding that the modification meets all the standards of this part and the board's rules.

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

(c) In addition to any other review required by federal law or regulations, the commissioner shall, within one (1) year after the effective date of this act, review outstanding surface coal mining and reclamation operation permits. The commissioner may require reasonable revision or modification of the permit provisions during the term of the permit; provided, that the revision or modification is based upon a written finding and subject to notice and hearing requirements and the board's rules, and may be appealed as provided in § 59-8-120.

59-8-114.

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

(b) The commissioner's inspections shall:

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

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

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

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

(d)

(1) If an inspector detects a violation of this part, the inspector shall immediately inform the operator, permittee, or person in writing and make a written report of the violation to the commissioner. The written communication and report shall not be considered a complaint issued pursuant to § 59-8-116; however, a complaint may arise from violations contained in the communication and report.

(2) Each inspector shall notify the operator or the person in charge of the mining or reclamation operation of the inspector's presence on the permitted area, unless the operator or person in charge of the operation is not reasonably available on the site during the inspection. The operator or the person in charge of the operation, or the operator's or person's designee, has the right to accompany the inspector during the inspection of the permitted area.

(e) The board shall require, by rules promulgated under § 59-8-103(b)(1), that all permittees:

- (1) Establish and maintain appropriate records;
- (2) Make monthly reports to the commissioner;
- (3) Install, use, and maintain any necessary monitoring equipment or methods;
- (4) Evaluate results in accordance with the methods, locations, intervals, and manner that the board prescribes; and
- (5) Provide other information relative to surface coal mining and reclamation operations that the board deems reasonable and necessary.

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

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

(g) The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the board to ensure the reliability and validity of the data collection and analysis or findings derived from the data collection and analysis.

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

- (1) Have the right of entry to, upon, or through any surface coal mining and reclamation operation or any premises in which any records required to be maintained under subsection (f) or (g) are located; and
- (2) May, at reasonable times, but without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required under this part.

(i) The commissioner shall make copies of any records, reports, inspection materials, or information obtained under this part immediately available to the public at convenient locations in the area of the mining.

(j)

(1) Whenever, on the basis of any information available to the commissioner, including receipt of information from any person, the commissioner has reason to believe that any operator, permittee, or person is in violation of this part or a rule promulgated by the board, or any permit condition, or complaint or cease and desist order issued under this part, the commissioner shall investigate, and, if the violation is confirmed, take appropriate action within ten (10) days; however, the commissioner shall take

appropriate action immediately if proof is provided that an imminent danger of significant environmental harm exists.

(2) The identity of any person supplying information shall remain confidential, if requested by the person.

(3) When an inspection results from information provided to the commissioner by any person, the commissioner shall notify the person when the inspection is proposed to be carried out and the person shall be allowed to accompany the inspector during the inspection.

(4) Within ten (10) days of the inspection, or fifteen (15) days of the receipt of a complaint if there is no inspection, the commissioner shall send a complete report to the person who reported the information.

(5) Any person dissatisfied with the action of the commissioner may appeal as provided in § 59-8-120.

59-8-115.

(a)

(1) A permittee may file with the commissioner a request for the release of all or part of a performance bond or deposit. A request for release of all or part of a performance bond or deposit shall indicate the location of the area and number of acres affected by the operation, the location of the area and number of acres of grading and revegetation accomplished by the permittee, and other information as the board may require by rules. If the request and the commissioner's inspection of the area affected show that the permittee is entitled to release of all or any portion of the bond or deposit, the commissioner shall approve the request and release all or a portion of the permittee's bond or deposit, as appropriate under this part.

(2) If the commissioner does not approve the request, the bond or deposit shall not be released until the permittee corrects the deficiencies found by the commissioner.

(3) A bond may be released on a portion of a permitted area if the permittee files a request containing the required information, the commissioner approves the request, and an inspection of the area affected shows compliance with the reclamation requirements of this part.

(b)

(1) Within thirty (30) days after an application for bond or deposit release has been initiated and filed with the commissioner, the permittee shall submit a copy of an advertisement placed at least once a week for four (4) successive weeks in a newspaper of general circulation in the locality of the surface coal mining and reclamation operation. The advertisement is considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit number and the date that the permit was approved, the amount of the bond filed and the portion of the bond sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as the results relate to the operator's approved plan.

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

(c) Upon receipt of any notification and request under this section, the commissioner shall, within thirty (30) days, inspect and evaluate the reclamation work involved. The evaluation shall consider, but not be limited to, the degree of difficulty to complete or evaluate any remaining reclamation, whether pollution or diminution of surface or subsurface water is occurring, the probability of continuation of the pollution or diminution, and the estimated cost of abating or correcting it. The commissioner shall notify the permittee in writing of the commissioner's decision to

release or not to release all or part of the performance bond or deposit within sixty (60) days from the filing of the request, if no public hearing is held, and if a public hearing is held, within thirty (30) days after the hearing date. The commissioner shall send a copy of any notification of a decision not to release all or part of a bond to the permittee's surety. The commissioner's decision may be appealed pursuant to subsection (i).

(d)

(1) The commissioner may release all or part of the bond or deposit when the commissioner is satisfied that the reclamation covered by the bond or deposit, or portion of the bond or deposit, has been accomplished as required by this part. The remaining bond shall be sufficient to satisfy all final reclamation requirements.

(2) When a permittee performs the backfilling, regrading, topsoiling, drainage control, site preparation, spoil treatments, mulching, and initial planting of the vegetative cover in accordance with the approved plan as noted on an annual report, the commissioner may issue to the permittee and the permittee's surety a partial release of sixty percent (60%) of the surety bond for each acre of the affected area with respect to which the approved reclamation plan has been carried out. The remaining bond shall be held for at least five (5) years after the last year of augmented seeding, fertilizing, irrigation, or other work to assure that all reclamation requirements have been successfully met. A portion of the remaining bond may be released prior to the elapsing of five (5) years in accordance with board rules.

(3) The commissioner shall retain an amount of the bond for the affected area, which would be sufficient for a third party to cover the cost of all remaining reclamation work and reestablishing vegetation. The remainder of the bond or deposit shall not be released under subdivision (d)(2) so long as the disturbed lands are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by this part or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined prime farmlands of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to this part. When a silt dam or impoundment approved as part of the mining or reclamation plan is to be retained as a permanent impoundment pursuant to § 59-8-110, the portion of the bond may be released under subdivision (d)(1) so long as the silt dam or impoundment meets the post-mining land use criteria and water quality and quantity concerns, and provisions for sound future maintenance by the permittee or the landowner have been made with the commissioner.

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

(e) If the commissioner disapproves the application for release of all or part of the bond, the commissioner shall notify the permittee and the permittee's surety, stating the reasons for disapproval and recommending specific corrective actions necessary to secure the release, and allowing the permittee an opportunity for a hearing. The notice and recommendation shall be handed to the permittee in person, or sent by certified mail, return receipt requested, addressed to the permanent address shown on the application for a permit. The notice shall specify how the permittee has failed to comply with this part or rules promulgated pursuant to this part.

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

(g) Any person with a valid legal interest, which might be adversely affected by release of all or a portion of the bond, or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or development and enforcement of environmental standards with

respect to such operations, has the right to file written objections to the proposed release from bond to the commissioner within thirty (30) days after the last publication of the newspaper notice provided for in subsection (b). If one (1) or more written objections to a release of bond is filed, and a hearing requested, the commissioner shall inform all the interested parties of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release, or in Nashville, at the option of the objector, within thirty (30) days of the request for a hearing. The commissioner shall advertise the date, time, and location of the public hearing in a newspaper of general circulation in the locality for two (2) consecutive weeks.

(h) Without prejudice to the rights of the objectors or the applicant, or the responsibilities of the commissioner, the commissioner may convene an informal conference as provided for in this part to resolve written objections.

(i)

(1) A petition for appeal may be filed by:

(A) The applicant for release; or

(B) By any aggrieved person who:

(i) Provided written objections during the time period specified in subsection (g); or

(ii) Provided written or oral objections at the hearing or an informal conference whose appeal is based upon any of the issues that were provided to the commissioner in the written objections or in testimony at the hearing or an informal conference on the application.

(2) For permits for which the department gives public notice of a draft of a bond release, any applicant or aggrieved person may base an appeal on any material change to conditions in the final release from those in the draft, unless the material change has been subject to additional opportunity for public comment.

(3) Any petition for appeal under this subsection (i) shall be filed with the commissioner within thirty (30) days after public notice of the commissioner's decision to grant or deny the release.

(4) Notwithstanding § 4-5-223 or any other law to the contrary, this subsection (i) is the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a bond release. When a petition to appeal the commissioner's issuance or denial of a bond release is timely filed, the procedure for conducting the contested case shall be in accordance with § 59-8-120.

59-8-116.

(a)

(1) If the commissioner determines that any operator, permittee, or person is in violation of this part, the board's rules, or any permit condition required by this part, or order issued pursuant to this part, the commissioner shall issue a complaint to the operator, permittee, or person fixing a reasonable time, but not more than ninety (90) days, for the abatement of the violation. The board may promulgate rules under § 59-8-103(b)(1) that allow for reasonable extensions beyond ninety (90) days when it is not feasible to abate the violation within that time; however, when the abatement time permitted is in excess of ninety (90) days, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(2)

(A) If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the commissioner, the commissioner finds that the violation

has not been abated and that the operator, permittee, or person has not reached an agreement with the commissioner, the commissioner shall immediately order a cessation of surface coal mining and reclamation operations or the portion of the operations relevant to the violation.

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

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

(D) If a cease and desist order is not complied with, or the operator, permittee, or person refuses or fails to correct the violation, the permit may be revoked and the performance bond shall then be forfeited to the commissioner. When a bond is forfeited, the commissioner shall give notice to the attorney general and reporter, who shall collect the forfeiture.

(b)

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

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

(c)

(1) The commissioner shall issue cease and desist orders, or suspend or revoke permits, for a pattern of violations caused by an unwarranted failure to comply with this part, the board's rules, or a permit or order, after issuing a show cause order and offering an opportunity for a public hearing of which all interested parties shall be notified. If the operator, permittee, or person fails to show cause as to why the permit should not be suspended or revoked, the commissioner shall suspend or revoke the permit. A written or electronic record shall be kept of any show cause hearing by the commissioner and the hearing shall be subject to title 4, chapter 5, part 3. Within sixty (60) days following a show cause hearing, the commissioner shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the commissioner's findings, concerning suspension or revocation of the permit. Appeals of the commissioner's decision shall be pursuant to § 59-8-120.

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

be forfeited. When a bond is forfeited, the commissioner shall give notice to the attorney general and reporter, who shall collect the forfeiture.

(d)

(1) Complaints and cease and desist orders shall set forth with reasonable specificity:

(A) The nature of the violation;

(B) The remedial action required;

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

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

(2) The commissioner shall deliver each complaint or cease and desist order issued under this section by:

(A) Personal service upon the operator, permittee, or person; or

(B) Certified mail return receipt requested, when the complaint or cease and desist order is mailed to the operator, permittee, or person at the address shown in the permit application, to the agent for service of process for the operator, permittee, or person at the address shown in the permit application, to the surety's address as shown on the bond document filed with the permit, or, when no permit has been issued, to the last known address of the operator, permittee, or person.

(3) All complaints and cease and desist orders shall be in writing and shall be signed by the commissioner.

(4) The commissioner may modify, vacate, or terminate any complaint or cease and desist order issued pursuant to this section.

(5) Any complaint or cease and desist order issued pursuant to this section, which requires cessation of active mining, expires within thirty (30) days of actual notice to the operator, permittee, or person, unless an informal public hearing is held at the site or within a reasonable proximity to the site where any viewings of the site can be conducted during the course of the informal public hearing; however, the complaint or cease and desist order shall not expire if the operator, permittee, or person waives the informal hearing.

(e) The commissioner shall send a copy of all complaints and cease and desist orders to the permittee's surety.

(f) Except as provided in subsection (c), a complaint or cease and desist order issued pursuant to this section shall inform the alleged violator or violators of the opportunity for an informal public hearing as provided in subdivision (d)(5), if applicable, and a hearing before the board as provided in § 59-8-120. If the complaint or cease and desist order is appealed within thirty (30) days of the date the complaint or cease and desist order is served, the operator, permittee, or person may request that the commissioner make a decision upon both the complaint or cease and desist order and a notice of proposed assessment arising from the complaint or cease and desist order as provided in § 59-8-117(b), if appropriate. Upon the request of the alleged violator or violators, the department shall promptly make available and provide access to any documents and other information that address the factual basis of the complaint.

59-8-117.

(a) Any operator, permittee, or person who violates this part, the board's rules, or any permit condition required by this part, or order issued pursuant to this part may be assessed a civil penalty by the commissioner, except that if the violation leads to the issuance of a cease and desist order, a civil penalty shall be assessed. A civil penalty assessed under this subsection (a) shall not exceed five thousand dollars (\$5,000) for each violation. Each day of continuing violation may be deemed a

separate violation for purposes of assessing a civil penalty. In determining the amount of the penalty, the commissioner shall consider the history of previous violations by the operator, permittee, or person at the particular coal surface mining operation; the seriousness of the violation, including any irreparable harm to the environment and any danger to the health or safety of the public; whether the operator, permittee, or person was negligent; and the demonstrated good faith of the operator, permittee, or person charged in attempting to achieve rapid compliance after notification of the violation. If notice of a proposed assessment is not provided as part of a complaint or cease and desist order pursuant to § 59-8-116, then the commissioner shall give notice of a proposed assessment by certified mail return receipt requested as provided in § 59-8-116(d)(2) within thirty (30) days of the date the complaint or order is served. If an appeal from the notice of proposed assessment is not made to the commissioner or the board as provided in subsection (b) or (c) by the operator, permittee, or person within thirty (30) days of service of the notification of the proposed assessment, the operator, permittee, or person is deemed to have consented to the assessment, and the assessment shall become final.

(b)

(1) Unless the operator, permittee, or person subject to the notice of proposed assessment consents to the notice of proposed assessment under subsection (a), the commissioner shall not assess a civil penalty until the operator, permittee, or person receives an opportunity for a hearing before the commissioner.

(2) When a public hearing has been held, the commissioner shall make findings of fact, and the commissioner shall issue a written decision as to the occurrence of the violation, if submitted by the operator, permittee, or person as provided in § 59-8-116(f), and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(3) Any hearing under this subsection (b) shall be of record and shall be subject to title 4, chapter 5, part 3.

(4) If an operator, permittee, or person who is charged with a violation fails to appear at the public hearing, then the operator, permittee, or person shall be deemed to have consented to the assessment, and the assessment shall become final.

(c) The operator, permittee, or person shall have thirty (30) days after the notice of proposed assessment is served pursuant to subsection (a) or, after a decision is issued by the commissioner pursuant to subdivision (b)(2) if an appeal is filed pursuant to subsection (b), to pay the proposed penalty in full or, if the operator, permittee, or person wishes to contest either the amount of the penalty or the violation, forward the proposed amount to the commissioner for placement in an escrow account. If, through administrative or judicial review of the proposed violation or penalty, the board, chancellor, or judge determines that no violation occurred or that the amount of the penalty should be reduced, the commissioner shall, within thirty (30) days of the determination, remit the applicable escrowed amount to the operator, permittee, or person with interest at the rate of six percent (6%) per annum, or at the prevailing department of treasury rate, whichever is greater. Failure to forward the money to the commissioner within thirty (30) days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) Notwithstanding § 20-4-101 to the contrary, the commissioner, through the attorney general and reporter, may institute proceedings in the name of the department for the recovery of any assessment or penalty made under this part in the chancery court for Davidson County, or the chancery court or circuit court in the district where the surface coal mining and reclamation operation is located. All sums recovered shall be placed in the state treasury and credited to the coal mining protection fund, created by § 59-8-132.

(e) Any person, who willfully and knowingly violates a condition of a permit issued under this part or fails or refuses to comply with any complaint or order issued under § 59-8-116, § 59-8-120, or § 59-8-121, except an order incorporated under subsections (a) and (b), or who willfully and knowingly falsifies or fails to make any statement, representation, or certification in any records, information, plans, specifications, or other data required by the board or the commissioner, commits a

Class E felony and, upon conviction, shall be punished only by a fine of not more than ten thousand dollars (\$10,000).

(f) Any person who knowingly violates the conflict of interest provisions of § 59-8-127 commits a Class E felony and, upon conviction, shall be punished only by a fine of not more than two thousand five hundred dollars (\$2,500). For purposes of this subsection (f), "person" includes state officials and employees.

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

(h) Any person who, except as permitted by law, knowingly prevents or impedes an employee of this state from performing the employee's duty under this part commits a Class E felony, and upon conviction, shall be punished only by a fine of not more than ten thousand dollars (\$10,000).

(i) Whenever a corporation commits the acts described in subsection (a), (e), (g), or (h), any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties and fines that may be imposed under subsections (a), (e), (g), and (h).

(j)

(1) The time period for the correction of a violation for which a complaint has been issued under § 59-8-116 shall not end:

(A) In the case of any review proceeding under § 59-8-120 that is initiated by the operator, permittee, or person wherein the commissioner orders, after an expedited hearing, the suspension of the abatement requirements of the complaint after determining that the operator, permittee, or person will suffer irreparable loss or damage from the application of those requirements, until the entry of a final order by the board; or

(B) In the case of any review proceeding under § 59-8-121 that is initiated by the operator, permittee, or person wherein the court orders the suspension of the abatement requirements, until the entry of an order of the court.

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

(l) All penalties recovered under this section shall be placed in the state treasury and credited to the coal mining protection fund, created in § 59-8-132. Nothing in this part abrogates the right of any person who is materially or personally damaged or injured by the operation of a surface mine to seek remedies against the responsible person in court.

59-8-118.

(a)

(1) Notwithstanding § 20-4-101(a) to the contrary, the commissioner may request the attorney general and reporter to institute a civil action for relief against any operator, permittee, or person or the operator's, permittee's, or person's agent, including a permanent or temporary injunction, restraining order, or any other appropriate order, and venue and jurisdiction for the action shall be in the Davidson County chancery or circuit court or the chancery or circuit court in the district where the surface mining operation is located, whenever the operator, permittee, person, or agent:

(A) Violates or fails or refuses to comply with any cease and desist order issued by the commissioner under this part;

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

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

(D) Refuses to permit inspection of a coal mine by the commissioner;

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

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

(G) Violates or threatens to violate this part, the board's rules, or a permit issued under this part, or violates or threatens to violate any cease and desist order or determination issued pursuant to this part.

(2) A court that is presiding over a civil action initiated under subdivision (a)(1) shall provide the relief that is appropriate.

(b)

(1) The commissioner may bring an action to enforce a cease and desist order issued under this part if an appeal of the order is not requested in a timely manner and the order has not been complied with. In an action to enforce a cease and desist order, all findings of fact contained in the order and complaint are deemed to be final and not subject to review except as to receipt of notice of the order; provided, the defendant may proffer evidence of compliance with the cease and desist order.

(2) The commissioner may also bring an action to enforce any order made by the commissioner, which has become final either by the failure of any person to appeal the commissioner's order or by an appellate court's decision against any person who fails to comply with a final order. In these suits, the commissioner's decision shall not be subject to challenge as to matters of fact; provided, the defendant may present evidence showing compliance with the commissioner's order.

(c)

(1) Notwithstanding § 20-4-101(a) to the contrary, any action for a permanent or temporary injunction, restraining order, or any other relief brought by the commissioner shall be filed in, and venue and jurisdiction for the action shall be in, the Davidson County chancery or circuit court, or the chancery or circuit court in the district where the surface mining operation is located, in which all or a part of the violation is or is about to occur, in the name of the department by the district attorney general or by the attorney general and reporter at the direction of the commissioner or the board, and under the supervision of the attorney general.

(2) An enforcement proceeding shall not be tried by a jury.

(3) Appeals from judgments or decrees issued by trial courts in proceedings brought under this part shall be made to the supreme court despite the fact that controverted questions of fact may be involved.

(d) Nothing in this part eliminates any additional enforcement rights or procedures that are available under any state law to the commissioner, but are not specifically enumerated in this part.

59-8-119.

(a) Except as provided in subsections (b) and (c), any aggrieved person may commence a civil action in the Davidson County chancery court or the chancery court in the district where the surface coal mining and reclamation operation is located to compel compliance with this part:

(1) Against the state or any state or local governmental agency, to the extent permitted by the eleventh amendment to the United States constitution, which is alleged to be in violation of this part, or any rule promulgated under this part, or order or permit issued pursuant to this part, or against any other person who is alleged to be in violation of this part, or any rule promulgated under this part, or order or permit issued pursuant to this part; or

(2) Against the commissioner to the extent permitted by the eleventh amendment to the United States constitution, when the commissioner is alleged to have failed to perform any role or duty under this part that is not discretionary for the commissioner.

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

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

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

(c) No action may be commenced under subdivision (a)(2) until sixty (60) days after the plaintiff has provided written notice of the violation to the commissioner, in the manner that the board requires by rules promulgated under § 59-8-103(b)(1), except that an action may be brought immediately after notice of the violation is provided to the commissioner, if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(d) The commissioner may intervene in any civil action brought under this section as a matter of right.

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

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

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

59-8-120.

(a)

(1) Any hearing brought before the board pursuant to §§ 59-8-112, 59-8-113, 59-8-114, 59-8-115, 59-8-116, 59-8-117, and 59-8-125 shall be conducted as a contested case.

(2) The hearing shall be heard before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless settled by the parties.

(3) The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the petition is filed.

(4) The scheduling order for the contested case issued by the administrative judge shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing.

(5) The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final, unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to § 4-5-315, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after the entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record, and shall allow each party an opportunity to present oral arguments.

(6) If appealed to the board or reviewed by the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness.

(7) In an appeal or review as provided in subdivisions (a)(5) and (6), the board shall render a final order, in accordance with § 4-5-314, affirming, modifying, remanding, or vacating the administrative judge's order.

(8) A final order rendered pursuant to this section is effective upon its entry, except as provided in § 4-5-320(b), unless a later effective date is stated in the final order.

(9) A petition to stay the effective date of a final order may be filed under § 4-5-316.

(10) A petition for reconsideration of a final order may be filed pursuant to § 4-5-317.

(11) Judicial review of a final order may be sought by filing a petition for review in accordance with § 4-5-322.

(12) An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; provided, in other matters before the board, it may be considered but shall not be binding on the board.

(b) Notwithstanding § 20-4-101(a) to the contrary, in the case of or refusal to comply with a notice of hearing, subpoena, or order issued under this section, venue and jurisdiction for the action shall be in the Davidson County chancery court or the chancery court in the district where the surface mining operation is located, upon application of the board or the commissioner, to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey the order of the court may be punished by the court as contempt.

(c) Notwithstanding subsection (a), any operator, permittee, or person to whom an order of suspension of a permit or order to cease and desist surface coal mining and reclamation operations is directed pursuant to this part, shall comply with the order immediately, but, on appeal to the board, shall, within thirty (30) days, have a hearing and decision on the order, unless temporary relief has been granted by the commissioner or by a court.

(d) Any aggrieved person may, after filing an appeal to the board, file with the board a written request that the commissioner grant temporary relief from any complaint or order, together with a detailed statement giving reasons for requesting the relief. The board shall issue an order or decision granting or denying the relief within five (5) days of its receipt, unless the parties agree to a longer time. The board may grant the relief requested, under the conditions the board prescribes, if:

(1) All parties to the proceeding have been notified and a hearing has been held in the locality of the surface coal mining and reclamation operations

on the request for temporary relief in which all parties were given an opportunity to be heard;

(2) The operator, permittee, or person shows that there is a substantial likelihood that the final decision of the board in the hearing will be favorable to the operator, permittee, or person; and

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

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

59-8-121.

(a)

(1) Notwithstanding § 20-4-101(a) to the contrary, any final order or determination by the board is subject to judicial review, and venue and jurisdiction for such action shall be in the Davidson County chancery court or the chancery court in the district where the surface mining operation is located.

(2) Judicial review shall be pursuant to § 4-5-322; however, no judicial review shall be had of any order that becomes final as a result of failure of the aggrieved party to appear at a hearing:

(A) That was requested by the aggrieved party; and

(B) For which the aggrieved party received adequate notice.

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

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

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

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

59-8-122.

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

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

(c)

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

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

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

(2) Nothing in this subsection (c) shall interrupt underground coal mining operations.

59-8-123.

(a) In order to encourage advances in coal surface mining and reclamation practices, or to allow post-mining land use for industrial, commercial, residential, or public use, including recreational facilities, the commissioner, with the approval of the secretary, may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under this part.

(b) The departures may be authorized if:

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

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

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

(4) All other state and federal agencies with jurisdiction over the environmental standards or practices for which departure is desired concur with the departure.

59-8-124.

(a) The general assembly declares that voids, and open and abandoned tunnels, shafts, auger holes, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety, and that surface impacts of any underground or surface coal mining and reclamation operation may degrade the environment. The commissioner is authorized to fill voids, seal abandoned tunnels, shafts, auger holes, and entryways, and reclaim surface impacts of underground or surface coal mines that the commissioner determines could endanger life and property, constitute a hazard to public health and safety, or degrade the environment. The commissioner is authorized to carry out this subsection (a) as part of this state's approved abandoned mine reclamation program, as provided for in § 59-8-324.

(b) Funds available for use in carrying out the purpose of this section may include those funds which are allocated to this state under 30 U.S.C. § 1232(g).

(c) In those instances where mine piles are being reworked for environment and conservation purposes, the incremental costs of disposing of the wastes from the

operations by using them to fill voids and seal tunnels may be eligible for funding pursuant to this section; provided, that the disposal of these wastes meets the purposes of this section.

(d) The commissioner may acquire by purchase, donation, or otherwise the interest in land that the commissioner determines necessary to carry out this section.

59-8-125.

(a)

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

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

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

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

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

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

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

(4) The program shall include a process that includes:

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

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

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

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

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

(b) Any aggrieved person may petition the commissioner to have an area designated as unsuitable for surface coal mining and reclamation operations, or to have an existing designation terminated. A petition filed pursuant to this subsection (b) shall contain allegations of facts with supporting evidence that tends to establish the allegations. Within ten (10) months after receipt of the petition, the commissioner shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a petition has been filed, but before the hearing on it, any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations. Within sixty (60) days after the hearing, the commissioner shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons for the decision. In the event that all of the petitioners stipulate agreement prior to the requested hearing, and withdraw their requests, the hearing need not be held.

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

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

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

- (1) The information contained in the database, records, and inventory system;
- (2) Any information that was provided by other governmental agencies or the public; and
- (3) The information contained in the detailed statement provided in subsection (c).

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

(f) The commissioner's decision is subject to appeal to the board as provided in § 59-8-120, and to judicial review as provided in § 59-8-121.

59-8-126. The board shall promulgate rules under § 59-8-103(b)(1) to require the training, examination, and certification of persons engaging in, or directly responsible for, blasting or use of explosives in coal surface mining operations.

59-8-127. No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any underground coal mining operation or surface coal mining and reclamation operation.

59-8-128. This part does not operate to repeal or affect any of the laws of this state relating to the pollution of the air or waters, or any environment and conservation or mining laws, but shall be held and construed as ancillary and supplemental thereto.

59-8-129.

(a) Irrespective of the date of issuance of a permit, all operators, permittees, and persons, except as provided in subsection (b), shall immediately conform to any statutes enacted, or rules adopted pursuant to those statutes, on the effective date of such statutes and rules. This section does not require the regrading or replanting of any area on which the work was satisfactorily performed prior to the effective date of the statute or rule.

(b) The board shall promulgate rules under § 59-8-103(b)(1) that are consistent with 30 CFR 773.4 concerning continued operations under federal program permits.

59-8-130. Any agency, unit, or instrumentality of state, federal, or local government, including any publicly owned utility or publicly owned corporation of state, federal, or local government, that proposes to engage in exploration or mining operations that are subject to this part, shall comply with this part; provided, that local governmental entities and state agencies are not subject to fees or bonds except as otherwise required by this part.

59-8-131. Any hearing required by this part shall be conducted in accordance with § 13-18-114, when the hearing involves a major energy project, as defined by § 13-18-102.

59-8-132.

(a) There is created a segregated account within the state treasury to be known as the "coal mining protection fund." Monies shall be deposited to the fund pursuant to §§ 59-8-107, 59-8-117, and 67-7-110, and shall be invested for the benefit of the fund pursuant to § 9-4-603.

(b) The monies in the coal mining protection fund shall be used for the administration and enforcement of the requirements of this part.

(c) All fees and penalties collected by the commissioner pursuant to this part shall be deposited by the state treasurer into the coal mining protection fund, created in subsection (a), and shall be used by the commissioner to defray expenses necessary to administer this part. Unexpended and unobligated fees remaining in this account at the end of any fiscal year shall not revert to the general fund but shall remain available for the purposes set forth in this part.

59-8-133.

(a) Implementation of this part is subject to the availability of federal funds for such purpose.

(b) The cost of administering and enforcement of this part shall be paid in equal proportions by federal funds made available for such purpose and funds in the coal mining protection fund, created in § 59-8-132.

SECTION 2. Tennessee Code Annotated, Section 59-8-212, is amended by adding the following language between the second and third sentences in the section:

The fund shall also be available to the commissioner for expenditures consistent with § 59-8-104.

SECTION 3. Tennessee Code Annotated, Section 4-3-1016(d)(14) is amended by deleting the language "board of water quality, oil and gas" and substituting the language "board of energy and natural resources".

SECTION 4. Tennessee Code Annotated, Section 4-29-239(a), is amended by deleting subdivision (42) in its entirety and substituting instead the following:

(42) Tennessee board of energy and natural resources, created by § 69-3-104;

SECTION 5. Tennessee Code Annotated, Section 59-8-202(3), is amended by deleting the language "board of water quality, oil and gas" and substituting the language "board of energy and natural resources".

SECTION 6. Tennessee Code Annotated, Section 59-8-351(1), is amended by deleting the language "board of water quality, oil, and gas as created by former § 59-8-321" and substituting instead the language "board of energy and natural resources created by § 69-3-104".

SECTION 7. Tennessee Code Annotated, Section 59-8-403(2), is amended by deleting the language "board of water quality, oil, and gas as established pursuant to former § 59-8-321" and substituting the language "board of energy and natural resources, created by § 69-3-104".

SECTION 8. Tennessee Code Annotated, Section 59-8-411(c)(2), is amended by deleting the language "Tennessee board of water quality, oil, and gas" and substituting the word "board".

SECTION 9. Tennessee Code Annotated, Section 59-8-413(e)(5), is amended by deleting the language "Tennessee board of water quality, oil, and gas as provided in former § 59-8-321" and substituting the word "board".

SECTION 10. Tennessee Code Annotated, Section 59-8-414(b), is amended by deleting the language "Tennessee board of water quality, oil, and gas" and substituting the word "board".

SECTION 11. Tennessee Code Annotated, Section 59-8-416(f)(1), is amended by deleting the language "Tennessee board of water quality, oil, and gas pursuant to former § 59-8-321(g)" and substituting the word "board".

SECTION 12. Tennessee Code Annotated, Section 59-8-417(b)(1), is amended by deleting the language "Tennessee board of water quality, oil, and gas" and substituting the word "board".

SECTION 13. Tennessee Code Annotated, Section 59-10-102, is amended by deleting the language "board of water quality, oil, and gas, established by former § 59-8-321" and substituting the language "board of energy and natural resources, created by § 69-3-104".

SECTION 14. Tennessee Code Annotated, Section 60-1-101(1), is amended by deleting the language "board of water quality, oil and gas created by § 69-3-104" and substituting the language "board of energy and natural resources, created by § 69-3-104".

SECTION 15. Tennessee Code Annotated, Section 60-1-401, is amended by deleting the language "board of water quality, oil and gas" wherever it appears and substituting the language "board of energy and natural resources,".

SECTION 16. Tennessee Code Annotated, Section 60-1-404(a) is amended by deleting the language "board of water quality, oil and gas" and substituting the language "board of energy and natural resources".

SECTION 17. Tennessee Code Annotated, Section 60-1-503(1), is amended by deleting the language "board of water quality, oil and gas" and substituting the language "board of energy and natural resources, created by § 69-3-104".

SECTION 18. Tennessee Code Annotated, Section 60-1-503(9)(D), is amended by deleting the language "board of water quality, oil and gas" and substituting the language "board of energy and natural resources, created by § 69-3-104".

SECTION 19. Tennessee Code Annotated, Section 68-203-103(b)(1), is amended by deleting the language "board of water quality, oil and gas" and substituting the language "board of energy and natural resources, created by § 69-3-104".

SECTION 20. Tennessee Code Annotated, Section 68-211-104(1), is amended by deleting the language "board of water quality, oil and gas" and substituting the language "board of energy and natural resources, created by § 69-3-104".

SECTION 21. Tennessee Code Annotated, Section 68-212-105(1), is amended by deleting the language "board of water quality, oil and gas" and substituting the language "board of energy and natural resources, created by § 69-3-104".

SECTION 22. Tennessee Code Annotated, Section 68-221-201(4)(D), is amended by deleting the language "board of water quality, oil and gas" and substituting the language "board of energy and natural resources".

SECTION 23. Tennessee Code Annotated, Section 68-221-703(2), is amended by deleting the language "board of water quality, oil and gas as established by § 69-3-104" and substituting the language "board of energy and natural resources, created by § 69-3-104".

SECTION 24. Tennessee Code Annotated, Section 68-221-1111, is amended by deleting the language "board of water quality, oil and gas" wherever it appears in the section and substituting the language "board of energy and natural resources".

SECTION 25. Tennessee Code Annotated, Section 69-3-103, is amended by deleting subdivision (3) and substituting the following:

(3) "Board" means the Tennessee board of energy and natural resources, created by § 69-3-104;

SECTION 26. Tennessee Code Annotated, Section 69-3-103(18), is amended by deleting the language "board of water quality, oil and gas" and substituting the language "Tennessee board of energy and natural resources".

SECTION 27. Tennessee Code Annotated, Section 69-3-104(a), is amended by deleting subdivision (1) and substituting the following:

(1) There is hereby created and established the Tennessee board of energy and natural resources, referred to in this part as the "board," which shall be composed of fourteen (14) members as follows:

(A) The commissioner of environment and conservation, who shall be the chair of the board;

(B) The commissioner of health;

(C) The commissioner of agriculture; and

(D) Eleven (11) citizen members appointed by the governor for terms of four (4) years;

SECTION 28. Tennessee Code Annotated, Section 69-3-104(a)(4), is amended by deleting the language "nine (9)" in subdivision (a)(4)(A)(i) and substituting the language "eleven (11)"; and by deleting the "and" at the end of subdivision (a)(4)(A)(viii), and replacing the period at the end of subdivision (a)(4)(A)(ix) with a semicolon; and adding the following language as new subdivisions:

(x) One (1) member shall represent the coal mining industry and shall be appointed from lists of qualified persons submitted by interested mining industry groups including, but not limited to, the Tennessee Mining Association; and

(xi) One (1) member shall represent owners of coal reserves and shall be appointed from lists of qualified persons submitted by interested mining industry groups including, but not limited to, the Tennessee Mining Association.

SECTION 29. Tennessee Code Annotated, Section 69-3-104(a)(13), is amended by deleting the word "and" at the end of subdivision (a)(13)(A)(iii), replacing the period at the end of subdivision (a)(13)(A)(iv) with the language "; and", and adding the following language as a new subdivision:

(v) Notwithstanding the term limitations prescribed in subdivision (a)(13)(B):

(a) The term of the member appointed under subdivision (a)(4)(A)(x) shall terminate on September 30 in the year five (5) years after the effective date of this act; and

(b) The term of the member appointed under subdivision (a)(4)(A)(xi) shall terminate on September 30 in the year six (6) years after the effective date of this act.

SECTION 30. Tennessee Code Annotated, Section 69-3-105(e)(1)(C), is amended by deleting the language "of water quality, oil and gas".

SECTION 31. Tennessee Code Annotated, Section 69-3-135, is amended by deleting the language "of water quality, oil and gas".

SECTION 32. Tennessee Code Annotated, Section 69-3-138(a)(2), is amended by deleting the language "of water quality, oil and gas established in § 69-3-104".

SECTION 33. Tennessee Code Annotated, Section 69-3-139(c), is amended by deleting the language "of water quality, gas, and oil".

SECTION 34. Tennessee Code Annotated, Section 69-3-146(c), is amended by deleting the language "of water quality, oil and gas".

SECTION 35. Tennessee Code Annotated, Section 69-7-206(a), is amended by deleting the language "board of water quality, oil and gas" and substituting the language "board of energy and natural resources".

SECTION 36. Tennessee Code Annotated, Section 69-7-206(d), is amended by deleting the language "board of water quality, oil and gas" and substituting the language "board of energy and natural resources".

SECTION 37. Tennessee Code Annotated, Section 69-7-207, is amended by deleting the language "board of water quality, oil and gas, created by § 69-3-104" and substituting the language "board of energy and natural resources, created by § 69-3-104".

SECTION 38. Tennessee Code Annotated, Section 69-7-210, is amended by deleting the language "board of water quality, oil and gas" and "water quality control board" wherever it appears and substituting the language "board of energy and natural resources".

SECTION 39. Tennessee Code Annotated, Section 69-7-303(1), is amended by deleting the language "board of water quality, oil and gas established pursuant to § 69-3-104" and substituting the language "Tennessee board of energy and natural resources, created by § 69-3-104".

SECTION 40. Tennessee Code Annotated, Section 67-7-104, is amended by designating the existing language as subsection (a) and adding the following as a new subsection:

(b)

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

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

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

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

SECTION 41. Tennessee Code Annotated, Section 67-7-110, is amended by adding the following language as a new, appropriately designated subsection:

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

SECTION 42. Tennessee Code Annotated, Section 68-105-120, is amended by adding the following language as a new, appropriately designated subdivision:

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

SECTION 43. On or before the January 1 occurring two (2) years after the effective date of this act, and on or before January 1 every two (2) years thereafter, the department of environment and conservation shall submit a report to the finance, ways and means committees of the house of representatives and the senate on the revenue generated from the fees imposed by the Primacy and Reclamation Act of Tennessee, compiled in title 59, chapter 8, part 1. The department shall include in the report a determination as to whether an adjustment to the fees is necessary to provide that the administration and enforcement of the Primacy and Reclamation Act of Tennessee is fiscally self-sufficient and that the revenues from the fees are sufficient to meet required expenditures.

SECTION 44. The governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

SECTION 45. The commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

SECTION 46. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act

which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 47. Sections 44, 45, 46 and designated § 59-8-132 in Section 1 of this act shall take effect upon becoming a law, the public welfare requiring it. For the purposes of rulemaking, and SECTIONS 3-41, this act shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund, the public welfare requiring it. All other provisions of this act shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries, the public welfare requiring it.

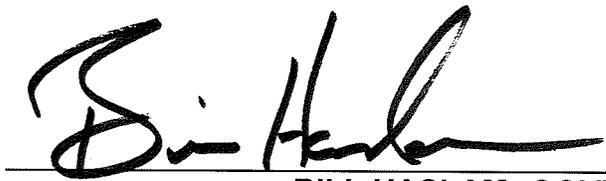
SENATE BILL NO. 686

PASSED: April 12, 2018


RANDY McNALLY
SPEAKER OF THE SENATE


BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 25th day of April 2018


BILL HASLAM, GOVERNOR