

Notes to reader:

1. Except as discussed in note 2, proposed new text that amends an existing regulation is **bolded and underlined**.
2. If the lead-in line states that a new section, subsection, paragraph, subparagraph, or clause is being added, or that an existing section, subsection, etc. is being repealed and readopted (replaced), the new (or replaced) text is not bolded or underlined.
3. [ALL-CAPS TEXT WITHIN BRACKETS] indicates text that is proposed to be deleted.
4. When the word “including” is used, Alaska Statutes provide that it means “including, but not limited to.”

PROPOSED REGULATIONS - _____

11 AAC 90.023 is repealed and readopted to read:

11 AAC 90.023. Identification of interests and compliance information. (a) An applicant must provide in a permit application

(1) a statement indicating whether the applicant is a corporation, partnership, association, sole proprietorship, or other business entity; and

(2) the applicant’s taxpayer identification number; and

(3) if applicable, a statement of the operator’s status as a corporation, partnership, association, sole proprietorship, or other business entity;

(b) Each application must contain the names, addresses, and telephone numbers of the permit applicant, operator, and the operation's resident agent for service of process.

(c) For a business identified under (a) of this section, the application must contain the following information, where applicable:

(1) the name, address, and telephone number of every officer, partner, member,

director or other person performing a function similar to a director, and any person owning 10 percent or more of the applicant or operator's stock

(2) provide for each person listed in (c)(1)

(A) the person's position title and relationship to the applicant or operator, including percentage of ownership and location in the organizational structure; and

(B) the date the person began functioning in that position;

(3) names under which the applicant, partner, or principal shareholders listed in (c)(1) operate or previously conducted an operation in the United States within the five years preceding the date of application;

(4) names under which the applicant's operator, the operator's partner, or a principal shareholder listed in (c)(1) operate or previously conducted an operation in the United States within the five years preceding the date of application; and

(5) a complete organizational structure of each business entity, up to and including the ultimate parent entity, identified in (a)(1) of this section; for every listed business entity the applicant must also provide the required information for every president, chief executive officer, and director, or person in a similar position, and every person of record who owns 10 percent or more of the entity.

(d) Each application must contain a list of any current or previous surface coal mining operation in the United States owned or controlled by an applicant, operator, partner, or principal shareholder listed in (c)(1), or any person identified in (b)(2) of this section within the five-year period preceding the date of submission of the application. For each operation the list must include

(1) the permittee's and operator's name and address;

- (2) the permittee's and operator's taxpayer identification numbers;
- (3) the federal or State permit number and corresponding MSHA number;
- (4) the regulatory authority with jurisdiction over the permit; and
- (5) the permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure.

(e) Each application must describe all land, interests in land, options, or pending bids on interests held or made by the applicant for land which is contiguous to the area to be covered by the permit.

(f) Each application must contain

- (1) a statement of whether the applicant, operator, or any subsidiary, affiliate, or other entity owned or controlled by or under common control with the applicant or operator has in the last years preceding the date of the application

- (A) had a federal or state coal mining permit suspended or revoked; or

- (B) forfeited a coal mining bond or similar security deposited in lieu of bond;

- (2) a statement of the facts involved in a suspension, revocation, or forfeiture listed under (1) of this subsection, including

- (A) the permit identification number, date of issuance of the permit and amount of bond or similar security;

- (B) the date of suspension, revocation, or forfeiture;

- (C) the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;

- (D) the current status of the permit, bond, or similar security involved and,

when applicable, the amount of bond or similar security forfeited; and

(E) the date, location, and type of any administrative or judicial proceeding initiated concerning the suspension, revocation, or forfeiture, and the current status of these proceedings; and

(3) a list of all violations as required under AS 27.21.180(e); for each violation the application must include

(A) the permit number and associated MSHA number;

(B) the date of citation of the violation, identification number, identity of the issuing authority, and name of the person to whom the violation notice was issued;

(C) a brief description of the particular alleged violation;

(D) the date, location, and type of any administrative or judicial proceedings initiated concerning the violation;

(E) the current status of the proceedings and of the violation notice;

(F) if the abatement period for a violation in a notice of violation issued under 11 AAC 90.613 or 11 AAC 90.615, or other state or federal regulatory program equivalent, has not expired, certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation; and

(G) for a violation not covered under (F) of this paragraph, the action, if any, taken by the applicant to abate the violation.

(g) An applicant must affirm, under oath and in writing, that the information provided in an application is accurate and complete. If an applicant previously applied for a permit, the applicant must update the permit application information based on the information in the applicant violator system. If

(1) all or part of the information in the applicant violator system is accurate and complete, then the applicant may certify to the commissioner by affirming, under oath and in writing, what the relevant information in the applicant violator system is and that this information is accurate, complete, and up to date;

(2) part of the information in the applicant violator system is missing or incorrect, then the applicant must submit to the commissioner the necessary information or corrections and affirm, under oath and in writing, that the information the applicant submits is accurate and complete;

(3) the applicant can neither certify that the data in the applicant violator system is accurate and complete nor make corrections, then the applicant must include in the permit application the information required under this section.

(h) The commissioner may establish a central file to house an applicant's identity information rather than place duplicate information in each of the applicant's permit application files. The commissioner will make the information available to the public upon request. (Eff. 5/2/83, Register 84; am ___/___/_____, Register ___)

Authority: AS 27.21.030 AS 27.21.110

Editor's note: As of Register ___ (_____, 20___), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by repeal and readoption.

11 AAC 90.025 is readopted and further amended to read:

11 AAC 90.025. Authority to enter and ownership information. (a) Each application must **include the following for the land within the permit area** [CONTAIN: THE NAME,

ADDRESS, AND, IF KNOWN, THE TELEPHONE NUMBER OF]:

(1) **the name, address, and, if known, the telephone number of** [EVERY OWNER, LESSEE, AND PURCHASER OF RECORD UNDER A REAL ESTATE CONTRACT OF THE AREA TO BE AFFECTED BY SURFACE OPERATIONS, FACILITIES, OR OF THE COAL TO BE MINED; AND]

(A) each legal or equitable owner of record of the surface and mineral estates;

(B) each holder of record of any leasehold interest; and

(C) each purchaser of record under a real estate contract; and

(2) **the name and address of** every owner of record of the surface and mineral estates that are contiguous to **any part of** the proposed permit area.

(b) Each application must **include a description of** [DESCRIBE] the legal authority for the applicant's right to enter the permit area to begin operations and must state whether the right is the subject of pending litigation. The description of the legal authority must identify relevant documents by type, date of execution, and the specific land to which they pertain.

(c) If the private mineral estate to be surface mined has been severed from the private surface estate, the applicant shall also provide at least one of the proofs required by AS 27.21.180(c)(6). (Eff. 5/2/83, Register 84; am 7/29/98, Register 147; am/readopt ___ / ___ / ____, Register ___)

Authority: AS 27.21.030 **AS 27.21.110** AS 27.21.180

Editor's note: As of Register ___ (_____, 20___), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by readoption and amendment.

11 AAC 90 is amended by adding new sections to Article 6 to read:

11 AAC 90.103. Entry of information into the applicant violator system. (a) The commissioner will enter the following information into the federal applicant violator system:

(1) the information an applicant is required to submit under 11 AAC 90.023(a) - (c), and

(2) the information an applicant is required to submit under 11 AAC 90.023(f) pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired.

(b) The commissioner shall update the information entered under (a) of this section if the commissioner determines that there is additional information needed in the permit application.

(c) The commissioner will enter the following data into the applicant violator system:

(1) a permit record or a change to a permit record not later than 30 days after issuing a permit or making a subsequent change

(2) an unabated or uncorrected violation not later than 30 days after an abatement period expires;

(3) a change to the information required under 90.023 not later than 30 days after an applicant notifies the commissioner of a change;

(4) a change in status of violations listed in the Applicant Violator System will be entered within thirty days after abatement, correction, or termination of a violation, or an administrative or judicial decision affecting a violation.

(e) The commissioner will enter the result of an enforcement action under this chapter, including an administrative or judicial decision, into the applicant violator system. The

commissioner may enter information submitted under 11 AAC 90.123(a) – (c) into the applicant violator system before the conclusion of an enforcement action. Listing information in the applicant violator system does not create a presumption or constitute a determination that a person identified in (b) or (c) of this section owns or controls a surface coal mining operation.

(Eff. ___/___/____, Register ___)

Authority: AS 27.21.030 AS 27.21.110 AS 27.21.180

11 AAC 90.104. Permit eligibility determination. (a) Except as provided in (c) of this section and 11 AAC 90.109, the commissioner will make a preliminary finding that an applicant is not eligible for a permit under AS 27.21.180(e) and (f) and this section if a surface coal mining operation

(1) the applicant directly owns or controls has an unabated or uncorrected violation; or

(2) the applicant or the applicant’s operator indirectly controls has an unabated or uncorrected violation that was cited after November 2, 1988, and the control was established after November 2, 1988.

(b) In determining whether an applicant is eligible for a permit, the commissioner will conduct a review under 11 AAC 90.105 of available information, including the applicant and operator history, permit history, and history of violations. If the commissioner finds that

(1) neither condition under (a) of this section is met, the commissioner will move the application forward for permitting;

(2) an applicable surface coal mining operation has an unabated or uncorrected violation, the commissioner will make a preliminary finding of ineligibility and determine if the

applicant is eligible for a provisional permit under 11 AAC 90.109;

(3) an applicable surface coal mining operation has more than one unabated or uncorrected violation, the commissioner will make a preliminary finding of ineligibility and determine if the applicant is eligible for a provisional permit under 11 AAC 90.109 or if the applicant should be permanently ineligible for a permit under (h) of this section.

(c) An applicant is eligible for a permit under this section if an unabated violation

(1) occurred after October 24, 1992; and

(2) resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for re-mining under a permit held by the person applying for the new permit

(d) For a permit issued under 11 AAC 90.159 to conduct a surface coal mining operation on previously mined land, an event or condition is presumed to be unanticipated for the purpose of (c) of this section if it

(1) arose after permit issuance;

(2) was related to prior mining; and

(3) was not identified in the permit application.

(f) When reviewing a permit application under 11 AAC 90.125, the commissioner may not issue a permit until the applicant meets the requirement of 11 AAC 90.023(g) to update and certify interests and compliance information. After the applicant submits this information, the commissioner will request a compliance history report from the applicant violator system under 11 AAC 90.125(c) to determine if the applicant or applicant's operator has unabated or uncorrected violations which affect permit eligibility under this section.

(g) If the commissioner determines that an applicant is ineligible for a permit under this

section, the commissioner will send written notification to the applicant of the applicant's right to appeal this decision. This notification must include the reason the applicant is ineligible and include the applicant's right to appeal under 11 AAC 90.131 of this section. The applicant may attempt to cure the violation prior to the commissioner finding the applicant permanently ineligible to receive a permit.

(h) The commissioner may not issue a permit under this chapter if the commissioner determines that an applicant or the applicant's operator is permanently ineligible to receive a permit under this section. After making a preliminary finding of ineligibility and providing written notification under (g) of this section, the commissioner will make a preliminary finding of permanent permit ineligibility if

(1) the applicant or operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under 11 AAC90.617(b); and

(2) the violations are of such nature and duration, with such resulting irreparable damage to the environment, as to indicate an intent not to comply with AS 27.21, this chapter, or the approved permit.

(i) The applicant or operator may, not later than 30 days after receiving notice of a preliminary finding of permanent permit ineligibility, request a hearing on a under AS 27.21.150. If an applicant does not request a hearing or the hearing affirms the preliminary finding of permanent permit ineligibility, the preliminary decision becomes a final finding. (Eff.

___ / ___ / ___, Register ___)

Authority: AS 27.21.030 AS 27.21.140 AS 27.21.190
AS 27.21.180

11 AAC 90.105. Review of application information to determine eligibility. (a) Based on an administratively complete application under 11 AAC 111, the commissioner will review the information submitted by the applicant under 11 AAC 90.023, information from the applicant violator system, and any other available information, to review the applicant's and the applicant's operators' organizational structure and ownership or control relationships, permit history, and compliance history to determine permit eligibility under 11 AAC 90.104.

(b) After a review of information under (a) of this section, the commissioner will issue a determination as to whether the applicant or operator engaged by the applicant has previous mining experience. If the commissioner determines that neither the applicant nor any individual identified in the application has previous surface coal mining experience, the commissioner will conduct an investigation to determine if any other person with surface coal mining experience will own or control all or a portion of the operation.

(c) If, after a review under (b) of this section, the commissioner identifies a person not otherwise listed in the application as a person with ownership or control over all or a portion of the operation, the commissioner will issue a written preliminary finding describing the nature and extent of ownership or control. A written preliminary finding under this subsection must be based on evidence sufficient to establish a prima facie case of ownership or control. The commissioner will issue this finding to the applicant or permittee and to a person identified as an owner or controller. A person identified as an owner or controller under this subsection may submit information demonstrating the person's lack of ownership or control not later than 30 days after the commissioner issues the finding. After the 30-day period ends, the commissioner will

(1) review the information submitted under this subsection and

(A) if the commissioner determines that the person is not an owner or controller, serve written notice of this determination to the person and applicant;

(B) if the commissioner determines that the person is an owner or controller, issue a final written finding to the person and applicant and enter the finding and information into the applicant violator system; or

(2) if there is no new information submitted, issue a final written finding to the person and applicant and enter the finding and information into the applicant violator system.

(d) A person identified as an owner or controller in a final written finding under (c) of this section may challenge the finding under 11 AAC 90.137. (Eff. ___/___/_____, Register ___)

Authority: AS 27.21.030 AS 27.21.140 AS 27.21.190

AS 27.21.180

11 AAC 90.109. Provisional permit. (a) The commissioner will issue a provisional permit, revocable under (c) of this section, to an applicant eligible under (b) of this section who owns or controls a surface coal mining and reclamation operation with:

(1) a notice of violation for which the abatement period has not yet expired; or

(2) a violation that is unabated or uncorrected beyond the abatement or correction period.

(b) An applicant is eligible for a provisional permit if the applicant demonstrates, with respect to each violation listed in (a) of this section, one or more of the following:

(1) for a violation meeting the criteria of (a)(1) of this section, the applicant certifies that the applicant has abated or is in the process of abating the violation to the

satisfaction of the regulatory authority with jurisdiction over the violation and the commissioner has no evidence to the contrary;

(2) the applicant, and applicant's operator, and each operation the applicant or the applicant's operator owns or controls is in compliance with the terms of any abatement plan or payment schedule approved by the agency with jurisdiction over the violation;

(3) the applicant is pursuing a good faith

(A) challenge to all pertinent ownership or control listings or findings under 11 AAC 90.137; or

(B) administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force;

(4) the violation is the subject of a good faith administrative or judicial appeal contesting the validity of the violation, unless there is an initial judicial decision affirming the violation and that decision remains in force.

(c) The commissioner will consider a provisional permit to be improvidently issued and will make preliminary findings under 11 AAC 90.134 to propose a suspension or rescission of the provisional permit under 11 AAC 90.136 if there if any of the following occurs:

(1) a violation the applicant certified as being abated under (b)(1) of this section is not abated within the specified abatement period;

(2) the applicant, the applicant's operator, or an operation that the applicant or the applicant's operator owns or controls, does not comply with the terms of an abatement plan or payment schedule mentioned in (b)(2) of this section;

(3) in the absence of a request for judicial review, the disposition of a challenge or

any subsequent administrative review referenced in (b)(3) or (4) of this section affirms the validity of the violation or the ownership or control listing or finding; or

(4) the initial judicial review decision referenced in (b)(3)(ii) or (b)(4) of this section affirms the validity of the violation or the ownership or control listing or finding. (Eff. ___/___/____, Register ___)

Authority: AS 27.21.030 AS 27.21.180

11 AAC 90.111 is readopted and further amended to read:

11 AAC 90.111. Completeness review. (a) The commissioner will determine whether an application for a permit, renewal of a permit, or major revision of a permit is complete within 90 days after the date of receipt of the application. A complete application is one which contains all information required under 11 AAC 90.021 – 11 AAC 90.101. If the application is not complete, the commissioner will notify the applicant, in writing, of all information required to render the application complete.

(b) After the commissioner determines that an application is complete under (a) of this section, but before a permit is issued, an applicant must update, correct, or indicate that no change has occurred in the information previously submitted under 11 AAC 90.023 through 11 AAC 90.033. (Eff. 5/2/83, Register 84; am/readopt ___/___/____, Register ___)

Authority: AS 27.21.030 AS 27.21.180

Editor's note: As of Register ___ (_____, 20___), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by readoption and amendment.

11 AAC 90.119 is repealed and readopted to read:

11 AAC 90.119. Transfer, sale, or assignment of permit rights. (a) A person may not transfer, sell, or assign a permit right under this chapter without the written approval of the commissioner. The commissioner may authorize a proposed successor in interest to temporarily continue the permittee's operation if the successor meets the requirements of AS 27.21.190(d) and agrees, in writing, to comply with the approved permit in all respects. The proposed successor in interest shall obtain and provide proof to the commissioner of a reclamation bond by either transfer of the current permit holder's bond, written agreement with the permit holder, or providing other sufficient bond or equivalent guarantee as required by 11 AAC 90.201. This temporary authorization lasts until the commissioner either grants or denies the successor's application for a permit transfer or for a new or revised permit.

(b) A person seeking to succeed by transfer, sale, or assignment to the rights granted by a permit must provide the commissioner with an application for approval of the proposed transfer, sale, or assignment which includes any revised information required by 11 AAC 90.023 – 11 AAC 90.031 including:

(1) the name and address of the existing permittee and permit number or other identifier;

(2) a brief description of the proposed action requiring approval; and

(3) the legal, financial, compliance, and related information required by 11 AAC 90.023 for the applicant for approval of the transfer, assignment, or sale of permit rights.

(c) To make a change to the approved permittee's operation or reclamation plan; the insurance, bond, or equivalent guarantee; or the approved permit area a proposed successor must apply for a new permit or a major revision to the existing permit.

(d) The commissioner will provide notice of a complete application to transfer, sell, or assign permit rights under this chapter in accordance with 11 AAC 90.907. A person whose interests may be adversely affected by granting the approval, including an official of any federal, state, or local government agency, may submit written comments on the application to the commissioner not later than 30 days after the commissioner gives notice of the application.

(e) The commissioner may approve the transfer, sale, or assignment of permit rights upon a written finding that the successor:

(1) is eligible to receive a permit in accordance with 11 AAC 90.107;

(2) submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by 11 AAC 90.201; and

(3) meets the requirements of 11 AAC 90.125 and any other requirements specified by the commissioner.

(f) The commissioner shall notify the permittee, the successor, each person who provided comment, and OSMRE of the commissioner's findings and any decision under this section.

(g) The successor shall immediately notify the commissioner of the consummation of the transfer, sale, or assignment of permit rights. (Eff. 5/2/83, Register 84; am 11/18/94, Register 132; am/readopt ___/___/_____, Register ___)

Authority: AS 27.21.030 AS 27.21.190

Editor's note: As of Register ___ (_____, 20___), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by repeal and readoption.

11 AAC 90.125 is readopted and further amended to read:

11 AAC 90.125. Commissioner's findings. (a) The commissioner will not approve an application for a permit or major revision of a permit unless the application affirmatively demonstrates and the commissioner finds, in writing, on the basis of information set out in the application or information otherwise available that is documented in the approval, that

(1) the conditions specified in AS 27.21.180(c) have been met;

(2) neither the applicant nor the operator is in violation of the conditions specified in AS 27.21.180(f);

(3) the applicant has assured that disturbances to the hydrologic balance will be minimized, the water rights of present users will be protected, and, in those cases where rights cannot be protected, alternative water sources of similar quantity and quality will be provided;

(4) the applicant has obtained a negative determination of alluvial valley floors or satisfied the requirements of 11 AAC 90.149;

(5) the proposed postmining land use of the permit area has been approved by the commissioner under 11 AAC 90.481;

(6) the operation will not affect the continued existence of known threatened or endangered species or result in the destruction or adverse modification of their critical habitat as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531, et seq.);

(7) an existing structure proposed for use in the operation meets the requirements of 11 AAC 90.005;

(8) all specific approvals required under 11 AAC 90.301 - 11 AAC 90.501 have been made;

(9) the commissioner has determined the amount of bond necessary under 11 AAC 90.205;

(10) for auger mining,

(A) adverse water quality impacts will be prevented or corrected; (B) prohibition of augering is not necessary to maximize the utilization, recoverability, or conservation of coal;

(C) effects from augering operations would not prevent reclamation from being performed in accordance with this chapter; and

(D) subsidence resulting from auger mining will not disturb or damage power lines, pipelines, buildings, roads, or other facilities; and

(11) the applicant has submitted proof that all reclamation fees required by 30 C.F.R. Part 870 have been paid.

(12) the potential effects of the operation on property listed or eligible for listing on the National Register of Historic Places has been considered in accordance with 11 AAC 90.091 and 11 AAC 90.121(a);

(13) for a re-mining operation that the applicant proposes to reclaim according to standards in 11 AAC 90.443(e) or 11 AAC 90.457(c)(5), the site is a previously mined area as defined in this chapter.

(14) the applicant is eligible to receive a permit, based on the review and finding required under 11 AAC 90.104 of this section.

(b) If the commissioner finds that existing structures cannot be reconstructed or modified without causing significant harm to the environment or to the public health or safety, the applicant will be required to abandon the existing structure on a schedule approved by the commissioner in compliance with 11 AAC 90.471. The structure may not be used for or to facilitate operations after the effective date of issuance of the permit.

(c) After making a final finding under (a) of this section and not more than five business days before issuing a permit, the commissioner will request a compliance history report from the applicant violator system to determine if there are any unabated or uncorrected violations which affect permit eligibility under 11 AAC 90.104. (Eff. 5/2/83, Register 84; am 11/18/94, Register 132; am/readopt ___/___/_____, Register ___)

Authority: AS 27.21.030 AS 27.21.180

Editor's note: As of Register ___ (_____, 20___), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by readoption and amendment.

11 AAC 90.127 is readopted and further amended to read:

11 AAC 90.127. Permit conditions. Each permit issued by the commissioner will contain the following conditions:

(1) the permittee shall conduct operations only on that land which is approved for the term of the permit and that is subject to the performance bond or other equivalent guarantee in effect under 11 AAC 90.201;

(2) the permittee shall conduct all operations only as described in the complete application, except to the extent that the commissioner otherwise directs in the application decision;

(3) the permittee shall comply with the performance standards of 11 AAC 90.301 - 11 AAC 90.501;

(4) the permittee shall allow an authorized representative of the commissioner or the secretary the right of entry specified in 11 AAC 90.601 - 11 AAC 90.603;

(5) the permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including

(A) any accelerated or additional monitoring necessary to determine the nature, extent, and result of any noncompliance;

(B) immediate implementation of measures necessary to comply; and

(C) warning, as soon as possible after learning of the noncompliance, any person whose health and safety is in imminent danger due to the noncompliance; and

(6) the permittee shall pay all reclamation fees required by 30 C.F.R. 870 for all coal produced under this permit [.]

(7) not later than 60 days after the addition, departure, or other change in position of a person identified in the information submitted under 11 AAC 90.023(c), the permittee shall provide or update the information required under that section, including the date of any addition, departure, or change in position. (Eff. 5/2/83, Register 84; am 11/18/94, Register 132; am/readopt ___/___/____, Register ___)

Authority: AS 27.21.030 AS 27.21.180

Editor's note: As of Register ___ (_____, 20___), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by readoption and amendment.

11 AAC 90 is amended by adding new sections to Article 6 to read:

11 AAC 90.134. Initial review and preliminary finding requirements for improvidently issued permits. (a) If the commissioner determines that a surface coal mining

and reclamation permit issued under 11 AAC 90.109 or 11 AAC 90.125 may have been improvidently issued, the commissioner will review the circumstances under which the permit was issued. After this review, the commissioner will determine if there is sufficient evidence to make a prima facie case that the permit was improvidently issued because:

(1) under the permit eligibility criteria in effect at the time the permit was issued:

(A) the commissioner should not have issued the permit because of an unabated or uncorrected violation; or

(B) the permit was issued on the presumption that a violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation;

(2) the applicant or the applicant's operator owned or controlled a surface coal mining and reclamation operation has a violation that:

(A) remains unabated or uncorrected;

(B) is not the subject of a good faith appeal; and

(C) is not the subject of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the regulatory authority, department or agency which has jurisdiction over the violation;

(3) through an ownership or control link, the permittee was linked to the violation under the permit eligibility criteria in effect at the time the permit was issued, and the ownership or control link between the permittee and the person responsible for the violation still exists, or, where the link was severed, the permittee continues to be responsible for the violation; or.

(4) the provisional permit meets one of the criteria listed in 90.109(c).

(b) If the commissioner determines that there is sufficient evidence to establish a prima

facie case that the permit was improvidently issued, the commissioner will issue a written preliminary finding under (a) of this subsection. The commissioner will serve the permittee with notice and the written preliminary finding.

(c) Not later than thirty days after receiving a notice under (b) of this section, the permittee may request in writing that the commissioner reconsider the finding that a permit was improvidently issued and may provide evidence to the commissioner to support this claim. After considering the record and evidence submitted under this subsection, the commissioner will make a final finding, in writing, as to whether the permit was improvidently issued. Based on this finding, the commissioner may propose to either suspend or rescind an improvidently issued permit under 11 AAC 90.136. The commissioner will provide notice of this proposal along with the final finding in accordance with 11 AAC 90.135.

(d) The provisions of 11 AAC 90.137 apply when a challenge under (c) of this section concerns a preliminary finding under (a)(2) of this section that the applicant or the applicant's operator currently owns or controls, or owned or controlled, a surface coal mining operation.

(Eff. ___/___/____, Register ___)

Authority: AS 27.21.030 AS 27.21.150 AS 27.21.180

11 AAC 90.135. Notice and appeal requirements for the proposed suspension or rescission of an improvidently issued permit. (a) If the commissioner proposes to suspend or rescind an improvidently issued permit, the commissioner will provide written notice to the permittee with a statement detailing the basis for the proposed decision under AS 27.21.180 that:

(1) after review of any evidence submitted under 11 AAC 90.134(c), and finding that a permit was improvidently issued under the criteria in subsection 11 AAC 90.134(a), or

(2) after review of a provisional permit issued under 11 AAC 90.109 and finding that one or more of the conditions listed in 11 AAC 90.109c)(1) through (4) exists.

(b) The commissioner will, in accordance with 11 AAC 90.619, provide the permittee notice of a proposed suspension or rescission that states that, under 11 AAC 90.134(d), in 60 days the permit will be suspended, or in 120 days the permit will be rescinded. A permittee may request that the commissioner reconsider the proposed suspension or rescission and submit supporting information with the request. The commissioner will consider the additional information and revoke the proposed suspension or rescission if the commissioner finds that

(1) the violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

(2) the owner or the owner's operator no longer own or control the relevant operation;

(3) the commissioner's finding that formed the basis for the suspension or rescission was made in error;

(4) the violation is the subject of a good faith administrative or judicial appeal, unless there is an initial judicial decision affirming the violation, and that decision remains in force;

(5) the violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation, or

(6) the permittee is pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding, unless there is an initial judicial decision affirming the listing or finding, and that decision remains in force.

(c) If a permittee does not request reconsideration under (b) of this section, the

commissioner will suspend the permit after 60 days and rescind the permit after 120 days, in accordance with 11 AAC 90.134(d). If a permittee request reconsideration and the commissioner does not revoke a proposed decision to suspend or rescind a permit under (b) of this section, the commissioner will affirm the proposed decision that the permit was improvidently issued before taking action to suspend or revoke the permit under 11 AAC 90.136. After the commissioner affirms a proposed decision under this section, it is a final decision.

(d) A person may appeal a final decision under (c) of this section if the person has an interest that may be adversely affected by the decision and the person exhausted the available administrative remedies. A hearing on an appeal under this subsection is conducted in accordance with 11 AAC 90.131 and AS 27.21.150. A suspension or rescission of the permit at issue will occur in accordance with 11 AAC 90.134(d) unless the person obtains a stay for temporary relief. (Eff. ___/___/____, Register ___)

Authority: AS 27.21.030 AS 27.21.150 AS 27.21.180

11 AAC 90.136. Suspension or rescission requirements for improvidently issued permits. (a) Unless subject to reconsideration or an appeal under 11 AAC 90.135(b) or (d), the commissioner will suspend or rescind the permit when the time specified in 11 AAC 90.134(d) expires. The commissioner will provide written notice to the permittee when a permit is suspended or rescinded and will post a copy of the notice in the department office closest to the permit area.

(b) A permittee may request reconsideration of the suspension or rescission under 11 AAC 90.135(b) or, if all administrative remedies are exhausted, the permittee may request judicial review of the suspension or rescission. (Eff. ___/___/____, Register ___)

Authority: AS 27.21.030 AS 27.21.150 AS 27.21.190
AS 27.21.240

11 AAC 90.137. Ownership or control challenges. (a) A person may request a reconsideration of a listing or finding of ownership or control under 11 AAC 90.105 if:

(1) the person is listed in a permit application or in the applicant violator system as an owner or controller of all or part of a surface coal mining operation,

(2) the commissioner finds that the person is an owner or controller of all or part of a surface coal mining operation under 11 AAC 90.105(b), or

(3) the person is an applicant or permittee affected by an ownership or control listing or finding.

(b) A permittee must include with a request for consideration under this section a written explanation of the basis for the challenge and reliable, credible evidence supporting the challenge. The permittee must also submit the written explanation to a regulatory authority in another jurisdiction if the challenge affects a pending permit application in that jurisdiction or if the challenge affects a surface coal mining operation in that jurisdiction. If the challenge concerns a violation under the jurisdiction of a different regulatory authority, the commissioner will review the information in the applicant violator system and may request that the office overseeing the applicant violator system conduct an investigation into the violation. The commissioner will also consult with the applicable regulatory authority regarding the details of the violation.

(c) A challenger under this section must prove by a preponderance of the evidence that the challenger does not currently own or control the relevant operation and did not own or

control the operation during the course of the relevant time period.

(d) The evidence provided under (a) of this section will become part of the public record unless the person providing the evidence requests that the commissioner hold materials submitted under this section as confidential, subject to AS 27.21.200(c) and the Alaska Public Records Act Evidence provided under (a) of this section may include

(1) a notarized affidavit containing specific facts about the duties performed for the relevant operation, the beginning and ending dates of the ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation in question;

(2) certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;

(3) certified copies of documents filed with or issued by any state; municipal, or Federal government agency; or

(4) an opinion of counsel that includes supporting evidence, a statement by counsel that they are qualified to render the opinion, and a statement that counsel has personally and diligently investigated the facts of the matter.

(e) Not later than 60 days after a person files a challenge under this section, the commissioner will issue a written decision finding whether the challenger owns or controls the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. The commissioner will enter the final decision into the applicant violator system and promptly provide a copy of the decision to the challenger.

(f) The person who filed the challenge or a person with an interest that may be adversely affected by the decision may appeal this decision. A hearing on an appeal under this section will

be conducted in accordance with 11 AAC 90.131 and AS 27.21.150. A permittee must exhaust all administrative remedies before the permittee may seek judicial review.

(g) The commissioner will update the applicant violator system to reflect any changes following an appeal.

(h) At any time, a person listed in the applicant violator system as an owner or controller of a surface coal mining operation may request an informal explanation from the Applicant Violator System Office as to the reason the person is in the applicant violator system in an ownership or control capacity. The Applicant Violator System Office will provide a response describing why the person is listed in the applicant violator system in accordance with 30 C.F.R. §773.26(e). (Eff. ___/___/_____, Register ___)

Authority: AS 27.21.030 AS 27.21.150 AS 27.21.180

11 AAC 90 is amended by adding a new section to Article 7 to read:

11 AAC 90.159 Lands eligible for re-mining. (a) A person may be eligible to obtain a permit on previously mined lands with an unabated violation under 11 AAC 90.104(c). A person who submits a permit application to conduct a surface coal mining operation on previously mined lands eligible for re-mining must comply with (b) of this section.

(b) In addition to the information required for an application under this chapter, an applicant for a permit on lands eligible for re-mining shall conduct a diligent investigation of the site. A diligent investigation includes visual observations, a record review of mining on the site, and an environmental sampling tailored to current site conditions. Following an investigation, the applicant shall identify and include in the application potential environmental and safety problems not otherwise addressed that a person could reasonably anticipate occurring. The

applicant must also describe the mitigation measures the applicant or operator will take to meet the reclamation requirements under this chapter. (Eff. ___/___/____, Register ___)

Authority: AS 27.21.030 AS 27.21.110 AS 27.21.210

11 AAC 90.613 is readopted and further amended to read:

11 AAC 90.613. Cessation orders. (a) The commissioner will immediately **issue** [ORDER] a cessation **order to the permittee or operator** of exploration activities, [OR] surface coal mining and reclamation operations, or of the relevant portion **of an operation** if **the commissioner** [HE OR SHE] finds, on the basis of an inspection, **that a** [any] condition or practice **of the activity or operation** or **a** [ANY] violation of **AS 27.21** [THE ACT], this chapter, or **a** [ANY] condition of an exploration approval or permit imposed under **AS 27.21** [THE ACT] or this chapter

(1) **creates** [CREATING] an imminent danger to the health or safety of the public; or

(2) **causes** [CAUSING], or **is** reasonably expected to cause, significant imminent environmental harm to land, air, or water resources.

(b) If the cessation ordered under (a) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the commissioner will impose affirmative obligations on the person to whom it is issued to abate the condition, practice, or violation. The order will specify the time by which abatement must be accomplished.

(c) Exploration activities or surface coal mining and reclamation operations conducted without a valid approval or permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water

resources, unless these operations are an integral uninterrupted extension of previously approved activities or operations and the person conducting the activities or operations has filed a timely and complete application for an approval or permit to conduct the operations.

(d) The commissioner will immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the relevant portion when a notice of violation has been issued under 11 AAC 90.615 and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the commissioner.

(e) A cessation order issued under this section will be in writing, be signed by the commissioner, and set forth with reasonable specificity

(1) the nature of the violation;

(2) any required remedial actions, affirmative obligations, or interim steps;

(3) the time established for any abatement and any interim steps;

(4) a description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies; and

(5) that the right to an informal conference on the order will be considered waived unless a conference is requested within 30 days after service of the order.

(f) The cessation order will remain in effect until the condition, practice, or violation has been abated; **the commissioner vacates, modifies, or terminates the order** [OR UNTIL VACATED, MODIFIED, OR TERMINATED,] in writing[, BY THE COMMISSIONER]; or [UNTIL] the order expires under AS **27.21.240(h)** [41.45.240(h)].

(g) Reclamation operations and other activities intended to protect public health and safety and the environment must continue during the period of any order unless otherwise provided in the order.

(h) The commissioner will, in his or her discretion, modify, terminate, or vacate a cessation order for good cause and extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(i) The commissioner will terminate a cessation order, by written notice to the person to whom the order was issued, when he or she determines that all conditions, practices, or violations listed in the order have been abated. Termination does not affect the right of the commissioner to assess civil penalties for those violations under 11 AAC 90.625.

(j) Not later than 30 days after the commissioner issues a cessation order under 11 AAC 90.613/this section, the permittee shall submit changes or updates to the information submitted under 11 AAC 90.023. If no changes or updates are required, the permittee shall submit a statement that no changes are required. A permittee is not required to submit changes or updates under this subsection if a court grants a stay of the cessation order that remains in effect.

(k) Not later than 60 days after issuing a cessation order, the commissioner will send a written notice of the cessation order to the permittee, the operator, and each person who has been listed or identified by the applicant, permittee, or commissioner as an owner or controller of the operation, as defined in 11 AAC 90.023. (Eff. 5/2/83, Register 84;

am/readopt ___ / ___ / ____, Register ___)

Authority: AS 27.21.030 AS 27.21.240

Editor's note: As of Register ___ (_____, 20___), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by readoption and amendment.

11 AAC 90.617 is readopted and further amended to read:

11 AAC 90.617. Suspension or revocation of permits. (a) Except as otherwise provided in this section, the commissioner will issue an order to a permittee requiring **the permittee** [HIM OR HER] to show cause why **the** [HIS] permit and right to mine under **AS 27.21** [THE ACT] should not be suspended or revoked if the commissioner determines that a pattern of violations of any requirements of **AS 27.21** [THE ACT], this chapter, or any permit condition required **under AS 27.21** [BY THE ACT] exists or has existed and that the violation were caused willfully or were unwarranted. For **the purpose** [PURPOSES] of this subsection and unless the context indicates otherwise

(1) a violation is caused **willfully if the person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted**

(A) intentionally, voluntarily, or consciously; and

(B) with intentional disregard of or plain indifference to legal

requirements [VIOLATION" MEANS AN ACT OR OMISSION WHICH VIOLATES THE ACT, THIS CHAPTER, OR ANY PERMIT CONDITION REQUIRED BY THE ACT OR THIS CHAPTER COMMITTED BY A PERSON WHO INTENDS THE RESULT WHICH ACTUALLY OCCURS];

(2) **a violation is unwarranted if** ["UNWARRANTED VIOLATION" MEANS] the failure of the permittee to prevent the occurrence of **a** [ANY] violation of **a** [THE] permit or **a** [ANY] requirement of **AS 27.21 or this chapter is** [THE ACT] due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate **a** [ANY] violation of the permit or **a**

requirement of AS 27.21 or this chapter is [THE ACT] due to indifference, lack of diligence, or lack of reasonable care; **the commissioner will attribute a violation**[. VIOLATION] by **an operator** [ANY PERSON CONDUCTING OPERATIONS] on behalf of the permittee [WILL BE ATTRIBUTED] to the permittee unless the permittee establishes that **the operator committed an act** [THEY WERE ACTS] of deliberate sabotage.

(b) The commissioner will, in his or her discretion, determine that a pattern of violations exists or has existed based on two or more inspections of the permit area within any 12-month period after considering circumstances including

(1) the number of violations, cited on more than one occasion, of the same or related requirements of the Act, this chapter, or the permit;

(2) the number of violations, cited on more than one occasion, of different requirements of the Act, this chapter, or the permit; and

(3) the extent to which the violations were unrelated departures from lawful conduct.

(c) The commissioner will promptly review the history of violations of any permittee cited for violations of the same or related requirements of the Act, this chapter, or the permit during three or more inspections of the permit area within any 12- month period. If, after review, the commissioner determines that a pattern of violations exists or has existed, he or she will issue an order under (a) of this section.

(d) The commissioner will, in his or her discretion, decline to issue a show cause order or vacate an outstanding show cause order if he or she finds, taking into account exceptional factors present in the particular case, that it would be demonstrably unjust to issue or fail to vacate the

show cause order. The basis for this finding will be fully explained and documented in the records of the case.

(e) At the time of issuance of the order the commissioner will provide notice, including a brief statement of the procedure for intervention in the proceeding, in accordance with 11 AAC 90.907(d).

(f) Following issuance of a show cause order, the commissioner will hold a public hearing upon 30 days written notice of the time, date, and place of the hearing to the permittee and any intervenors. The hearing is subject to AS 44.62.330 -- 44.62.630.

(g) Within 60 days after the hearing, the commissioner will issue a written determination whether a pattern of violations exists and, if appropriate, an order. If the permit and the permittee's right to mine are revoked or suspended, the permitted shall immediately cease operations on the permit area and shall

(1) if revoked, complete reclamation within the time frame specified in the order;

or

(2) if suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

(h) If a permittee fails to abate a violation contained in a notice of violation or a cessation order within the abatement period set in the notice or order or as subsequently extended, the commissioner will review the permittee's history of violations to determine whether a pattern of violations exists under this section and will issue an order to show cause, if appropriate. (Eff.

5/2/83, Register 84; am/readopt ___ / ___ / ____, Register ___)

Authority: AS 27.21.030 AS 27.21.240

Editor's note: As of Register ____ (_____, 20____), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by readoption and amendment.

11 AAC 90.625 is repealed and readopted to read:

11 AAC 90.625. Penalty assessment and computation. (a) The commissioner may assess a penalty for each violation contained in a notice of violation issued under 11 AAC 90.615 and will assess a penalty for each violation contained in a cessation order issued under 11 AAC 90.613. The commissioner will determine whether to assess a penalty and compute the amount of a penalty in accordance with this section.

(b) The commissioner will find the beginning dollar value by determining the seriousness of a violation based on the adverse environmental impact and the hazard to public health and safety. The value will be the sum of

(1) the degree of the adverse environmental impact, with no adverse impact assigned a zero dollar value,

(A) for a minimal degree of adverse impact, a dollar value of

- (i) 25 for potential environmental impact;
- (ii) 50 for actual environmental impact;
- (iii) 100 for irreparable environmental impact;

(B) for a moderate degree of adverse impact, a dollar value of

- (i) 50 for potential environmental impact;
- (ii) 100 for actual environmental impact;
- (iii) 150 for irreparable environmental impact;

(C) for a severe degree of adverse impact, a dollar value of

(i) 100 for potential environmental impact;

(ii) 150 for actual environmental impact;

(iii) 200 for irreparable environmental impact and

(2) the degree of potential public health and safety hazard resulting from a violation, with no hazard assigned a zero dollar value, moderate hazard assigned a 75 dollar value, and severe assigned a 150 dollar value.

(c) The commissioner will multiply the sum determined under (b) of this section by

(1) zero, if the extent of the damage or hazard is none or minimal, occurring on or off the permit area;

(2) three, if the extent of the damage or hazard is small and located in the permit area;

(3) six, if the extent of the damage or hazard is small and located off of the permit area;

(4) six, if the extent of the damage or hazard is moderate and located on the permit area

(5) nine, if the extent of the damage or hazard is moderate and located off the permit area

(6) nine, if the extent of the damage or hazard is large and located on the permit area.

(7) twelve if the extent of the damage or hazard is large and located off the permit area

(d) If a violation does not result in a penalty under (b) and (c) of this section, but the violation obstructs program administration or enforcement, the commissioner will assess a penalty of \$250.

(e) The commissioner will take the dollar value determined under (c) or (d) of this section and multiply it by the degree of fault, determined by the commissioner, as follows:

(1) if the violation could not have been prevented through the use of reasonable care, multiplied by a factor of one;

(2) if the violation occurred because of the operator's or permittee's lack of reasonable care, lack of diligence, or indifference, multiplied by a factor of two;

(3) if the violation occurred because of the disregard of a known situation likely to cause a violation or a known situation that should have been recognized as likely to cause a violation, multiplied by a factor of three;

(4) if the permittee or operator intentionally, voluntarily, or consciously ordered or carried out an act or omission with reckless disregard or plain indifference to legal requirements that resulted in a violation or the failure to abate or correct a violation, multiplied by a factor of four.

(f) The commissioner may modify the amount determined under (e) of this section

(1) by adding an additional \$500 if three or more violations occurred at the same operation during the 12 months immediately preceding the notice of violation that are not the subject of administrative or judicial review at the time of the assessment;

(2) by reducing the amount for good faith compliance with AS 27.21 and this chapter after receiving a notice of violation or cessation order if the abatement is achieved in less time than originally set for abatement

(A) 40 percent credit if the abatement is complete within 25 percent of the original abatement time

(B) 25 percent credit if the abatement is complete within 50 percent of the original abatement time

(C) 10 percent credit if the abatement is complete within 75 percent of the original abatement time

(g) The commissioner may assess a separate civil penalty, computed under (b) – (f) of this section, for each day after the date the commissioner issued the notice of violation or cessation order if

(1) the violation continued to cause irreparable damage after the date the commissioner issued the notice of violation or cessation order;

(2) the degree of fault was determined under (e)(2) or (3) of this section;

(3) the recipient of the notice of violation or cessation order gained an economic benefit as a result of the violation; or

(4) the violation resulted in administrative or inspection costs in excess of the costs normally incurred by the commissioner. (Eff. 5/2/83, Register 84; am 9/28/86, Register 99; am ___/___/____, Register ___)

Authority: AS 27.21.030 AS 27.21.240 AS 27.21.250

Editor's note: As of Register ___ (_____, 20___), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by repeal and readoption.

11 AAC 90.637 is readopted and further amended to read:

11 AAC 90.637. Amount of individual civil penalty. (a) In determining the amount of an individual civil penalty assessed under 11 AAC 90.635, the commissioner will consider

(1) the individual's history of authorizing, ordering, or carrying out previous violations, **failures, or refusals** at the particular operation;

(2) the seriousness of the violation, **failure, or refusal** as indicated by the extent of damage, the anticipated cost of reclamation, whether irreparable damage to the environment occurred, the extent that the violation, **failure, or refusal** has created a hazard to public health or safety, and the seriousness of any hazard that has been created to public health or safety;

(3) the extent to which the individual's negligence, rather than knowing and willful conduct, resulted in the violation, **failure, or refusal**; and

(4) the demonstrated good faith of the individual in attempting to achieve rapid compliance after receiving the notice of the violation, **failure, or refusal**.

(b) The commissioner may consider each day of a continuing violation as a separate violation, and may assess a separate individual civil penalty for each day the violation continues, beginning on the date of service of the underlying notice of violation, cessation order, or other order incorporated in a final decision issued by the commissioner, and ending on the date abatement or compliance is achieved.

(c) For purposes of this section "violation, failure, or refusal" includes:

(1) a failure to comply with a condition of a permit or of any other permit that the commissioner is enforcing under AS 27.21.240 or the regulations implementing that section; or

(2) a failure or refusal to comply with any order issued under AS 27.21.240, or any order incorporated in a final decision issued by the commissioner, except an order

incorporated in a decision issued under AS 27.21.250(c). (Eff. 4/24/09, Register 190;
am/readopt ___/___/_____, Register ___)

Authority: AS 27.21.030 AS 27.21.250

Editor's note: As of Register ___ (_____, 20___), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by readoption and amendment.

11 AAC 90 is amended by adding new sections to Article 12 to read:

11 AAC 90.643. Criminal penalties. If an inspection under AS 27.21.230 or an investigation under AS 27.21.240 shows that a person meets the criteria for criminal prosecution under AS 27.21.250(e), (f), (g), or (i), the commissioner may notify the attorney general of the results of the inspection or investigation and request that the attorney general pursue criminal prosecution against the person. (Eff. ___/___/_____, Register ___)

Authority: AS 27.21.030 AS 27.21.250

11 AAC 90.645. Civil actions for relief. (a) The commissioner does not need to issue a notice of violation or a cessation order prior to requesting the Attorney General to institute a civil action for relief under AS 27.21.240.

(b)The Commissioner may make a request under (a) of this section after a single instance of any of the reasons listed under AS 27.21.240(j)(1) through (4). (Eff. ___/___/_____, Register ___)

Authority: AS 27.21.030 AS 27.21.240

11 AAC 90 is amended by adding a new section to Article 17 to read:

11 AAC 90.898. Contractor eligibility. The commissioner may not authorize the dispersal of funds from the abandoned mine reclamation fund to a successful bidder for an abandoned mine land program contract, for either coal or non-coal projects, until the requirements of this section are met. The commissioner must determine that the bidder meets the permit eligibility requirements under 11 AAC 90.104 and that the bidder does not appear on the list generated under AS 36.05.090(b). In order for the commissioner to make this determination, a successful bidder must provide the commissioner with the ownership and control information required under 11 AAC 90.023(b) and 11 AAC 90.023(c). (Eff. ___/___/____, Register ___)

Authority: AS 27.21.030 AS 27.21.270

11 AAC 90.911 is readopted and further amended to read:

11 AAC 90.911. Definitions. Unless the context indicates otherwise, in AS 27.21 and this chapter,

(1) "acid drainage" means water with a pH which may cause or contribute to violation of the Alaska water quality laws and regulations discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations;

(2) "acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage;

(3) "Act" means the Alaska Surface Coal Mining Control and Reclamation Act (AS 27.21);

(4) "adjacent area" means land located outside the affected area or permit area, depending on the context, where air, water, fish, wildlife, vegetation or other resources may be adversely impacted by surface coal mining and reclamation operations;

(5) "affected area" means any land or water upon or in which mining activities are conducted or located, including land or water which is located above underground mine workings;

(6) "affected person" as used in 11 AAC 90.751 - 11 AAC 90.759 means any person subject to the provisions of AS 27.21.050;

(7) "agricultural activities" means, with respect to alluvial valley floors, the use of any tract of land for the production of domestic animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors; including pasturing, grazing and watering livestock, and cropping, cultivating or harvesting plants whose production is aided by the availability of water from subirrigation or flood irrigation; but not including agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation;

(8) "agricultural use" means the use of any tract of land for the production of domestic animal or vegetable life including pasturing, grazing, and watering livestock and cropping, cultivating, and harvesting plants;

(9) "aircraft runways" means areas cleared, graded, surfaced, or otherwise modified from the natural condition to facilitate the landing, storage, and servicing of fixed wing and rotary aircraft;

(10) "Alaska state program" means the program submitted to the Secretary under section 503(a) of the Surface Mining Control and Reclamation Act of 1977;

(11) "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 before mining and blends into and complements the drainage pattern of the surrounding terrain in accordance with the performance standards of this chapter;

(12) "aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use;

(13) "arid and semiarid area" means, in the context of alluvial valley floors, an area experiencing water deficits where water use by native vegetation equals or exceeds that supplied by precipitation;

(14) "auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface;

(15) "best technology currently available" or "BTCA" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but not result in contributions of suspended solids in excess of requirements set by applicable state or federal laws and regulations, and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practical; "BTCA" includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the commissioner, even if they are not in routine use; BTCA" includes construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and

design of sedimentation ponds in accordance with 11 AAC 90.301 - 11 AAC 90.501; the commissioner will, in his or her discretion, determine the "best technology currently available" on a case-by-case basis;

(16) "cemetery" means any area of land where human bodies are interred; (17)

"coal exploration" means

(A) the field gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(B) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this chapter;

(18) "coal processing plant" means a complex of facilities where coal is subjected to crushing, cleaning, concentrating, or other chemical or physical processing;

(19) "collateral bond" means an indemnity agreement in a sum certain executed by the permittee as principal and supported by the deposit with the commissioner of one or more of the following:

(A) cash in federally insured accounts payable only to the state upon demand;

(B) negotiable bonds of the United States, a state, or a municipality, endorsed to the order of the State of Alaska;

(C) negotiable certificates of deposit made payable or assigned to the state;

(D) an irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the state upon presentation;

(E) a perfected, first-lien security interest in real property in favor of the state;

(F) other investment-grade rated securities having a rating of AAA, AA or A or equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of the state;

(20) "combustible material" means organic material that is easily ignited by fire, heat, or oxidation;

(21) "compaction" means increasing the density of a material by reducing the voids between the particles generally by controlled placement and mechanical effort such as the repeated application of wheel, track, or roller loads from heavy equipment;

(22) "commissioner" means the commissioner of natural resources or his or her designee. (23) "coal mine waste" means coal processing waste and underground development waste;

(23) "coal mine waste" means coal processing waste and underground development waste;

(24) "cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, including row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops;

(25) "direct financial interest" means ownership or part ownership of land, stocks, bonds, debentures, warrants, partnership shares, or other holdings or any other arrangement which may result in a benefit from a holding in or salary from coal mining operations; "direct

financial interest" includes employment, pensions, creditor, real property, and other financial relationships;

(26) "disturbed area" means an area where vegetation, topsoil, aquatic substrate, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed or, in the case of aquatic systems where the area is channelized or dewatered, until reclamation is complete and the performance bond or other assurance of performance required by 11 AAC 90.201 - 11 AAC 90.209 is released;

(27) "diversion" means a channel, embankment, or other structure constructed to divert water from one area to another;

(28) "downslope" means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor;

(29) "embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, to support roads or railways, or for other similar purposes;

(30) "emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated;

(31) "ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table;

(32) "employee" means any person employed by the department who performs any function or duty under the Act;

(33) "escrow account bond" means cash deposited in one or more federally insured accounts which are payable on demand only to the state, or cash deposited directly with the state;

(34) "essential hydrologic functions" means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials; a combination of these functions provides a water supply during extended periods of low precipitation; the role of the alluvial valley floor

(A) in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial valley floor greater than the amount available from direct precipitation;

(B) in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials;

(C) in regulating the natural flow of surface water results from the characteristic configuration of the channel flood plain and adjacent low terraces;

(D) in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow; and

(E) in making water usefully available for agricultural activities results from the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the

natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for the growth of agriculturally useful plants;

(35) "existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction began before approval of the state program;

(36) "expended" means that money has been paid or that work has been accomplished or services rendered;

(37) "extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished, including only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other construction, or within the boundaries of the area directly affected by other types of government-financed construction, will be considered incidental to that construction;

(38) "extreme danger" means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed;

(39) "flood irrigation" means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water;

(40) "fragile land" means geographic areas containing natural, ecologic, scientific, or aesthetic resources that could be damaged or destroyed by surface coal mining and reclamation operations. Examples of fragile land includes, but is not limited to, uncommon geologic features, National Natural Landmark sites, groundwater recharge areas, valuable

habitats for fish and wildlife, critical habitats for endangered species of animals and plants, critical wetlands, environmental corridors containing concentrations of ecologic and aesthetic features, areas of recreational value due to high environmental quality, buffer zones around areas where surface coal mining is prohibited; and important, unique, or highly productive soils or mineral resources;

(41) "fugitive dust" means particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both, including emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; and other activities in which material is either removed, stored, transported, or redistributed;

(42) "fund" means the "Alaska Abandoned Mined Land Reclamation Fund" established under 11 AAC 90.800;

(43) "general area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins;

(44) "government financing agency" means a federal, state, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction;

(45) "government-financed construction" means construction funded 50 Percent or more by funds appropriated from a government financing agency's budget or obtained from

general revenue bonds, but does not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments;

(46) "ground water" means that one or more zones of saturation located at various depths below the ground surface and either confined by impermeable earth material or overlaying an impermeable layer of earth material;

(47) "coal processing waste" means earth materials which are separated and wasted from the product coal during physical or chemical processing, cleaning, or concentrating of coal;

(48) "habitat" means terrestrial and aquatic systems that support fish and wildlife by providing feeding, breeding, resting and protective cover.

(49) "head-of-hollow fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20 or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10; the top surface same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area;

(50) "higher or better uses" means those postmining land uses that have a higher value or other benefit to the landowner or community than the premining land use;

(51) "highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities;

(52) "historic land" means historic or cultural districts, places, structures, or objects, including but not limited to, sites listed or eligible for listing on a state or National

Register of Historic Places, national historic landmarks, archeological and paleontological sites, or cultural or religious districts, places, or objects;

(53) "hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir; "hydrologic balance" encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage;

(54) "hydrologic regime" means the entire process of water movement in a given areas as a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration;

(55) "impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste;

(56) "indirect financial interest" means the same financial relationships as for direct ownership, but where the employee or private contractor benefits from interests held by his or her spouse, minor child and other relatives, including in-laws, residing in his or her home; no indirect financial interest exists if there is no relationship between the employee's or contractor's functions or duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest;

(57) "in situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical

processing of coal, including in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining;

(58) "intermittent stream" means a stream or reach of a stream that drains a watershed of at least one square mile, is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge;

(59) "irreparable damage to the environment" means any damage to the environment that cannot be corrected by actions of the applicant;

(60) "land use" means specific uses or management-related activities, rather than the vegetation or cover of the land which may be identified in combination when joint or seasonal uses occur and may include support facilities that are an integral part of the use; "land use" includes use of the following categories of land for the purposes stated:

(A) "cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops;

(B) "pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed;

(C) "grazing land" means land used for both grassland and forest land where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production;

(D) "forestry land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products;

(E) "residential land" means land used for single and multiple-family housing, mobile home parks, and other residential lodgings;

(F) "industrial/commercial land" means land used for

(i) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities;

(ii) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments;

(G) "recreational land" means land used for leisure-time use, including facilities such as parks and camps, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses;

(H) "fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife;

(I) "developed water resources" means land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, flood control, and water supply;

(J) "undeveloped land" means land that is undeveloped or, if previously developed, land that has been allowed to return to a natural equilibrium through succession;

(61) "left or abandoned in either an unreclaimed or inadequately reclaimed condition" means land or water

(A) which was mined or which was affected by mining, wastebanks, processing, or other mining processes before August 3, 1977, and on which all mining has ceased;

(B) which continues, in its present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of the land or water resources, or endanger the health and safety of the public;

(C) for which there is no continuing reclamation responsibility under state or federal law;

(62) "marine docking facilities" means shoreland that is cleared, graded, stabilized, constructed upon, or otherwise modified from the natural condition to facilitate the landing, anchorage, loading and unloading, and servicing of marine craft, including motorized and non motorized transport vessels;

(63) "materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where these changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing before mining;

(64) "mountaintop removal" means surface mining which removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling

contour, with no highwalls remaining, and capable of supporting postmining land uses approved in accordance with 11 AAC 90.141;

(65) "mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth;

(66) "natural hazard land" means geographic areas in which natural conditions exist that pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, earthquakes, unstable geology, long-term disruptions, or degradation of surface and subsurface water supplies, and substantial increases in flood heights or frequencies;

(67) "occupied dwelling" means any building that is currently being used on a regular basis for human habitation;

(68) "OSM" means the Federal Office of Surface Mining Reclamation and Enforcement;

(69) "outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe;

(70) "overburden" means earth material of any nature, consolidated or unconsolidated, that overlies a coal deposit, including interburden but excluding topsoil;

(71) "perennial stream" means a stream or part of a stream that, as a result of ground-water discharge or surface runoff, flows continuously during all of the calendar year, except when frozen not including intermittent or ephemeral streams;

(72) "performing any function or duty under this Act" means those decisions or actions which, if performed or not performed, affect the programs under the Act;

(73) "performance bond" means a surety bond, collateral bond, escrow account bond, or a combination of these bonds, by which a permittee assures faithful performance of all the requirements of the Act, this chapter, and the requirements of the permit and reclamation plan;

(74) "permanent" as used for diversions or impoundments means a diversion or impoundment remaining after surface coal mining and reclamation operations are completed;

(75) "permanent facility" means any structure that is built, installed, or established to serve a particular purpose or any manipulation or modification of the surface that is designed to remain after reclamation is completed;

(76) "person having an interest which is or may be adversely affected or person with a valid legal interest" includes any person

(A) who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the commissioner, or

(B) whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the commissioner;

(77) "project" means an area with one or more abandoned mine land problems which are the subject of reclamation activity, construction which meets the requirements of 11 AAC 90.808(4) or 11 AAC 90.840(a)(3); and

(78) "property to be mined" means both the surface and mineral estates on and underneath land which is within the permit area;

(79) "prohibited interest" as used in 11 AAC 90.751 - 11 AAC 90.759, means any financial interest prohibited under AS 27.21.050;

(80) "public building" means any structure that is owned or leased by a public agency or used principally for public business, meetings, or other group gatherings;

(81) "public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours;

(82) "public park" means an area dedicated or designated by a federal, state, or municipal agency or native village for recreational use, whether or not such use is limited to certain times or days. It includes any land leased, reserved, or held open to the public because of that use;

(83) "public road" means any thoroughfare constructed or maintained with public funds which is open to the public for passage of motorized vehicles;

(84) "rangeland" means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage;

(85) "recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation;

(86) "reclamation" means those actions taken to restore mined land as required by this chapter to a postmining land use approved by the commissioner;

(87) "reclamation activity" means the reclamation, restoration, abatement, control, or prevention of adverse effects of past mining.

(88) "recurrence interval" means the interval of time in which precipitation event is expected to occur once on the average;

(89) "reference area" means a land unit which is representative of geology, soil, slope, and vegetation in the permit area and which is maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the commissioner;

(90) "renewable resource land" means aquifers and areas for the recharge of aquifers and other underground water, areas for agricultural or silvicultural production of food and fiber, and grazing land;

(91) "road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations, consisting of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure, and including access and haul roads, and roads used by coal-hauling vehicles leading to transfer, processing, or storage areas; however, the term "road" does not include a ramp or route of travel within the immediate mining area or within spoil or coal mine waste disposal areas;

(92) "runoff event" means the quantity of water expected as a result of all physical and meteorological conditions, expressed in terms of recurrence interval;

(93) "safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices;

(94) "secretary" means the Secretary of the United States Department of the Interior or the Secretary's representative;

(95) "sedimentation pond" means a primary sediment control structure including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out; "sedimentation pond" does not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment to the extent that these secondary sedimentation structures drain to a sedimentation pond;

(96) "shallow ground water" means that body of ground water, excluding the capillary fringe, that is not confined by an overlying impermeable zone;

(97) "slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance;

(98) "soil amendments" means any material that when added to the soil increases its ability to support plant growth by correcting deficiencies of either a physical or chemical origin;

(99) "soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface differentiated on the basis of field characteristics and laboratory data; the three major soil horizons are

(A) A horizon, or the uppermost mineral layer, often called the surface soil or topsoil which is the part of the soil in which organic matter is most abundant and leaching of soluble or suspended particles is typically the greatest;

(B) B horizon, or the layer that typically is immediately beneath the A horizon and often called the subsoil and which commonly contains more clay, iron, or aluminum than the A or C horizons; and

(C) C horizon, or the deepest layer of soil profile which consists of loose material or weathered rock that is relatively unaffected by biologic activity;

(100) "soil survey" means a field or other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets soils for use meeting the standards of the National Cooperative Soil Survey;

(101) "spoil" means overburden that has been removed during surface coal mining operations;

(102) "stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating;

(103) "steep slope" means any slope of more than 20 degrees or any lesser slope designated by the commissioner after consideration of soil, climate, and other characteristics of a region;

(104) "subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semi-saturated or saturated subsurface zone where water is available for use by vegetation; "subirrigation" may be identified by:

(A) diurnal fluctuation of the water table due to the differences in nighttime and daytime evapotranspiration rates;

(B) increasing soil moisture from a portion of the root zone down to the saturated zone due to capillary action;

(C) mottling of the soils in the root zones;

(D) existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or

(E) an increase in streamflow or a rise in ground water levels shortly after the first killing frost on the valley floor;

(105) "substantial disturbance" means an impact on land, air or water resources by activities such as

(A) blasting;

(B) mechanical excavation, excluding the use of light, portable field equipment;

(C) drilling or enlarging coal or water exploratory holes or wells; and

(D) construction of roads, structures, trails, aircraft landing and marine docking areas;

(106) "surety bond" means an indemnity agreement in a sum certain payable to the state, executed by the permittee as principal, and supported by the performance guarantee of a corporation licensed to do business as a surety in Alaska;

(107) "surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location;

(108) "surface operations and impacts incident to an underground coal mine" means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in AS 27.21.220 and surface coal mining operations;

(109) "suspended solids or non-filterable residue", expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses at 40 CFR 136;

(110) "temporary" as used for diversions or impoundments means a diversion of a stream or overland flow or an impoundment which is used during coal exploration or surface coal mining and reclamation operations and not approved as part of the approved postmining land use;

(111) "ton" means 2000 pounds avoirdupois (.90718 metric ton);

(112) "topsoil" means the A soil horizon layer of the three major soil horizons;

(113) "toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water;

(114) "toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it;

(115) "unconsolidated streamlaid deposits holding streams" means, with respect to alluvial valley floors, all flood plains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than 3 feet in bankfull width and greater than 0.5 feet in bankfull depth;

(116) "underground development waste" means waste rock or related materials, including coal, that are excavated, moved, and disposed of from underground workings in connection with underground mining activities;

(117) "underground mining activities" means a combination of

(A) surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(B) underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting;

(118) "undeveloped rangeland" means, for purposes of alluvial valley floors, land where the use is not specifically controlled and managed;

(119) "upland areas" means, with respect to alluvial valley floors, those geomorphic features located outside the flood plain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and

covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material;

(120) "valley fill" means a fill structure consisting of any material other than organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20 degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees;

(121) "water pollution" means degradation of water quality below that required by applicable state and federal water quality laws and regulations and this chapter;

(122) "water table" means the upper surface of a zone of saturation, excluding the capillary fringe, where the body of ground water is not confined by an overlying impermeable zone;

(124) "surface coal mining operations" under AS 27.21.998(17)(A) include leaching and other chemical and physical processing of coal whether or not performed on-site;

(125) "community or institutional building" means a structure, other than a public building or an occupied dwelling, that

(A) is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups;

(B) functions as an educational, cultural, historic, religious, scientific, correctional, mental health care, or physical health care facility; or

(C) is used for public services; in this subparagraph, "public services" includes water supply, power generation, and sewage treatment;

(126) "cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all

anticipated mining on surface water and ground water systems; in this paragraph; "anticipated mining" includes the entire projected lives through bond releases of

(A) the proposed operation;

(B) all existing operations;

(C) any operation for which a permit application has been submitted to the commissioner; and

(D) all operations required to meet diligent development requirements for leased federal coal, and for which actual mine development information is available; in this subparagraph, "leased federal coal" has the meaning given in 30 C.F.R. 740.5(a);

(127) "impounding structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semi-liquid material; (128) "other minerals" has the meaning given in AS 27.21.998;

(129) "other treatment facility" means any chemical treatment, such as flocculation or neutralization, or mechanical structure, such as a clarifier or precipitator, that has a point source discharge and is utilized

(A) to prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(B) to comply with all applicable federal water quality laws and regulations and with all applicable provisions of AS 46.03 and regulations in effect under that chapter;

(130) "precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, hail, or water emanating from snow cover as snowmelt in a set or specified period of time;

(131) "previously mined area" means land

(A) affected by surface coal mining operations that were conducted before August 3, 1977; and

(B) that has not been reclaimed to the standards of this chapter;

(132) "refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material;

(133) "registered professional engineer" means an individual with a valid certificate of registration issued under AS 08.48 and 12 AAC 36 as a professional engineer;

(134) "registered professional land surveyor" means an individual with a valid certificate of registration issued under AS 08.48 and 12 AAC 36 as a professional land surveyor;

(135) "siltation structure" means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

(136) "applicant violator system" means an automated information system of applicant, permittee, operator, violation, and related data the federal OSMRE maintains to assist in implementing Public Law 95-87 Surface Mining Control and Reclamation Act of 1977;

(137) "control" means the ability to determine how a surface coal mining operation is conducted;

(138) "controller" means a person who has the ability to determine how a surface coal mining operation is conducted, including a permittee or an operator of a surface coal mining operation;

(139) "knowing" or "knowingly" means that a person is aware or has reason to be aware of the result of an act or omission, including an act or omission the person

authorized, ordered, or carried out;

(140) “MSHA” means the Federal Mine Safety and Health Administration;

(142) “own” means to have possession of more than 50 percent of a business entity’s voting securities, stock certificate, or other instrument defining the relationship of a person to a business entity;

(143) “owner” means a person who owns a business entity;

(144) “ownership” means the state of owning a business entity;

(145) “transfer, assignment, or sale of permit rights” means a method of legally changing the permittee of a surface coal mining operation. (Eff. 5/2/83, Register 84; am 12/18/83, Register 88; am 11/18/94, Register 132; am 7/29/98, Register 147; am 4/24/09, Register 190; am/readopt ___/___/____, Register ___)

Authority: AS 27.21.030 AS 27.21.220 AS 27.21.270
AS 27.21.210

Editor's note: As of Register ___ (_____, 20___), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by readoption and amendment.

11 AAC 90 is amended by adding a new section to Article 18 to read:

11 AAC 90.913. Permit eligibility violations. (a) Violation, when used in the context of the permit application information or permit eligibility requirements of AS 27.21.110, AS 27.21.180, and related regulations, means

(1) a failure to comply with an applicable provision of a federal or state law or regulation pertaining to air or water environmental protection, as evidenced by a written

notification from a governmental entity to the responsible person; or

(2) a noncompliance for which the commissioner has provided one or more of the following types of notice

(A) a notice of violation under 11 AAC 90.615 of this chapter;

(B) a cessation order under 11 AAC 90.613 of this chapter;

(C) a final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under 11 AAC 90.625 or 11 AAC 90.635 of this chapter;

(D) a bill or demand letter pertaining to delinquent reclamation fees owed under 30 C.F.R part 870;

(E) a notice of bond forfeiture under 11 AC 90.213 of this chapter when

(i) one or more violations upon which the forfeiture was based have not been abated or corrected; or

(ii) the amount forfeited and collected is insufficient for full reclamation under 11 AAC 90.201 of this chapter, the regulatory authority orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order.

(b) “violation notice” means a written notification from the commissioner or another governmental entity, as specified in the definition of violation in this section. (Eff.

___ / ___ / ____, Register ___)