

Kevin Meyer
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
WWW.LTGOV.ALASKA.GOV



530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Angie Fraker
Department of Natural Resources

FROM: Kady Levale, Office of the Lieutenant Governor *KJ*
465.3509

DATE: June 7, 2022

RE: Filed Permanent Regulations: Department of Natural Resources

Department of Natural Resources regulations re: surface coal mining and reclamation
(11 AAC 90)

Attorney General File:	2021200340
Regulation Filed:	6/7/2022
Effective Date:	7/7/2022
Print:	243, October 2022

cc with enclosures: Joseph Felkl, Department of Law
Judy Herndon, LexisNexis
Russell Kirkham, Regulations Contact

ORDER ADOPTING CHANGES TO REGULATIONS
OF DEPARTMENT OF NATURAL RESOURCES

The attached 66 pages of regulations, dealing with 11 AAC 90, are adopted and certified to be a correct copy of the regulation changes that the Department of Natural Resources adopts under the authority of AS 38.05.020 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

Although no public comments were received, the Department of Natural Resources paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

Date: 5/25/22



Corri Feige, Commissioner
Alaska Department of Natural Resources

FILING CERTIFICATION

Kady Levale for
I, Kevin Meyer Lieutenant Governor for the State of Alaska, certify that on
June 7, 2022, at 10:21a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for Kady Levale

for Lieutenant Governor

Effective: July 1, 2022

Register: 24th October 2022

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



Kevin Meyer
.....

**KEVIN MEYER
LIEUTENANT GOVERNOR**

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;

(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, if applicable:

(1) the name, address, and telephone number of

(A) every officer, partner, member, and director;

(B) every other person performing a function similar to a director; and

(C) any person owning 10 percent or more of the applicant's or operator's stock;

(2) for each person listed in (1) of this subsection,

(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

(1) of this subsection 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 (1) of this subsection 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) of this section, or any person identified in (c)(3) 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 that 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 five 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 directed the forfeiture of 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, 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, 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, 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.

(i) In this section, "violation notice" means a written notification from the commissioner or another governmental entity of a violation within the meaning given in 11 AAC 90.913. (Eff. 5/2/83, Register 84; am 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.110

Editor's note: As of Register 243 (October, 2022), 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

(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 [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

(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

7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.110 AS 27.21.180

Editor's note: As of Register 243 (October, 2022), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative

Code (AAC) by readoption with additional amendments.

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 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 that are unabated or uncorrected after the abatement or correction period has expired.

(b) The commissioner will update the information entered under (a) of this section if the commissioner determines that the permit application needs additional information.

(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 or correction period expires;

(3) a change to the information required under 11 AAC 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 not later than 30 days after abatement, correction, or termination of a violation, or an administrative or judicial decision affecting a violation.

(d) 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. 7/7/2022, Register 243)

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

(2) that 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 one or more unabated or uncorrected violations, 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

(A) eligible for a provisional permit under 11 AAC 90.109; or

(B) permanently ineligible for a permit under (g) 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.

(e) When reviewing a permit application under 11 AAC 90.125, the commissioner will 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 that affect permit eligibility under this section.

(f) 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. The applicant may attempt to cure the violation before the commissioner finding the applicant permanently ineligible to receive a permit.

(g) The commissioner will 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 (f) 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 AAC 90.617(b); and

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

(h) Not later than 30 days after receiving notice of a preliminary finding of permanent

permit ineligibility, the applicant or operator may 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.

7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.180 AS 27.21.190
AS 27.21.140

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. The commissioner will base written preliminary finding under this subsection on evidence sufficient to establish a prima facie case of ownership or control. The commissioner will issue the finding to the applicant or permittee and to a person identified as an owner or controller. Not later than 30 days after the commissioner issues the finding, a person identified as an owner or controller under this subsection may submit information demonstrating the person's lack of ownership or control. 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. 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.180 AS 27.21.190

AS 27.21.140

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 are 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, that 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 referenced 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 decision referenced in (b)(3)(B) or (4) of this section affirms the validity of the violation or the ownership or control listing or finding. (Eff.

7/7/2022, Register 243)

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) Not later than 90 days after the date of receipt of the application, the commissioner will determine whether an application for a permit, renewal of a permit, or major revision of a permit is complete. A complete application is one that 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

Register 243, October 2022

NATURAL RESOURCES

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 - 11 AAC 90.033. (Eff. 5/2/83, Register 84; am/readopt 7 / 7 / 2022, Register 243)

Authority: AS 27.21.030 AS 27.21.180

Editor's note: As of Register 243 (October, 2022), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by readoption with additional amendments.

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. The application must include 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) A proposed successor must apply for a new permit or a major revision to the existing permit in order to make a change to

- (1) the approved permittee's operation or reclamation plan;
- (2) the insurance, bond, or equivalent guarantee; or
- (3) the approved permit area.

(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 90.104;

(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 will 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 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.190

Editor's note: As of Register 243 (October, 2022), 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 90.121 is repealed and further amended to read:

11 AAC 90.121. Areas where mining may be limited. (a) Subject to valid existing rights **and (b) – (d) of this section**, the commissioner will prohibit operations in accordance with AS 27.21.260(d) [, SUBJECT TO (b) - (d) OF THIS SECTION].

(b) **Subject to (e) of this section, if an applicant is seeking a permit within an area described in** [FOR OPERATIONS UNDER] AS 27.21.260(d)(2), the commissioner

(1) will transmit a copy of the complete application to the agency that has

jurisdiction over the **location at issue**; [PARK OR SITE] and

(2) will not approve the application unless it is approved by that agency.

(c) **For** [THE COMMISSIONER WILL NOT APPROVE AN APPLICATION FOR] an operation on land within 300 feet, measured horizontally, from any occupied dwelling, [UNLESS] the applicant **must submit** [SUBMITS] with the application a written, signed [,] waiver from the owner of the dwelling, stating that the owner had the legal right to deny mining and knowingly waived that right. The waiver acts as consent to conduct the operation within a closer distance to the dwelling as specified in the waiver. A waiver obtained before August 3, 1977, is valid. A waiver obtained from a previous owner remains effective for a subsequent owner who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser is considered to have constructive knowledge if the waiver has been recorded in the public property records under state law. The waiver must be separate from a lease or deed unless

(1) the lease or deed contains an explicit waiver; and

(2) a copy of the lease or deed is included with the permit application.

(d) The commissioner **may** [WILL, IN HIS OR HER DISCRETION,] approve relocation of a public road or operations on land within 100 feet, measured horizontally, of the outside right-of-way of any public road, except where mine access roads or haulage roads join the right-of-way, if [THE COMMISSIONER]

(1) [REQUIRES] the applicant **obtains the** [TO OBTAIN ANY] necessary approval of the governmental authority with jurisdiction over the public road; **and**

(2) **the commissioner** provides [OPPORTUNITY, AFTER APPROPRIATE]

notice for the local community to comment on [, FOR A PUBLIC HEARING IN THE LOCALITY OF] the proposed operations **to determine** [FOR THE PURPOSE OF DETERMINING] whether the interests of the public and affected landowners will be protected; and

(A) includes in the notice the date, time, and location for a public hearing and makes a written finding on this issue not later than 30 days after the hearing; or

(B) after taking written public comments, [(3)] makes a written finding not later than [WITHIN] 30 days after hearing, or at the end of the public comment period [IF NO HEARING IS HELD, THAT THE INTERESTS OF THE PUBLIC AND AFFECTED LANDOWNERS WILL BE PROTECTED].

(e) If the commissioner is unable to determine whether the proposed operation is located within land identified in AS 27.21.260(d) **for the purpose of complying with (b) of this section**, the commissioner will transmit a copy of the relevant portions of the application to the appropriate federal, state, or municipal agency or Native corporation or village for a determination of the relevant boundaries or distances, with a request that it respond, in writing, **not later than [WITHIN] 30 days after receipt of the request**. The commissioner will presume that the proposed operation is not located within the boundaries of this land if no response is returned within 30 days. **If the commissioner is notified that AS 27.21.260(d) applies after the 30-day period, the presumption no longer applies** [THIS PRESUMPTION IS NOT CONCLUSIVE IF THE COMMISSIONER IS NOTIFIED DURING THE REVIEW OF THE APPLICATION THAT THE PROPOSED OPERATION IS WITHIN A PROTECTED AREA].

Register 243, October 2022

NATURAL RESOURCES

(Eff. 5/2/83, Register 84; am 11/18/94, Register 132; am/readopt 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.260 AS 27.21.960

Editor's note: As of Register 243 (October, 2022), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by readoption with additional amendments.

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

11 AAC 90.122. Areas designated by acts of Congress. Coal mining and reclamation operations may not be conducted on the following lands unless there are valid existing rights, as determined under 11 AAC 90.139, or where valid existing rights determinations for land are not required because an existing operation meets the requirements of 11 AAC 90.123:

(1) any lands protected under AS 27.21.260(d);

(2) any federal lands within a national forest; this prohibition does not apply if the United States Secretary of Agriculture

(A) finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations; and

(B) finds, in addition, that

(i) any surface operations and impacts will be incidental to an underground coal mine; or

(ii) with respect to lands that do not have significant forest cover within a national forest west of the 100th meridian, that surface mining is in

compliance with 16 U.S.C. 528 - 531 (Multiple-Use Sustained Yield Act of 1960), 30 U.S.C. 201 - 209 (Federal Coal Leasing Amendments Act of 1975), and 16 U.S.C. 1600 - 1614 (National Forest Management Act of 1976), and 30 U.S.C. 1201 - 1328 (Surface Mining Control and Reclamation Act of 1977). (Eff.

7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.260

11 AAC 90.123 is repealed and readopted to read:

11 AAC 90.123. Valid existing rights. (a) Possession of a valid existing right only confers an exception from the prohibitions of AS 27.21.260, 11 AAC 90.121, and 30 U.S.C. 1272(e). A person seeking to exercise a valid existing right must comply with all other pertinent requirements of AS 27.21 and this chapter.

(b) Except as provided in this section, a person claiming a valid existing right must demonstrate that a legally binding conveyance, lease, deed, contract or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operation intended. This right must exist at the time that the land came under the protection of AS 27.21.260 or 11 AAC 90.121. State law will govern the interpretation of a document relied upon to establish a property right, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the document came into existence will govern the interpretation.

(c) Except as provided in (f) of this section, a person claiming a valid existing right must demonstrate compliance with one of the following:

(1) before the land came under the protection of AS 27.21.260 or 11 AAC 90.121, the person obtained all necessary permits and authorizations required to conduct surface coal mining operations or made a good-faith effort to obtain all necessary permits and authorizations; at a minimum, the person must have submitted an application for at least one permit required under 11 AAC 90.007; or

(2) the land is needed for and immediately adjacent to a surface coal mining operation, before the land came under the protection of AS 27.21.260 or 11 AAC 90.121 the person obtained all necessary permits and authorizations required to conduct surface coal mining operations, or made a good-faith attempt to obtain all permits and authorizations, and the person successfully demonstrates need under (d) of this section.

(d) A person claiming the land is needed for and immediately adjacent to a surface coal mining operation under (c)(2) of this section must demonstrate that prohibiting expansion of the operation onto the adjacent land would unfairly impact the viability of the operation as planned before the land came under the protection of AS 27.21.260 or 11 AAC 90.121. Except for operations in existence before August 3, 1977, or for which a good-faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of AS 27.21.260 or 11 AAC 90.121 when the regulatory authority approved the permit for the original operation or when the good-faith effort to obtain all necessary permits for the original operation was made.

(e) In evaluating whether a person meets this standard under (d) of this section, the commissioner in making this determination may consider

(1) the extent to which a coal supply contract or other legal or business

commitment that predates the time that the land came under the protection of AS 27.21.260 or 11 AAC 90.121 depend upon use of that land for a surface coal mining operation;

(2) the extent to which a plan used to obtain financing for the operation before the land came under the protection of AS 27.21.260 or 11 AAC 90.121 relies upon use of that land for a surface coal mining operation;

(3) the extent to which investments in the operation before the land came under the protection of AS 27.21.260 or 11 AAC 90.121 rely upon use of that land for surface coal mining operations; and

(4) whether the land lies within the area identified on the life-of-mine map submitted under 11 AAC 90.021(f) or 11 AAC 90.063(3) before the land came under the protection of AS 27.21.260 or 11 AAC 90.121.

(f) A person who claims a valid existing right to use or construct a road meeting the definition of "surface mining activities" in 11 AAC 90.911 across the surface of land protected by AS 27.21.260 or 11 AAC 90.121 and the road must demonstrate that one or more of the following circumstances exist:

(1) the road existed when the land upon which it is located came under the protection of AS 27.21.260 or 11 AAC 90.121 and the person has a legal right to use the road for surface coal mining activities;

(2) a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of AS 27.21.260 or 11 AAC 90.121 and the person has a legal right to use or construct a road across the right-of-way or easement for surface coal mining activities under the document creating subsequent conveyances;

(3) a valid permit for use or construction of a road for surface coal mining operations in that location existed when the land came under the protection of AS 27.21.260 or 11 AAC 90.121; or

(4) the land protected by AS 27.21.260 or 11 AAC 90.121 has a valid existing right that exists under (a) and (b) of this section. (Eff. 5/2/83, Register 84; am 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.260

Editor's note: As of Register 243 (October, 2022), 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 is amended by adding a new section to read:

11 AAC 90.124. Processing a request for valid existing rights. (a) A person seeking a valid existing rights determination for federal lands described in AS 27.21.260(d)(1) or for national forests must submit the request directly to the United States Secretary of the Interior. Requests for determinations on non-federal lands may be submitted to the commissioner.

(b) When the commissioner makes a valid existing rights determination on non-federal lands the procedures under (c) - (h) of this section apply.

(c) The applicant or permittee must submit a request for a valid existing rights determination to the department if the applicant or permittee intends to conduct surface coal mining operations on the basis of a valid existing right under 11 AAC 90.121 or is seeking to

confirm the right to do so. A person may submit a request for a valid existing rights determination before preparing and submitting an application for a permit or boundary revision for the land. A person submitting a request for a valid existing rights determination under 11 AAC 90.123(c) and this section must provide

(1) a property rights demonstration under 11 AAC 90.123(c)(1) if the person successfully obtained all permits and authorizations required to conduct surface coal mining on the land or under 11 AAC 90.123(c)(2) if the person successfully obtained all permits and authorizations to conduct surface coal mining on immediately adjacent land and the land is needed for the use of the permitted property; this demonstration must include the following items:

- (A) a legal description of the land at issue;
- (B) complete documentation of the character and extent of the current interests in the surface and mineral estates of the land at issue;
- (C) a complete chain of title for the surface and mineral estates of the land to which the request pertains;
- (D) a description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;
- (E) a description of the type and extent of surface coal mining operations that the applicant or permittee claims the right to conduct under previous authorizations, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with state property law;

(F) complete documentation of the nature and ownership, as of the date that the land came under the protection of AS 27.21.260 and 11 AAC 90.121, of all property rights for the surface and mineral estates of the land to which the request pertains;

(G) names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

(H) if the coal interests have been severed from other property interests, documentation that the owners of other property interests in the land to which the request pertains have been notified and provided reasonable opportunity to comment on the validity of the applicant's or permittee's property rights claims; and

(I) any comments received in response to the notification provided under (H) of this paragraph;

(2) for a request under 11 AAC 90.123(c), when a person made a good-faith effort to obtain all necessary permits and authorizations, the information required under (1) of this subsection and

(A) the approval and issuance dates and identification number for a permit, license, or authorization that the applicant, permittee, or predecessor in interest obtained before the land came under the protection of statute;

(B) the application date and identification number for a permit, license, or authorization for which the applicant, permittee, or predecessor in interest submitted an application before the land came under the protection of statute; and

(C) an explanation of other good-faith effort that the applicant, permittee,

or predecessor in interest made to obtain the necessary permit, license, or authorization as of the date that the land came under the protection of AS 27.21.260 and 11 AAC 90.121;

(3) for a request under 11 AAC 90.123(c)(2), when the land is needed for and immediately adjacent to a surface coal mining operation, the information required under (1) of this subsection and an explanation regarding how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of statute; or

(4) for a request under 11 AAC 90.123(e) relating to road use or construction, satisfactory documentation showing that

(A) a road existed when the land upon which it is located came under the protection of AS 27.21.260 and the applicant or permittee has a legal right to use the road for a surface coal mining operation;

(B) a properly recorded right-of-way or easement for a road in the location existed when the land came under the protection of statute, and, under the document creating the right-of-way or easement and under any subsequent conveyances, the applicant or permittee has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or

(C) a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of 11 AAC 90.121 or 11 AAC 90.122.

(d) For an initial review of a request for a valid existing rights determination, the commissioner will first determine whether the request includes all applicable components required under (c) of this section. An initial review pertains only to the completeness of the request, not to the legal or technical adequacy of the materials submitted. If the commissioner determines that the request does not include all applicable components required under (c) of this section, the commissioner will provide notice to the physical or electronic address provided of the deficiency to the applicant and establish a reasonable time for the applicant to submit the missing information. The commissioner may extend the time to submit missing information as is reasonably necessary. Once a request includes all applicable components under (c) of this section, the commissioner will provide for public notice and comment under (e) of this section. If an applicant does not provide the information that the commissioner requests under this subsection within the time specified or as subsequently extended, the commissioner will issue a determination that the applicant or permittee has not demonstrated a valid existing right, as provided in (e)(4) of this section.

(e) The commissioner will make a completed request available to the public in accordance with 11 AAC 90.907(b) and provide notice of the request as provided in 11 AAC 90.907(d), including at least one publication in a newspaper general circulation in the area in which the land is located. The public notice must include

- (1) a physical or electronic mail address to submit comment on the request;
- (2) the location of the land to which the request pertains;
- (3) a description of the type of surface coal mining operations planned;
- (4) a reference to and brief description of the applicable standards pertaining to a

valid existing right in 11 AAC 90.123 and,

(A) if the request relies on 11 AAC 90.123(c)(1) or (2), a description of the property rights that are claimed and the basis for the claim;

(B) if the request relies on 11 AAC 90.123(f)(1), a description of the basis for the applicant's or permittee's claim that the road existed when the land came under the protection of statute and a description of the basis for the applicant's or permittee's claim that it has a legal right to use that road for surface coal mining operations; or

(C) if the request relies on 11 AAC 90.123(f)(2), a description of the basis for the claim that a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of statute and a description of the basis for the claim that, under the document creating the right-of-way or easement and under any subsequent conveyances, the applicant or permittee has a legal right to use or construct a road across the right-of-way or easement to conduct surface coal mining operations;

(5) if the request relies upon 11 AAC 90.123(c) or (f)(1) or (2), a statement that the commissioner will not make a decision on the merits of the request if, by the close of the comment period under this notice, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other document that forms the basis of the applicant or permittee's claim;

(6) a description of the procedures in this section that the commissioner will follow in processing the request;

- (7) the closing date of the comment period;
- (8) a statement that an interested persons may obtain a 30-day extension of the comment period upon request; and
- (9) the name and address of the department's office where a copy of the request is available for public inspection.

(f) The commissioner will promptly provide a copy of the notice required under (e) of this section to

(1) all owners of surface and mineral estates in the land included in the request who the commissioner can reasonably locate; and

(2) the owner of the land or feature causing the land to come under the protection of AS 27.21.260, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of statute.

(g) The commissioner will provide a 30-day comment period, starting from the date of service of the notice. The commissioner may grant an additional 30-day comment period for good cause upon request.

(h) The commissioner will review the materials submitted under (c) of this section, comments received under (e) of this section, and any other relevant, reasonably available information to determine whether the record is sufficiently complete to support a decision on the merits of the request. If not, the commissioner will notify the applicant or permittee in writing and request that the applicant or permittee submit, within a specified reasonable time, any additional information that the commissioner determines necessary.

(i) Once the record is complete, the commissioner will make a determination, in writing,

as to whether the applicant or permittee has demonstrated a valid existing right. The commissioner will include findings of fact and explain how the applicable elements of 11 AAC 90.123 are or are not satisfied. The commissioner will not determine that a valid existing right exists if the commissioner has not received information that the commissioner requested under (d) or (h) of this section within the time specified or as subsequently extended.

(j) When making a determination under (i) of this section that relies on one or more of the reasons in 11 AAC 90.123(c) or (f)(1) or (2), the commissioner will consider impact of a property rights disagreement, as follows:

(1) if a property rights claim is the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question, on or before the close of the comment period, the commissioner will issue a determination that

(A) the applicant or permittee has not demonstrated a valid existing right because the property rights are the subject of pending litigation; and

(B) this determination is made without prejudice and the applicant or permittee may refile the request once the property rights dispute is finally adjudicated; and

(2) if a disagreement about a property right is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the commissioner will

(A) evaluate the merits of the information in the record;

(B) determine whether the applicant or permittee has demonstrated that the requisite property rights exist under 11 AAC 90.123; and

(C) issue a written decision in accordance with (i) of this section.

- (k) After making a determination of a valid existing right, the commissioner will
- (1) provide a copy of the determination, together with an explanation of appeal rights and procedures,
 - (A) to the applicant or permittee;
 - (B) to the owner or owners of the land to which the determination applies;
 - (C) to the owner of the feature causing the land to come under the protection of statute; and
 - (D) when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of statute; and
 - (2) publish notice of the determination in a newspaper of general circulation in the area which the land is located.
- (l) A determination by the commissioner that an applicant or permittee has or does not have valid existing rights is a final decision subject to administrative and judicial review under AS 27.21.150.
- (m) The commissioner will make a copy of all records associated with a request for a valid existing right subject to notice and comment under (e) of this section, available to the public in the same manner as the department must make permit applications available to the public under AS 27.21.100. (Eff. 7 / 7 / 2022, Register 243)

Authority: AS 27.21.030 AS 27.21.260

11 AAC 90.125(a) is amended by adding a new paragraph to read:

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

11 AAC 90.125 is amended by adding a new subsection to read:

(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 that affect permit eligibility under 11 AAC 90.104. (Eff. 5/2/83, Register 84; am 11/18/94, Register 132; am/readopt 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.180

Editor's note: As of Register 243 (October, 2022), this section is transferred from material adopted by reference in 11 AAC 90.001(a) to the Alaska Administrative Code (AAC) by readoption with additional amendments.

11 AAC 90.127 is repealed and readopted to read:

11 AAC 90.127. Permit conditions. In a permit that the commissioner issues, the commissioner will include the following conditions requiring the permittee to

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

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

(4) 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) 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) 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, a person whose health and safety is in imminent danger due to the noncompliance;

(6) pay all reclamation fees required by 30 C.F.R. Part 870 for all coal produced under this permit; and

(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

7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.180

Editor's note: As of Register 243 (October, 2022), 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 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 currently owns or controls, or owned or controlled, a surface coal mining and reclamation operation that 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 that 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) a provisional permit meets one of the criteria listed in 11 AAC 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 30 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.

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), finds that a permit was improvidently issued under the criteria in 11 AAC 90.134(a); or

(2) after review of a provisional permit issued under 11 AAC 90.109, finds that one or more of the conditions listed in 11 AAC 90.109(c)(1) - (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(c), 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 owns or controls 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(c). If a permittee requests 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(c) unless the person obtains a stay for temporary relief. (Eff. 7/7/2022, Register 243)

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(c) 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. 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.190 AS 27.21.240
AS 27.21.150

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 becomes 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 AS 40.25.100 - 40.25.295 (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. 7/7/2022, Register 243)

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 that the applicant or operator will take to meet the reclamation requirements under this chapter. (Eff. 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.110 AS 27.21.210

11 AAC 90.163 is repealed and readopted to read:

11 AAC 90.163. Exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for surface coal mining. (a) A person who intends to

conduct coal exploration that will substantially disturb the natural land surface or that will take place in an area designated unsuitable for surface mining under AS 27.21.260 or 11 AAC 90.121 shall file an application in the format required by 11 AAC 90.021. The application must include

(1) the information required under 11 AAC 90.161(a)(1), (2), and (5);

(2) an exploration and reclamation plan of operations, that includes

(A) a brief description of the proposed area, cross-referenced to the map required under (4) of this subsection, including available information on

(i) surface topography;

(ii) geologic, surface water, and other physical features;

(iii) vegetative cover; and

(iv) important habitat for fish, wildlife, and plants, including any endangered or threatened species listed under 16 U.S.C. 1531 - 1543 (Endangered Species Act of 1973);

(B) a description of known cultural or historic resources listed or eligible for listing on the National Register of Historic Places (54 U.S.C. 302101 - 302108) and known archaeological features within the proposed exploration area; the commissioner may require additional information regarding known or unknown historic or archeological resources if these resources are likely to be affected by activities under this section;

(C) a description of the methods to be used to conduct coal exploration and reclamation, including types and uses of equipment, drilling, blasting, road or other transportation facility construction, and earth and debris disposal areas;

(D) an estimated timetable for each phase of exploration and reclamation;
(E) the estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;

(F) the documentation required under (b) of this section if the applicant proposes to remove more than 250 tons of coal; and

(G) a description of how the exploration activities will comply with 11 AAC 90.167;

(3) the names and addresses of all owners and leaseholders of record of the surface land and the mineral estate in the area to be explored;

(4) a map of the 1:63,360 scale series enlarged at least 2.5 times showing, based on available information, the area to be disturbed by the proposed exploration and reclamation activities, including

(A) existing roads, structures, pipelines, and the proposed location of trenches, roads, rights-of-way, and other access routes

(B) land excavations to be conducted;

(C) water or coal exploratory holes and wells to be drilled or altered;

(D) earth or debris disposal areas;

(E) bodies of water;

(F) historic, archeological and cultural features;

(G) topographic and drainage features; and

(H) the habitats of endangered or threatened species identified in

(2)(A)(iv) of this subsection;

(5) a statement as to whether coal exploration is proposed for lands under the protection of AS 27.21.260 or 11 AAC 90.121, and a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities are designed to minimize interference with the values for which those lands were designated as unsuitable for coal mining and reclamation operations; and

(6) documentation of consultation with the owner, agency, or both about a feature causing the land to come under the protection of AS 27.21.260(d) and 11 AAC 90.121, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of AS 27.21.260(d) or 11 AAC 90.121.

(b) The commissioner may approve an exploration permit to extract more than 250 tons of coal under an exploration permit only if the applicant

(1) demonstrates that coal testing is necessary for the development of a surface coal mining and reclamation operation for which a permit application will be submitted in the near future;

(2) demonstrates that any sale or commercial use of the coal is for testing purposes only; the commissioner will

(A) determine under 11 AAC 90.002(b) whether the commercial use or sale is to test coal for an operation; and

(B) base a determination that a permit is not required on a demonstration by the applicant that includes the information required under this subsection and

(i) evidence that sufficient coal reserves are available to demonstrate that the amount of coal to be removed is not the total reserve, but is a

sampling of a larger reserve; and

(ii) an explanation of why other means of exploration are not adequate to determine the quality of the coal or the feasibility of developing a surface coal mining operation;

(3) demonstrates that the amount of coal proposed to be extracted is the minimum necessary for testing;

(4) provides the location where the coal will be tested;

(5) provides the name of the testing firm;

(6) provides a statement from the testing firm, the intended end user of the coal, or, if applicable, the agent or broker handling the transaction, that describes

(A) the specific tests that will be conducted and the amount of coal necessary for these tests; and

(B) the reason for testing, including, if applicable, that the coal may differ from the user's other coal supplies;

(7) submitting evidence that sufficient reserves of coal are available to the applicant for future commercial use or sale to the intended end user to demonstrate that the amount of coal to be removed is a sample of a larger reserve and not the total reserve; and

(8) providing an explanation of why other means of exploration are not adequate to determine the quality of the coal or the feasibility of developing a surface coal mining operation.

(c) On any lands protected under AS 27.21.260 or 11 AAC 90.121, the commissioner will authorize surface coal mining activities only upon a finding that exploration activities will

be conducted to minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the commissioner will provide a reasonable opportunity for the owner of, and, when applicable, the agency with primary jurisdiction over, the feature causing the land to come under the protection of AS 27.21.260, to comment on whether the finding is appropriate. (Eff. 5/2/83, Register 84; am 11/18/94, Register 132; am 7/29/98, Register 147; am 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.200

Editor's note: As of Register 243 (October, 2022), 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 90.613 is repealed and readopted to read:

11 AAC 90.613. Cessation orders. (a) The commissioner will immediately issue a cessation order to the permittee or operator of exploration activities, of surface coal mining and reclamation operations, or of the relevant portion of an operation if the commissioner finds, on the basis of an inspection,

(1) a condition or practice of an exploration activity or surface coal mining and reclamation operation that

- (A) creates an imminent danger to the health or safety of the public; or
- (B) causes, or is reasonably expected to cause, significant imminent

environmental harm to land, air, or water resources; or

(2) a violation of AS 27.21, this chapter, or a condition of an exploration approval or permit imposed under AS 27.21 or this chapter that

(A) creates an imminent danger to the health or safety of the public; or

(B) causes, 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 as quickly as possible, the commissioner will impose affirmative obligations on the person to whom the cessation order is issued to abate the condition, practice, or violation. In the order document, the commissioner will specify the affirmative obligations that are in addition to the cessation order, and will specify the time by which abatement must be accomplished.

(c) An exploration activity or surface coal mining and reclamation operation conducted without a valid approval or permit constitutes a condition or practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, unless the activity or operation is an integral, uninterrupted extension of previously approved activities or operations and the person conducting the activity or operation has filed a timely and complete application for an approval or permit to conduct the activity or operation.

(d) The commissioner will immediately order the cessation of coal exploration, of a surface coal mining and reclamation operation, or of the relevant portion of that operation when a notice of violation has been issued under 11 AAC 90.615 and the person to whom the notice 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 must be in writing, be signed by the commissioner, and set out 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 the order applies; and

(5) that the right to an informal conference on the order will be considered waived unless a conference is requested not later than 30 days after service of the order.

(f) A cessation order under this section remains in effect until

- (1) the condition, practice, or violation is abated;
- (2) the commissioner vacates, modifies, or terminates the order in writing; or
- (3) the order expires under AS 27.21.240(h).

(g) A reclamation operation and other activity 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 may modify, terminate, or vacate a cessation order for good cause and extend the time for abatement if failure to abate within the set time is not caused by lack of diligence on the part of the person to whom the order was issued.

(i) The commissioner will terminate a cessation order, by written notice to the person to whom the order was issued, when the commissioner 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 this section, the permittee or operator shall submit changes or updates to the information submitted under 11 AAC 90.023. If no changes or updates are required, the permittee or operator shall submit a statement that no changes are required. A permittee or operator 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

(1) has been listed or identified under 11 AAC 90.023 by the applicant, permittee, or commissioner; and

(2) is an owner or controller of the operation. (Eff. 5/2/83, Register 84; am 7/17/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.240

Editor's note: As of Register 243 (October , 2022), 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 90.617 is repealed and readopted to read:

11 AAC 90.617. Pattern of violations of AS 27.21 or the term of a permit. (a) Upon a

finding that a pattern of violations exists under AS 27.21.240(f), the commissioner will issue the permittee a notice of violation and an order described in AS 27.21.240(f) to show cause. For the purpose of AS 27.21.240(f) and this subsection,

(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;

(2) a violation is unwarranted if the failure of the permittee to prevent the occurrence of a violation of a permit or a requirement of AS 27.21 or this chapter is due to indifference, lack of diligence, or lack of reasonable care, or if the failure to abate a violation of the permit or a requirement of AS 27.21 or this chapter is due to indifference, lack of diligence, or lack of reasonable care; the commissioner will attribute a violation by an operator on behalf of the permittee to the permittee unless the permittee establishes that the operator committed an act of deliberate sabotage.

(b) The commissioner may 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 AS 27.21, this chapter, or the permit;

(2) the number of violations, cited on more than one occasion, of different

requirements of AS 27.21, 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 AS 27.21, 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, the commissioner will issue an order under (a) of this section.

(d) The commissioner may decline to issue a show cause order or vacate an outstanding show cause order if the commissioner 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 commissioner will fully explain and document the basis for this finding in the records of the case.

(e) After issuance of an order under this section and if the permittee requests a hearing under AS 27.21.240(f), the commissioner will provide notice in accordance with AS 27.21.240(g) and 11 AAC 90.907(d), including a brief statement of the procedure for any known interested persons to intervene in the public hearing.

(f) Following issuance of a show cause order and at the request of the person to whom the order was issued, 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 other persons who requested a hearing under AS 27.21.240(c). The hearing is subject to AS 44.62.330 - 44.62.630.

(g) Not later than 60 days after the hearing or issuance of the order to show cause, the

commissioner will issue a written decision, order, and the reasons for both, in accordance with AS 27.21.240(g) concerning the suspension or revocation of the permit. If the commissioner suspends or revokes the permit, the permittee shall immediately cease operations and complete the reclamation as required under AS 27.21.240(g). Additionally, if the commissioner suspends the permit, the permittee shall 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 under AS 27.21.240(a) or (b) 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 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.240

Editor's note: As of Register 243 (October, 2022), 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 90.625 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 \$0 value, moderate hazard assigned a \$75 value, and severe hazard assigned a \$150 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 on 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) 12, 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, with a

(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 that the commissioner normally incurs. (Eff. 5/2/83, Register 84; am 9/28/86, Register 99; am 7 / 7 / 2022, Register 243)

Authority: AS 27.21.030 AS 27.21.240 AS 27.21.250

Editor's note: As of Register 243 (October , 2022), 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 90.635 is repealed and readopted to read:

11 AAC 90.635. Civil penalty against a director, officer, or agent of a corporate permittee. (a) Under the circumstances set out in (b)(1) and (2) of this section for a violation by a permittee that is a corporation, the commissioner may assess a civil penalty against a director, officer, or agent of the corporate permittee, if the director, officer, or agent knowingly and willfully authorized, ordered, or carried out a violation of AS 27.21, this chapter, or a permit

condition.

(b) The commissioner will not assess a civil penalty under (a) of this section in situation resulting from a violation by a corporate permittee unless

(1) the commissioner issues a cessation order to the corporate permittee for a violation; and

(2) the violation remains unabated for at least 30 days after issuance of the cessation order. (Eff. 4/24/2009, Register 190; am 7 / 7 / 2022, Register 243)

Authority: AS 27.21.030 AS 27.21.250

Editor's note: As of Register 243 (October, 2022), 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 repealed and readopted to read:

11 AAC 90.637. Amount of civil penalty against a director, officer, or agent of a corporate permittee. (a) In determining the amount of a civil penalty assessed against a director, officer, or agent of a corporate permittee under AS 27.21.250(a) and 11 AAC 90.635, in addition to the penalty assessed under AS 27.21.250(h), the commissioner will consider

(1) the director's, officer's, or agent'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

(A) the extent of damage;

- (B) the anticipated cost of reclamation
 - (C) whether irreparable damage to the environment occurred;
 - (D) the extent that the violation, failure, or refusal has created a hazard to public health or safety; and
 - (E) the seriousness of any hazard that has been created to public health or safety;
- (3) the extent to which the director's, officer's, or agent's negligence, rather than knowing and willful conduct, resulted in the violation, failure, or refusal; and
- (4) the demonstrated good faith of the director, officer, or agent 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 civil penalty against a director, officer, or agent of a corporate permittee under AS 27.21.250(a) and 11 AAC 90.635, in addition to the penalty assessed under AS 27.21.250(h), for each day the violation, failure, or refusal 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

Register 243, October 2022

NATURAL RESOURCES

incorporated in a decision issued under AS 27.21.250(c). (Eff. 4/24/2009, Register 190; am

717 / 2002, Register 243)

Authority: AS 27.21.030 AS 27.21.250

Editor's note: As of Register 243 (October , 2022), 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 90.639 is repealed and readopted to read:

11 AAC 90.639. Procedure for assessment of civil penalty against a director, officer, or agent of a corporate permittee. (a) If assessing a civil penalty against a director, officer, or agent of a corporate permittee under AS 27.21.250(a) and 11 AAC 90.635, in addition to the penalty assessed under AS 27.21.250(h), the commissioner will serve a notice of the proposed civil penalty assessment on each director, officer, or agent to be assessed. In the notice, the commissioner will include a narrative explanation of the reasons for the penalty, the amount of the proposed assessment, and a copy of any underlying notice of violation and cessation order.

(b) The notice of proposed civil penalty assessment becomes a final decision of the commissioner 30 days after service upon the director, officer, or agent unless

(1) the director, officer, or agent contests the amount of the penalty or the fact of the violation, in accordance with AS 27.21.250(b); or

(2) the director, officer, or agent, or the responsible corporate permittee agree with the commissioner in writing to a plan and schedule for the abatement or correction of the

violation.

(c) For purposes of this section, the commissioner will perform service by certified mail or in person. Service is complete upon mailing or personal service. The commissioner will not consider service to be incomplete because of refusal to accept. (Eff. 4/24/2009, Register 190; am 7/17/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.250

Editor's note: As of Register 243 (October , 20 22), 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 90.641 is repealed and readopted to read:

11 AAC 90.641. Payment of penalty assessed against a director, officer, or agent of a corporate permittee. (a) Except as provided in (b) and (c) of this section, a director, officer, or agent of a corporate permittee shall pay in full a civil penalty not later than 30 days after service of a notice under 11 AAC 90.639 of a proposed civil penalty assessment.

(b) If the director, officer, or agent named in a notice of proposed civil penalty assessment contests the amount of the penalty or the violation in accordance with AS 27.21.250(b) and 11 AAC 90.639(b), the penalty is due not later than 30 days after the commissioner issues a final written decision affirming, increasing, or decreasing the proposed penalty.

(c) If the director, officer, or agent, or the responsible corporate permittee agree with the

commissioner in writing to a plan and schedule for the abatement or correction of the violation, and the abatement or correction is not satisfactory, the penalty is due not later than 30 days after the commissioner issues a final written decision affirming, increasing, or decreasing the proposed penalty.

(d) If a director, officer, or agent who is assessed a penalty as set out in 11 AAC 90.635 - 11 AAC 90.639 fails to pay an overdue penalty, the commissioner may

- (1) request that the attorney general initiate litigation to recover the penalty;
- (2) report the failure to the United States Internal Revenue Service;
- (3) report the failure to the Department of Revenue;
- (4) report the failure to credit bureaus; or
- (5) refer the debt to collection agencies. (Eff. 4/24/2009, Register 190; am

7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.250

Editor's note: As of Register 243 (October , 2022), 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 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

Register 243, October 2022

NATURAL RESOURCES

results of the inspection or investigation and request that the attorney general pursue criminal prosecution against the person. (Eff. 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.250

11 AAC 90.645. Civil actions for relief. (a) The commissioner is not required to issue a notice of violation or a cessation order before 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 violation, interference, or unlawful refusal under AS 27.21.240(j)(1) - (4). (Eff. 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.250

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

11 AAC 90.898. Contractor eligibility. The commissioner will not authorize the dispersal of money from the abandoned mine reclamation fund (30 U.S.C. 1231) 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 (c). (Eff. 7/7/2022, Register 243)

Authority: AS 27.21.030

AS 27.21.270

11 AAC 90.911(68) is amended to read:

(68) **"OSMRE" or "OSM"** means the **United States Department of Interior,**

[FEDERAL] Office of Surface Mining Reclamation and Enforcement;

11 AAC 90.911 is amended by adding new paragraphs to read:

(136) "applicant violator system" means the automated information system of applicant, permittee, operator, violation, and related data that OSMRE maintains to assist in implementing 30 U.S.C. 1201 - 1328 (P.L. 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) "department" means the Department of Natural Resources;

(140) "MSHA" means the United States Department of Labor, Mine Safety and Health Administration;

(141) "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;

(142) "owner" means a person who owns a business entity;

(143) "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;

(146) "valid existing right" means a set of circumstances under which a person may, subject to regulatory authority approval, conduct a surface coal mining operation on land where AS 27.21.260 or 11 AAC 90.121 would otherwise prohibit such an 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 4/24/2009 [09], Register 190; am 7 / 7 / 2022, Register 243)

Authority: AS 27.21.030 AS 27.21.220 AS 27.21.270
AS 27.21.210

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

11 AAC 90.913. Permit eligibility violations. 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, a violation is

(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) an act of 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;

(B) a cessation order under 11 AAC 90.613;

(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;

(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 if

(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, the regulatory authority orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order. (Eff. 7/7/2022, Register 243)

Authority: AS 27.21.030 AS 27.21.220 AS 27.21.270
AS 27.21.210