

LOUISIANA SURFACE MINING AND RECLAMATION ACT

August 15, 2008

DEPARTMENT OF NATURAL RESOURCES

Office of Conservation



JAMES H. WELSH, Commissioner of Conservation

Injection and Mining Division

JOSEPH S. BALL, JR., Director

Surface Mining Section

DALE BERGQUIST, Geologist Supervisor

Table of Contents

Chapter 9. Surface Mining and Reclamation Act

§901. Short title 1
§902. Declaration of policy 1
§903. Purposes..... 2
§904. Definitions 2
§905. Jurisdiction and powers; rules and regulations 4
§905.1. Abandoned mine reclamation; fund participation..... 6
§905.2. Reclamation Plan 7
§905.3. Implementation of the plan 7
§905.4. Exclusion and exemption of water resources..... 9
§906. Mining permits 10
§906.1. Surface mining and reclamation fees..... 11
§906.2. Collection of surface mining and reclamation regulatory fees 11
§906.3. Department of Revenue; surface mining and reclamation fees..... 11
§907. Application requirements..... 12
§908. Reclamation plan requirements 15
§909. Performance bonds 17
§910. Permit approval or denial..... 17
§911. Revision of permits..... 19
§912. Coal exploration and development permits 20
§913. Public notice and public hearings 21
§914. Decisions of commissioner and appeals 21
§915. Environmental protection performance standards 22
§916. Confidentiality 30
§917. Inspections and monitoring..... 30
§918. Penalties..... 31
§919. Release of performance bonds or deposits..... 33
§920. Citizen suits 34
§921. Enforcement..... 35
§922. Designating areas unsuitable for surface coal mining 37
§923. Federal lands..... 38
§924. Public agencies, public utilities, and public corporations 39
§925. Review by commissioner..... 39
§926. Judicial review 40
§927. Surface coal mining operations not subject to this Act..... 41
§928. Employee protection..... 41
§929. Experimental practices..... 42
§930. Water rights and replacement 42
§931. Effective date; time of issuance of regulations 42
§932. Effect of amendments to public law 95-87 43

Chapter 9A. Interstate Mining Compact

§951. Findings and purpose..... 44
§952. Membership 44
§953. Limitations..... 44
§954. Expenses 45
§955. General power of governor; withdrawal 45

Chapter 9B. Louisiana Noncoal Surface Mining Law - Repealed

§961. Short Title 46
§962. Declaration of policy 46
§963. Jurisdiction..... 46
§964. Powers and duties 46
§965. Definitions 46

§966. Funding.....	46
§967. Permits.....	46
§968. Buffer zones.....	46
§969. Procedure of reclaiming land.....	46
§970. Annual status reports.....	46
§971. Completion of reclamation obligations.....	46
§972. Reclamation fee.....	46
§973. Inspections.....	46
§974. Violations; notice; hearings; enforcement.....	47
§975. Penalties.....	47
§976. Designating areas unsuitable for noncoal surface mining.....	47
§977. Exempt Operations.....	47
§978. Confidentiality.....	47
§979. Judicial review.....	47

Louisiana Revised Statutes
Title 30. Minerals, Oil, and Gas and Environmental Quality
Chapter 9. Surface Mining and Reclamation Act

§901. Short title

This Chapter shall be known and may be cited as the "Louisiana Surface Mining and Reclamation Act."
Acts 1976, No. 141, § 1.

§902. Declaration of policy

The legislature finds and declares that:

- A. The extraction of lignite and other forms of coal by surface mining operations is a basic and essential activity making an important contribution to the economic wellbeing of the state and nation.
- B. Proper reclamation of surface mined lands is necessary to prevent unreasonable degradation of land and water resources that would be detrimental to the general welfare, health, safety, and property rights of the citizens of this state.
- C. Surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications therefor must vary accordingly.
- D. Regulation of surface mining is in the public interest and will benefit the public health, safety, welfare and economy of the state of Louisiana and will prevent the destruction or diminishing of the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes by preventing unreasonable erosion, landslides, floods, water pollution, destruction of fish and wildlife habitat and impairment of natural beauty, and will benefit governmental programs and efforts to conserve soil, water, and other natural resources.
- E. Reclamation of surface mined land as provided by this Act will allow the mining of valuable lignite and other forms of coal in a manner designed for the protection and subsequent beneficial use of these lands.

Acts 1976, No. 141, § 1.

- F. The Congress of the United States has enacted Public Law 95-87*, the "Surface Mining Control and Reclamation Act of 1977", which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the Department of the Interior over the regulation of surface coal mining and reclamation within the United States.
- G. Section 503 of Public Law 95-87** provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within such state by obtaining approval of a state program of regulation which demonstrates that the state has the capability of carrying out the provisions and meeting the purposes of Public Law 95-87.
- H. Section 503 of Public Law 95-87 further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state must have a state law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of Public Law 95-87.
- I. The State of Louisiana, to accomplish the purposes for which the Louisiana Surface Mining and Reclamation Act was adopted, wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state pursuant to Public Law 95-87.

Added by Acts 1978, No. 406, § 1.

*30 U.S.C.A. § 1201 et seq.

**30 U.S.C.A. § 1253.

§903. Purposes

A. It is hereby declared to be the purpose of this Chapter to avoid the adverse effects to society and the environment resulting from unregulated surface mining operations, as defined herein; to assure that surface mining operations are not conducted where reclamation as required by this Chapter is not possible; to assure that surface mining operations are so conducted as to prevent unreasonable degradation to land and water resources; to assure that reclamation of all surface mined lands is accomplished as contemporaneously as practicable with the surface mining, recognizing that the extraction of lignite and other forms of coal by responsible mining operations is an essential and beneficial economic activity; to protect, conserve, and replenish the natural resources of the state; to prohibit and prevent the waste, wasteful use, and wasteful utilization of lignite and other forms of coal; and to prevent the use of lignite and other forms of coal in such a manner and in such quantities as to threaten the premature exhaustion, extinction, and destruction of the supply of lignite and other forms of coal in the state.

Acts 1976, No. 141, § 1.

B. It is further declared to be the purpose of this Chapter to promote the reclamation of mined areas that were left without adequate reclamation prior to the enactment of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, et seq., and that continue, in their unreclaimed condition, to substantially degrade the quality of the environment, to prevent or damage the beneficial use of land or water resources, or to endanger the health or safety of the public.

Added by Acts 1983, No. 573, § 1.

§904. Definitions

(1) "Act" means the Louisiana Surface Mining and Reclamation Act.

(2) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the Commissioner determines that they are in compliance with Section 915B(8) of this Act.

(3) "Coal" includes all forms of coal, including lignite.

(4) "Commissioner" means the Commissioner of Conservation of the State of Louisiana, or such other person or persons who may from time to time be designated by the Commissioner to administer and enforce the provisions of this Chapter.

(5) "Department of Natural Resources" and "department" means the Department of Natural Resources of the State of Louisiana.

(6) "Development operations" means all or any part of the process of removing, by power earth moving equipment, coal or overburden for the purpose of determining coal quality or quantity or coal mining feasibility; Provided, that if more than twenty-five thousand tons of coal or ten surface acres of overburden will be removed then such operations shall be considered coal mining operations.

(7) "Development operations permit" means the certification by the Commissioner that the named person may conduct the development operations described in the certification during the term of the development operations permit and in the manner established in the certification.

(8) Repealed by Acts 1985, No. 281, § 2.

(9) "Exploration operations" means the drilling of test holes or core holes for the purpose of or related to the determining of the location, quantity or quality of a coal deposit under a permit to be issued by the commissioner and any other coal exploration operations that will substantially disturb the surface and are not otherwise covered by this Act.

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

(11) "Operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred and fifty tons of coal from the earth by surface coal mining methods within twelve consecutive calendar months in any one location.

(12) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commissioner, but does not include exploration and development permits.

(13) "Permit applicant" or "applicant" means a person applying for a permit.

(14) "Permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by Section 909 of this Chapter and shall be readily identifiable by appropriate markers on the site.

(15) "Permittee" means a person holding a permit.

(16) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization.

(17) The term "prime farmland" shall have the same meaning as that prescribed by the United States Secretary of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics, and which historically have been used for intensive agricultural purposes, and as published in the Federal Register.

(18) "Public Law 95-87" means the Federal Surface Mining Control and Reclamation Act of 1977.*

(19) "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to Section 908.

(20) "Secretary of Natural Resources" or "Secretary" means the Secretary of Natural Resources of the Department of Natural Resources of the State of Louisiana.

(21) "Secretary of the Interior" means the Secretary of the Interior of the Department of Interior of the United States.

(22) "Surface coal mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of such operations after the date of enactment of this Chapter.

(23) "Surface coal mining operations" means

- (a) Activities conducted on the surface of lands in connection with a surface coal mine, the products of which enter commerce or the operations of which directly or indirectly affect commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site: Provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 per centum of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration or development subject to Section 912 of this Act, and

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

(24) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this Chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Chapter due to indifference, lack of diligence, or lack of reasonable care.

Added by Acts 1978, No. 406, § 1.

*30 U.S.C.A. § 1201 et seq.

§905. Jurisdiction and powers; rules and regulations

- A. The Department of Natural Resources, Office of Conservation, or such persons as may be designated by the commissioner, is hereby designated as the official agency whose duty it is to administer the regulations and guidelines contained in this Chapter and to institute such other reasonable regulations and guidelines, after notice and public hearing, as may become necessary pursuant to this Chapter to protect state and private lands from unreasonable degradation by any operator engaged in surface coal mining operations. Exclusive jurisdiction over all aspects of surface coal mining and reclamation shall be vested in the Department of Natural Resources, Office of Conservation. The Secretary of Natural Resources shall be responsible for the policies of the State relating to the development of the State's lignite reserves, including the transportation and utilization thereof, and shall formulate plans and shall advise the Governor and the Legislature with respect to short and long term policies of the State concerning the development of the State's lignite reserves, including the transportation and utilization thereof, and the integration of the development of the State's lignite reserves into the development of the State's fuel sources. The secretary of the Department of Natural Resources in cooperation with the Commissioner of Conservation shall establish, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations.
- B. The authority shall be vested in the commissioner, and such other persons as may be designated by the commissioner, to administer and enforce the provisions of this Chapter, and he shall seek the accomplishment of the purposes of this Chapter by all practicable and economically feasible methods and in so doing shall have the following duties and powers:
 - (1) To make those expenditures which he deems necessary to accomplish the purposes of this Chapter.
 - (2) To adopt, amend, and issue rules and regulations in accordance with the requirements of the Louisiana Administrative Procedure Act, except where the provisions of the Louisiana Administrative Procedure Act are in conflict with the provisions of this Chapter, in which case the provisions of this Chapter and the regulations issued by the commissioner pursuant to this Chapter shall govern, pertaining to surface coal mining and reclamation operations consistent with the general intent and purposes of this Chapter, including regulations consistent with regulations issued by the secretary of the Interior pursuant to the Surface Mining Control and Reclamation Act, as amended as required for the state to assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations pursuant to Section 503 of the Surface Mining Control and Reclamation Act, as amended. The commissioner may issue regulations without public notice and hearing in the event regulations must be issued to ensure timely action by the state in the assumption or retention by the state of exclusive jurisdiction over the regulation of surface coal mining and reclamation operations pursuant to Section 503 of Surface Mining Control and Reclamation Act, as amended.

Amended by Acts 1980, No. 121, § 1.

Amended by Acts 2008, No. 278, § 1.

- (3) To issue permits pursuant to the provisions herein.
- (4) To conduct hearings pursuant to the provisions herein.
- (5) To issue or modify orders reasonably necessary or take such actions as are necessary to carry out the provisions of this Chapter and regulations adopted hereunder.
- (6) To receive by gift, grant, donation or otherwise any sum or money, and/or assistance from any person or the United States, its agencies, the state of Louisiana or any political subdivision thereof for the enactment and enforcement of this Chapter and the mining and reclamation of land affected by surface coal mining operations.
- (7) To employ such officers, agents, employees, and professional personnel, including legal counsel, as he deems necessary for the performance of his powers and duties and prescribe the powers and duties and fix the compensation of such officers, agents, employees, and professional personnel.
- (8) To issue an order, ordering a cessation of surface coal mining and/or reclamation operations, or revoking the permit of an operator who has failed to comply with an order of the commissioner to take any action required by this Chapter or rules and regulations issued pursuant to this Chapter. In the event the permit is revoked, the operator's performance bond or cash or collateral securities shall be forfeited if it is determined that this is necessary to reclaim the area of land affected by the operator's surface coal mining operation.
- (9) To contract, upon such terms as he may agree upon, for legal, financial, engineering and other professional services necessary to expedite the conduct of the affairs of the Department of Natural Resources, Office of Conservation, under the provisions of this Act.
- (10) To enter into contracts with state boards, agencies and soil and water conservation districts having expertise for the purposes of obtaining professional and technical services necessary to implement the provisions of this Chapter.
- (11) To exercise discretionary review pursuant to the provisions of this Chapter over all aspects of surface coal mining and reclamation operations performed within this State.
- (12) To personally or through his authorized legal counsel represent the State in all matters involving or affecting the interest of the State and its residents relative to proceedings before any federal agencies, offices and congressional committees and in all judicial actions arising out of the proceedings of such agencies, offices and committees or in relation thereto and to appear in the courts and before agencies of this State or of other states in order to carry out the purposes of this Chapter.
- (13) To commence and prosecute legal actions as authorized in this Act, including legal actions against the Secretary of the Interior and the Office of Surface Mining Reclamation and Enforcement as authorized by this Chapter.
- (14) To take those steps necessary to enable the state to participate to the fullest extent practicable in the Abandoned Mine Reclamation Program provided in Title IV of the Surface Mining Control and Reclamation Act, as amended, 30 U.S.C 1201 et seq.
Added by Acts 1983, No. 573, § 1.
Amended by Acts 2008, No. 278, § 1.

C. A rule, regulation or order, or any amendment thereof, adopted by the commissioner may differ in its terms and provisions as between particular conditions, particular mining techniques, particular areas of the State or any other conditions that appear relevant and necessary so long as the action taken is consistent with the attainment of the general intent and purpose of this Chapter. In adopting rules, regulations and orders the commissioner shall give due recognition to the fact that although certain surface coal mining and reclamation operations may

cause a need for particular regulatory control in one area of the State, such control may not be necessary or desirable for another area of the State due to the unique characteristics of each type of surface mining and the various economic and environmental factors relating to same, and the commissioner shall take into account, in this connection, all factors found by him to be proper and just, including the existing climatology, topography, vegetation and all other physical conditions, populations, mining and reclamation techniques, the economic and social impact of the proposed rule, regulation or order, and the fact that the rule, regulation or order and the degrees of conformance therewith which may be proper as to one area of the State may not be proper or practicable as to another area of the State.

Added by Acts 1978, No. 406, § 1.

§905.1. Abandoned mine reclamation; fund participation

- A. The commissioner is authorized to take all action necessary to ensure Louisiana's participation to the fullest extent practicable in the abandoned mines reclamation fund established by the Surface Mining Control and Reclamation Act as amended, 30 U.S.C. 1201 et seq.; and the office of conservation of the Department of Natural Resources shall function as the state's agency for such participation. Pursuant to the Surface Mining Control and Reclamation Act as amended, 30 U.S.C. 1201 et seq., the commissioner shall by rule establish priorities that meet the terms of the Surface Mining Control and Reclamation Act as amended, 30 U.S.C. 1201 et seq., and applicable federal regulations for the expenditure of those funds; designate the land and water eligible for reclamation or abatement expenditures; submit reclamation plans, annual projects, and applications to the appropriate authorities; undertake emergency reclamation projects pursuant to the terms of the Surface Mining Control and Reclamation Act as amended, 30 U.S.C. 1201 et seq., and applicable federal regulations; and administer all money received for abandoned mine reclamation or related purposes.

Added by Acts 1983, No. 573, § 1.

Amended by Acts 2008, No. 278, § 1.

- B. (1) The following funds shall be deposited immediately upon receipt into the state treasury:
- (a) Monies granted by the secretary of the United States Department of the Interior for purposes of this Chapter;
 - (b) Monies appropriated by the legislature for purposes of this Chapter;
 - (c) Monies donated from sources, including, but not limited to persons, corporations, or associations for purposes of this Chapter, except as provided in Article VII, Section 9(A)(1) of the Constitution of Louisiana;
 - (d) Monies recovered through liens filed against privately-owned land under this Chapter; and
 - (e) Fines collected from violations of this Chapter, or any rule, regulation, or order issued under this Chapter.
- (2) After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited as required by this Subsection shall be credited to the office of conservation.
- C. Appropriation of monies by the legislature from these funds shall be for expenditures on eligible lands and water with priority given first to addressing the impacts of past coal mining practices and then to the impacts of past solid mineral development.
- D. Lands and water eligible for reclamation or drainage abatement expenditures under this Section are those which were mined or which were affected by such mining, abandoned or left in an inadequate reclamation status, and for which there is no continuing reclamation responsibility under state or federal laws.

Added by Acts 1985, No. 281, § 1.

Amended by Acts 2008, No. 278, § 1.

§905.2. Reclamation Plan

- A. The office of conservation will submit to the secretary of the Interior a state reclamation plan to carry out the purposes of this Section.
- B. The state reclamation plan shall generally identify both coal and non-coal problem areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform this work in conformance with the provisions of this Chapter.
- C. The office may submit an annual application for the support of the state program and implementation of specific reclamation projects to the secretary of the interior. These annual requests shall include such information as may be requested by the secretary.
- D. The office may provide annual and other reports required by the secretary of the Interior to accompany the annual request for support required in Subsection C of this Section.
- E. The costs for each proposed project under this Section shall include: actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

Added by Acts 1985, No. 281, § 1.

Amended by Acts 2008, No. 278, § 1.

§905.3. Implementation of the plan

- A. (1) If the commissioner, after notice and hearing, makes a finding of fact that:
 - (a) Land or water resources have been adversely affected by past solid mineral development practices;
 - (b) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken;
 - (c) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past solid mineral development practices are not known or readily available, or the owners will not give permission for the state or its political subdivisions, their agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past solid mineral development practices;
- (2) Then, upon giving notice by mail to the owners, if known, or if not known, by posting notice upon the premises and advertising once in a newspaper of general circulation designated as the official journal by the governing authority, in the parish in which the land lies, the agents, employees, or contractors of the office, shall have the right to enter the property adversely affected by past solid mineral development practices and any other property to have access to that property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. This entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass on it. The monies expended for this work and the benefits accruing to the premises so entered upon shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in these premises for any alleged damages by virtue of the entry; but this provision is not intended to create new rights of action or eliminate existing immunities.
- B. The agents, employees, or contractors of the office of conservation shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past solid mineral development practices and to determine the feasibility of restoration, reclamation,

abatement, control, or prevention of these adverse effects. This entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass on it.

- C. The state may acquire any land by purchase, donation, or condemnation which is adversely affected by past solid mineral development practices if the commissioner, after notice and hearing, determines that acquisition of this land is necessary to successful reclamation and that:
- (1) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past solid mineral development practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and
 - (2) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past solid mineral development practices; or
 - (3) Acquisitions of mineral refuse disposal sites and all mineral refuse on same will serve the purposes of this Chapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past solid mineral development practices.
- D. Title to all lands acquired under this Section shall be in the name of the state. The price paid for land acquired under this Section shall reflect the market value of the land as adversely affected by past solid mineral development practices.
- E. (1) Where land acquired under this Section is deemed to be suitable for industrial, commercial, residential, or recreational development the office of conservation, in conjunction with the secretary of natural resources, may sell this land by public sale under a system of competitive bidding, at not less than fair market value, and under such other regulations promulgated to insure that the land is put to proper use consistent with local and state land use plans.
- (2) The state, when requested after appropriate public notice, shall hold a public hearing with the appropriate notice, in the parish or parishes or the appropriate political subdivisions of the state in which lands acquired under this Section are located. The hearing shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past solid mineral development practices.
- F. The state, through the office of conservation and the secretary of natural resources may accept lands acquired and reclaimed by the secretary of the Interior pursuant to Section 407(h) of the Surface Mining Control and Reclamation Act as amended. In addition, the office may accept grants from the secretary to carry out the purposes of Section 407(h) of the Surface Mining Control and Reclamation Act as amended.
- G. (1) Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past solid mineral development practices on privately owned land, the office shall itemize the monies so expended and may file a statement of same in the office of the clerk of court of the parish in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past solid mineral development practices if the monies so expended shall result in a significant increase in property value.
- (2) This statement shall constitute a lien upon the land described in it. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past solid mineral development practices.

- (3) No lien shall be filed against the property of any person, in accordance with this Subsection who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed.
- H. The landowner may proceed to petition within sixty days after the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past solid mineral development practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement provided for in Subsection G of this Section. Any party aggrieved by the decision may appeal as provided by law.
- I. The lien provided in this Section shall be recorded in the office of the clerk of court of the parish in which the land lies. The statement shall constitute a lien upon the land as of the date of the expenditure of the monies and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.
- J. (1) The office may fill any voids, seal any abandoned tunnels, shafts, and entryways, and reclaim surface impacts of underground or surface mines which the office determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment.
- (2) The office may make expenditures and carry out the purposes of this Section without regard to the provisions of R.S. 30:905.1(D) only after all reclamation with respect to abandoned coal lands or coal development impacts has been met, except for those reclamation projects relating to the protection of the public health or safety.
- (3) In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from these operations by filling voids and sealing tunnels may be eligible for funding if the disposal of these wastes meets the purposes of this Section.
- (4) The office may acquire by purchase, donation, easement, or otherwise such interests in land as it determines necessary to carry out the provisions of this Section.
- K. Repealed by Acts 2008, No. 278,§1.
- L. (1) The office may request the attorney general, who is hereby authorized to initiate, in addition to any other remedies provided for in this Chapter, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this Section.
- (2) The office in conjunction with appropriate state agencies as determined in implementing regulations, may construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment of water pollution may be dependent upon the ultimate use of the water; but the above provisions of this Subsection shall not be deemed in any way to repeal or supersede any portion of the federal Water Pollution Control Act (33 U.S.C.A. 1151, et seq., as amended) and no control or treatment under this Section shall in any way be less than that required under the federal Water Pollution Control Act. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.
- (3) The office may transfer funds to other appropriate state agencies, in order to carry out the reclamation activities authorized by this Chapter.

Added by Acts 1985, No. 281,§ 1.

Amended by Acts 2008, No. 278,§ 1.

§905.4. Exclusion and exemption of water resources

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

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

Added by Acts 1985, No. 281, § 1.

Amended by Acts 2008, No. 278, § 1.

§906. Mining permits

- A. No person shall engage in or carry out on lands within the State any surface coal mining operations unless such person has first obtained a permit issued by the commissioner pursuant to this Chapter.
- B. All permits issued pursuant to the requirements of this Chapter shall be issued for a term not to exceed five years. If the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for such specified longer term, the commissioner may grant a permit for such longer term. A successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

Amended by Acts 1980, No. 121, § 2.

- C. A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by such permit within three years of the issuance of the permit: Provided, that the commissioner may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: Provided further, that with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.
- D. (1) Any valid permit issued pursuant to this Chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal and such renewal shall be issued (provided that on application for renewal the burden shall be on the opponents of renewal), subsequent to fulfillment of the public notice requirements of Sections 913 and 914, unless it is established that and written findings by the commissioner are made that
- (a) The terms and conditions of the existing permit are not being satisfactorily met.
 - (b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this Chapter and regulations issued pursuant to this Chapter.
 - (c) The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas.
 - (d) The operator has not provided evidence that the performance bond in effect for such operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the commissioner might require pursuant to Section 909, or
 - (e) Any additional revised or updated information required by the commissioner by regulation has not been provided. Prior to the approval of any renewal of permit the commissioner shall provide notice to the appropriate public authorities.
- (2) If an application for renewal of a valid permit includes a proposal to extend the mining operations beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid

permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this Chapter.

- (3) Any permit renewal shall be for a term not to exceed the period of the original permit established by this Chapter. Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit. The commissioner shall issue regulations which provide for a procedure which will give the permittee sufficient time prior to the expiration of the present term of the permit to correct or commence to correct any condition which the commissioner finds will prevent issuance of a permit renewal.

Amended by Acts 1980, No. 121, § 2.

Added by Acts 1978, No. 406, § 1;

- E. No person shall conduct any underground or auger coal mining operations if such operations would be subject to Public Law 95-87 until the state has implemented a program regulating such operations pursuant to Public Law 95-87* or the Department of Interior has implemented a federal program regulating such operations. Any person desiring to conduct any such operations described shall notify the commissioner at least 36 months prior to the time such operations are planned to begin in order that the commissioner may initiate appropriate legislation and adopt such rules as are necessary to implement such program.

Added by Acts 1979, No. 553, § 1.

*30 U.S.C.A. § 1201 et seq.

§906.1. Surface mining and reclamation fees

There is hereby imposed on all permittees under the supervision of the assistant secretary pursuant to Chapter 9 of this Title, Surface Mining and Reclamation Act, an annual regulatory fee of eight cents per ton on all coal and lignite mined in this state. This fee shall be used for the purpose of enforcing the Louisiana Surface Mining and Reclamation Act and regulations promulgated thereunder.

Added by Acts 1986, No. 351, § 1.

§906.2. Collection of surface mining and reclamation regulatory fees

- A. The surface mining and reclamation regulatory fee shall be paid to the secretary of the Department of Revenue on a monthly basis and shall begin to accrue on July 1, 1986, and shall be paid using forms to be prescribed by the secretary of the Department of Revenue.
- B. If any permittee fails to pay the surface mining and reclamation regulatory fee, the secretary of the Department of Revenue may proceed to enforce the collection thereof by utilizing the remedies and procedures set forth in Chapter 18 of Subtitle II of Title 47, specifically including any authority to obtain and audit information and impose interest and penalties.

Amended by Acts 1997, No. 658, § 2.

Added by Acts 1986, No. 351, § 1

§906.3. Department of Revenue; surface mining and reclamation fees

- A. Funds received by the Department of Revenue in the form of surface mining and reclamation fees shall be deposited immediately upon receipt to the state treasury.

Amended by Acts 1997, No. 658, § 2.

- B. Repealed by Acts 1992, No. 984, § 18.

- C. Repealed by Acts 1992, No. 984, § 18.

Added by Acts 1986, No. 351, § 1.

§907. Application requirements

- A. Each application for a surface coal mining and reclamation permit pursuant to this Chapter shall be accompanied by a fee as determined by the commissioner, with such fee not to exceed the actual or anticipated cost of reviewing, administering and enforcing such permit.
- B. The permit application shall be submitted in a manner satisfactory to the commissioner and shall contain, among other things:
 - (1) The names and addresses of:
 - (a) The permit applicant.
 - (b) Every legal owner of record of the property (surface and mineral), to be mined.
 - (c) The holders of record of any leasehold interest in the property.
 - (d) The purchaser of record of the property under a real estate contract.
 - (e) The operator if he is a person different than the applicant, and
 - (f) If any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent.
 - (2) The names and addresses of the owners of record of all surface and subsurface areas adjacent to any area of the permit area or within the permit area but on which, at the time of filing the permit application, the applicant does not have the legal right to enter and commence surface coal mining operations.
 - (3) A statement of any current or previous surface coal mining permits in the United States held by the applicant and the permit identification and each pending application.
 - (4) If the applicant is a partnership, corporation, association, or other business entity, the following where applicable: The names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and address of any person owning of record ten percentum or more of any class of voting stock of the applicant, and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation within the United States within the five year period preceding the date of submission of the application.
 - (5) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever held a Federal or State mining permit which in the five year period prior to the date of submission of the application has been suspended or revoked or has had a mining bond or similar security deposit in lieu of bond forfeited and, if so, a brief description of the facts involved.
 - (6) A copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks, which advertisement shall include the ownership and a description of the exact location and boundaries of the proposed site sufficient so that the proposed operation may be readily located by local residents, and the location of where the application is available for public inspection.
 - (7) A description of the type and method of coal mining operation that is proposed, the engineering techniques proposed, and the equipment proposed to be used; if applicable a description of the alternative type and method of coal mining and reclamation operation that is proposed in the event the applicant is unable to obtain the legal right to enter and commence surface coal mining operations on any tracts of land within the proposed permit area.

- (8) The anticipated starting and termination dates of each phase of the mining operation and the number of acres of land to be affected.
- (9) An accurate map or plan, to an appropriate scale, clearly showing the land to be affected as of the date of the application, the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations and a statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation: Provided, that nothing in this Chapter shall be construed as vesting in the commissioner the jurisdiction to adjudicate property title disputes.
- (10) The names of the watershed and location of the surface stream or tributary into which surface and pit drainage may be discharged.
- (11) A determination of the probable hydrologic consequences of the mining and reclamation operations both on and off the mine site with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the commissioner of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability: Provided, however, that this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate Federal or State agency: Provided further, that the permit shall not be approved until such information is available and is incorporated into the application.
- (12) When requested by the commissioner, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges.
- (13) Accurate maps to an appropriate scale clearly showing:
 - (a) The land to be affected as of the date of the application and
 - (b) All types of information set forth on topographical maps of the United States Geological Survey of a scale of 1:24,000 or 1:25,000 or larger, including all manmade features and significant known archeological sites existing on the date of application. Such a map or plan shall among other things specified by the commissioner show all boundaries of the land to be affected, the boundary lines and name of present owners of record of all surface areas abutting the permit areas, and the location of all buildings within one thousand feet of the permit area.
- (14) Cross section maps or plans of the land to be affected including the actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information: the nature and depth of the various strata of overburden; the location of subsurface water if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all mineral crops lines and the strike and dip of the coal to be mined within the area of land to be affected; existing or previous surface mining limits; the location and extent of known workings of any underground mines, including mine openings to the surface; the location of aquifers; the estimated elevation of the watertable; the location of spoil, waste, or refuge areas and top soil preservation areas; the location of all impoundments for waste or erosion control; any settling or water treatment facility; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan.
- (15) A statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found; an analysis of the chemical properties of such coal; the

sulphur content of any coal seam; chemical analysis of potentially acid or toxic forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined, except that the provisions of this Paragraph (15) may be waived by the commissioner with respect to the specific application by a written determination that such requirements are unnecessary.

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

Amended by Acts 1999, No. 1002, § 1.

Added by Acts 1978, No. 406, § 1

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

- (18) A description of the nature of cultural, historical, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological features within the proposed mine plan and adjacent areas. The description shall be based on all available information including but not limited to data of state and local archaeological, historical, and cultural preservation agencies. Each plan shall describe the measures to be used to prevent adverse impact to any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation. However, if joint agency approval is to be obtained or if there are valid existing rights in the public parks or historic places, the plan shall describe the measures to be used to minimize adverse impact to such public parks or historic places. The office of conservation may require the applicant to protect historic or archaeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. At the time of its issuance, a surface mining permit may require that appropriate mitigation and treatment be required to be taken after permit issuance, provided that the required measures are completed before the properties are affected by any mining operation.

- (19) A description of fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for such information shall be determined by the office of conservation in consultation with state and federal agencies with responsibilities for fish and wildlife. Site specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the secretary of the Interior under the Endangered Species Act (16 U.S.C. 1531 et seq.), or those species or habitats protected by state statutes, habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas, or other species or habitats identified through agency consultation as requiring special protection under state or federal law.

- (20) A description of how, to the extent possible using the best technology available, the operator will minimize disturbances and adverse impact on fish, wildlife, and related environmental values, including compliance with the Endangered Species Act (16 U.S.C. 1531 et seq.), during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall apply, at a minimum, to species and habitats identified in Paragraph (18) of this Subsection and include protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and power lines, the monitoring of surface water quality and quantity, and enhancement measures that will be used during the reclamation and post-mining phase of operation to develop aquatic and terrestrial habitats. Such measures may also include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the

replacement of perches and nest boxes. When the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

Added by Acts 1999, No. 1002, § 1.

- C. (1) If the commissioner finds that the probable total annual production at all locations of any coal surface mining operator will not exceed three hundred thousand tons, the determination of probable hydrologic consequences, including the engineering analyses and designs necessary for the determination, required by Paragraph B(11) of this Section, cross-section maps and plans required by Paragraph B(14) of this Section, the drilling and statement of the result of test borings or core samplings required by Paragraph B(15) of this Section, the collection of archaeological and historical information and related plans required by Paragraph B(17) of this Section, the collection of site-specific resources information required by Paragraph B(18) of this Section, the production of protection and enhancement plans for fish and wildlife habitats required by Paragraph B(19) of this Section, and information and plans for any other environmental values required by the office of conservation and this Chapter, and pre-blast surveys required by R.S. 30:915(B)(15) shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the commissioner and the cost of the preparation of such determination and statement shall be assumed by the commissioner.

Amended by Acts 1999, No. 1002, § 1.

- D. Each applicant for a permit shall be required to submit to the commissioner as part of the permit application a reclamation plan which shall meet the requirements of this Chapter and the regulations issued pursuant to this Chapter.
- E. Each applicant for a permit shall file a copy of his application for public inspection with the clerk of court in each parish where the mining is proposed to occur, except for that information pertaining to the coal seam itself and that information which shall be kept confidential pursuant to this Chapter.
- F. Each applicant for a permit shall submit to the commissioner as part of the permit application a certificate issued by an insurance company authorized to do business in Louisiana certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other state or federal self insurance requirements. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of State law. Such policy shall be maintained in full force and effect during the term of the permit, or any renewal, including the length of all reclamation operations.
- G. Each applicant for a surface coal mining and reclamation permit shall submit to the commissioner as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of Section 915B(15).

Added by Acts 1978, No. 406, § 1.

§908. Reclamation plan requirements

- A. Each reclamation plan submitted as part of a permit application under the provisions of this Chapter shall include, in the degree of detail necessary to demonstrate that reclamation required by this Chapter and the regulations issued pursuant to this Chapter can be accomplished, a statement of:
- (1) The identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought.
 - (2) The condition of the land to be covered by the permit prior to any mining including:
 - (a) The uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining, and

- (b) The capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover, and, if applicable, a soil survey prepared pursuant to Section 907B(16), and
 - (c) The productivity of the land prior to mining, including appropriate classification as prime farm lands, as well as the average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management.
- (3) The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface and state and local governments or agencies thereof which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation.
 - (4) A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use.
 - (5) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment proposed to be used; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for backfilling, soil stabilization, compacting, grading, and appropriate revegetation; a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in Section 915B(7)(a), (b), (c), and (d), for those food, forage, and forest lands identified in Section 915B(7); an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in Section 915.
 - (6) The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future can be minimized.
 - (7) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan.
 - (8) The consideration which has been given to making the surface mining and reclamation operations consistent with surface owner plans and applicable state and local land use plans and programs.
 - (9) The steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards.
 - (10) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical, environmental and climatological conditions.
 - (11) All lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit.
 - (12) The results of test boring which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the commissioner, including the location of subsurface water, and an analysis of the chemical properties including acid forming properties of the minerals and overburden: Provided, that information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental contents which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.
 - (13) A detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:
 - (a) The quality of surface and ground water systems, both on site and off site, from adverse effects of the mining and reclamation process.

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

(14) Such other requirements as the regulatory authority shall prescribe by regulations.

- B. Any information required by this Section which is not on public file pursuant to state law shall be held in confidence by the commissioner.

Added by Acts 1978, No. 406, § 1.

§909. Performance bonds

- A. After a surface coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the commissioner on a form prescribed and furnished by the commissioner a bond for performance payable, as appropriate, to the state, and conditioned upon faithful performance of all the requirements of this Act and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the commissioner an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the commissioner. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the commissioner in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.
- B. Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in Section 915. The bond shall be executed by the operator and a corporate surety licensed to do business in the state, except that the operator may elect to deposit cash, negotiable bonds of the United States government or state, or negotiable certificates of deposit of any bank organized or transacting business in the State. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.
- C. The commissioner may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the commissioner the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount.
- D. Cash or securities so deposited shall be deposited upon the same terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.
- E. The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the commissioner from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

Added by Acts 1978, No. 406, § 1.

§910. Permit approval or denial

- A. Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this Chapter, including public notification and an opportunity for a public hearing as required by Section 913, the commissioner shall grant, require modification of, or deny the application for a permit in a reasonable time set by the commissioner, and notify the applicant in writing. The applicant for a permit, or

revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of this Chapter and the regulations issued pursuant to this Chapter. Within ten days after the granting of a permit, the commissioner shall notify the police jury in the parishes, and the local governmental officials in any other local political subdivision, in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

- B. The permit or revision application shall be approved when, but only when, the application affirmatively demonstrates and the commissioner finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant, that
- (1) The permit application is accurate and complete and that all the requirements of this Chapter and the regulations issued pursuant to this Chapter have been complied with.
 - (2) The applicant has demonstrated that reclamation as required by this Chapter and the regulations issued pursuant to this Chapter can be accomplished under the reclamation plan contained in the permit application.
 - (3) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in Section 907B has been made by the commissioner and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area.
 - (4) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to Section 922 of this Chapter or is not within an area under study for such designation in an administrative proceeding commenced pursuant to Section 922A(4)(c) or Section 922B, unless in such an area as to which an administrative proceeding has commenced pursuant to Section 922A(4)(c) of this Chapter, the operator making the permit application demonstrates that, prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit.
 - (5) In cases where the private mineral estate has been severed from the private surface estate, as to tracts within the permit area on which the applicant has the legal right to enter and commence surface mining operations, the applicant has submitted to the commissioner
 - (a) The written consent of the surface owner to the extraction of coal by surface mining methods; or
 - (b) A conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or
 - (c) If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with State law: Provided, that nothing in this Chapter shall be construed to authorize the commissioner to adjudicate property rights disputes.
- C. The applicant shall file with his permit application a schedule listing any and all notices of violations of this Chapter and any applicable law, rule, or regulation of the state or the United States, or of any department or agency of the state or the United States, pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the commissioner indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this Chapter or such other laws referred to in this Subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation, and no permit shall be issued to an applicant after a finding by the commissioner, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of

this Chapter or such other laws referred to in this Subsection of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this Chapter.

- D. (1) In addition to finding the application in compliance with Subsection B of this Section, if the area proposed to be mined contains prime farmland pursuant to Section 907B(16), the commissioner shall, after consultation with the secretary of the Department of Agriculture, pursuant to the regulations issued pursuant to this Chapter, grant a permit to mine on prime farmland if the commissioner finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in Section 915B(7).
- E. Approval of a permit or revision to a permit may not be denied for the reason that the applicant does not, at the time of filing of the application for a permit, have the legal right to enter and commence surface mining operations on all tracts of land within the permit area: Provided, that the applicant has demonstrated that the permit area can be mined in accordance with this Chapter and the regulations issued pursuant to this Chapter without mining of the tracts on which the applicant does not have the legal right to enter and commence surface mining operations: Provided further, that the permittee shall notify the commissioner when the permittee has obtained the legal right to enter and commence surface mining operations on such tracts.
- F. A permit may contain only such conditions as are expressly provided for in regulations issued pursuant to this Chapter.

Added by Acts 1978, No. 406, § 1.

§911. Revision of permits

- A. (1) During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the commissioner.
- (2) An application for a revision of a permit shall not be approved unless the commissioner finds that reclamation as required by this Chapter and the regulations issued pursuant to this Chapter can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a period of time established by the commissioner. The commissioner shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply. Any revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements. Insignificant departures, as permitted by regulations issued pursuant to this Chapter, in a permitted mining and reclamation plan which will not adversely affect the environmental impact of the surface coal mining and reclamation operations shall not require the revision of a permit pursuant to this Section. Notice of all such insignificant departures in a mining and reclamation plan shall be submitted to the commissioner in the operator's next monthly report and the commissioner may, within thirty days after receipt of the operator's monthly report, require the operator to submit an application for a permit revision pursuant to this Section.

Amended by Acts 1980, No. 121, § 3.

- (3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.
- B. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Chapter shall be made without the written approval of the commissioner; Provided, that the commissioner shall approve a transfer, assignment or sale to the parent or a subsidiary of the permittee, or to an affiliate of, or a person controlled by or under common control with, the permittee, if the permittee satisfies the commissioner that the transfer, assignment or sale will not jeopardize the accomplishment of the objectives of this Chapter.
- C. The commissioner shall, within a time limit prescribed in the regulations issued pursuant to this Chapter, review outstanding permits and may require reasonable revision or modification of the permit provisions

during the term of such permit: Provided, that such revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by the regulations issued pursuant to this Chapter.

Added by Acts 1978, No. 406, § 1.

§912. Coal exploration and development permits

A. Any person planning to conduct exploration operations as defined in this Chapter shall obtain an exploration permit from the commissioner prior to conducting such exploration operations. The commissioner shall adopt regulations controlling the issuance of such permits, and such regulations shall require at a minimum that:

- (1) An application for an exploration permit include a description of the proposed exploration area and the period of the proposed exploration.
- (2) All lands disturbed by exploration operations which substantially disturb the surface be reclaimed in accordance with the performance standards in Section 915 of Chapter 9. The term "land disturbed" shall include excavations, roads, drill holes, and the removal of necessary facilities and equipment.
- (3) The exploration permittee properly plug all holes before abandonment and submit a report to the commissioner within six months after expiration of the permit stating and attesting further that each hole has been properly plugged when abandoned.
- (4) The applicant submits an application fee of \$50.00.
- (5) The applicant submits such reasonable bond with security as the commissioner may require to assure performance of the required reclamation and plugging obligations, said bond to be released when the report required above has been submitted and the reclamation and plugging obligations have been satisfied.

Within thirty days after receipt of a complete application, application fee and bond the commissioner shall issue an exploration permit, with a term not to exceed one year. All logs and core analyses obtained by any person conducting exploration activities pursuant to this subsection shall be furnished to the commissioner within five years after expiration of the applicable exploration permits unless such data will be or is intended to be submitted as part of an application for a mining permit.

B. Any person planning to conduct development operations as defined in this Chapter shall obtain a development operations permit from the commissioner prior to conducting any development operations. The commissioner shall adopt regulations controlling the issuance of such permits, and such regulations shall require at a minimum that:

- (1) An application for a development operations permit include a description of the area of the proposed development operations and the period of the proposed operations.
- (2) All land disturbed by the development operations, including excavations, roads, drill holes and the removal of necessary facilities and equipment, be reclaimed in accordance with the performance standards in Section 915 of Chapter 9.
- (3) An application contain a reclamation plan, including a description of the means to be used and an estimate of the cost of reclamation per acre.
- (4) The applicant submit a \$75 application fee and a reasonable bond with sufficient security to assure performance of the reclamation duties required by Chapter 9. The bond shall be released when the reclamation requirements have been completed.

Within thirty days after receipt of a complete application, application fee and bond the commissioner shall issue a development operations permit with a term not to exceed 18 months.

- C. Any person who conducts any coal exploration and/or development activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of Section 918.
- D. Coal exploration on Federal lands shall be governed by Section 4 of the Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1085).*

Added by Acts 1978, No. 406, § 1.

*30 U.S.C.A. § 201(b).

§913. Public notice and public hearings

- A. At the time of submission of an application for a surface coal mining and reclamation permit, or revision of an existing permit, pursuant to the provisions of this Chapter, the applicant shall submit to the commissioner a copy of his advertisement of the ownership, precise location, and boundaries of the land to be affected. At the time of submission such advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks. The commissioner shall notify various affected local governmental bodies, planning agencies, sewage and water treatment authorities and water companies in the locality in which the proposed surface mining will take place, notifying them of the operator's intention to surface mine a particularly described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities or companies may submit written comments within a reasonable period established by the commissioner on the mining application with respect to the effect of the proposed operation on the environment which are within their area of responsibility. Such comments shall immediately be transmitted to the applicant by the commissioner and shall be made available to the public at the same locations as are the mining applications.
- B. Any person having an interest which is or may be adversely affected or the officer or head of any state, federal or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operations with the commissioner within thirty days after the last publication of the above notice. Such objections shall immediately be transmitted to the applicant by the commissioner and shall be made available to the public. If written objections are filed and an informal conference requested, the commissioner shall then hold an informal conference in the locality of the proposed mining if requested within a reasonable time of the receipt of such objections or request. The date, time and location of such informal conference shall be advertised by the commissioner in a newspaper of general circulation in the locality of the proposed mining operation at least two weeks prior to the scheduled conference date. The commissioner may arrange with the applicant upon request by any party to the administrative proceeding access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. In the event all parties requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their request, such informal conference need not be held.

Added by Acts 1978, No. 406, § 1.

§914. Decisions of commissioner and appeals

- A. If an informal conference has been held pursuant to Section 913B, the commissioner shall, within sixty days after such conference, issue and furnish the applicant for a permit and persons who are parties to the administrative proceedings with the written finding of the commissioner granting or denying the permit in whole or in part and stating the reasons therefor.
- B. If there has been no informal conference held pursuant to Section 913B, the commissioner shall notify the applicant for a permit within a reasonable time as determined by the commissioner and set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed, but not later than sixty days

after the last publication of the notice required in Section 913A, whether the application has been approved or disapproved in whole or in part.

- C. If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is notified of the final decision of the commissioner on the permit application, the applicant or any person with an interest which is or may be adversely affected may request a hearing before the commissioner on the reasons for the final determination. The commissioner or his representative shall hold a hearing within thirty days of such request and provide notification to all interested parties at the time that the applicant is so notified. Such hearing shall be of record and adjudicatory in nature, and no person who presided at a conference under Section 913B shall either preside at the hearing or participate in the decision thereon or in any administrative appeal therefrom. Within thirty days after the hearing the commissioner shall issue and furnish the applicant, and all persons who participated in the hearing, with the written decision of the commissioner granting or denying the permit in whole or in part and stating the reasons therefor.
- D. Where a hearing is requested pursuant to Subsection C, the commissioner may, under such conditions as he may prescribe, grant such temporary relief as he deems appropriate pending final determination of the proceedings if:
 - (1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief.
 - (2) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding, and
 - (3) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.
- E. For the purpose of such hearing, the commissioner or his representative may administer oaths, subpoena witnesses or written or printed materials, compel attendance of the witnesses or production of the materials and take evidence including but not limited to site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each public hearing required by this Chapter shall be made, and a transcript made available on the motion of any party or by order of the commissioner.
- F. Any applicant or any person with an interest which is or may be adversely affected who has participated in the administrative proceedings as an objector, and who is aggrieved by the decision of the commissioner, or if the commissioner fails to act within the time limits specified in this Chapter, shall have the right to appeal in accordance with Section 926.

Added by Acts 1978, No. 406, § 1.

§915. Environmental protection performance standards

- A. Any permit issued pursuant to this Chapter to conduct surface coal mining operations shall require that such surface coal mining operations will meet all applicable performance standards of this Chapter and the regulations issued pursuant to this Chapter.
- B. General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operator as a minimum to:
 - (1) Conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining can be minimized.
 - (2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as such use

or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicant's declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of State, Federal or local law.

- (3) Except as provided in Subsection C with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this Chapter: Provided, that in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill grade, and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: Provided further, that in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this Chapter.
- (4) Stabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution.
- (5) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner such other strata which is best able to support vegetation.
- (6) Restore the topsoil or the best available subsoil which is best able to support vegetation.
- (7) For all prime farmlands as identified in Section 907B(16) to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction shall be established by the commissioner, and the operator shall, as a minimum, be required to:
 - (a) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material.
 - (b) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically

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

- (c) Replace and regrade the root zone material described in (b) above with proper compaction and uniform depth over the regraded spoil material, and
 - (d) Redistribute and grade in a uniform manner the surface soil horizon described in Subparagraph (a).
- (8) Create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:
- (a) The size of the impoundment is adequate for its intended purposes.
 - (b) The impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under United States Public Law 83-566 (16 U.S.C. 1006).
 - (c) The quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable Federal and State law in the receiving stream.
 - (d) The level of water will be reasonably stable.
 - (e) Final grading will provide adequate safety and access for proposed water users, and
 - (f) Such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.
- (9) Conducting any augering operation associated with surface mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete; and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the commissioner determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety: Provided, that the commissioner may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the solid fuel resources or to protect against adverse water quality impacts.
- (10) Minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by:
- (a) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:
 - (i) Preventing or removing water from contact with toxic producing deposits.
 - (ii) Treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses.
 - (iii) Casing, sealing, or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters.
 - (b) (i) Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow,

or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable State or Federal law.

- (ii) Constructing any siltation structures pursuant to Subparagraph (b)(i) of this subsection prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan.
 - (c) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized; and depositing the silt and debris at a site and in a manner approved by the regulatory authority.
 - (d) Restoring recharge capacity of the mined area to approximate premining conditions.
 - (e) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.
 - (f) Such other actions as the Commissioner may prescribe.
- (11) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this Chapter.
- (12) Refrain from surface coal mining within five hundred feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided, that the commissioner shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if (a) the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the regulatory authorities concerned with surface mine regulation and the health and safety of underground miners, and (b) such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.
- (13) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed by the Secretary of the Interior pursuant to Section 515(f) of Public Law 95-87,* all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments.
- (14) Insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion.
- (15) Insure that explosives are used only in accordance with existing State and Federal law and the regulations issued by the Commissioner pursuant to this Chapter, which shall include provisions to:
- (a) Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site and by providing daily notice to resident/occupiers in such areas prior to any blasting.
 - (b) Maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts.

- (c) Limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons, (ii) damage to public and private property outside the permit area, (iii) adverse impacts on any underground mine, and (iv) change in the course, channel, or availability of ground or surface water outside the permit area.
 - (d) Require the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations.
 - (e) Provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area the applicant or permittee shall conduct a pre-blasting survey of such structures and submit the survey to the commissioner and a copy to the resident or owner making the request. The area of the survey shall be decided by the commissioner and shall include such provisions as the commissioner shall promulgate.
- (16) Insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations.
 - (17) Insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property.
 - (18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water.
 - (19) Establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan; and provided that as to vines, the plan shall prohibit the planting of Kudzu, pueraria lobata, or any vine of the Kudzu family.
 - (20) Assume the responsibility for successful revegetation, as required by Paragraph (19) above, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with Paragraph (19) above: Provided, that when the commissioner approves a long-term intensive agricultural postmining land use, the applicable five year period of responsibility for revegetation shall commence at the date of initial planting of such long-term intensive agricultural postmining land use: Provided further, that when the commissioner issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the Commissioner may grant exception to the provisions of Paragraph (19) above.
 - (21) Protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area.
 - (22) Place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that:
 - (a) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement.
 - (b) The areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement.
 - (c) Appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement.

- (d) The disposal area does not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented.
 - (e) If placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the commissioner, the spoil could be placed in compliance with all the requirements of this Chapter, and shall be placed, where possible, upon, or above, a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.
 - (f) Where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed.
 - (g) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses.
 - (h) Design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards, and
 - (i) All other provisions of this Chapter are met.
- (23) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this Chapter, taking into consideration the physical, climatological, and other characteristics of the site.
- (24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.
- (25) Provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the commissioner shall determine shall be retained in place as a barrier to slides and erosion.
- C. (1) Where an applicant meets the requirements of Paragraphs (2) and (3) of this subsection a permit without regard to the requirement to restore to approximate original contour set forth in Subsection 915B(3) or 915D(2) and (3) of this Section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided in Subsection C(3)(a) hereof, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this Subsection.
- (2) In cases where an industrial, commercial, agricultural, residential or public facility, including recreational facilities, use is proposed for the postmining use of the affected land, the Commissioner may grant a permit for a surface mining operation of the nature described in Subsection C(1) where:
- (a) After consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use.
 - (b) The applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be:
 - (i) Compatible with adjacent land uses.
 - (ii) Obtainable according to data regarding expected need and market.
 - (iii) Assured of investment in necessary public facilities.

- (iv) Supported by commitments from public agencies where appropriate.
 - (v) Practicable with respect to private financial capacity for completion of the proposed use.
 - (vi) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use, and
 - (vii) Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.
- (c) The proposed use would be consistent with adjacent land uses, and existing state and local land use plans and programs.
 - (d) The commissioner provides the police jury of the Parish in which the land is located and any state or Federal agency which the commissioner, in his discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use.
 - (e) All other requirements of this Act will be met.
- (3) In granting any permit pursuant to this subsection the Commissioner shall require that:
- (a) The toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion.
 - (b) The reclaimed area is stable.
 - (c) The resulting plateau or rolling contour drains inward from the out slopes except at specified points.
 - (d) No damage will be done to natural watercourses.
 - (e) Spoil will be placed on the mountain top bench as is necessary to achieve the planned postmining land use: Provided, that all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of Subsection B(22) of this Section.
 - (f) Insure stability of the spoil retained on the mountaintop and meet the other requirements of this Chapter.
- (4) The commissioner shall promulgate specific regulations to govern the granting of permits in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.
- (5) All permits granted under the provisions of this Subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.
- D. The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this Section: Provided, however, that the provisions of this Subsection D shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with provisions of Subsection C hereof:
- (1) Insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or

mining cut: Provided, that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of Paragraph 915B(3) or 915D(2) shall be permanently stored pursuant to Section 915B(22).

- (2) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation.
 - (3) The operator may not disturb land above the top of the highwall unless the commissioner finds that such disturbances will facilitate compliance with the environmental protection standards of this section: Provided, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate said compliance.
 - (4) For the purposes of this Subsection D, the term "steep slope" is any slope above twenty degrees or such lesser slope as may be defined by the commissioner after consideration of soil, climate, and other characteristics of a region.
- E.
- (1) The commissioner may permit variances for the purposes set forth in Paragraph (3) of this Subsection, provided that the watershed control of the area is improved; and further provided complete backfilling with spoil material shall be required to cover completely the highwall which material will maintain stability following mining and reclamation.
 - (2) Where an applicant meets the requirements of Paragraphs (3) and (4) of this subsection a variance from the requirement to restore to approximate original contour set forth in subsection 915D(2) of this Section may be granted for the surface mining of coal where the owner of the surface knowingly requests in writing, as a part of the permit application, that such a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities, in accord with the further provisions of (3) and (4) of this Subsection.
 - (3)
 - (a) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use.
 - (b) Is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site, and
 - (c) After approval of the appropriate state environmental agencies, the watershed of the affected land is deemed to be improved.
 - (4) In granting a variance pursuant to this subsection the commissioner shall require that only such amount of spoil will be placed off the mine bench as is necessary to achieve the planned postmining land use, insure stability of the spoil retained on the bench, meet all other requirements of this Chapter, and all spoil placement off the mine bench must comply with subsection 915B(22).
 - (5) The commissioner shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.
 - (6) All exceptions granted under the provisions of this Subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

Added by Acts 1978, No. 406, § 1.

*30 U.S.C.A. § 1265(f).

§916. Confidentiality

Information submitted to the office of conservation pursuant to R.S. 30:912 as confidential concerning trade secrets, or privileged commercial or financial information which relates to competitive rights shall not be available for public examination.

Added by Acts 1978, No. 406,§ 1; Amended by Acts 1979, No. 553,§ 2.

§917. Inspections and monitoring

- A. For the purpose of the administration and enforcement of any permit under this Chapter, or of determining whether any person is in violation of any requirement of this Chapter:
- (1) The commissioner shall require any permittee to (a) establish and maintain appropriate records, (b) make monthly reports to the commissioner, (c) install, use, and maintain any necessary monitoring equipment or methods, (d) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as the commissioner shall prescribe, and (e) provide such other information relative to surface coal mining and reclamation operations as the commissioner deems reasonable and necessary.
 - (2) For those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the commissioner shall specify those:
 - (a) Monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence.
 - (b) Monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost, deepest, coal seam to be mined.
 - (c) Records of well logs and borehole data to be maintained, and
 - (d) Monitoring sites to record precipitation. The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the commissioner in order to assure their reliability and validity, and
 - (3) The authorized representatives of the commissioner without advance notice and upon presentation of appropriate credentials (a) shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are located; and (b) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this Chapter.
- B. The inspections by the commissioner shall (1) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit; (2) occur without prior notice to the permittee or his agents or employees except for necessary onsite meetings with the permittee; and (3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this Chapter.
- C. Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.
- D. Each inspector, upon detection of each violation of any requirement of this Chapter or the regulations issued pursuant to this Chapter, shall forthwith inform the operator in writing, and shall report in writing any such violation to the commissioner.

- E. Copies of any records, reports, inspection materials, or information obtained under this Chapter by the commissioner shall be made immediately available to the public at central and sufficient locations in the parish of the area of mining so that they are conveniently available to residents in the areas of mining.
- F. After the State has assumed exclusive jurisdiction of surface coal mining operations as provided in section 503 of Public Law 95-87,1 and as long as the State retains such jurisdiction, then no employee of the Office of Conservation performing any function or duty under this Chapter shall have a direct or indirect financial interest in any surface coal mining operation. Whoever knowingly violates the provisions of this Subsection shall, upon conviction, be punished by a fine of not more than \$2,500.00, or by imprisonment of not more than one year, or by both. The commissioner shall by regulation establish methods by which the provisions of this Subsection will be monitored and enforced by the commissioner, including appropriate provisions for the filing by such employees in the review of statements and supplements thereto concerning any financial interest which may be effected by this subsection. This Subsection shall not be given effect (1) if the Secretary of the Interior does not require the inclusion of similar provisions in state laws as a condition for approval by the Secretary of the Interior of state programs of regulation of surface coal mining and reclamation operations pursuant to Section 503 of Public Law 95-87 or (2) if any such requirement of the Secretary of the Interior is declared invalid by final decree of a court of competent jurisdiction: Provided, that if similar provisions are required by the Secretary of the Interior to be included in state laws, the Secretary of Natural Resources and the commissioner may commence and prosecute an action in the appropriate federal court to have the regulation requiring inclusion declared invalid.
- G. (1) Any person who is or may be adversely affected by a surface coal mining operation may notify the commissioner or any representative of the commissioner responsible for conducting the inspection, in writing, of any violation of this Chapter which he has reason to believe exists at the surface mining site. The commissioner shall, by regulation, establish procedures for informal review of any refusal by a representative of the commissioner to issue a citation with respect to any such alleged violation. The commissioner shall furnish such persons requesting the review a written statement of the reasons for the commissioner's final disposition of the case.

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

Added by Acts 1978, No. 406, § 1.

*30 U.S.C.A. § 1253.

§918. Penalties

- A. Any permittee who violates any permit condition or who violates any other provision of this Chapter, may be assessed a civil penalty by the commissioner, except that if such violation leads to the issuance of a cessation order under section 921, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.
- B. A civil penalty shall be assessed by the commissioner only after the person charged with a violation described under Subsection A of this Section has been given an opportunity for a public hearing. Where such a public hearing has been held, the commissioner shall make findings of fact, and he shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the commissioner shall consolidate such hearings with other proceedings under Section 921 of this Chapter. Any hearing under this Section shall be of record and shall be subject to the Louisiana Administrative Procedures Act, except where

the provisions of the Administrative Procedures Act are in conflict with this Chapter and the regulations issued by the commissioner pursuant to the Chapter, in which case the provisions of this Chapter and the regulations issued hereunder shall govern. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the commissioner after the commissioner has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

Amended by Acts 1980, No. 121, § 4

- C. Upon the issuance of a notice or order charging that a violation of Chapter 9 has occurred, the commissioner shall inform the operator within thirty days of the proposed amount of said penalty. The person charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the commissioner for placement in an escrow account. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the commissioner shall within thirty days remit the appropriate amount to the person, with interest at the rate of 6 percent per annum. Failure to forward the money to the commissioner within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.
- D. Any person who willfully and knowingly violates a condition of a permit issued pursuant to this Chapter or fails or refuses to comply with any order issued under Section 921 or Section 926 of this Chapter, or any order incorporated in a final decision issued by the commissioner under this Chapter, except an order incorporated in a decision issued under Subsection B of this Section or Subsection C of Section 921 of this Chapter, shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than one year, or both.
Amended by Acts 1980, No. 121, § 4
- E. Whenever a corporate permittee violates a condition of a permit issued pursuant to this Chapter or fails or refuses to comply with any order issued under Section 921 of this Chapter, or any order incorporated in a final decision issued by the Commissioner under this Chapter except an order incorporated in a decision issued under Subsection B of this Section or Section 928 of this Chapter, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections A and D of this Section.
- F. Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Chapter or any regulation issued pursuant to this Chapter or any order or decision issued by the commissioner under this Chapter, shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.
- G. Any operator who fails to correct a violation for which a citation has been issued under Section 921A within the period permitted for its correction, which period shall not end until the entry of a final order by the commissioner in the case of any review proceedings under Section 925 initiated by the operator wherein the commissioner orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings under Section 926 initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation, shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation continues.
- H. The commissioner may commence and prosecute civil actions to recover civil penalties owed under this Chapter.

Added by Acts 1978, No. 406, § 1.

§919. Release of performance bonds or deposits

- A. The permittee may file a request with the commissioner for the release of all or part of a performance bond or deposit. Within thirty days after any application for bond or deposit release has been filed with the commissioner, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the surface coal mining and reclamation activities took place, notifying them of his intention to seek release from the bond.
- B. Upon receipt of the notification and request, the commissioner shall within thirty days conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution. The commissioner shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty days from the filing of the request, if no public hearing is held pursuant to Subsection F, and if there has been a public hearing held pursuant to Subsection F, within thirty days thereafter.
- C. The commissioner shall release in whole or in part said bond or deposit if the commissioner is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this Chapter according to the following schedule:
 - (1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the release of 60 per centum of the bond or collateral for the applicable permit area.
 - (2) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the commissioner shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation for the period specified for operator responsibility in Section 915 of reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Section 915B(10) or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 907B(16). Where a silt dam is to be retained as a permanent impoundment pursuant to Section 915B(8), the portion of bond may be released under this Paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the commissioner.
 - (3) When the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in Section 915: Provided, That no bond shall be fully released until all reclamation requirements of this Chapter are fully met.
- D. If the commissioner disapproves the application for release of the bond or portion thereof, the commissioner shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.

- E. When any application for total or partial bond release is filed with the commissioner, the commissioner shall notify the municipality in which a surface coal mining operation is located by certified mail at least thirty days prior to the release of all or a portion of the bond.
- F. Any person with a valid legal interest which might be adversely affected by release of the bond or the responsible officer or head of any State, Federal or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond to the commissioner within thirty days after the last publication of the above notice. If written objections are filed, and a hearing requested, the commissioner shall inform all the interested parties of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the commissioner in a newspaper of general circulation in the locality for two consecutive weeks, and the commissioner shall hold a public hearing in the locality of the surface coal mining operation proposed for bond release or at the State capital at the option of the objector, within thirty days of the request for such hearing.
- G. Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the commissioner pursuant to this section, the commissioner may establish an informal conference as provided in Section 913 to resolve such written objections.
- H. For the purpose of such hearing the commissioner shall have the authority and is hereby empowered to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of the materials, and take evidence including but not limited to inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this Chapter shall be made, and a transcript made available on the motion of any party or by order of the commissioner.

Added by Acts 1978, No. 406, § 1.

§920. Citizen suits

- A. After the state has assumed exclusive jurisdiction of surface coal mining operations as provided in Section 503 of Public Law 95-87,* and as long as the state retains such jurisdiction, then, except as provided in subsection B of this Section, and subject to the provisions of subsection G of this Section, any person having an interest which is or may be adversely affected may commence a civil action in a court of the state on his own behalf to compel compliance with this Chapter.
 - (1) Against the state or a state instrumentality or agency which is alleged to be in violation of the provisions of this Chapter or of any rule, regulation, order or permit issued pursuant to this Chapter, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this Chapter, or
 - (2) Against the commissioner where there is alleged a failure of the commissioner to perform any act or duty under this Chapter which is not discretionary with the commissioner.
- B. No action may be commenced
 - (1) Under subsection A(1) of this Section
 - (a) Prior to sixty days after the plaintiff has given notice in writing of the violation (i) to the commissioner and (ii) to any alleged violator; or
 - (b) If the commissioner has commenced and is diligently prosecuting a civil action in a court of the state to require compliance with the provisions of this Chapter; but in any such action any such person shall have the right to intervene, or (2) Under subsection A(2) of this Section prior to sixty days after the plaintiff has given notice in writing of such action to the commissioner in such

manner as the commissioner shall by regulation prescribe, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

- C. (1) Any action respecting a violation of this Chapter or the regulations thereunder may be brought only in the judicial district in which the surface coal mining operation complained of is located.
- (2) In such action under this Section, the commissioner, if not a party, may intervene as a matter of right.
- D. The court, in issuing any final order in any action brought pursuant to Subsection A of this Section, may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Louisiana Code of Civil Procedure.
Amended by Acts 1979, No. 553, § 3.
- E. Nothing in this Section shall restrict any right which any person, or class of persons, may have under any statute or law to seek enforcement of any of the provisions of this Chapter and the regulations thereunder, or to seek any other relief, including relief against the commissioner.
- F. Any person who is injured in his person or property through the violation by any operator of any rule, regulation, order, or permit issued pursuant to this Chapter may bring an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this Subsection shall affect the rights established by or limits imposed under the State's Worker's Compensation laws.**
- G. This Section shall not be given effect (1) if the Secretary of the Interior does not require the inclusion of similar provisions in state laws as a condition for approval by the Secretary of the Interior of state programs of regulation of surface coal mining and reclamation operations pursuant to Section 503 of Public Law 95-87* or (2) if any such requirement of the Secretary of the Interior is declared invalid by final decree of a court of competent jurisdiction: Provided, that if similar provisions are required by the Secretary of the Interior to be included in state laws, the Secretary of Natural Resources and the Commissioner may commence and prosecute an action in the appropriate Federal court to have the regulation requiring inclusion declared invalid.

Added by Acts 1978, No. 406, § 1. Acts 1983, 1st Ex.Sess., No. 1, § 6.

*30 U.S.C.A. § 1253

**R.S. 23:1021 et seq.

§921. Enforcement

- A. (1) Whenever, on the basis of any information available to him, including receipt of information from any person, the commissioner has reason to believe that any person is in violation of any requirement of this Chapter or any permit condition required by this Chapter, the commissioner shall immediately order inspection of the surface coal mining operation at which the alleged violation is occurring unless the information available to the commissioner is a result of a previous inspection of such surface coal mining operation. When the inspection results from information provided to the commissioner by any person, the commissioner shall notify such person when the inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection.
- (2) When, on the basis of any inspection, the commissioner or his authorized representative determines that any condition or practices exist, or that any permittee is in violation of any requirement of this Chapter or any permit condition required by this Chapter, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the commissioner or his authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice or violation. Such cessation order shall remain in effect until the commissioner or his authorized representative determines that the condition,

practice, or violation has been abated, or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subparagraph A(5) of this Section. Where the commissioner finds that the ordered cessation of surface coal mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the commissioner shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the commissioner deems necessary to abate the imminent danger or the significant environmental harm.

- (3) When, on the basis of an inspection, the commissioner or his authorized representative determines that any permittee is in violation of any requirement of this Chapter or any permit condition required by this Chapter, but such violation does not create an imminent danger to the health or safety of the public, or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the commissioner or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time but not more than ninety days for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the commissioner or his authorized representative, the commissioner or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the commissioner or his authorized representative determines that the violation has been abated, or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to Subparagraph A(5) of this Section. In the order of cessation issued by the commissioner under this Subsection, the commissioner shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order.
 - (4) When, on the basis of an inspection, the commissioner or his authorized representative determines that a pattern of violations of any requirements of this Chapter or any permit conditions required by this Chapter exists or has existed, and if the commissioner or his authorized representative also finds that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this Chapter or any permit conditions, or that such violations are willfully caused by the permittee, the commissioner or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested the commissioner shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the commissioner or his authorized representative shall forthwith suspend or revoke the permit.
 - (5) Notices and orders issued pursuant to this Section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the commissioner or his authorized representative who issues such notice or order, and all such notices and orders shall be in writing and shall be signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the commissioner or his authorized representative. Provided, that any notice or order issued pursuant to this Section which requires cessation of mining by the operator shall expire within thirty days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.
- B. The commissioner may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court for the parish in which the surface coal mining and reclamation operation is located or in which the permittee thereof has his principal office, whenever such permittee or his agent (a) violates or fails or refuses to comply with any order or decision issued by the commissioner under this Chapter, or (b) interferes with, hinders, or delays the commissioner or his authorized representatives in carrying out the provisions of this Chapter, or (c) refuses to admit such authorized representative to the mine, or (d) refuses to permit inspection of the mine by such authorized representative, or

(e) refuses to furnish any information or report requested by the commissioner in furtherance of the provisions of this Chapter, or (f) refuses to permit access to, and copying of, such records as the commissioner determines necessary in carrying out the provisions of this Chapter. Such court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders may be issued in accordance with the Louisiana Rules of Civil Procedure. Any relief granted by the court to enforce an order under clause (a) of this Section shall continue in effect until the completion or final termination of all proceedings for review of such order under this title, unless, prior thereto, the district court granting such relief sets it aside or modifies it.

Added by Acts 1978, No. 406, § 1.

C. Any person who shall, except as permitted by law, willfully resist, prevent, impede, or interfere with the commissioner of conservation or any of his agents in the performance of duties required by this Chapter or regulations thereunder shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

Added by Acts 1979, No. 553, § 4.

§922. Designating areas unsuitable for surface coal mining

- A. (1) The commissioner shall establish a planning process enabling objective decisions to be made based upon competent and scientifically sound data and information as to which, if any, land areas of the State are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in Paragraphs (2) and (3) of this Subsection, but such designation shall not prevent the mineral exploration pursuant to Chapter 9 of any area so designated.
- (2) Upon petition pursuant to Subsection B of this Section, the commissioner shall designate an area as unsuitable for all or certain types of surface coal mining operations if the commissioner determines that reclamation pursuant to the requirements of this Chapter is not technologically and economically feasible.
- (3) Upon petition pursuant to Subsection B of this Section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will
- (a) Be incompatible with existing state or local land use plans or programs; or
 - (b) Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or
 - (c) Affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or
 - (d) Affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.
- (4) The commissioner shall be responsible for surface coal mining lands review, and shall develop
- (a) A data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to support and permit reclamation of surface coal mining operations.
 - (b) A method or methods for implementing land use planning decisions concerning surface coal mining operations, and
 - (c) Proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this Section.
- (5) Determinations of the unsuitability of land for surface coal mining, as provided for in this Section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state, and local levels.

- (6) The requirements of this Section shall not apply to lands on which surface coal mining operations are being conducted under a permit issued pursuant to this Chapter, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.
- B. Any person having an interest which is or may be adversely affected shall have the right to petition the commissioner to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the commissioner shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this Subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the commissioner shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.
- C. Prior to designating any land areas as unsuitable for surface coal mining operations, the commissioner shall prepare a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal.
- D. After the enactment of this Chapter and subject to valid rights existing prior to August 3, 1977, no surface coal mining operations shall be permitted:
- (1) On any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act* and National Recreation Areas designated by Act of Congress;
 - (2) On any Federal lands within the boundaries of any national forest, except as permitted by Section 522(e)(2) of Public Law 95-87**;
 - (3) Which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the commissioner and the federal, state, or local agency with jurisdiction over the park or the historic site.
 - (4) Within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the commissioner may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or
 - (5) Within three hundred feet from any occupied dwelling, unless waived by the owner thereof, or within three hundred feet of any public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery.

Amended by Acts 1980, No. 121, § 5.

Added by Acts 1978, No. 406, § 1.

*16 U.S.C.A. § 1276(a).

**30 U.S.C.A. § 1272(e)(2).

§923. Federal lands

The commissioner may elect to enter into a cooperative agreement with the Secretary of the Interior to provide for state regulation of surface coal mining and reclamation operations on federal lands within the state, in which event the provisions and requirements of Section 513(c) of Public Law 95-87* shall apply as applicable to Sections 913, 914, and 910 of this Chapter.

Added by Acts 1978, No. 406, § 1.

*30 U.S.C.A. § 1263(c).

§924. Public agencies, public utilities, and public corporations

Any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, which proposes to engage in surface coal mining operations shall comply with the provisions of this Chapter.

Added by Acts 1978, No. 406, § 1.

§925. Review by commissioner

A. (1) A permittee issued a notice or order by the commissioner pursuant to the provisions of Subparagraphs A(2) and (3) of section 921 of this Chapter, or any person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the commissioner for review of the notice or order within thirty days of receipt thereof or within thirty days of its modification, vacation, or termination. Upon receipt of such application, the commissioner shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. The filing of an application for review under this Subsection shall not operate as a stay of any order or notice.

(2) The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto. Any such hearing shall be of record and shall be subject to the Louisiana Administrative Procedures Act except where the provisions of the Administrative Procedures Act are in conflict with the provisions of this Chapter and the regulations issued by the commissioner pursuant to this Chapter, in which case the provisions of this Chapter and the regulations issued by the commissioner hereunder shall govern.

Amended by Acts 1980, No. 121, § 6.

B. Upon receiving the report of such investigation, the commissioner shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order, or the modification, vacation, or termination of such notice or order complained of and incorporate his findings therein. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to the provisions of Subparagraph A(2) or A(3) of Section 921 of this Chapter, the commissioner shall issue the written decision within thirty days of the receipt of the application for review, unless temporary relief has been granted by the commissioner pursuant to Subparagraph C of this section or by the court pursuant to Subparagraph C of Section 926 of this Chapter.

C. Pending completion of the investigation and hearing required by this section, the applicant may file with the commissioner a written request that the commissioner grant temporary relief from any notice or order issued under Section 921 of this Chapter, together with a detailed statement giving reasons for granting such relief. The commissioner shall issue an order or decision granting or denying such relief expeditiously: Provided, that where the applicant requests relief from an order for cessation of coal mining and reclamation operations issued pursuant to Subparagraph A(2) or A(3) of Section 921 of this Chapter, the order or decision on such a request shall be issued within five days of its receipt. The commissioner may grant such relief, under such conditions as he may prescribe, if:

(1) A hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard.

(2) The applicant shows that there is substantial likelihood that the findings of the commissioner will be favorable to him, and

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

D. Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to Section 921, the commissioner shall hold a public hearing after giving written notice of the time, place, and date thereof. Any such hearing shall be of record and shall be subject to the Louisiana Administrative Procedures Act, except where the provisions of the Administrative Procedures Act are in conflict with the provisions of this Chapter and the regulations issued by the commissioner pursuant to this Chapter, in which case the provisions of this Chapter and the regulations issued by the commissioner shall govern. Within sixty days following the public hearing, the commissioner shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the commissioner revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the commissioner, or the commissioner shall declare as forfeited the performance bonds for the operation.

Amended by Acts 1980, No. 121, § 6.

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

Added by Acts 1978, No. 406, § 1.

§926. Judicial review

A. Any person affected who is aggrieved by a rule, regulation, or order issued by the commissioner hereunder, or by an act done or threatened thereunder, and who has exhausted his administrative remedy, may obtain judicial review thereof in a suit instituted in the district court of the parish of East Baton Rouge or in the parish where the operations occur which give rise to the rule, regulation, order, or act. Such suit shall be filed within thirty days after the challenged rule, regulation, order, or other act is promulgated or taken and shall be tried summarily, in term or vacation. In such trials the validity of any rule, regulation, or order made or promulgated hereunder shall be deemed prima facie valid and the court shall be limited in its consideration to a review of the record of the proceedings before the commissioner and no new or additional evidence shall be received. The reviewing court shall limit its consideration to the following:

- (1) Whether the rule, regulation, order, or act is constitutional;
- (2) Whether the commissioner lacked jurisdiction to adopt the rule, regulation, or order or do the act or whether the rule, regulation, order, or act exceeds the commissioner's jurisdiction;
- (3) Whether the rule, regulation, order, or act was procured by fraud;
- (4) Whether the rule, regulation, order, or act is reasonable; or
- (5) Whether the commissioner's decision to adopt the rule, regulation or order or do the act is supported by substantial evidence.

B. A rule, regulation or order issued by the commissioner pursuant to this Chapter may only be reviewed judicially pursuant to this Section. The courts of the State shall have no jurisdiction to hear and determine actions contesting the validity of a rule, regulation or order issued by the commissioner except as provided in this Section.

C. In the case of a proceeding to review any order or decision issued by the commissioner under this Chapter, including an order or decision issued pursuant to Subparagraph C or D of Section 925 of this Chapter

pertaining to any order issued under Subparagraph A(2), A(3), or A(4) of Section 921 of this Title for cessation of coal mining and reclamation operations, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

- (1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief.
- (2) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding, and (3) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

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

Added by Acts 1978, No. 406, § 1. Amended by Acts 1979, No. 553, § 5.

§927. Surface coal mining operations not subject to this Act

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

- (1) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him.
- (2) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two thirds percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.
Amended by Acts 1999, No. 1002, § 1.
- (3) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction under regulations established by the commissioner.

Added by Acts 1978, No. 406, § 1.

§928. Employee protection

- A. After the state has assumed exclusive jurisdiction of surface coal mining operations as provided in section 503 of Public Law 95-87*, and as long as the state retains such jurisdiction, then, no person shall discharge, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Chapter.
- B. Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of Subsection A of this Section may, within thirty days after such alleged violation occurs, apply to the commissioner for a review of such firing or alleged discrimination. A copy of the application shall be sent to the person or operator who will be the respondent. Upon receipt of such application, the commissioner shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to the Louisiana Administrative Procedures Act. Upon receiving the report of such investigation the commissioner shall make findings of fact. If he finds that a violation did occur, he shall issue a decision incorporating therein his findings and an order requiring the party committing the violation to take such affirmative action to abate the violation as the commissioner deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no violation, he will issue a finding. Orders issued by the commissioner under this Subsection shall be subject to judicial review in the same manner as orders and decisions of the commissioner are subject to judicial review under this Chapter.

- C. Whenever an order is issued under this Section to abate any violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the persons committing the violation.
- D. This Section shall not be given effect (1) if the Secretary of the Interior does not require the inclusion of similar provisions in state laws as a condition for approval by the Secretary of the Interior of state programs of regulation of surface coal mining and reclamation operations pursuant to Section 503 of Public Law 95-87* or (2) if any such requirement of the Secretary of the Interior is declared invalid by final decree of a court of competent jurisdiction: Provided, that if similar provisions are required by the Secretary of the Interior to be included in state laws, the Secretary of Natural Resources and the commissioner may commence and prosecute an action in the appropriate federal court to have the regulation requiring inclusion declared invalid.

Added by Acts 1978, No. 406, § 1.

*30 U.S.C.A. § 1253.

§929. Experimental practices

In order to encourage advances in mining and reclamation practices or to allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities, the commissioner with approval by the Secretary of the Interior may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under Sections 915 of this Chapter. Such departures may be authorized if (i) the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by promulgated standards; (ii) the mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and (iii) the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

Added by Acts 1978, No. 406, § 1. Amended by Acts 1980, No. 121, § 7.

§930. Water rights and replacement

- A. After the state has assumed exclusive jurisdiction of surface coal mining operations as provided in Section 503 of Public Law 95-87, 1 and as long as the state retains such jurisdiction, then, nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.
- B. The operator of a surface coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such surface coal mine operation.
- C. This Section shall not be given effect (1) if the Secretary of the Interior does not require the inclusion of similar provisions in state laws as a condition for approval by the Secretary of the Interior of state programs of regulation of surface coal mining and reclamation operations pursuant to Section 503 of Public Law 95-87* or (2) if any such requirement of the Secretary of the Interior is declared invalid by final decree of a court of competent jurisdiction: Provided, that if similar provisions are required by the Secretary of the Interior to be included in state laws, the Secretary of Natural Resources and the commissioner may commence and prosecute an action in the appropriate Federal court to have the regulation requiring inclusion declared invalid.

Added by Acts 1978, No. 406, § 1.

*30 U.S.C.A. § 1253.

§931. Effective date; time of issuance of regulations

This Chapter shall be effective upon final approval of the State's program of regulations by the Secretary of the Interior pursuant to Section 503 of Public Law 95-87.* Provided, that the commissioner shall, upon signing of this Chapter by the Governor of the State, immediately issue regulations pursuant to this Chapter as required to insure

approval of the State program of regulations by the Secretary of the Interior. The regulations shall be effective upon the effective date of this Chapter..

Added by Acts 1978, No. 406, § 1.

*30 U.S.C.A. § 1253.

§932. Effect of amendments to public law 95-87

The commissioner shall have the right to grant variances to the requirements of this Chapter and the regulations issued pursuant to this Chapter in the issuance of any permit pursuant to this Chapter, or, upon application of a permittee, to amend an issued permit to allow such a variance, when such variances are permitted by an amendment to Public Law 95-87* subsequent to the enactment of this Chapter.

Added by Acts 1978, No. 406, § 1.

*30 U.S.C.A. § 1201 et seq.

Louisiana Revised Statutes
Title 30. Minerals, Oil, and Gas and Environmental Quality
Chapter 9A. Interstate Mining Compact

§951. Findings and purpose

- A. The Legislature of Louisiana finds and declares that:
- (1) Within the state mining for solid minerals constitutes a significant aspect of the state's economy;
 - (2) In addition to the present salt mining, sulphur mining, and sand and gravel mining, the surface mining of lignite will soon commence in the state as a new industry;
 - (3) The Interstate Mining Compact was effected in 1966 to provide a forum for states having significant solid mineral mining to exchange ideas on mining technology, conservation, and reclamation practices and to generate consensus policies for use as desired by member states and for input at the congressional and federal regulatory level of government;
 - (4) Membership in the Compact by the state will provide the governor, as the representative of the state on the Interstate Mining Commission, direct input on significant solid mineral mining issues and policies and access to ideas and sources of information, not otherwise available, which may enable the state to initiate progressive or desired policies and mining control techniques that will enure to the benefit of the citizens of Louisiana and the mining industry.
- B. The purposes of the Interstate Mining Compact are recognized to be to:
- (1) Advance the protection and restoration of land, water, and other resources affected by mining.
 - (2) Assist in the reduction, elimination, or counteracting of pollution or deterioration of land, water, and air attributable to mining.
 - (3) Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.
 - (4) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources.
 - (5) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

Added by Acts 1979, No. 714, §1.

§952. Membership

Pursuant to the findings of the legislature and subject to the limitations hereinafter set forth, the Interstate Mining Compact is hereby enacted into law and the state through the office of the governor is authorized to join and participate in the Interstate Mining Compact through membership on the Interstate Mining Commission.

Added by Acts 1979, No. 714, §1.

§953. Limitations

- A. No provisions of the Interstate Mining Compact, nor any policies of the Interstate Mining Commission, shall be construed to limit, repeal, or supersede any law of the state of Louisiana.

- B. The governor and the legislature, or agents of either, shall have the right to inspect the books and accounts of the Interstate Mining Commission at any reasonable time while the state is a member.
- C. A copy of the bylaws of the Interstate Mining Commission shall be placed on file with the secretary of the Department of Natural Resources and be available for inspection at any reasonable time by the legislature or any interested citizen.
- D. A report of the preceding year's activities of the Interstate Mining Commission shall be made to the governor and the legislature annually.

Added by Acts 1979, No. 714, §1.

§954. Expenses

Dues and expenses incurred as a consequence of membership by the state in the Interstate Mining Compact shall be paid only pursuant to appropriations therefor by the legislature.

Added by Acts 1979, No. 714, §1.

§955. General power of governor; withdrawal

- A. Within the limitations of this Chapter the governor shall be entitled to exercise all of the power of his office necessary in his judgment to maintain the state in good standing as a member and to participate fully therein.
- B. After the governor has given one year's notice in writing to the governors of all other member states, the legislature, by appropriate repealing legislation, may withdraw the state from the Interstate Mining Compact.

Added by Acts 1979, No. 714, §1.

Louisiana Revised Statutes
Title 30. Minerals, Oil, and Gas and Environmental Quality
Chapter 9-B. Louisiana Noncoal Surface Mining Law

§961. Short Title

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§962. Declaration of policy

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§963. Jurisdiction

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§964. Powers and duties

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§965. Definitions

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§966. Funding

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§967. Permits

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§968. Buffer zones

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§969. Procedure of reclaiming land

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§970. Annual status reports

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§971. Completion of reclamation obligations

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§972. Reclamation fee

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§973. Inspections

Repealed by Acts 1993, No. 245, §1.
Added by Acts 1992, No. 1097, §1.

§974. Violations; notice; hearings; enforcement

Repealed by Acts 1993, No. 245, §1.

Added by Acts 1992, No. 1097, §1.

§975. Penalties

Repealed by Acts 1993, No. 245, §1.

Added by Acts 1992, No. 1097, §1.

§976. Designating areas unsuitable for noncoal surface mining

Repealed by Acts 1993, No. 245, §1.

Added by Acts 1992, No. 1097, §1.

§977. Exempt Operations

Repealed by Acts 1993, No. 245, §1.

Added by Acts 1992, No. 1097, §1.

§978. Confidentiality

Repealed by Acts 1993, No. 245, §1.

Added by Acts 1992, No. 1097, §1.

§979. Judicial review

Repealed by Acts 1993, No. 245, §1.

Added by Acts 1992, No. 1097, §1.

Repealed by Acts 1993, No. 245, §1.

Added by Acts 1992, No. 1097, §2.

Repealed by Acts 1993, No. 245, §1.

Added by Acts 1992, No. 1097, §3.

HISTORY

Title 30, Chapter 9 Acts

Act 141 of 1976	Enacts Sections 901 - 914
Act 406 of 1978	Enacts Sections 915 - 932 Amends Sections 902.F - 902.I, 904 - 914
Act 553 of 1979	Enacts Sections 906.E and 921.C Amends Sections 916, 920.D and 926.A
Act 714 of 1979	Enacts Sections 951 - 954
Act 121 of 1980	Amends Sections 905.B(2), 906.B, 906.D(3), 911.A(2), 918.B, 918.D, 922.D(5), 925.A(2), 925.D and 929
Act 573 of 1983	Enacts Sections 904(X), 905.B(14) and 905.I Amends Section 903
Act 281 of 1985	Enacts Sections 905.2 - 905.5
Act 351 of 1986	Enacts Sections 906.1 - 906.3
Act 984 of 1992	Repeals Sections 906.3.B and C
Act 1097 of 1992	Enacts Sections 961 – 979
Act 245 of 1993	Repeals Sections 961-979
Act 658 of 1997	Amends Sections 906.2 and 906.3
Act 1002 of 1999	Enacts Sections 907.B(17) - (20) Amends Sections 907.B(16), 907.C and 927(2)
Act 278 of 2008	Amends Sections 905.B(2) and (14), 905.1, 905.3(A) and (D), 905.4(A)(1)(a) and (c) and (2), (B), (C), (D), (E)(2), (F), (G), (H), and (J)(2). Repeals Sections 905.2 and 905.4(K)