

1 SB62  
2 115018-2  
3 By Senator Barron  
4 RFD: Governmental Affairs  
5 First Read: 12-JAN-10  
6 PFD: 12/18/2009

8 SYNOPSIS: Under existing law, the Alabama Surface  
9 Mining Commission regulates the surface coal mining  
10 industry in the state and ensures the reclamation  
11 of land which has been surface mined or which has  
12 suffered from the effects of underground coal  
13 mining.

14 This bill would require the commission to  
15 meet once every month instead of once every 30  
16 days.

17 This bill would authorize the commission to  
18 charge reasonable fees for training, examination,  
19 and certification programs.

20 This bill would authorize the commission to  
21 hire or contract with attorneys to serve as hearing  
22 officers and would delete the requirement that such  
23 hearing officers be provided offices in separate  
24 facilities from that of the commission.

25 This bill would authorize the commission to  
26 establish and charge reasonable fees for an initial  
27 surface mining license and annual updates.

1                   This bill would also delete the requirement  
2                   that commission inspectors issue citations  
3                   compelling attendance at an expeditious hearing  
4                   before a hearing officer upon issuance of a  
5                   cessation order.

6  
7                   A BILL

8                   TO BE ENTITLED

9                   AN ACT

10  
11                   Relating to the Alabama Surface Mining Commission;  
12                   to amend Sections 9-16-73, 9-16-74, 9-16-77, 9-16-78, 9-16-81,  
13                   and 9-16-93, Code of Alabama 1975, to require the commission  
14                   to meet once every month instead of once every 30 days; to  
15                   authorize the commission to charge reasonable fees for  
16                   training, examination, and certification programs; to  
17                   authorize the commission to hire or contract with attorneys to  
18                   serve as hearing officers; to delete the requirement that  
19                   separate offices in separate facilities be provided for  
20                   hearing officers; to authorize the commission to establish and  
21                   charge reasonable fees for initial surface mining licenses and  
22                   annual updates; and to delete the requirement that commission  
23                   inspectors issue citations compelling attendance at  
24                   expeditious hearings before a hearing officer upon issuance of  
25                   a cessation order.

26                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 9-16-73, 9-16-74, 9-16-77, 9-16-78, 9-16-81, and 9-16-93 of the Code of Alabama 1975, are amended to read as follows:

"§9-16-73.

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

"(b) The commission shall be composed of seven members, who are fair and reasonable citizens of the state, appointed by the Governor, with the advice and consent of the Senate. The Governor shall initially appoint two members of the commission for a term of five years, two members for four years, two members for three years, and one member for two years. All members appointed subsequently shall be appointed for terms of five years.

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

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

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

"(d) The commission shall annually elect from among its members a ~~chairman~~ chair, a ~~vice-chairman~~ vice chair, and such other officers as necessary to fulfill its duties. In the event of a vacancy among the commissioners, the Governor ~~shall~~, within 90 days of being notified of such vacancy, shall make an appointment to such vacancy, which appointment shall

1 be subject to the advice and consent of the Senate at the next  
2 regular or special session of the Legislature, ~~in~~. In the  
3 event such appointee is confirmed, his or her term shall be  
4 for the balance of the vacancy so filled.

5 " (e) The commission shall appoint a ~~director~~  
6 Director of the Alabama Surface Mining Commission, who must  
7 have a working knowledge of the federal and state surface  
8 mining statutes, rules, and regulations, and shall fix his or  
9 her compensation. The commission may appoint a deputy director  
10 as an unclassified position and the compensation of such  
11 deputy director shall be fixed by the commission subject to  
12 ~~provisions of~~ the state Merit System. The director shall be  
13 the chief operating officer of the commission and shall be  
14 charged with exercising such powers, duties, and functions as  
15 may be conferred upon him or her by the commission or this  
16 article, except the director shall not have the power to  
17 promulgate, modify, suspend, or repeal any standards, rules,  
18 or regulations provided for or authorized under this article.  
19 The director ~~is authorized~~, subject to the approval of the  
20 commission, ~~to~~ may create such divisions of his or her office  
21 as may be necessary to carry out its functions and may employ  
22 professional, technical, legal, or clerical personnel as may  
23 be necessary to carry out the duties and functions of the  
24 commission. ~~He~~ may also The director, with the approval of the  
25 commission, may also contract with private persons, firms, or  
26 corporations to provide professional or technical assistance

1 or consultant services to assist his or her office in carrying  
2 out the purposes of this article.

3                 "(f) The members of ~~said the~~ commission shall  
4 receive as compensation ~~\$75.00~~ seventy-five dollars (\$75) per  
5 day for each day of official business as approved and  
6 validated by the ~~chairman~~ chair. The ~~chairman~~ chair shall  
7 receive ~~\$100.00~~ one hundred dollars (\$100) per day for each  
8 full day he or she is occupied with business of the  
9 commission. The ~~chairman is hereby authorized to~~ chair may  
10 approve and certify expenses of every member of the commission  
11 for reimbursement pursuant to Article 2, commencing with  
12 Section 36-7-20, Chapter 7 of Title 36.

13                 "(g) Five members of the commission shall constitute  
14 a quorum and recusal of a member shall not affect the quorum.  
15 The commission shall keep a complete and accurate record of  
16 all its meetings, a copy of which shall be kept on file in the  
17 office of the commission and open to public inspection. The  
18 commission shall meet at least once every ~~30 days~~ month, or at  
19 such more frequent occasions as the Governor, the ~~chairman~~  
20 chair, or director determine a session is necessary to fulfill  
21 its duties and obligations.

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

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

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

20                         "§9-16-74.

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

24                         "(1) Adopt, amend, suspend, repeal, and enforce  
25 reasonably necessary rules and regulations, provided such  
26 rules and regulations shall not be more stringent than those  
27 promulgated by federal law, or rule or regulation, to control

1 surface coal mining operations consistent with this article  
2 including the declaration of public policy and legislative  
3 intent contained in Section 9-16-71. Such rules and  
4 regulations may be for the state as a whole or may vary from  
5 area to area, as may be appropriate to accomplish the policy  
6 and intent of this article and in order to take into account  
7 varying local conditions.7.

8 "(2) Hold public hearings as may be specified by law  
9 relating to any aspect or matter in the administration of this  
10 article and, in connection therewith, administer oaths, and  
11 compel the attendance of witnesses and the production of  
12 evidence. In the event of failure of any person to comply with  
13 any subpoena lawfully issued, or on the refusal of any witness  
14 to produce evidence or to testify as to any matter regarding  
15 which he or she may be lawfully interrogated, it shall be the  
16 duty of any court of competent jurisdiction, upon the  
17 application of the commission, to compel obedience by  
18 proceedings for contempt as if the disobedience occurred in  
19 such court.7.

20 "(3) Issue such orders as may be necessary to  
21 effectuate the purposes of this article and enforce the same  
22 through appropriate administrative and judicial proceedings.7.

23 "(4) Promulgate and enforce rules, regulations, and  
24 standards requiring the training, examination, and  
25 certification of persons engaging in or directly responsible  
26 for the use of explosives for the purpose of blasting in  
27 surface coal mining. Such rules and regulations shall include,

1                   but not be limited to, provisions for establishing and  
2                   charging reasonable fees for the administration of these  
3                   rules, regulations, and standards and for the training and  
4                   examination of applicants for certification, for the renewal  
5                   of certification, and for continuing education.†

6                   "(5) Secure through its director necessary  
7                   scientific, technical, administrative, and operational  
8                   services, including laboratory facilities by contract or  
9                   otherwise.†

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

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

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

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

23                  "(10) Advise, consult, contract, and cooperate with  
24                  other agencies of the state, local governments, industries,  
25                  other states, interstate agencies, and the federal government  
26                  and with interested persons or groups, especially, but not  
27                  limited to, achieve one-stop permitting for surface coal

1 mining operations and to transfer funds to carry out  
2 reclamation activities.7.

3 "(11) Consult, upon request, with any person  
4 proposing to construct, install7 or otherwise acquire a  
5 surface coal mine, concerning the efficacy of construction,  
6 installation, or acquisition of such surface mine. Nothing in  
7 any such consultation shall be construed to relieve any person  
8 from compliance with this article, rules and regulations in  
9 force pursuant ~~thereto~~ to this article, or any other provision  
10 of law.7.

11 "(12) Accept, receive, and administer grants or  
12 other funds or gifts from public and private agencies,  
13 including the federal government, for the purpose of carrying  
14 out any of the functions of this article. Funds received by  
15 the regulatory authority pursuant to this section shall be  
16 deposited in the State Treasury to the account of the Alabama  
17 Surface Mining Fund.7.

18 "(13) Employ personnel and consultants, purchase  
19 such equipment and supplies, and lease or otherwise acquire  
20 through its director such property as may be necessary for the  
21 administration of this article. Subject to any applicable  
22 restrictions contained in law, any department or agency of the  
23 state may, from its available resources, may provide the  
24 regulatory authority with personnel and services, with or  
25 without charge, and the regulatory authority may compensate  
26 other agencies for services.7.

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

"(15) Perform other acts and duties consistent with the provisions of this article as may be necessary to implement the declaration of public policy and legislative intent contained in Section 9-16-717.

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

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

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

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

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

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

"b. The commission shall make every effort to obtain full reimbursement from the Director of the Office of Surface Mining Reclamation and Enforcement for the costs of performing its duties under paragraph (21)a. hereof a.

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

"d. If any of the commission's rules or regulations are adjudged unconstitutional or invalid in their application, or stayed pending litigation in any court of competent jurisdiction, the Alabama Surface Mining Commission shall have

1 the power to enforce any valid, constitutional, and analogous  
2 provision of the rules and regulations promulgated under P.L.  
3 95-87.

4 "e. The State of Alabama, by any provision, part, or  
5 all of this article, does not waive any rights and powers  
6 reserved to it by the Tenth Amendment to the Constitution of  
7 the United States, and this subdivision (21) shall not be  
8 interpreted so as to prevent the State of Alabama from  
9 protecting any and all of its rights and governmental powers  
10 through any legal action as might be determined by duly  
11 constituted officials of the State of Alabama.

12 "(22) No commission member, employee of the  
13 commission, or any other state employee performing any  
14 function or duties under this article shall have a direct or  
15 indirect financial interest in underground or surface coal  
16 mining operations. Whoever knowingly violates ~~the provisions~~  
17 ~~of the above sentence shall~~ this subdivision, upon conviction,  
18 shall be punished by a fine of not more than ~~\$2,500.00~~ two  
19 thousand five hundred dollars (\$2,500), or by imprisonment for  
20 not more than one year, or both.

21 "§9-16-77.

22 "(a) There is hereby created a Division of Hearings  
23 and Appeals within the Alabama Surface Mining Commission to  
24 enforce ~~the provisions~~ of this article. The division shall  
25 have such powers and authority as required by law and as  
26 delegated by the director.

"(b) To hear and determine appeals from regulatory, enforcement or other activities of the commission as may be specified by law the director shall appoint one or more impartial hearing officers. These hearing officers shall be employees of the commission, and shall be classified personnel in the state Merit System. These hearing officers shall also be members in good standing of the Alabama State Bar. The director shall also appoint and designate one hearing officer as chief hearing officer who shall be responsible for the assignment of cases to the hearing officers as well as the efficient administration of the functions and duties of the hearing officers. The commission may hire or contract with hearing officers to hear and determine appeals from regulatory, enforcement, or other activities of the commission. A hearing officer shall be a member of and in good standing with the Alabama State Bar.

"§9-16-78.

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

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

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

"(d) Hearing officers' offices and facilities for the holding and conducting of hearings shall be located in a facility completely separate from the facility in which the commission is located. There shall be no ex parte communications of any kind relating to commission business, or proposed or pending cases, by or with any hearing officer by any party or representative of any party, or by any employee or representative of the commission.

1                             "§9-16-81.

2                             "(a) All surface coal mining operations shall be  
3                             subject to ~~the provisions of~~ this article, except as excluded  
4                             in Section 9-16-99.

5                             "(b) No person shall engage in or carry out on lands  
6                             within the state any surface coal mining operations unless  
7                             such person has first obtained a license in accordance with  
8                             ~~the provisions of~~ this section. The term of a license shall be  
9                             continuous and shall authorize the licensee, subject to the  
10                             other provisions of this article, to engage in surface coal  
11                             mining operations unless the license shall be suspended or  
12                             revoked in accordance with ~~the provisions of~~ this article.  
13                             Suspension, revocation, or subcontracting shall in no way  
14                             relieve the licensee of his or her obligation to comply with  
15                             the reclamation requirement of this article.

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

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

23                             "(2) The legal address of the applicant for service  
24                             of legal process or notices.

25                             "(3) If known, the names and addresses of the  
26                             agents, subsidiaries, or independent contractors who may be  
27                             engaged in surface coal mining on behalf of the applicant on

1 land to be affected. Any agent, subsidiary, or independent  
2 contractor engaged by the applicant subsequent to issuance of  
3 a permit shall be identified to the regulatory authority  
4 within 30 days of its engagement. The utilization of an agent,  
5 subsidiary, or subcontractor shall not relieve the licensee of  
6 its responsibility ~~hereunder, under this article.~~

7 "(4) If the applicant is a partnership, corporation,  
8 association, or other business entity, the following where  
9 applicable: the names and addresses of every officer, partner,  
10 director, or person performing a function similar to a  
11 director, of the applicant, together with the name and address  
12 of any person owning of record 10 percentum or more of any  
13 class of voting stock of the applicant and a list of all names  
14 under which the applicant, partner, or principal shareholder  
15 previously operated a surface mining operation within the  
16 United States within the five-year period preceding the date  
17 of submission of the application.7

18 "(5) All names under which the applicant and persons  
19 listed in the license application previously operated or is  
20 engaging in surface coal mining within the State of Alabama,  
21 or any other state.7

22 "(6) A statement of whether the applicant, any  
23 subsidiary, affiliate, or persons controlling, controlled by,  
24 or under common control with the applicant, or any partner of  
25 the applicant, if the applicant is a partnership, or any  
26 principal officer or director, if the applicant is a  
27 corporation, has ever held a federal or any state mining

1        permit which in the five year period prior to the date of  
2        submission of the application has been suspended or revoked or  
3        has had a mining bond or similar security deposited in lieu of  
4        bond forfeited and, if so, a brief explanation of the facts  
5        involved.

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

12                "(1) Demonstrate that it has available to it  
13      sufficient technical skill to assure compliance with ~~the~~  
14      ~~provisions of~~ this article and the regulations adopted  
15      pursuant ~~hereto~~; to this article.

16                "(2) Demonstrate sufficient financial responsibility  
17      to reasonably assure the regulatory authority of the  
18      applicant's financial ability to execute the requirements of  
19      this article pursuant to regulations promulgated by the  
20      regulatory authority~~to~~.

21                "(3) Certify by notarized statement under oath that  
22      the applicant has read and is fully familiar with ~~the~~  
23      ~~provisions of~~ this article and with all reclamation  
24      requirements contained in this article and regulations  
25      promulgated by the regulatory authority~~to~~.

26                "(4) Certify that the applicant will obtain and will  
27      furnish the regulatory authority evidence of having obtained

1 such permits as may be required prior to commencing operation  
2 under any permit which may be issued under this article to the  
3 applicant.

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

9 "(f) (1) The initial fee for a license shall be  
10 ~~\$1,000.00 a reasonable amount as established by rule of the~~  
11 ~~commission~~ and shall be submitted with the application.  
12 Licenses shall be updated annually ~~pursuant to regulations~~  
13 ~~upon payment of an annual license update fee, in a reasonable~~  
14 ~~amount as established by the commission, and compliance with~~  
15 ~~any applicable rules of the commission.~~

16 "(2) A licensee with a valid license issued by the  
17 Alabama Surface Mining Reclamation Commission prior to the  
18 effective date of this article and who intends to conduct  
19 surface coal mining and reclamation operations pursuant to  
20 this article must reapply to the regulatory authority for a  
21 license within 90 days of the effective date of this article.  
22 The fee for such application shall be ~~\$200.00 two hundred~~  
23 ~~dollars (\$200)~~ and shall be in lieu of the ~~\$1,000.00~~ initial  
24 licensing fee. The license shall be granted provided that no  
25 prior licensee shall be eligible to receive a license until  
26 all outstanding and delinquent fines, fees, penalties, or  
27 other debts owed to the Alabama Surface Mining Reclamation

1       Commission by the prior licensee shall have been paid in full  
2       to the regulatory authority. Licenses may be granted with  
3       specific conditions or restrictions.

4                 "§9-16-93.

5                 "(a) Whenever, on the basis of any information  
6       available to it, including receipt of information from any  
7       person, the regulatory authority has reason to believe that  
8       any person is in violation of any requirement of this article  
9       or any permit condition required by this article, the  
10      regulatory authority shall immediately order an inspection of  
11      the surface coal mining operation at which the alleged  
12      violation is occurring unless the same information is  
13      available to the regulatory authority as a result of a  
14      previous inspection. When the inspection results from  
15      information provided to the regulatory authority by any  
16      person, the regulatory authority shall notify such person when  
17      the inspection is proposed to be carried out and such person  
18      shall be allowed to accompany the inspector during the  
19      inspection. The regulatory authority shall consult with all  
20      state and federal agencies charged with the enforcement of  
21      mine safety regulations and shall ensure that the person  
22      accompanying the inspector complies with appropriate safety  
23      standards and regulations. The regulatory authority shall  
24      provide that the person accompanying the inspector assumes the  
25      risk of personal injury where such injury results from conduct  
26      of the operator which is neither negligent nor intentional and

1 where the person accompanying the inspector fails to comply  
2 with appropriate safety standards and regulations.

3                         "(b) When on the basis of an inspection by an  
4 authorized representative of the regulatory authority, the  
5 regulatory authority or its authorized representative  
6 determines that any condition or practice exists or that any  
7 permittee is in violation of any requirement of this article  
8 or any permit condition required by this article, and such  
9 violation, condition, or practice also creates an imminent  
10 danger to the health or safety of the public, or is causing or  
11 can reasonably be expected to cause significant imminent  
12 environmental harm to land, air, or water resources, the  
13 regulatory authority or its authorized representative shall  
14 immediately order a cessation of surface coal mining and  
15 reclamation operations or the portion thereof relevant to the  
16 condition, practice, or violation ~~and issue a citation for an~~  
17 ~~expeditious hearing before a hearing officer pursuant to~~  
18 ~~Sections 9-16-78 and 9-16-79~~ of this article. Such cessation  
19 order shall remain in effect until the regulatory authority or  
20 its authorized representative determines that the condition,  
21 practice, or violation has been abated, or until modified,  
22 vacated, or terminated by the regulatory authority or its  
23 authorized representative pursuant to subsection (e) ~~of this~~  
24 ~~section~~ or by the hearing officer. Where the regulatory  
25 authority finds that the ordered cessation of surface coal  
26 mining and reclamation operations, or any portion thereof,  
27 will not completely abate the imminent danger to the health or

1 safety of the public or the significant, imminent  
2 environmental harm to land, air, or water resources, the  
3 regulatory authority ~~shall~~, in addition to the cessation  
4 order, shall impose affirmative obligations on the operator  
5 requiring him or her to take whatever steps the regulatory  
6 authority deems necessary to abate the imminent danger or the  
7 significant, imminent harm.

8 "(c) When on the basis of an inspection by an  
9 authorized representative of the regulatory authority, the  
10 regulatory authority or its authorized representative  
11 determines that any permittee is in violation of any  
12 requirement of this article, including any permit condition  
13 required by this article, but such violation does not create  
14 an imminent danger to the health or safety of the public or  
15 cannot be reasonably expected to cause significant, imminent  
16 environmental harm to land, air, or water resources, the  
17 regulatory authority or its authorized representative shall  
18 issue a notice to the permittee or his or her agent fixing a  
19 reasonable time, but not more than 90 days, for the abatement  
20 of the violation and providing opportunity for an informal  
21 conference. If, upon expiration of the period of time as  
22 originally fixed or subsequently extended, for good cause  
23 shown and upon the written findings of the regulatory  
24 authority or its authorized representative, the regulatory  
25 authority or its authorized representative finds that the  
26 violation has not been abated, a cessation order shall  
27 immediately be issued for the relevant portion of the surface

1 coal mining and reclamation operation including the entire  
2 operation, if relevant. Such cessation order shall remain in  
3 effect until modified, vacated, or terminated by the  
4 regulatory authority or its authorized representative pursuant  
5 to subsection (e) ~~of this section~~ or until the regulatory  
6 authority or its authorized representative determines that the  
7 violation has been abated. In the order of cessation the  
8 regulatory authority shall determine the steps necessary to  
9 abate the violation in the most expeditious manner possible  
10 and shall include the necessary measures in the order. Actions  
11 taken by the regulatory authority under this subsection may be  
12 reviewed by a hearing officer pursuant to Sections 9-16-78 and  
13 9-16-79 ~~of this article~~.

14 "(d) When, on the basis of an inspection, the  
15 regulatory authority or its authorized representative  
16 determines that a pattern of violations of any requirements of  
17 this article or any permit conditions exists or has existed,  
18 and if the regulatory authority or its authorized  
19 representative also find that such violations are caused by  
20 the unwarranted failure of the permittee to comply with any  
21 requirements of this article or any permit conditions, or that  
22 such violations are willfully caused by the permittee, the  
23 regulatory authority or its authorized representative shall  
24 forthwith issue an order to show cause as to why the permit  
25 should not be suspended or revoked and shall provide  
26 opportunity for a public hearing before a hearing officer  
27 pursuant to Sections 9-16-78 and 9-16-79 ~~of this article~~. If a

1 hearing is requested, the hearing officer shall inform all  
2 interested parties of the time and place of the hearing. Upon  
3 the permittee's failure to show cause as to why the permit  
4 should not be suspended or revoked, the hearing officer shall  
5 forthwith suspend or revoke the permit. If the hearing officer  
6 revokes the permit, the permittee shall immediately cease  
7 surface coal mining operations on the permit area and shall  
8 complete reclamation within a period specified by the hearing  
9 officer or the hearing officer shall declare as forfeited the  
10 performance bonds for the operation.

11 "(e) Notices and orders issued pursuant to this  
12 section shall set forth with reasonable specificity the nature  
13 of the violation and the remedial action required, the period  
14 of time established for abatement, and a reasonable  
15 description of the portion of the surface coal mining and  
16 reclamation operation to which the notice or order applies.  
17 Each notice or order issued under this section shall be given  
18 promptly to the permittee or his or her agent by the  
19 regulatory authority or its authorized representative who  
20 issues such notice or order and all such notices and orders  
21 shall be in writing and shall be signed by the regulatory  
22 authority or such authorized representative. Any notice or  
23 order issued pursuant to this section may be modified,  
24 vacated, or terminated by the regulatory authority or its  
25 authorized representative. Provided, that any notice or order  
26 issued pursuant to this section which requires cessation of  
27 mining by the operator shall expire within 30 days of actual

1 notice to the operator or his or her agent, unless a public  
2 hearing is held at the site or within such reasonable  
3 proximity to the site that any viewings of the site can be  
4 conducted during the course of the public hearing.

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

13 "a. Violates (1) ~~violates~~ or fails or refuses to  
14 comply with any order or decision issued by the regulatory  
15 authority under this article, or.

16 "b. Interferes (2) ~~interferes~~ with, hinders, or  
17 delays the regulatory authority or his or her authorized  
18 representatives in carrying out ~~the provisions of~~ this  
19 article, or.

20 "c. Refuses (3) ~~refuses~~ to admit such authorized  
21 representative to the mine, or.

22 "d. Refuses (4) ~~refuses~~ to permit inspection of the  
23 mine by such authorized representative, or.

24 "e. Refuses (5) ~~refuses~~ to furnish any information  
25 or report requested by the regulatory authority in furtherance  
26 of ~~the provisions of~~ this article or.

1                   "f. Refuses ~~(6) refuses~~ to permit access to, and  
2 copying of, such records as the regulatory authority  
3 determines necessary in carrying out ~~the provisions of~~ this  
4 article.

5                   "(2) Such court shall have jurisdiction to provide  
6 such relief as may be appropriate. Temporary restraining  
7 orders shall be issued in accordance with Rule 65 of the  
8 Alabama Rules of Civil Procedure as amended. Any relief  
9 granted by the court to enforce an order under ~~clause (1) of~~  
10 ~~this subsection paragraph a.~~ shall continue in effect until  
11 the completion or final termination of all proceedings for  
12 review of such order under this article, unless, prior  
13 thereto, the circuit court granting such relief sets it aside  
14 or modifies it."

15                   Section 2. This act shall become effective on the  
16 first day of the third month following its passage and  
17 approval by the Governor, or its otherwise becoming law.