

Chapter 9: State Surface Mining Laws

In general, most states enacted the surface mining laws with the main policy of protecting and conserving the state natural resources and reclaiming land affected by surface mining. To effectuate this policy, these state laws require each person to obtain a surface mining license, unless statutorily exempted, before engaging in any surface mining operations. In addition to the license requirement, all licensees must obtain a permit. Among other things, most importantly, a mining and reclamation plan and a map must accompany each permit application. Once the authoritative department approves a permit application, and before commencing mining, the applicant must file with the agency a performance bond for each mining operation. Permittee is required to file an annual mining and reclamation operations and progress report with the agency. Furthermore, these state laws create surface mining land reclamation funds to protect and conserve natural resources and to reclaim areas affected by surface mining operations.

Maryland is unique in that it has two additional provisions in its Surface Mining law to remedy dewatering in karst terrain. These provisions protect the affected property owners in Baltimore, Carroll, Frederick, and Washington Counties where karst terrain is found. The law requires the agency to establish zones of dewatering influence around surface mines in karst terrain and to administer program requiring permittees to mitigate or compensate affected property owners in those counties.

Pennsylvania law is unique in that it specifically prohibits surface operations in certain areas, for example, lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers Systems, and the National Recreation Areas designated by Act of Congress. The Pennsylvania law requires its authoritative agency to establish a Remining Operator's Assistance Program that will assist and pay for the preparation of applications for licensed mine operators otherwise eligible to obtain a permit for remining abandoned mine land, including remining of land subject to bond forfeitures and coal refuse piles. Furthermore, the Pennsylvania law requires that the Commonwealth of Pennsylvania be arranged into mine land and water conservation districts, each of which will have a mine conservation inspector.

Wisconsin law allows the governing body of a county, city, village, or town to adopt, by ordinance, regulations for the reclamation of nonmetallic mining sites. A county nonmetallic mining reclamation ordinance applies to each town area and does not require approval of the town board. However, the county ordinance does not apply to towns that have a town nonmetallic ordinance, which is at least as restrictive as the county ordinance.

Maryland (region 1).—The Maryland Legislature enacted the Surface Mining law with the main purpose of protecting and conserving the natural resources of Maryland and the reclamation of areas of land affected by surface mining of metallic and nonmetallic minerals (other than coal).¹⁷⁷⁹ Moreover, it authorizes the Maryland Department of Natural Resources to adopt regulations reasonably necessary to administer this law.¹⁷⁸⁰

¹⁷⁷⁹Surface Mining law, MD. CODE ANN., NAT. RES. § 7-6A-02(b) (Supp. 1994).

¹⁷⁸⁰Id.

However, this Surface Mining law does not apply to—
 public agencies or entities that have adopted reclamation standards
 applying to the activities and the standards approved by the department;¹⁷⁸¹
 mining on Federal lands performed under a valid permit from the
 appropriate Federal agency;¹⁷⁸² and
 counties that have restrictive laws.¹⁷⁸³

Under this law, the Surface Mined Land Reclamation Fund is created.¹⁷⁸⁴ This fund
 comprises of all funds received by the department from license fees, permit fees,
 special reclamation fees, the forfeiture of bonds and of cash deposits and securities,
 and fines collected upon conviction of a permittee or a licensee.¹⁷⁸⁵ Furthermore,
 the department can use this fund only for the purposes of administering and
 implementing the surface mining law, including rehabilitating the area of land
 affected by the operation upon which liability was charged on the bond.¹⁷⁸⁶

Before engaging in any surface mining activities within Maryland, all persons are
 required to obtain a surface mining license.¹⁷⁸⁷ However, the license requirement
 may be exempted from the following activities:

- Those aspects of deep mining that do not have a significant effect on the
 surface, if the affected area does not exceed three acres in extent.¹⁷⁸⁸
- Operations engaged in processing minerals.¹⁷⁸⁹
- Excavation or grading conducted solely to help onsite farming or onsite
 construction for purposes other than surface mining.¹⁷⁹⁰
- Removal of overburden and mining of limited amounts of any mineral when
 done only for the purpose of prospecting and to the extent necessary to
 determine the location, quantity, or quality of any natural deposit, if no
 minerals are sold, processed for sale, or consumed in the regular operation of
 business.¹⁷⁹¹
- The handling, processing, or storage of slag and stone on the premises of a
 manufacturer as a part of any manufacturing process that requires stone as a
 raw material or produces slag as a by-product.¹⁷⁹²

¹⁷⁸¹Id. § 7-6A-31(a) (1989). Public agencies or entities include the State Highway Administration, any county road department in the State, any legally constituted public governing entities such as municipal corporations, or individuals acting under contract with any of these public agencies or entities, on highway rights-of-way or borrow pits owned, operated, or maintained solely in connection with the construction, repair, and maintenance of the public roads systems of the State or other public facilities. Id.

¹⁷⁸²MD. CODE ANN., NAT. RES § 7-6A-31(b) (1989).

¹⁷⁸³Id. § 7-6A-31(c) (1989).

¹⁷⁸⁴Id. § 7-6A-04 (1989 & Supp. 1994).

¹⁷⁸⁵Id. § 7-6A-04(a) (1989).

¹⁷⁸⁶Id.

¹⁷⁸⁷Id. § 7-6A-06(a) (1989).

¹⁷⁸⁸Id. § 7-6A-06(f)(1) (1989).

¹⁷⁸⁹Id. § 7-6A-06(f)(2) (1989).

¹⁷⁹⁰Id. § 7-6A-06(f)(3) (1989).

¹⁷⁹¹Id. § 7-6A-06(f)(4) (1989).

¹⁷⁹²Id. § 7-6A-06(f)(5) (1989).

- The extraction of minerals by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner.¹⁷⁹³
- Mining operations if the affected land does not exceed one acre in area.¹⁷⁹⁴
- Dredging from submerged public or private lands in the State if this activity is conducted under license from the State Board of Public Works or by permit from the department.¹⁷⁹⁵
- The extraction of sand, rock, gravel, stone, earth, or fill from borrow pits for highway construction purposes or other public facilities, if the work is performed under a bond and contract, and the specifications of the department that require reclamation of the area affected.¹⁷⁹⁶

To obtain a license, the interested person must apply in writing on a form prepared and provided by the department.¹⁷⁹⁷ A \$300 fee must accompany application.¹⁷⁹⁸ License must be renewed annually and the annual renewal fee is \$150.¹⁷⁹⁹ Moreover, the department cannot issue a new or renewed license if it determines after investigation that the applicant has failed and continues to fail to comply with any of the provisions of the surface mining law.¹⁸⁰⁰

In addition to the license requirement, the law also imposes a permit requirement on all licensees.¹⁸⁰¹ The law provides that licensees cannot engage in surface mining within the State except on affected land that is covered by a valid surface mining permit.¹⁸⁰² Such permit, moreover, can cover more than one tract of land, if the tracts are contiguous and are described in the permit application.¹⁸⁰³ Generally, the permit application must be accompanied by a number of documents, including—

- a right of entry agreement,¹⁸⁰⁴
- a mining and reclamation plan and map,¹⁸⁰⁵ and
- applicable required and additional fees for the permit.¹⁸⁰⁶

The department can waive the right of entry agreement submission.¹⁸⁰⁷

The mining and reclamation plan must include—

- the proposed plan,
- topographic map,
- a summary statement, and

¹⁷⁹³MD. CODE ANN., NAT. RES § 7-6A-06(f)(5) (1989).§ 7-6A-06(f)(6) (1989).

¹⁷⁹⁴Id. § 7-6A-06(f)(7) (1989).

¹⁷⁹⁵Id. § 7-6A-06(f)(8) (1989).

¹⁷⁹⁶Id. § 7-6A-06(f)(9) (1989).

¹⁷⁹⁷Id. § 7-6A-06(b) (1989).

¹⁷⁹⁸Id. § 7-6A-06(c) (Supp. 1994).

¹⁷⁹⁹Id.

¹⁸⁰⁰Id. § 7-6A-06(d) (1989).

¹⁸⁰¹Id. § 7-6A-07 (1989 & Supp. 1994).

¹⁸⁰²Id. § 7-6A-07(a).

¹⁸⁰³Id. § 7-6A-07(c).

¹⁸⁰⁴Id. § 7-6A-07(d)(1) (1989 & Supp. 1994). This agreement allows the Department personnel to enter the land, after making reasonable effort to notify the permittee, the owner, or operator. Id.

¹⁸⁰⁵Id. § 7-6A-07(d)(2) (1989 & Supp. 1994).

¹⁸⁰⁶Id. § 7-6A-07(e)(h).

¹⁸⁰⁷Id. § 7-6A-07(d)(3) (1989 & Supp. 1994).

other required provisions.¹⁸⁰⁸

In the proposed plan, the applicant must include at least the following information:¹⁸⁰⁹

- The purpose for which the land was previously used.
- The use which is proposed to be made of the land following reclamation.
- The manner in which the land is to be opened for mining and how the mining activity is to progress across the tract.
- The location of affected areas.
- The manner in which topsoil and subsoil are to be conserved and restored.
- If backfilling is required, or where the proposed subsequent land use requires fill, the manner in which the compaction of the fill will be accomplished.
- The manner and type of landscaping and screening of the working areas which are exposed to public view during mining.
- The proposed practices to protect adjacent surface resources.
- The specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and the proposed method of accomplishment.
- The manner and type of revegetation or other surface treatment of the affected areas.
- A time schedule that meets the requirements of this provision.
- Maps and any other supporting documents required by the department.

The summary statement must cover the methods of—
 compliance with State air and water pollution requirements;
 prevention, elimination, or minimization of conditions that would be hazardous to animal or fish life in or adjacent to the area;
 rehabilitation of settling ponds;
 control of contaminants and disposal of mining refuse; and
 restoring or establishing stream channels and streambanks to a condition minimizing erosion, siltation, and other pollution.¹⁸¹⁰

In addition, the reclamation plan is required to ensure that reclamation activities are conducted to the extent feasible simultaneously with mining operations and are initiated at the earliest feasible time after completion or termination of mining on any part of the permit area.¹⁸¹¹

The department is required to grant or deny the requested permit as expeditiously as possible. It must process the application concurrently with existing local or

¹⁸⁰⁸MD. CODE ANN., NAT. RES § 7-6A-19 (1989 & Supp. 1994).

¹⁸⁰⁹Id. § 7-6A-19(a).

¹⁸¹⁰Id. § 7-6A-19(c).

¹⁸¹¹Id. § 7-6A-19(d) (1989 & Supp. 1994).

county land use and zoning reviews.¹⁸¹² If granted, the permit can last for the period requested and deemed reasonable, but not exceeding 25 years.¹⁸¹³ The department has a number of grounds to deny a permit. They are as follows:¹⁸¹⁴

- The proposed operation will violate the requirements set forth by the surface mining law or the department's promulgated regulations.
- The operation will have an unduly adverse effect on wildlife or on freshwater, estuarine, or marine fisheries.
- The applicant has failed to provide applicable permits or approvals covering the operation from all State and local agencies responsible for air and water pollution, sediment control, and zoning.
- The operation will constitute a substantial physical hazard to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road, or other public or private property in existence at the time of the application for permit.
- The operation will have significant adverse effect on the uses of a publicly owned park, forest, or recreational area in existence at the time of the application for the permit.
- The applicant does not have a valid surface mining license from the State.
- The applicant has not corrected all violations, which may have been committed under any prior permit.
- Previous experience with similar operations indicate a substantial probability that the operation will result in substantial deposits of sediment in streambeds or lakes, landslides, or other water pollution.

Once the department approves application for a permit, and before commencing mining, the applicant must file with the department a bond for each mining operation.¹⁸¹⁵ The bond must be in the amount of \$1,250 maximum per acre based on the number of acres of affected land covered by the permit. However, a bond may not be filed for less than \$8,000.¹⁸¹⁶ Moreover, the department is required to reconsider the amount of the bond if the total bond fee is unreasonable and excessive for the particular tract of land.¹⁸¹⁷ The department will release the bond on completion of the mining operations and after the requirements of the permit have been complied with.¹⁸¹⁸ However, the bond will be forfeited if the permittee fails to perform as set forth in the authorized mining and reclamation plan and to reclaim the land in accordance with the permit.¹⁸¹⁹ If a permittee previously has forfeited any bond, the permittee is prohibited from conducting surface mining activities, unless on application, the permittee repays the department the cost of reclamation if the department had reclaimed the land, plus interest.¹⁸²⁰

¹⁸¹²MD. CODE ANN., NAT. RES. § 7-6A-09(a) (1989).

¹⁸¹³Id. § 7-6A-11.

¹⁸¹⁴Id. § 7-6A-09(b).

¹⁸¹⁵Id. § 7-6A-20(a) (1989 & Supp. 1994).

¹⁸¹⁶Id. § 7-6A-20(b) (1989 & Supp. 1994).

¹⁸¹⁷Id.

¹⁸¹⁸Id. § 7-6A-21 (1989).

¹⁸¹⁹Id. § 7-6A-22 (1989).

¹⁸²⁰Id. § 7-6A-23.

The Maryland Surface Mining laws provide that a permittee may apply for a surface mining permit modification,¹⁸²¹ affecting the land area covered by the permit, with the approved mining and reclamation plan coupled with the permit, or other terms and conditions of the permit.¹⁸²² Furthermore, permits are renewable.¹⁸²³ The law also permits the permittee to transfer the permit to the successor in interest, thereby releasing all liabilities imposed on the permittee regarding the operation. By transferring the permit, the successor assumes all duties and responsibilities of the first permittee regarding the reclamation of land.¹⁸²⁴ The successor must pay a \$500 filing fee, and request of transfer is subject to the department's approval or denial.¹⁸²⁵

The Department of Natural Resources may suspend a permit until the violation is corrected if it has reason to believe that the permittee violates any provisions of this law or any regulations promulgated by the department.¹⁸²⁶ However, before suspending a permit, the department must notify the permittee of the violation and afford the permittee and afford the permittee the right to a hearing.¹⁸²⁷ It may revoke the permit if the violation is not corrected.¹⁸²⁸

The permittee is required to file an annual mining and reclamation operations and progress report with the department.¹⁸²⁹ The department must inspect each permit area annually to determine if the permittee has complied with the mining and reclamation plan, the terms and conditions of the permit, the requirements of the Maryland Surface Mining law, and any regulations promulgated by the department.¹⁸³⁰ Moreover, upon completion of reclamation of an area of affected land, the department must inspect the area again to ensure compliance.¹⁸³¹

If no mineral has been produced or overburden removed for 1 year, and the permittee has vacated the site of operation without having complied with the requirements of the plan, the permittee's operation will be considered abandoned. If the permittee, within 30 days after receiving notification from the department considering the operation abandoned, does not submit evidence to suggest otherwise, the department will declare the operation abandoned and initiate legal proceedings against the permittee.¹⁸³² Halted operations are not subject to legal proceedings. An operation is considered halted if active work has ceased temporarily because of weather conditions, market conditions, or other reasonable cause explained in writing by the permittee to the satisfaction of the department. Also, it must be accompanied by a statement that the permittee fully intends to resume active operation when the adverse conditions have passed.¹⁸³³

¹⁸²¹MD. CODE ANN., NAT. RES. § 7-6A-12(a).

¹⁸²²Id. § 7-6A-12(b) (1989 & Supp. 1994).

¹⁸²³Id. § 7-6A-13 (1989 & Supp. 1994).

¹⁸²⁴Id. § 7-6A-16(a) (1989).

¹⁸²⁵Id. § 7-6A-16(c)-(d) (1989 & Supp. 1994).

¹⁸²⁶Id. § 7-6A-18(a) (1989).

¹⁸²⁷Id. § 7-6A-18(a)-(b) (1989).

¹⁸²⁸Id. § 7-6A-18(c).

¹⁸²⁹Id. § 7-6A-24.

¹⁸³⁰Id. § 7-6A-25.

¹⁸³¹Id. § 7-6A-27 (1989).

¹⁸³²Id. § 7-6A-26(a).

¹⁸³³Id. § 7-6A-26(b).

In addition to other mandatory duties, the Department of Natural Resources is required to—

review mineral resources plan elements developed by local planning commissions to determine whether the proposed plan is consistent with the programs and goals of the Department;¹⁸³⁴

establish standards of qualifications for surface mine inspectors deemed necessary for qualification;¹⁸³⁵

review application and accompanying documents and make further inquiries, inspections, or examinations as necessary or desirable for proper evaluation.¹⁸³⁶

In 1991, the Maryland Legislature enacted two additional provisions in the Maryland Surface Mining law to remedy the dewatering in karst terrain. Dewatering of surface mines located in karst terrain is known to interfere with water-supply wells and cause in some instances sudden subsidence of land (known as sinkholes). It may also result in property damage to landowners in a definable zone of dewatering influence around a surface mine.¹⁸³⁷ Thus, these provisions protect the affected property owners in Baltimore, Carroll, Frederick, and Washington Counties, where karst terrain is found. It requires the Department to establish zones of dewatering influence around surface mines in karst terrain and to administer a program requiring permittees to mitigate or compensate affected property owners in those counties.¹⁸³⁸ To further this responsibility, the department is required to adopt regulations to establish an administrative process to expedite the resolution of water supply loss or property damage claims.¹⁸³⁹

If the permittee is issued a water appropriation permit to dewater a pit located in karst terrain in Baltimore, Carroll, Frederick, and Washington Counties, the department must establish, as a condition of the permittee's surface mining, a zone of dewatering influence around the surface mine. The area extent of the zone of dewatering influence will be based on the following: local topography, watersheds, aquifer limits, and other hydrogeologic factors, such as the occurrence of natural fractures, cracks, crevices, lineaments, igneous dikes, changes in rock type, and variations in the water-bearing characteristics of formations.¹⁸⁴⁰

Within the established zone of dewatering influence, the permittee is required to remedy the property owners by—

replacing, at no expense to the owner of the real property that is affected by the surface mine dewatering, a water supply that fails as a result of declining ground water levels; and

paying monetary compensation to the affected property owner or repairing any property damage caused by sudden subsidence of the surface of the

¹⁸³⁴MD. CODE ANN., NAT. RES. § 7-6A-03.1(a) (Supp. 1994).

¹⁸³⁵Id. § 7-6A-05 (1989).

¹⁸³⁶Id. § 7-6A-08 (1989 & Supp. 1994).

¹⁸³⁷Id. § 7-6A-10.1(a) (Supp. 1994). Karst terrain is defined to mean an irregular topography which is (1) caused by solution of limestone and other carbonate rock; and (2) characterized by closed depressions, sinkholes, caverns, solution cavities, and underground channels that, partially or completely, may capture surface streams. Id. § 7-6A-10.2(a)(3) (Supp. 1994).

¹⁸³⁸Id. § 7-6A-10.1(b) (Supp. 1994), effective July 1, 1991.

¹⁸³⁹Id. § 7-6A-10.2(h) (Supp. 1994).

¹⁸⁴⁰Id. § 7-6A-10.2(b).

land, upon a determination by the department of proximate cause after permittee has received notification of property damage and an opportunity to respond.¹⁸⁴¹

However, the permittee is not required to replace water supplies if the permittee demonstrates to the department by clear and convincing evidence that the proximate cause of the loss of water supply is not the result of pit dewatering.¹⁸⁴²

However, the compensation, restoration or mitigation requirement does not apply to—
improvements that are made to real property within an established zone of dewatering influence following the department's final decision to grant a surface mining permit; or

improvements that are made to real property following the establishment of a zone of dewatering influence as a condition of an existing surface mine permit.¹⁸⁴³

Pennsylvania (region 1).—Under the Pennsylvania Surface Mining Conservation and Reclamation Act,¹⁸⁴⁴ the following provisions are applicable to surface mining activities within Pennsylvania:

- Each person must obtain an operator's license before engaging in coal mining activities. A fee and insurance policy must accompany application for license.¹⁸⁴⁵
- Each person must obtain a mining permit from the department of Environmental Resources before engaging in surface coal mining activities. The permit application must be accompanied with an application fee, a map and related information, a reclamation plan, an insurance policy, and a performance bond. The reclamation plan must include the following information—¹⁸⁴⁶
 - statement of the uses and productivity of the land proposed to be affected;
 - where the proposed land use so requires, the manner in which the compaction of the soil and fill will be accomplished;
 - a description of the manner in which the operation will segregate and conserve topsoil;
 - a detailed timetable for the accomplishment of each major step in the reclamation plan and the operator's estimate of the cost of each step and total cost of the reclamation program;
 - a full explanation of the conditions which do not permit contouring, unless the reclamation plan provides for contouring;
 - the written consent of the landowner to enter upon any land to be affected by the operation;

¹⁸⁴¹MD. CODE ANN., NAT. RES. § 7-6A-10.2(c).

¹⁸⁴²Id. § 7-6A-10.2(f).

¹⁸⁴³Id. § 7-6A-10.2(i) (Supp. 1994).

¹⁸⁴⁴PENN. STAT. ANN. § 1396.2 et seq. (Supp. 1993).

¹⁸⁴⁵Id. § 1396.3a.

¹⁸⁴⁶Id. § 1396.4.

the manner in which the operator plans to divert surface water from draining into the pit and the manner in which the operator plans to prevent water from accumulating in the pit;

the manner in which the operator plans to comply with the requirements of the Air Pollution Control Act, the Clean Stream law, the Coal Refuse Disposal Control Act, and where applicable, the Pennsylvania Solid Waste Management act, or the Solid Waste Management act, and the Dam Safety and Encroachments act. Compliance with these statutes does not relieve the operator from the responsibility for complying with the provisions of other applicable statutes such as the Pennsylvania Bituminous Coal Mine act, the Pennsylvania Anthracite Coal Mine act, and an act providing for Emergency Medical Personnel; Employment of Emergency Medical Personnel, and Emergency Communications in Coal Mines;

a statement of the land use proposed for the affected area after mining and reclamation are completed;

for those lands identified as prime farmlands, a soil survey to confirm the exact location of such farmlands. The Department will not grant a permit to affect prime farmland unless after consultation with the USDA, the department puts in writing that the operator has the technological capability to restore such affected area to equivalent or higher levels of yield as nonaffected prime farmland in the surrounding area under equivalent levels of management;

an explanation demonstrating that the proposed operation will be conducted so as to maximize the use and conservation of the solid fuel resource; and

other information as the department may require.

The use of explosives for the purpose of blasting in connection with surface mining must be done in compliance with regulations promulgated by and under the supervision of the Secretary.¹⁸⁴⁷

Each operator who proposes to remine an area on which there are preexisting pollution discharges resulting from mining can request special authorization from the department to conduct surface coal mining.¹⁸⁴⁸

Each person who engages in coal extraction pursuant to a government-financed reclamation contract must obtain a valid surface mining permit, unless they can demonstrate that they are eligible to secure special authorization to engage in a government-financed reclamation contract authorizing incidental and necessary coal extraction.¹⁸⁴⁹

¹⁸⁴⁷PENN. STAT. ANN. § 1396.4b.

¹⁸⁴⁸Id. § 1396.4f.

¹⁸⁴⁹Id. § 1396.4h.

Except for the mining operations, which existed on August 3, 1977, surface mining operations are not permitted.¹⁸⁵⁰

- On any lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers Systems, and the National Recreation Areas designated by the Act of Congress.
- On any Federal lands within the boundaries of any national forest, unless the department determines otherwise.
- Which will adversely affect any publicly owned park or any places included in the National Register of Historic Sites, unless approved jointly by the department and the Federal, State, or local agency with jurisdiction over the park or the historic site.
- Within 100 feet of the outside right-of-way line of any public road, unless such operation is in the public interest and the landowners affected will be protected.
- Within 300 feet from any occupied dwelling, unless waived.

The department is required to designate an area as unsuitable for all or certain types of surface mining operations. It can designate an area as unsuitable for mining operation if such operation will—

- be incompatible with existing state or local land use plans or programs;
- affect fragile or historic lands;
- affect renewable resources lands; or
- affect natural hazard lands.¹⁸⁵¹

Furthermore, the department can designate areas suitable for reclamation by remining surface mining activities, including bond forfeiture areas, where the department determines that reclamation is technological and economically feasible.¹⁸⁵² Before declaring an area suitable for remining, the department must consider the following:¹⁸⁵³

- Those lands that are affected by surface or deep mining activities, including coal refuse piles, and which are causing or contributing to the pollution of state waters.
- Areas which if remined would result in enhancement of nearby recreation, natural or scenic areas.
- Areas where remining would result in significant environmental and economic or social enhancement of the surrounding region.
- Areas that do not meet water quality standards, but which if remining occurs, are likely to maintain or enhance existing downstream water uses and meet water quality standards, and will not cause further degradation of receiving stream water quality.

¹⁸⁵⁰PENN. STAT. ANN. § 1396.4e(h).

¹⁸⁵¹Id. § 1396.4e.

¹⁸⁵²Id. § 1396.4i.

¹⁸⁵³Id. § 1396.4i.

- The presence of economically viable coal reserves in the area which could be extracted by surface mining activities with reclamation being technologically and economically feasible.

The Pennsylvania Surface Mining Conservation and Reclamation Act requires the department to establish a Remining Operator's Assistance Program, which will assist and pay for the preparation of applications for licensed mine operators otherwise eligible to obtain a permit for remining abandoned mine land, including remining of land subject to bond forfeitures and coal refuse piles.¹⁸⁵⁴ The Environmental Quality Board must publish proposed regulations to constitute an interim reclamation and remining program which provides incentives and assistance to reclaim abandoned mine lands and land which is subject to bond forfeitures.¹⁸⁵⁵ Moreover, the Department is authorized to issue a nontransferable bond credit to a licensed mine operator for voluntary reclamation of abandoned mine lands approved by the Department.¹⁸⁵⁶

The act requires that the Commonwealth of Pennsylvania be arranged into mined land and water conservation districts where each district will have a mine conservation inspector.¹⁸⁵⁷ Moreover, except with respect to ordinances adopted pursuant to the Pennsylvania Municipalities Planning Code (Act of July 31, 1968, Public Law 805, 247), all local ordinances and enactments supporting regulation of surface mining are superseded.¹⁸⁵⁸

All funds received from license fees, permit fees, forfeitures of bonds, fines, and civil penalties are deposited in the Surface Mining Conservation and Reclamation Fund that is used for—

the revegetation or reclaiming of land affected by surface mining of any kind of coal;

restoration or replacement of water supplies affected by surface mining activities; or

any other conservation purposes provided by this act.

The act creates a Remining Environmental Enhancement Fund where the Secretary of Environmental Resources is authorized to transfer 1 million dollars per fiscal year.¹⁸⁵⁹ Furthermore, it creates the Remining Financial Assurance Fund where the Governor is authorized to transfer up to 5 million dollars to provide financial assurance for the reclamation bond credit program and the payment-in-lieu-of-bond program.¹⁸⁶⁰

Alabama (region 2).—Two particular acts pertain to surface mining reclamation. They are the Alabama Surface Mining Act of 1969 and the Alabama Surface Mining Control and Reclamation Act of 1981. Each shall be discussed in turn.

¹⁸⁵⁴PENN. STAT. ANN. § 1396.4j.

¹⁸⁵⁵Id. § 1396.4k.

¹⁸⁵⁶Id. § 1396.4m.

¹⁸⁵⁷Id. § 1396.15c.

¹⁸⁵⁸Id. § 1396.17a.

¹⁸⁵⁹Id.

¹⁸⁶⁰Id.

Alabama Surface Mining Act of 1969.—The Alabama Surface Mining Act of 1969¹⁸⁶¹ was enacted to provide for the "safe and reasonable reclamation of lands . . . to protect the taxable value of property and preserve the natural resources . . . and the health and safety of the people of this state."¹⁸⁶² Operators engaging in surface mining activities have the following mandatory obligations:

- Obtain a valid permit from the department before starting to mine coal by the surface mining method,¹⁸⁶³ which must be accompanied with bond and filing fee.¹⁸⁶⁴ Amendment of permit is allowable.¹⁸⁶⁵
- Submit to the department a map or aerial photograph showing the location of the surface mining operation within 90 days after expiration of the permit period.¹⁸⁶⁶
- Carry on grading of affected land to reduce peaks and ridges to a rolling topography.¹⁸⁶⁷
- Cover the face of any toxic material left exposed by the operator's surface mining operation in the bottom of the pit.¹⁸⁶⁸
- Divert water from the mining operation in a manner designed to reduce siltation, erosion or other damage to streams and natural watercourses.¹⁸⁶⁹
- Plant tree seedlings on or directly seed the affected land with native or commercial species.¹⁸⁷⁰
- Construct fire lanes or access roads on all affected land that is to be reforested.¹⁸⁷¹

To enforce the provisions of this act, the department's inspectors can enter upon the landowner's land to inspect and determine compliance with the act.¹⁸⁷² If the director determines that there is noncompliance, the director must serve a written notice of the violation, afford a hearing allowing such person to answer the charges, and enter an order.¹⁸⁷³ However, such order is appealable in the circuit court of the judicial circuit in which the operator has his or her principal business or where the property affected by the order is located.¹⁸⁷⁴

However, this act does not apply to surface mining activities of the state Highway Department or any city, county or municipality incident to their activities in constructing, repairing, and maintaining the public road system in Alabama.¹⁸⁷⁵ This exemption also extends to any person, firm or corporation contracting with the

¹⁸⁶¹Alabama Surface Mining Act of 1969, ALA. CODE § 9-16-1 through 9-16-15 (1975 & Supp. 1993).

¹⁸⁶²Id. § 9-16-3 (1975).

¹⁸⁶³ALA. CODE § 9-16-4.

¹⁸⁶⁴Id. § 9-16-5. For more information regarding bonds, Id. § 9-16-8.

¹⁸⁶⁵Id. § 9-16-6.

¹⁸⁶⁶Id. § 9-16-7(a)(1).

¹⁸⁶⁷Id. § 9-16-7(a)(2).

¹⁸⁶⁸Id. § 9-16-7(a)(3).

¹⁸⁶⁹Id. § 9-16-7(a)(4).

¹⁸⁷⁰Id. § 9-16-7(b).

¹⁸⁷¹Id. § 9-16-7(d).

¹⁸⁷²Id. § 9-16-9.

¹⁸⁷³Id. § 9-16-10(a).

¹⁸⁷⁴Id. § 9-16-10(b).

¹⁸⁷⁵Id. § 9-16-14.

State Highway Department, city, county or municipality to construct, repair, and maintain public roads.¹⁸⁷⁶

Alabama Surface Mining Control and Reclamation Act of 1981.—The Alabama Legislature enacted the Alabama Surface Mining Control and Reclamation Act of 1981 that was created to provide regulation and control of surface coal mining operations and to reduce injurious effects to the environment and resources of Alabama.¹⁸⁷⁷ It has the following objectives:¹⁸⁷⁸

- Establish a statewide program to reduce adverse effects to the environment resulting from surface coal mining operations.
- Provide that surface coal mining operations will be encouraged only in the manner consistent with prudent use of the State natural resources.
- Provide that adequate measures are undertaken to reclaim surface-mined areas promptly.
- Exercise the full reach of State constitutional powers to provide protection of the public interest through effective control of surface coal mining operations, and
- Encourage the economic development of the State coal resources as a source of energy and other uses.

The Surface Mining Control and Reclamation Act of 1981 establishes a Surface Mining Commission composed of seven appointed members.^{1879, 1880, 1881}

The Surface Mining Commission has numerous powers.¹⁸⁸² The more important ones include—

adopting, amending, suspending, repealing, and enforcing reasonably necessary rules and regulations;¹⁸⁸³

establishing and enforcing coal surface mining reclamation standards for the State which may vary according to appropriate areas;¹⁸⁸⁴

accepting, receiving, and administering grants or other funds or gifts from public and private agencies, including the Federal Government;¹⁸⁸⁵

issuing, continuing in effect, revoking, modifying, or denying permits for surface coal mining activities;¹⁸⁸⁶

issuing warnings and initiating civil or criminal actions for noncompliance with the act;¹⁸⁸⁷ and

¹⁸⁷⁶Alabama Surface Mining Act of 1969, ALA. CODE § 9-16-14.

¹⁸⁷⁷The Alabama Surface Mining Control and Reclamation Act of 1981, ALA. CODE § 9-16-70 through 9-16-107 (1975 & Supp. 1993).

¹⁸⁷⁸Id.

¹⁸⁷⁹Id. § 9-16-73(a)-(b).

¹⁸⁸⁰Id. § 9-16-73(k).

¹⁸⁸¹Id. § 9-16-73(m).

¹⁸⁸²Id. § 9-16-74.

¹⁸⁸³Id. § 9-16-74(1).

¹⁸⁸⁴Id. § 9-16-74(8).

¹⁸⁸⁵Id. § 9-16-74(12).

¹⁸⁸⁶Id. § 9-16-74(18).

¹⁸⁸⁷Id. § 9-16-74(19).

enforcing the provisions of the State program approved pursuant to the Federal Surface Mining Control and Reclamation Act of 1977.¹⁸⁸⁸

In addition, the commission is also given general powers of subdelegation of its authorized acts and duties, except for specific limitation.¹⁸⁸⁹ Within the Alabama Surface Mining Commission, a Division of Hearings and Appeals¹⁸⁹⁰ and the Surface Mining Control and Reclamation Division are created.¹⁸⁹¹

The act also established the Alabama surface mining fund, which comprises all moneys deriving from fees, the forfeiture of bonds, the recovery of civil penalties and appropriations by the legislature.¹⁸⁹²

The following mandatory provisions are applicable to all surface coal mining operations:

- All persons who engage in or carry out on land any surface coal mining operations must first obtain an annual license.¹⁸⁹³
- All persons who engage in surface coal mining operations at a particular location (except as subcontractors of the permittee) must obtain a permit from the regulatory authority for that location.¹⁸⁹⁴ The permit application must be accompanied by—
 - a fee,¹⁸⁹⁵
 - a set of information,¹⁸⁹⁶
 - a reclamation plan,¹⁸⁹⁷
 - a certification of insurance,¹⁸⁹⁸ and
 - a blasting plan.¹⁸⁹⁹

If the area proposed to be mined contains prime farmland, after consulting with the Secretary of Agriculture, the regulatory authority can grant a permit to mine on prime farmland only if it finds in writing that the operator has the technological capability to restore the mined area within a reasonable time to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area and can meet the soil reconstruction standards.¹⁹⁰⁰ After a permit application has been approved but before the permit is issued, the operator must file with the regulatory authority a performance bond payable to the state and conditioned upon faithful performance

¹⁸⁸⁸The Alabama Surface Mining Control and Reclamation Act of 1981, ALA. CODE § 9-16-70 through 9-16-107 (1975 & Supp. 1993).§ 9-16-74(21).

¹⁸⁸⁹Alabama Surface Mining Reclamation Comm'n v. Jolly, 362 So. 2d 919 (Ala. Civ. App. 1978) (deciding under former § 9-16-34).

¹⁸⁹⁰ALA. CODE § 9-17-77. For composition of the division, Id. § 9-16-77. For the powers of the division, Id. § 9-16-78. For hearings and appeals procedure, Id. § 9-16-79 (1975 & Supp. 1993).

¹⁸⁹¹Id. § 9-16-80 (1975). For the division's composition and powers, Id.

¹⁸⁹²Id. § 9-16-103.

¹⁸⁹³Id. § 9-16-81. For a complete requirements for license application, Id.

¹⁸⁹⁴Id. § 9-16-82. For a complete requirements for permit application, Id.

¹⁸⁹⁵Id. § 9-16-83(a).

¹⁸⁹⁶Id. § 9-16-83(b).

¹⁸⁹⁷Id. § 9-16-83(d).

¹⁸⁹⁸Id. § 9-16-83(f).

¹⁸⁹⁹Id. § 9-16-83(g). For detailed discussion of the standard of care for blasting operations, Harper v. Regency Dev. Co., 399 So. 2d 248 (Ala. 1981) (deciding under former § 9-16-41).

¹⁹⁰⁰Id. § 9-16-85(d).

of all the requirements of the act and the permit.¹⁹⁰¹ Moreover, the permit must require surface coal mining operations to meet all applicable performance standards and other requirements promulgated by the regulatory authority.¹⁹⁰² However, with approval by the Secretary of the Interior, the regulatory authority may grant departures from the environmental protection performance standards in individual cases on an experimental basis.¹⁹⁰³

In the event that the regulatory authority believes that violation of the act or permit condition exists, it must order an inspection of the surface coal mining operation.¹⁹⁰⁴ If such violation causes imminent danger to the health or safety of the public or imminent environmental harm to the state natural resources, the authority must order a cessation of such operations.¹⁹⁰⁵

After providing an opportunity for a public hearing, it must suspend or revoke the permit if it determines that a pattern of violations exists.¹⁹⁰⁶ In addition, the regulatory authority can request the attorney general to institute a civil action for injunction relief, restraining order or any other appropriate order in the circuit court where the surface coal mining and reclamation operation is located or where the permittee has a principal office.¹⁹⁰⁷ The act imposes both civil and criminal penalties for violation of any provision of this act or any rules or regulations promulgated by the regulatory authority.¹⁹⁰⁸ The act also allows a private citizen to commence civil action to compel compliance with this act.¹⁹⁰⁹

The act also requires the regulatory authority to establish a planning process enabling objective decisions as to which land areas of the State are unsuitable for all or certain types of surface coal mining operations (not mineral exploration).¹⁹¹⁰ However, any person having an interest or who may be adversely affected may petition the authority to have an area designated as unsuitable for surface coal mining operations or to have such a designation terminated.¹⁹¹¹

However, this act does not apply to the following surface mining operations:¹⁹¹²

- The extraction of coal by a landowner for one's own noncommercial use from land owned or leased by the owner.
- For surface mining operations affecting 2 acres or less, the regulatory authority may waive certain requirements of this act where those requirements will not affect the reclamation of the affected lands.
- The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction under regulations established by the regulatory authority.

¹⁹⁰¹ALA. CODE § 9-16-89.

¹⁹⁰²Id. § 9-16-90. For a more detailed description of the required performance standards, Id.

¹⁹⁰³Id. § 9-16-98.

¹⁹⁰⁴Id. § 9-16-93(a).

¹⁹⁰⁵Id. § 9-16-93(b).

¹⁹⁰⁶Id. § 9-16-93(d).

¹⁹⁰⁷Id. § 9-16-93(f).

¹⁹⁰⁸Id. § 9-16-94. For more detailed description of penalties, Id.

¹⁹⁰⁹Id. § 9-16-95.

¹⁹¹⁰Id. § 9-16-96(a).

¹⁹¹¹Id. § 9-16-96(b).

¹⁹¹²Id. § 9-16-99.

- The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the tonnage of minerals removed for commercial use or sale pursuant to regulations established by the regulatory authority.

Georgia (region 2).—The Georgia Surface Mining Act of 1968¹⁹¹³ was enacted with the following purposes:¹⁹¹⁴

- Assist in achieving and maintaining an efficient and productive mining industry and to assist in increasing economic and other benefits attributable to mining.
- Advance the protection of fish and wildlife, and the protection and restoration of land, water, and other resources affected by mining.
- Assist in the reduction, elimination, or counteracting of pollution or deterioration of land, water, and air attributable to mining.
- Encourage programs that will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources.
- Assist in efforts to facilitate the use of land and other resources affected by mining.

The act designates the Environmental Protection Division of the Department of Natural Resources to be the administering agency,¹⁹¹⁵ having the following mandatory duties and powers:¹⁹¹⁶

- Administer and enforce the Georgia Surface Mining Act and all promulgated rules and regulations.
- Consider permit applications of operators.
- Consider surface mining land use plans submitted by operators.
- Investigate and inspect.
- Revoke permits, deny renewals, and forfeit bonds or cash of mine operators who refuse to carry out their plans of mining land use.
- Collect information on surface mining and mining land use plans.
- Collect, publish, and distribute information on mining land uses.
- Accept moneys provided by government units and private organizations.
- Conduct research studies of mining land uses.
- Carry out land use projects on land where bonds or cash have been forfeited.
- Institute and prosecute all court actions necessary to enforce any issued order.
- Exercise all incidental powers necessary to carry out the purposes of the act.

The act requires the Board of Natural Resources to promulgate rules and regulations necessary to effectuate the Georgia Surface Mining Act of 1968.¹⁹¹⁷

¹⁹¹³Georgia Surface Mining Act of 1968, GA. CODE ANN. § 12-4-71 et seq. (1992).

¹⁹¹⁴Id. § 12-4-71.

¹⁹¹⁵Id. § 12-4-71(b).

¹⁹¹⁶Id. § 12-4-73.

¹⁹¹⁷Id. § 12-4-74.

Before starting surface mining operations, all operators of surface mining firms are required to obtain a permit from the director of the division.¹⁹¹⁸ All permit applications must accompany a mining land use plan, that must be consistent with the land use in the area of the mine and provide for reclamation of the affected land.¹⁹¹⁹ In addition, applicants must file a bond with the director. However, an applicant may request exemption from the bonding requirement, where granting such an exemption is at the discretion of the director.¹⁹²⁰ Mining by a permitted operator on an unauthorized site while holding other valid surface mining permits constitutes prima-facie evidence of violation of approved mining land use plans. All surface mining permits that the operator may hold may be suspended or revoked.¹⁹²¹

The division can file an injunctive relief in the superior court of any county having jurisdiction over an individual who appears to be violating any provisions of the act, rules and regulations, or the division's issued order.¹⁹²² The act imposes a civil penalty of an amount not exceeding \$1,000 (and an additional penalty of an amount not exceeding \$500 for each day such violation continues) on any person who violates any provision of this act or promulgated rules and regulations, or who intentionally or negligently fails or refuses to comply with any final order of the director of the division.¹⁹²³ Moreover, any person who engages in surface mining activities in violation of this act or who willfully misrepresents or gives false information will be guilty of a misdemeanor, and, upon conviction, will be fined not less than \$100 nor more than \$1,000 (each day of noncompliance constitutes a separate offense).¹⁹²⁴ However, any party who is aggrieved or adversely affected by an order of the division has the right to appeal to the superior court of the county of the party's residence.¹⁹²⁵

However, this act does not apply to surface mining activities of the Department of Transportation incident to its activities in constructing, repairing, and maintaining the public road system in Georgia.¹⁹²⁶ This exemption also extends to those operators who contract directly with the Department of Transportation, but not to parties who are subcontractors of such operators.¹⁹²⁷

Arkansas (region 3).—The Arkansas Surface Coal Mining and Reclamation Act of 1979,¹⁹²⁸ administered and enforced by the Arkansas Department of Pollution Control and Ecology,¹⁹²⁹ provides that lands and water eligible for reclamation or drainage abatement expenditures are those that were mined for coal or which were affected by the mining, wastebanks, coal processing, or other coal mining processes and abandoned or left in an inadequate reclamation status prior to 1977.¹⁹³⁰

¹⁹¹⁸GA. CODE ANN. § 12-4-75(1).

¹⁹¹⁹Id. § 12-4-75(2).

¹⁹²⁰Id. § 12-4-75(3).

¹⁹²¹Id. § 12-4-77.

¹⁹²²Id. § 12-4-79.

¹⁹²³Id. § 12-4-83.

¹⁹²⁴Id. § 12-4-84.

¹⁹²⁵Id. § 12-4-78.

¹⁹²⁶Id. § 12-4-82.

¹⁹²⁷Id.; 1968 Op. Att'y Gen. No. 68-406.

¹⁹²⁸Arkansas Surface Coal Mining and Reclamation Act of 1979, ARK. CODE ANN. § 15-58-101 through 5-58-510 (1987).

¹⁹²⁹Id. § 15-58-201.

¹⁹³⁰Id. § 15-58-401.

However, expenditure of moneys from the fund on land and water eligible for reclamation or drainage abatement depends on State priorities.

These priorities are in the following order (where item 1 means most important while item 6 means less important):¹⁹³¹

1. The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.
2. The protection of public health, safety, and general welfare from danger of adverse effects of coal mining practices.
3. The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices.
4. Research and demonstration projects regarding the development of surface mining reclamation and water quality control program methods and techniques.
5. The protection, repair, replacement, construction, or enhancement of public facilities.
6. The development of publicly owned land adversely affected by coal mining practices.

After giving proper notice, the act authorizes the director to enter upon the property adversely affected by past coal mining practices to restore, reclaim, abate, control, or prevent adverse effects if the director determines that—

the land or water resources have been adversely affected by past coal mining practices;

the adverse effects are at a state where reclamation action should be taken; and

the landowner's whereabouts is not known, or the landowner does not give permission for necessary reclamation.¹⁹³²

A lien will be attached to the reclaimed property if the moneys expended for reclamation result in a significant increase in property value. In addition, the director is empowered to acquire land that is adversely affected by past coal mining practices.¹⁹³³

Moreover, the act requires the Arkansas Pollution Control and Ecology Commission to issue regulations that adopt appropriate procedures for identifying and designating certain lands to be unsuitable for all or certain types of surface mining.¹⁹³⁴ Each operator of surface coal mining and reclamation operations must obtain a permit before conducting such operations.¹⁹³⁵ After a permit application is approved but before the permit is issued, the applicant must file a performance bond with the Arkansas Department of Pollution Control and Ecology.¹⁹³⁶ Coal exploration operations that substantially disturb the natural land surface must be conducted in compliance with coal exploration regulations issued by the

¹⁹³¹ARK. CODE ANN. § 15-58-402.

¹⁹³²Id. § 15-58-404.

¹⁹³³Id. § 15-58-406.

¹⁹³⁴Id. § 15-58-501.

¹⁹³⁵Id. § 15-58-502.

¹⁹³⁶Id. § 15-58-509.

commission.¹⁹³⁷ Furthermore, any permit issued to conduct surface coal mining operations and any authorization to conduct coal exploration operations require such operations to meet all applicable performance standards.¹⁹³⁸

The act prohibits a person performing any function or duty under this act to have any direct or indirect financial interest in any underground or surface coal mining operations. Those who knowingly violate these prohibitions are subject to a fine not exceeding \$2,500 and/or imprisonment not exceeding 1-year.¹⁹³⁹

The Arkansas Surface Coal Mining and Reclamation law creates a Surface Coal Mining Operation Fund to be used for the administration and enforcement of the act.¹⁹⁴⁰ In addition, the act imposes both civil and criminal penalties on violations of different sorts.¹⁹⁴¹ Moreover, the act also gives private persons the right to a private action to compel compliance.¹⁹⁴²

The act, however, does not apply to the following:¹⁹⁴³

- The surface mining of any minerals or materials other than coal (all minerals or materials other than coal are regulated by the Arkansas Open-Cut Land Reclamation Act of 1977).
- The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him.
- The extraction of coal as an incidental part of Federal, State, or local government-financed highways or other construction under regulations established by the commission.
- The extraction of coal as an incidental part of other minerals where coal does not exceed 16 2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale or for coal exploration.

This act does not affect any person's water rights. Thus, the operator of a surface coal mine must replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply is affected by the contamination, diminution or interruption proximately resulting from the surface coal mining operation.¹⁹⁴⁴

Mississippi (region 3).—Mississippi Legislature enacted two particular laws regarding the surface mining and reclamation of land: the Mississippi Surface Mining and Reclamation law and the Mississippi Surface Coal Mining and Reclamation law. Each shall be discussed in turn.

¹⁹³⁷ARK. CODE ANN. § 15-58-504.

¹⁹³⁸Id. § 15-58-510.

¹⁹³⁹Id. § 15-58-206.

¹⁹⁴⁰Id. § 15-58-508.

¹⁹⁴¹Id. § 5-58-301 through 15-58-308.

¹⁹⁴²Id. § 15-58-309.

¹⁹⁴³Id. § 15-58-106.

¹⁹⁴⁴Id. § 15-58-107.

Mississippi Surface Mining and Reclamation law.—Under the Mississippi Surface Mining and Reclamation law,¹⁹⁴⁵ the following provisions are applicable to mining operations:

- An operator who engages in surface mining must first obtain a permit for each operation from the commission. Before a Class I permit is granted, a public hearing must be conducted.¹⁹⁴⁶ Class I materials include bentonite, metallic ore, mineral clay, dolomite, and phosphate.¹⁹⁴⁷
- Each permit holder must file with the commission a certificate of compliance annually.¹⁹⁴⁸
- The operator of an operation for Class II materials must obtain a Class II permit. To obtain it, one must submit to the commission—
 - a notice of intent,
 - a copy of the proposed reclamation plan, and
 - a bond.
- Permit issuance depends upon the approval of the reclamation plan and if the bond is satisfied.¹⁹⁴⁹
- Application fees must accompany a surface mining permit application and notice of intent.¹⁹⁵⁰
- A reclamation plan must be developed in a manner consistent with local physical, environmental, and climatological conditions and current mining and reclamation technology. A reclamation plan must include a set of information, including—
 - identification of the entire area to be mined and affected;
 - condition of the land to be covered by the permit before mining;
 - capacity of the land to support its anticipated use following reclamation;
 - a description of how the proposed post-mining land condition is to be achieved;
 - steps taken to comply with applicable air and water quality and water rights laws and regulations, and with any applicable health and safety standards;
 - general timetable that the operator estimates will be necessary for accomplishing the major events contained in the reclamation plan; and
 - such other information as the commission, by regulation, requires.¹⁹⁵¹
- Moreover, the commissioners of the soil and water conservation districts affected are required to submit written comments, recommendations, and evaluations of the reclamation plan.¹⁹⁵²

¹⁹⁴⁵Mississippi Surface Mining and Reclamation Law, MISS. CODE ANN. § 53-7-1 et seq. (1990).

¹⁹⁴⁶Id. § 53-7-21.

¹⁹⁴⁷Id. § 53-7-5(b).

¹⁹⁴⁸Id. § 53-7-21.

¹⁹⁴⁹Id. § 53-7-23.

¹⁹⁵⁰Id. § 53-7-25.

¹⁹⁵¹Id. § 53-7-33.

¹⁹⁵²Id. § 53-7-33.

- Each permit issued must require the operation to meet all applicable reclamation standards that must require the operator at minimum to—¹⁹⁵³
 - conduct operations in a manner consistent with prudent mining practice;
 - restore the affected area so that it may be used for a useful, productive, and beneficial purpose, such as agricultural, grazing, industrial, or recreational uses;
 - conduct water drainage and silt control for all the affected areas so as to strictly control soil erosion, damage to adjacent lands, and pollution of streams and other waters;
 - remove or cover all metal, lumber, and other refuse;
 - regrade the area to the nearest approximate original contour or rolling topography, and elimination of all highways, spoil piles, and water-collecting depressions;
 - stabilize and protect all surface areas affected by the mining and reclamation operation sufficiently to control erosion, air, and water pollution;
 - remove and replace the topsoil, if any, from the land;
 - fill any auger holes with an impervious material to prevent drainage;
 - minimize the disturbances to the prevailing hydrologic balance at the main site and in associated offsite areas to the quantity and quality of water in surface and ground water system;
 - stabilize any waste piles;
 - in the use of impoundments for the disposal of mine wastes, ensure that leachate will not pollute surface or underground water, and locate impoundments so as not to endanger public health and safety;
 - ensure that all debris, acid-forming materials, toxic materials or fire hazard materials be treated or disposed of in a manner to prevent surface and underground water contamination;
 - ensure that construction, maintenance and post-mining conditions of access roads will minimize erosion and siltation, air and water pollution, and damage to fish or wildlife habitat or to public or private property;
 - refrain from constructing roads or other access ways up a streambed or drainage channel;
 - revegetate the affected area with plants to attain a useful, productive, and beneficial purpose and assume responsibility for successful revegetation for 2 years beyond the date on which 90 percent of the required bond is released;
 - ensure the quality and quantity of water in permanent impoundments of water as part of the approved reclamation plan; and
 - protect offsite areas from slides or damage occurring during the surface mining and reclamation operations, and not deposit spoil material or waste accumulation outside the permit area.

¹⁹⁵³Mississippi Surface Mining and Reclamation Law, MISS. CODE ANN. § 53-7-35.

- The applicant for a Class I materials permit must file performance bonds with the commission. However, all state agencies and political subdivisions of the State and local governing bodies are exempt from the bonding requirements.¹⁹⁵⁴
- The surface mining plan or reclamation plan may be amended in accordance with the commission's regulations. Permits may be transferred at the discretion of the commission.¹⁹⁵⁵
- All mining operations are prohibited in National and State parkland.¹⁹⁵⁶
- All permittees must—
 - establish and maintain appropriate records,
 - make reports to the commission, and
 - install, use, and maintain any necessary monitoring equipment for the purpose of observing and determining relevant surface or subsurface effects of the mining operation or reclamation program.¹⁹⁵⁷

In case of suspension of mining operations, operators must notify the commission within 60 days following the suspension.¹⁹⁵⁸

The commission, with assistance of the Mississippi Commission on Wildlife Conservation, must identify and designate certain lands as unsuitable for certain types of surface mining.¹⁹⁵⁹ Moreover, any person has the right to petition the commission to have an area designated as unsuitable for surface mining or to have such a designation modified, amended or terminated.¹⁹⁶⁰ The commission has the right to enter at reasonable time to any operation or premises to have access to records and inspect monitoring equipment or methods of operations.

The commission is also required to inspect on an irregular basis at a frequency necessary to ensure compliance.¹⁹⁶¹ Moreover, the representatives of the local soil and water conservation district have the right to inspect the operation and reclamation activities to ensure compliance with the permit, provisions of this law, and rules and regulations of the commission.¹⁹⁶²

The Mississippi Surface Mining and Reclamation law imposes both civil and criminal penalties for violation of any provision of the law or any rules and regulations of the commission.¹⁹⁶³

The Mississippi Surface Mining and Reclamation law creates a Land Reclamation Fund in the State treasury, to which all payment of fees, loans, grants, penalties, and bond damages (minus attorney's fees) must be deposited. The commission may use this fund for administration and enforcement of this law and for the reclamation of lands affected by operations.¹⁹⁶⁴

¹⁹⁵⁴MISS. CODE ANN. § 53-7-37.

¹⁹⁵⁵Id. § 53-7-43.

¹⁹⁵⁶Id. § 53-7-47.

¹⁹⁵⁷Id. § 53-7-53.

¹⁹⁵⁸Id. § 53-7-73.

¹⁹⁵⁹Id. § 53-7-49.

¹⁹⁶⁰Id. § 53-7-51.

¹⁹⁶¹Id. § 53-7-55.

¹⁹⁶²Id. § 53-7-57.

¹⁹⁶³Id. § 53-7-59, 53-7-61.

¹⁹⁶⁴Id. § 53-7-69.

However, the Mississippi Surface Mining and Reclamation law does not apply to mining operations of Class II materials that affect 4 acres or less of land. However, an exempted area of 4 acres or less may not be closer than 1,320 feet to another exempted area of 4 acres or less.¹⁹⁶⁵ Class II materials include sand, gravel, soil, clay, sand clay, clay gravel, limestone, and chalk.¹⁹⁶⁶

Moreover, excavations made by the owner of land for ones own use (not for commercial purposes), where the materials removed do not exceed 1,000 cubic yards per year and 1 acre or less of land is affected, are exempted from the notice requirement.¹⁹⁶⁷

A member, agent, or employee of the commission or the local soil and water conservation district cannot disclose—

information submitted to it regarding the deposits or materials,

information concerning trade secrets, or

privileged commercial or financial information that relates to competitive rights of the applicant and specially identified as confidential by the applicant.¹⁹⁶⁸

Mississippi Surface Coal Mining and Reclamation law—The Mississippi Surface Coal Mining and Reclamation law, to be administered and enforced by the Bureau of Geology and Energy Resources of the Mississippi Department of Natural Resources was enacted with the following purposes:¹⁹⁶⁹

- Assume state exclusive jurisdiction over the regulation of surface coal mining and reclamation operations.
- Develop, implement, and enforce a program that, at a minimum achieves the purposes of the Federal Surface Mining Control and Reclamation Act of 1977 (enacted by Congress as Public Law 95-87, codified as 30 U.S.C. 1201 et seq.).
- Assure that the rights of surface landowners and other persons with a legal interest in the land or its accessories are fully protected from such operations.
- Assure that surface coal mining operations are not conducted where required reclamation is not feasible.
- Assure that adequate procedures are undertaken to reclaim surface areas.
- Assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of state regulations, standards, reclamation plans or programs.
- Assure that the coal supply essential to energy requirements is provided.
- Exercise the full reach of state constitutional powers to ensure the protection of the public interest through effective control of surface coal mining operations.

The Mississippi Surface Coal Mining and Reclamation law requires the Mississippi Commission on Natural Resources to promulgate rules and regulations as it deems

¹⁹⁶⁵MISS. CODE ANN. § 53-7-7(1).

¹⁹⁶⁶Id. § 53-7-5(b).

¹⁹⁶⁷Id. § 53-7-7(1).

¹⁹⁶⁸Id. § 53-7-75.

¹⁹⁶⁹Id.

necessary to carry out the purposes and provisions of the Surface Coal Mining and Reclamation law.¹⁹⁷⁰

The law creates a number of bodies, including—
the Surface Mining and Reclamation Operations Section within the Bureau that has jurisdiction over geological studies and surveys; and¹⁹⁷¹
the Surface Mining Review Board, which reviews the actions of the administrator and performs other functions.¹⁹⁷²

The Review Board's action is subject to judicial review by the chancery court.¹⁹⁷³

The law prohibits any employee of the department of Natural Resources from having any direct or indirect financial interest in any underground or surface coal mining operations. Those who knowingly violate this prohibition are subject to a fine not exceeding \$2,500 or an imprisonment not exceeding 1 year, or both.¹⁹⁷⁴

The following provisions are applicable to surface coal mining operations in Mississippi:

- Each person who engages in any type of surface coal mining operation must secure a surface coal mining and reclamation permit.
- A permit is issued for up to 5 years.
- The permit is terminated if the permittee has not commenced the surface coal mining operation covered by the permit within 3 years of issuance.¹⁹⁷⁵
- A permit is transferable upon approval of the administrator.¹⁹⁷⁶
- A valid permit is renewable¹⁹⁷⁷ and revisable.¹⁹⁷⁸
- Each permit application must be accompanied by—
a fee;
insurance coverage;
blasting plan;
reclamation plan; and
other information.¹⁹⁷⁹
- Each permit applicant must file a copy of his or her application for public inspection with the clerk of the chancery court of the county or judicial district where the mining is to occur.¹⁹⁸⁰

¹⁹⁷⁰MISS. CODE ANN. § 53-9-11.

¹⁹⁷¹Id. § 53-9-13.

¹⁹⁷²Id. § 53-9-15, § 53-9-77.

¹⁹⁷³Id. § 53-9-79.

¹⁹⁷⁴Id. § 53-9-19.

¹⁹⁷⁵Id. § 53-9-21.

¹⁹⁷⁶Id. § 53-9-35.

¹⁹⁷⁷Id. § 53-9-23.

¹⁹⁷⁸Id. § 53-9-35.

¹⁹⁷⁹Id. § 53-9-25.

¹⁹⁸⁰Id. § 53-9-27.

Before granting a permit, the administrator of the Surface Mining and Reclamation Operations Section must determine whether—¹⁹⁸¹

the permit application is accurate and complete and complies with the requirements of the Mississippi Surface Coal Mining and Reclamation law and any other regulations promulgated;

the reclamation required by the Mississippi law and promulgated regulations can be accomplished under the submitted reclamation plan;

an assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the administrator and the proposed operation has been designed to prevent material damage to hydrologic balance outside the permit area;

the area proposed for mining is not included within an area designated unsuitable for surface coal mining;

in case the private coal estate has been severed from the private surface estate, the written consent of the surface owners to the extraction of coal or a conveyance granting or reserving the right to extraction of coal is submitted by the applicant; and

if the area proposed for mining contains prime farmland, the operator has the technological capacity to restore the mined area within a reasonable time to equivalent or higher levels of yield as nonmined prime farmland.

The person responsible for blasting must be trained, examined, and certified.¹⁹⁸²

A surface coal mining permit requires surface coal mining operations to meet all applicable performance standards.¹⁹⁸³ However, the administrator is authorized to grant departures from performance standards to encourage advances in mining and reclamation practices.¹⁹⁸⁴

Each permit issued for underground coal mining must comply with the provisions and regulations set forth specifically for underground coal mining.¹⁹⁸⁵

Each person who engages in any type of coal exploration operation must obtain an exploration permit from the administrator prior to conducting such operations. The administrator must keep confidential all information submitted concerning trade secrets or privileged commercial or financial information.¹⁹⁸⁶

Each permittee must post a conspicuous sign at the entrance of the surface coal mining and reclamation operation.¹⁹⁸⁷

The operator of a surface coal mine must replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply is affected by the contamination, diminution, or

¹⁹⁸¹MISS. CODE ANN. § 53-9-33.

¹⁹⁸²Id. § 53-9-87.

¹⁹⁸³Id. § 53-9-43 For description of performance standards, Id. § 53-9-45

¹⁹⁸⁴Id. § 53-9-49.

¹⁹⁸⁵Id. § 53-9-47.

¹⁹⁸⁶Id. § 53-9-41.

¹⁹⁸⁷Id. § 53-9-53.

interruption proximately resulting from the surface coal mining operation.¹⁹⁸⁸ The Mississippi Surface Coal Mining and Reclamation law imposes both civil¹⁹⁸⁹ and criminal penalties on violations of different sorts.¹⁹⁹⁰

The commission is required to establish a planning process to designate certain lands as unsuitable for surface coal mining operations.¹⁹⁹¹

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) that proposes to engage in surface coal mining operations is subject to the requirements of the Mississippi Surface Coal Mining and Reclamation law.¹⁹⁹² The law also applies where coal under land owned by the State, the surface rights to which are owned by a surface owner, is to be mined by methods other than underground mining techniques.¹⁹⁹³ However, the following are exempted from this law:¹⁹⁹⁴

- The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him.
- The extraction of coal as an incidental part of Federal, State, or local government-financed highways or other construction under regulations established by the commission.
- The extraction of coal as an incidental part of other materials where coal does not exceed 16 2/3 percent of the tonnage of materials removed for purposes of commercial use or sale.

Wisconsin (region 4).—Under the Wisconsin Nonmetallic Mining Reclamation provision,¹⁹⁹⁵ the governing body of a county, city, village, or town is allowed to adopt, by ordinance, regulations for the reclamation of nonmetallic mining sites.¹⁹⁹⁶ A county nonmetallic mining reclamation ordinance applies to each town within that county and does not require approval of the town board. However, the county ordinance does not apply to a town with a town nonmetallic mining ordinance that is at least as restrictive as the county ordinance.¹⁹⁹⁷ A local ordinance may apply to any portion of a nonmetallic mining site, including the unreclaimed portion of a site, that was mined before the ordinance became effective,¹⁹⁹⁸ but does not apply to the whole or any portion of a mining site that is subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources.¹⁹⁹⁹

The nonmetallic mining reclamation law does not allow any nonmetallic mining reclamation ordinance to exempt nonmetallic mining operations conducted by or on behalf of the State or a county, city, village, or town, from permit requirements and

¹⁹⁸⁸MISS. CODE ANN. § 53-9-85(2).

¹⁹⁸⁹Id. § 53-9-55.

¹⁹⁹⁰Id. § 53-9-57 through 53-9-61.

¹⁹⁹¹Id. § 53-9-7.

¹⁹⁹²Id. § 53-9-75.

¹⁹⁹³Id. § 53-9-83.

¹⁹⁹⁴Id. § 53-9-81.

¹⁹⁹⁵WIS. STAT. ANN. § 66.038 (West 1990).

¹⁹⁹⁶Id. § 66.038(2).

¹⁹⁹⁷Id. § 66.038(3)(a).

¹⁹⁹⁸Id. § 66.038(3)(b).

¹⁹⁹⁹Id. § 66.038(3)(c).

reclamation standards.²⁰⁰⁰ However, the ordinance can exempt a number of activities, including—

excavations or grading by a person solely for domestic use at his or her residence;

excavations or grading conducted for highway construction purposes within the highway right-of-way;

grading conducted for farming, preparing a construction site, or restoring land following a flood or natural disaster; and

excavations for building construction purposes.²⁰⁰¹

Furthermore, a nonmetallic mining reclamation ordinance can—
establish reclamation standards,

require operation and reclamation plans,

require a permit and fee, and

require a bond or other form of financial insurance conditioned on the faithful performance of all the requirements of the ordinance.²⁰⁰²

Iowa (region 5).—The Legislature of Iowa specifically indicates in its laws concerning mining activities that it is the policy of Iowa to "provide for the reclamation and conservation of land affected by surface mining and thereby to preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health, safety and general welfare of the people of this state."²⁰⁰³ The Division of Soil Conservation, Iowa Department of Agriculture and Land Stewardship, is authorized to adopt a plan or rules pursuant to this act; however, a plan or rules setting health and safety standards for surface mining is not valid or effective until it is approved by the Governor.²⁰⁰⁴

The following provisions are applicable to surface mining activities within Iowa:

- All persons, firms, partnerships, or corporations who engage in surface mining or operation of an underground mine(s) must first obtain an annual license from the Division of Soil Conservation.²⁰⁰⁵
- The division may suspend, revoke, or refuse to renew a license for repeated or willful violation of any provision of this act.²⁰⁰⁶
- An operator who engages in mining activities without obtaining a license is subject to an injunction order and a civil penalty of an amount not exceeding \$5,000.²⁰⁰⁷

²⁰⁰⁰WIS. STAT. ANN. § 66.038(3)(d).

²⁰⁰¹Id. § 66.038(3)(e).

²⁰⁰²Id. § 66.038(4).

²⁰⁰³Mines, IOWA CODE ANN. § 208.1 (West Supp. 1993).

²⁰⁰⁴Id. § 208.30.

²⁰⁰⁵Id. § 208.7. The application, accompanying a \$50 license fee, must be submitted to the Division. Id.

²⁰⁰⁶Id. § 208.8. The Act provides that the Division, in its proceedings to suspend, revoke or refuse to renew a license, must follow a certain prescribed procedure. Id.

²⁰⁰⁷Id. § 208.29.

At least 7 days before starting mining activities, an operator must register the mine with the division.²⁰⁰⁸ Failure to apply for registration of each mine site constitutes a simple misdemeanor.²⁰⁰⁹

A bond or security must accompany the application for registration.²⁰¹⁰ However, a political subdivision engaging in mining is exempted from the bond or security requirement.²⁰¹¹ The bond posted by an operator to guarantee reclamation of a site may be forfeited if the operator violates any of the provisions of this act or any rule adopted by the division.²⁰¹² The division must reclaim any surface-mined land, using the proceeds of the forfeiture to pay for the necessary reclamation work.²⁰¹³

An operator may at any time apply for amendment or cancellation of registration of any site.²⁰¹⁴

If control of an active site or the right to conduct any future mining at an inactive site is acquired by an operator other than the operator holding authorization to conduct surface mining on the site, the new operator must apply for registration of the site in the new operator's name.²⁰¹⁵

After completion of mining operations, an operator must comply with the reclamation requirements.²⁰¹⁶ Such operator must grade affected lands and provide for the vegetation of the affected lands. Overburden piles where deposition has not occurred for 12 months must be stabilized. Topsoil that is a part of overburden must not be destroyed or buried in the process of mining. However, crushing and stockpile areas in place on July 1, 1985, are not subject to the reclamation requirements, unless those areas continue to function as part of the mine site after July 1, 1988.²⁰¹⁷ Reclamation must be carried out according to a schedule established by the division.²⁰¹⁸ However, the division may extend the time for completing reclamation work if the operator can present to the division satisfactory evidence demonstrating that reclamation of affected land cannot be completed within the specified time without unreasonably impeding removal of mineral products from other parts of an active site or future removal of mineral products from an inactive site.²⁰¹⁹

An operator must file with the division a periodic report for each mine site under registration.²⁰²⁰

²⁰⁰⁸Mines, IOWA CODE ANN. § 208.13. A person who falsifies information required to be submitted in the registration application is guilty of a simple misdemeanor. Id.

²⁰⁰⁹Id. § 208.29.

²⁰¹⁰Id. § 208.14. For information regarding the form of the bond, Id. § 208.23. For information regarding single bond for multiple sites, Id. § 208.24. For information regarding cancellation of bond, Id. § 208.25.

²⁰¹¹Id. § 208.21.

²⁰¹²Id. § 208.28.

²⁰¹³Id.

²⁰¹⁴Id. § 208.15.

²⁰¹⁵Id. § 208.16.

²⁰¹⁶Id. § 208.17.

²⁰¹⁷Id. § 208.17.

²⁰¹⁸Id. § 208.19.

²⁰¹⁹Id. § 208.20.

²⁰²⁰Mines, IOWA CODE ANN. § 208.18.

New Mexico (region 6).—In 1979, New Mexico enacted the Surface Mining Act, which is effective until July 1, 2000.²⁰²¹ It was enacted with the following purposes:²⁰²²

- Establish a program to protect society and the environment from the adverse effects of surface coal mining operations.
- Assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances are fully protected against losses resulting from the improper conduct of such operations.
- Assure that surface mining operations are not conducted where reclamation as required by the act is not feasible.
- Assure that surface coal mining operations are conducted in a way that will protect the environment.
- Assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations.
- Assure that the coal supply essential to the nation's energy requirements and to its economic and social well-being is provided, and strike a balance between protection of the environment and agricultural productivity and the nation's need for coal.
- Assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of regulations, standards, and reclamation plans or programs.
- Establish a regulatory program appropriate to the terrain, climate, and the biological, chemical, and other physical conditions in areas subject to mining operations.

The provisions of the Surface Mining Act, however, do not apply to the extraction of coal—²⁰²³

by a landowner for one's own noncommercial use from land owned or leased by the landowner; or

as an incidental part of Federal, State, or local government-financed highway or other construction under regulations established by the commission.

The act requires all persons to obtain a permit before engaging in or carrying out any surface coal mining operations.²⁰²⁴ Applicant must meet the permit application requirements, including:

- A fee.²⁰²⁵
- A blasting plan.²⁰²⁶

²⁰²¹Surface Mining Act, NEW MEXICO STAT. ANN. § 69-25A-1 et seq. (Michie 1979 & Supp. 1993).

²⁰²²Id. § 69-25A-2 (Michie 1979 & Supp. 1993).

²⁰²³Id. § 69-25A-31.

²⁰²⁴Id. § 69-25A-9(A).

²⁰²⁵Id. § 69-25A-10(A).

²⁰²⁶Id. § 69-25A-19(F).

- A certificate of insurance or evidence of self-insurance.²⁰²⁷ However, the director may waive the public liability and self-insurance requirements or may reduce the amount of such insurance.²⁰²⁸
- A copy of the candidate's application for public inspection with the county clerk of the county or an appropriate public office approved by the director.²⁰²⁹
- Other information, including—²⁰³⁰
 - names and addresses of the permit applicant, every owner of record of the property (surface and mineral) to be mined, holders of record of any leasehold interest in the property, any purchaser of record of the property under a real estate contract, and the operator, if different from the applicant;
 - names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area;
 - a statement of any current or previous surface coal mining permits in the United States held by the applicant;
 - if the applicant is a partnership, corporation, association or other business entity, where practical, the names and addresses of every officer, partner, director, or person performing a function similar to a director of the applicant, together with the names and addresses of any person owning, of record, ten percent 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 coal mining operation within the United States within 5 years preceding the date of application submission;
 - a statement of whether the applicant or any subsidiary or affiliate has ever held a Federal or State mining permit which, in the 5 years prior to the date of submission, has been suspended or revoked or subjected to a bond;
 - a copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed site;
 - a description of the type and method of coal mining operation, the engineering techniques, and the equipment proposed or to be used;
 - the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;
 - the actual map or plan showing the land to be affected, the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations;
 - the name of the watershed and location of any surface stream or tributary into which surface and pit drainage will be discharged;
 - a determination of the probable hydrologic consequences of the mining and reclamation operations;

²⁰²⁷NEW MEXICO STAT. ANN. § 69-25A-10(G). For more information on public liability and self-insurance requirements, Id. § 69-25A-11. This certificate is issued by an insurance company authorized to do business in the United States and certifies that the applicant has a public liability policy in force for the surface coal mining and reclamation operations for which the permit is sought. Id.

²⁰²⁸Id. § 69-25A-11(B).

²⁰²⁹Id. § 69-25A-10(E).

²⁰³⁰Id. § 69-25A-10(B).

the climatological factors that are peculiar to the locality of the land to be affected at the request of the director;

cross-section maps and plans of the land to be affected;

a statement of the results of test boring or core samplings from the permit area;

a soil survey for those lands in the permit application that a reconnaissance inspection suggests to be prime farmlands; and

information regarding coal seams, test borings, core samplings, or soil samples for any person who has an interest that is or may be adversely affected.

A permit is issued for 5 years.²⁰³¹ Because a valid permit carries with it the right of successive renewal upon expiration in areas within the boundaries of the existing permit, once it is expired, the permittee may apply for renewal and the renewal must be issued unless the director determines that the terms and conditions of the existing permit are not satisfactorily met and the present surface coal mining and reclamation operation is not in compliance with the act.²⁰³² However, a permit terminates if the permittee has not begun the surface coal mining operations covered by the permit within 3 years of permit issuance.²⁰³³

In addition, the act provides that holders of permits issued to conduct surface coal mining operations must meet all applicable performance standards and other requirements promulgated by the commission by regulation.²⁰³⁴

Under this act, the coal surface mining commission of nine members is created.²⁰³⁵ The commission has the following mandatory duties:

- To adopt and file reasonable regulations that are necessary to implement the Surface Mining Act.²⁰³⁶
- To promulgate by regulation general performance standards applicable to all surface coal mining and reclamation operations.²⁰³⁷
- To promulgate rules and regulations directed toward the surface effects of underground coal mining operations.²⁰³⁸
- To inspect and monitor surface coal mining and reclamation operations.²⁰³⁹
- To require permittees to—
establish and maintain appropriate records;

²⁰³¹NEW MEXICO STAT. ANN. § 69-25A-9(B).

²⁰³²Id. § 69-25A-9(D).

²⁰³³Id. § 69-25A-9(C).

²⁰³⁴Id. § 69-25A-19(A).

²⁰³⁵Id. § 69-25A-4(A) (Michie Supp. 1993). The seven members include: the director of the Bureau of mines and mineral resources; the director of the Department of Game and Fish; the director of the Environmental improvement division; the chairman of the Soil and Water Conservation Commission; the director of the Agricultural experiment station; the state engineer; the commissioner of public lands; and two public members who will be appointed by the governor with the advice and consent of the senate.

²⁰³⁶Id. § 69-25A-5(A).

²⁰³⁷Id. § 69-25A-19(B).

²⁰³⁸Id. § 69-25A-20.

²⁰³⁹Id. § 69-25A-21.

make monthly reports to the director;
install, use, and maintain any necessary monitoring equipment or methods; and
evaluate results in compliance with the rules promulgated by the
commission.²⁰⁴⁰

The act authorizes the director to impose and enforce penalties and sanctions on any violator of the act.²⁰⁴¹ However, it allows any permittee who has been issued a notice or order of violation, or any person having an interest which is or may be adversely affected by such notice or order, to apply to the director for review of the notice or order.²⁰⁴² In addition, any party to a proceeding before the commission who is aggrieved by the commission's decision may request judicial review in the district court of Santa Fe County.²⁰⁴³

Texas (regions 6 & 7).—Under the Texas Surface Coal Mining and Reclamation Act,²⁰⁴⁴ the following provisions are applicable to coal mining and reclamation operations in Texas:

- Before surface mining operations, each operator must obtain a permit issued by the Texas Railroad Commission. A permit is issued for a period of up to 5 years. A permit is terminated if the permittee has not started the surface coal mining operation covered by the permit within 3 years of issuance.²⁰⁴⁵ A permit is renewable,²⁰⁴⁶ revisable, and transferable.²⁰⁴⁷ Among other things, each permit applicant must provide—
 - a permit application fee;²⁰⁴⁸
 - the permit application;²⁰⁴⁹
 - a reclamation plan;²⁰⁵⁰
 - data and maps;²⁰⁵¹
 - a blasting plan;²⁰⁵²
 - a determination of the probable hydrologic consequences of the mining and reclamation operation;²⁰⁵³
 - if requested, the published climatological factors that are peculiar to the locality of the affected land;²⁰⁵⁴
 - information pertaining to coal seams, test borings, core samplings, or soil samples as required,²⁰⁵⁵ and

²⁰⁴⁰NEW MEXICO STAT. ANN. § 69-25A-21.

²⁰⁴¹Id. § 69-25A-22, § 69-25A-25.

²⁰⁴²Id. § 69-25A-29.

²⁰⁴³Id. § 69-25A-30.

²⁰⁴⁴TEXAS CIVIL CODE ANN. STAT., Art. 5921-11, § 1 et seq. (West Supp. 1995).

²⁰⁴⁵Id. § 12.

²⁰⁴⁶Id. § 13.

²⁰⁴⁷Id. § 22.

²⁰⁴⁸Id. § 18.

²⁰⁴⁹Id. § 14.

²⁰⁵⁰Id.

²⁰⁵¹Id.

²⁰⁵²Id. § 16.

²⁰⁵³Id. § 14.

²⁰⁵⁴Id. § 14.

²⁰⁵⁵Id. § 14.

public liability insurance.²⁰⁵⁶

- The permit applicant must file a copy of the application for public inspection.²⁰⁵⁷ After a permit has been approved, but before its issuance, the applicant must submit a performance bond to the division.²⁰⁵⁸ Moreover, before granting a permit, the division must determine whether—²⁰⁵⁹
 - the permit application is accurate and complete and complies with the requirements of the Texas Surface Coal Mining and Reclamation Act;
 - the reclamation required by the act can be accomplished under the submitted reclamation plan;
 - the commission has made an assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance, and the proposed operation has been designed to prevent material damage to hydrologic balance outside the permit area;
 - the area proposed for mining is not included within an area designated unsuitable for surface coal mining;
 - in case the private coal estate has been severed from the private surface estate, the written consent of the surface owners to the extraction of coal or a conveyance granting or reserving the right to extraction of coal is submitted by the applicant;
 - the proposed surface coal mining operation, if located west of the 100th meridian west longitude, would not interrupt, discontinue or preclude farming on alluvial valley floors; and
 - if the area proposed for mining contains prime farmland, the operator has the technological capacity to restore the mined area within a reasonable time to equivalent or higher levels of yield than nonmined prime farmland.
- Permits issued to conduct surface coal mining operations require that such operations meet all applicable performance standards.²⁰⁶⁰ However, the commission is authorized to grant departures from performance standards to encourage technological advances in mining and reclamation practices.²⁰⁶¹
- Coal exploration operations that substantially disturb the natural land surface must be conducted in compliance with coal exploration regulations issued by the commission.²⁰⁶² Removal of more than 250 tons of coal pursuant to an exploration permit is allowed only with the specific written approval of the commission.²⁰⁶³
- Operators who conduct underground coal mining must comply with all applicable provisions of the act and all promulgated rules and regulations.²⁰⁶⁴
- Blasters must be trained, examined, and certified.²⁰⁶⁵

²⁰⁵⁶TEXAS CIVIL CODE ANN. STAT. § 24.

²⁰⁵⁷Id. § 17.

²⁰⁵⁸Id. § 25.

²⁰⁵⁹Id. § 21(b).

²⁰⁶⁰Id. § 23.

²⁰⁶¹Id. § 36.

²⁰⁶²Id. § 27.

²⁰⁶³Id.

²⁰⁶⁴Id. § 28.

²⁰⁶⁵Id. § 38.

Under the act, the Railroad Commission of Texas has exclusive jurisdiction over all surface coal mining and reclamation operations²⁰⁶⁶ and iron ore and iron ore gravel mining and reclamation operations.²⁰⁶⁷ However, jurisdiction over iron ore and iron ore gravel mining and reclamation operations is limited.²⁰⁶⁸

Among other mandatory powers and duties, the commission is required to do the following:

- Promulgate rules regarding the surface coal mining and reclamation operations that are required by this act.²⁰⁶⁹
- Establish, by rule, priorities for the expenditure of the Abandoned Mines Reclamation Fund; designate the land and water eligible for reclamation or abatement expenditure; submit reclamation plans, annual projects, and applications to the appropriate authorities; and administer all money received for abandoned mine reclamation or related purposes.²⁰⁷⁰
- Conduct inspections and monitoring of any surface coal mining and reclamation operations to determine compliance with the act.²⁰⁷¹ Inspection must occur on the irregular basis and occur without prior notice to the permittee.²⁰⁷²
- Develop a process for designating areas unsuitable for surface coal mining.²⁰⁷³

The act authorizes the commission to enter upon property adversely affected by past coal mining practice to restore, reclaim, abate, control, or prevent adverse effects if the director determines that—

- the land or water resources have been adversely affected by past coal mining practices;
- the adverse effects are at a stage where reclamation action should be taken; and
- the landowner's whereabouts are unknown, or the landowner does not give permission for necessary reclamation.

The money expended for that work is chargeable against the land.²⁰⁷⁴ Within 6 months after the completion of reclaiming work, the commission is required to put a lien on the reclaimed land.²⁰⁷⁵ However, a lien cannot be filed against property the owner of that—

- owned the surface prior to 1977, and
- neither consented to nor participated in nor exercised control over the mining operation that necessitated the performed reclamation.²⁰⁷⁶

²⁰⁶⁶TEXAS CIVIL CODE ANN. STAT. § 4(a).

²⁰⁶⁷TEXAS CIVIL CODE ANN., Art. 5921-11 § 4(b).

²⁰⁶⁸Id. § 4(b). Such jurisdiction does not extend to (1) mining or reclamation operations that occurred in or before 1985; or (2) a mining or reclamation operation which is conducted solely upon real property which is owned in fee simple by the person authorizing the operation or reclamation activity.

²⁰⁶⁹Id. § 6(a). The process of making and amendment rules and issuing permits must follow the Texas Administrative Procedure Register Act. Id. 6(b).

²⁰⁷⁰Id. § 7.

²⁰⁷¹Id. § 29.

²⁰⁷²Id.

²⁰⁷³Id. § 33.

²⁰⁷⁴Id. § 8.

²⁰⁷⁵Id. § 9.

²⁰⁷⁶Id.

The commission is empowered to acquire land that is adversely affected by past coal mining practices.²⁰⁷⁷ Furthermore, the commission is authorized to spend money from the Abandoned Mine Reclamation Fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible land.²⁰⁷⁸

The act does not apply to the following:²⁰⁷⁹

- The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him.
- The extraction of coal for commercial purpose where the surface mining operation affects 2 acres or less.
- The extraction of coal as an incidental part of Federal, state or local government-financed highways or other construction under regulations established by the commission.
- The extraction of coal as an incidental part of other minerals where coal does not exceed 16 2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale or for coal exploration subject to this act.

The Texas Surface Coal Mining and Reclamation Act imposes both monetary and prison term penalties on violations of different sorts.²⁰⁸⁰ Moreover, the act also gives any private person the right to private action to compel compliance.²⁰⁸¹

This act does not affect any person's water rights. Thus, the operator of a surface coal mine must replace the water supply of an owner of interest in real property who obtains all or part of the supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply is affected by the contamination, diminution, or interruption proximately resulting from the surface coal mining operation.²⁰⁸²

In addition to the Surface Coal Mining and Reclamation Act, the Texas Legislature also enacted the Uranium Surface Mining and Reclamation Act.²⁰⁸³

Idaho (region 8).—The Idaho Surface Mining Act,²⁰⁸⁴ administered by the Board of Land commissioners,²⁰⁸⁵ was enacted "to provide for the protection of the public health, safety and welfare, through measure to reclaim the surface of all the lands . . . disturbed by exploration and surface mining operations"2086

Under this act, the board has a number of mandatory duties and powers, including—

administering and enforcing the provisions of this act and promulgated rules and orders;

²⁰⁷⁷TEXAS CIVIL CODE ANN., Art. 5921-11 § 8.

²⁰⁷⁸Id. § 10.

²⁰⁷⁹Id. § 35.

²⁰⁸⁰Id. § 30.

²⁰⁸¹Id. § 31.

²⁰⁸²Id. § 37.

²⁰⁸³Id. § 131.001 et seq. (West 1993 & Supp. 1995).

²⁰⁸⁴The Idaho Surface Mining Act, IDAHO CODE ANN. § 47-1501 et seq. (1977 & Supp. 1994).

²⁰⁸⁵IDAHO CODE ANN. § 47-1504 (1977).

²⁰⁸⁶Id. § 47-1501 (1977).

conducting and promoting the coordination and acceleration of research, studies, surveys, experiments, demonstrations, and training in carrying out the provisions of this act;

adopting and promulgating reasonable rules consistent with and necessary to carry out the act;

entering upon affected lands to determine compliance; and
reclaiming affected land in which a bond has been forfeited.²⁰⁸⁷

The Idaho Surface Mining Act requires that before carrying out surface mining operations, each operator must submit to the board—

a map,

a reclamation plan of the operation,²⁰⁸⁸ and

a performance bond.²⁰⁸⁹

An applicant may amend the reclamation plan by submitting to the board a supplemental plan.²⁰⁹⁰ Moreover, an operator who engages in exploration and surface mining operations must comply with the following reclamation procedures:²⁰⁹¹

- Ridges of overburden must be leveled in such a manner as to have a minimum width of 10 feet at the top.
- Peaks of overburden must be leveled in such a manner as to have a minimum width of 15 feet at the top.
- Overburden piles must be reasonably prepared to control erosion.
- The operator must likewise prepare affected lands and adjacent premises under his or her control to reduce erosion, where water runoff from affected lands results in stream or lake siltation in excess of the normal results from runoff.
- Roads that are abandoned must be cross-ditched to avoid erosion gullies.
- Exploration drill holes must be plugged to eliminate hazards to humans or animals.
- Abandoned affected lands will be topped to control erosion or to foster the growth of the vegetation, which the operator elects to plant.
- The operator must revegetate the mined areas, overburden piles, and abandoned roads.
- Tailing ponds must be reasonably prepared to avoid hazards to humans or animals.

In case of exploration or surface mining operations that disturb less than 2 acres, the operator must contour the disturbed land to about the previous contour of the lands.

²⁰⁸⁷IDAHO CODE ANN. § 47-1505 (Supp. 1994).

²⁰⁸⁸Id. § 47-1506 (Supp. 1994).

²⁰⁸⁹Id. § 47-1512 (Supp. 1994).

²⁰⁹⁰Id. § 47-1508 (1977).

²⁰⁹¹Id. § 47-1509 (1977).

The act requires each person who wishes to engage in exploration operations using motorized earth-moving equipment to notify the board as soon as possible (not later than within 7 days) after starting the exploration operation.²⁰⁹²

Under this act, the operator must plant on affected lands similar vegetation species to that which grow on such area before exploration and surface mining operations.²⁰⁹³ The vegetation planting requirement does not apply to—

mined areas or overburden piles proposed to be used in the mining operation for haulage roads, provided that such roads are not abandoned;

mined areas or overburden piles where lakes are formed by rainfall or drainage runoff from the adjoining lands;

mineral stockpile;

any exploration trench that will become a part of any pit or overburden disposal area; and

roads that the operator intends to use in his or her mining operations, provided that such roads are not abandoned.²⁰⁹⁴

All of the required reclamation activities must be performed in a good and professional manner, with all reasonable diligence. Reclamation activities for exploration drill holes, roads, or trenches must be performed within 1 year after abandonment.

If the operator fails to comply with the provisions of this act, after proper notice of such noncompliance, the performance bond will be forfeited. The forfeiture of such bond will fully satisfy all obligations of the operator to reclaim the affected land.²⁰⁹⁵ However, the aggrieved operator is allowed to appeal from the board's order.²⁰⁹⁶

The act provides that the performance bond requirement does not apply to surface mining operations conducted by a public or governmental agency for maintenance, repair or construction of a public highway. Moreover, surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway that disturbs less than 2 acres are exempted from the requirement for submission of a map and reclamation plan.²⁰⁹⁷

Utah (region 8).—Under the Utah Coal Mining and Reclamation law,²⁰⁹⁸ the following provisions are applicable to coal mining activities:

- Coal exploration operations that substantially disturb the natural land surface must be conducted in compliance with coal exploration regulations issued by the Division of Oil, Gas and Mining.²⁰⁹⁹ Removal of more than 250 tons of coal pursuant to an exploration permit is allowed only with the specific written approval of the division.²¹⁰⁰

²⁰⁹²IDAHO CODE ANN. § 47-1506 (Supp. 1994).

²⁰⁹³Id. § 47-1510 (1977).

²⁰⁹⁴Id. § 47-1511 (1977).

²⁰⁹⁵Id. § 47-1513 (Supp. 1994).

²⁰⁹⁶Id. § 47-1514 (1977).

²⁰⁹⁷Id. § 47-1519 (Supp. 1994).

²⁰⁹⁸Utah Coal Mining and Reclamation law, UTAH CODE ANN. § 40-10-1 et seq. (1993 & Supp. 1995).

²⁰⁹⁹Id. § 40-10-8 (Supp. 1995).

²¹⁰⁰Id.

- Before surface mining operations, each operator must obtain a permit issued by the division pursuant to an approved mining and reclamation program. A permit is issued for up to 5 years. A permit is terminated if the permittee has not started a surface coal mining operation covered by the permit within 3 years of issuance.²¹⁰¹ Each permit application must be accompanied by—
 - the permit application fee;
 - submission of a reclamation plan;
 - proof of insurance; and
 - a blasting plan.²¹⁰²
- After a permit has been approved and before its issuance, the applicant must submit a performance bond to the division.²¹⁰³ Moreover, before granting a permit, the division must determine whether—²¹⁰⁴
 - the permit application is accurate and complete and complies with the requirements of the Utah Surface Coal Mining and Reclamation law and any other regulations promulgated;
 - the reclamation required by the Utah law and promulgated regulations can be accomplished under the submitted reclamation plan;
 - an assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the administrator and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;
 - the area proposed for mining is not included within an area designated as unsuitable for surface coal mining;
 - in case the private coal estate has been severed from the private surface estate, the written consent of the surface owners to the extraction of coal, or a conveyance granting or reserving the right to extraction of coal is submitted by the applicant;
 - the proposed surface coal mining operation would not interrupt, discontinue or preclude farming on alluvial valley floors; and
 - if the area proposed for mining contains prime farmland, the operator has the technological capacity to restore the mined area within a reasonable time to equivalent or higher levels of yield than nonmined prime farmland.
- Permits issued to conduct surface coal mining operations require that such operations meet all applicable performance standards.²¹⁰⁵

²¹⁰¹Utah Coal Mining and Reclamation law, UTAH CODE ANN. § 40-10-9 (1993).

²¹⁰²Id. § 40-10-10 (Supp. 1995).

²¹⁰³Id. § 40-10-15.

²¹⁰⁴Id. § 40-10-11.

²¹⁰⁵Id. § 40-10-17.

Operators who conduct underground coal mining must comply with all applicable provisions of the Utah Coal Mining and Reclamation Act and all promulgated rules and regulations:²¹⁰⁶

- The operator is required to post signs at operation entrances.²¹⁰⁷
- Copies of records, reports, inspection materials, or information obtained under this law (except trade secrets or financial or privileged information) must be made public.²¹⁰⁸
- The division must establish a planning process upon competent and scientifically sound data and information to designate certain lands as unsuitable for surface coal mining operations.²¹⁰⁹ Moreover, the division is authorized to expend moneys from the Abandoned Mine Reclamation Fund to provide for an abandoned mine reclamation program. However, expenditure of moneys from the fund on such programs depends on state priorities. These priorities are in the following descending order of importance—²¹¹⁰
 1. The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.
 2. The protection of public health, safety, and general welfare from danger of adverse effects of coal mining practices.
 3. The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices.
 4. Research and demonstration projects regarding the development of surface mining reclamation and water quality control program methods and techniques.
 5. The protection, repair, replacement, construction, or enhancement of public facilities.
 6. The development of publicly owned land adversely affected by coal mining practices.

However, it should be noted that Utah is not liable for any costs or damages resulting from action taken or not taken to carry out an abandoned mine reclamation plan.²¹¹¹ Moreover, the division will place a lien against reclaimed land except where the surface owner neither consented to nor participated in nor exercised control over the mining operation that necessitated reclamation work.²¹¹²

The law does not apply to the following:²¹¹³

- The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him.

²¹⁰⁶UTAH CODE ANN. § 40-10-18 (Supp. 1995).

²¹⁰⁷Id. § 40-10-19.

²¹⁰⁸Id.

²¹⁰⁹Id. § 40-10-24.

²¹¹⁰Id. § 40-10-25 (Supp. 1995). For creation of the Abandoned Mine Reclamation Fund, Id. 40-10-25.1 (Supp. 1995).

²¹¹¹Id. § 40-10-25.2 (1993).

²¹¹²Id. § 40-10-28 (Supp. 1995).

²¹¹³Id. § 40-10-5 (1993).

- The extraction of coal as an incidental part of Federal, State, or local Government-financed highways or other construction under regulations established by the division.
- The extraction of coal as an incidental part of other minerals where coal does not exceed 16 2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale or for coal exploration.²¹¹⁴

The Utah law prohibits any person performing any function or duty under this act to have any direct or indirect financial interest in any underground or surface coal mining operations. Those who knowingly violate this prohibition are subject to a fine not exceeding \$2,500 or an imprisonment not exceeding 1 year, or both.²¹¹⁵

This act does not affect any person's water rights. Thus, the operator of a surface coal mine must replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply is affected by the contamination, diminution, or interruption proximately resulting from the surface coal mining operation.²¹¹⁶

Oregon (region 9).—In Oregon, the following provisions are applicable to surface mining and exploration activities:

- Landowners or operators, who engage in surface mining on land after July 1, 1972, must obtain an operating permit for surface mining operations.²¹¹⁷ The permit application must be accompanied by—
 - a fee;²¹¹⁸
 - a bond or security deposit (a public or governmental agency does not have to provide bond or security deposit);²¹¹⁹ and
 - a reclamation plan.²¹²⁰
- If the permittee fails to comply with the reclamation plan, the department will provide notice of noncompliance and require the permittee to take action to rectify those deficiencies. If the permittee has not begun action to rectify deficiencies as required, the department can perform such work and assess costs against bond or security deposits.²¹²¹
- Individuals who engage in onshore exploration that disturbs more than 1 surface acre or involves drilling to greater than 50 feet must obtain an exploration permit before engaging in exploration activities.²¹²² This requirement does not apply to—
 - exploration that results in less than 1 acre of surface disturbance or drilling to 50 feet or less,²¹²³ or

²¹¹⁴UTAH CODE ANN. § 40-10-3 (Supp. 1995). The Laws provide this exemptions by noting including this in its definition of "surface coal mining operations".

²¹¹⁵Id. § 40-10-7 (Supp. 1995).

²¹¹⁶Id. § 40-10-29 (1993).

²¹¹⁷OR. REV. STAT. § 517.790 (1995).

²¹¹⁸Id. § 517.800.

²¹¹⁹Id. § 517.810.

²¹²⁰Id. § 517.840.

²¹²¹Id. § 517.860.

²¹²²Id. § 517.705.

²¹²³Id. § 517.715.

an applicant who holds a valid operating permit.²¹²⁴

- All mineral exploration drill holes must comply with the abandonment procedure.²¹²⁵

All provisions applicable to surface mining and exploration activities will not supersede any zoning laws or ordinances in effect on July 1, 1972. However, if such zoning laws or ordinances are repealed on or after that date, these provisions and adopted rules and regulations will hold.²¹²⁶ The governing board of the State Department of Geology and Mineral Industries will administer and enforce the provisions of Mineral Exploration and Reclamation of Mining Lands.²¹²⁷

California (region 10).—The Surface Mining and Reclamation Act of 1975 of California²¹²⁸ was enacted to create and maintain an effective and comprehensive mining and reclamation policy to ensure that.²¹²⁹

- Adverse environmental effects are prevented or minimized.
- Mined lands are reclaimed to a useable condition that is readily adaptable for alternative land use.
- Production and conservation of minerals are encouraged.
- Residual hazards to public health and safety are eliminated.

This act does not allow the taking of private property for public use without payment of just compensation.

With this act with the understanding surface mining that takes place in diverse areas where geologic, topographic, climatic, biological, and social conditions are significant different, reclamation operations, and specifications may vary accordingly.²¹³⁰

However, the provisions of the Surface Mining and Reclamation Act do not apply to the following activities:²¹³¹

- Excavation or grading conducted for farming or onsite construction or for the purpose of restoring land following a flood or natural disaster.
- Onsite excavation and earthmoving activities that are an integral and necessary part of a construction project that prepare a site for construction.
- Operation of a plant site used for mineral processing.
- Extraction of minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of 1 acre or less.
- Surface mining operation that is required by Federal law to protect a mining claim, if such operations are conducted solely for that purpose.

²¹²⁴OR. REV. STAT. § 517.720.

²¹²⁵Id. § 517.715(2).

²¹²⁶Id. § 517.780.

²¹²⁷Id. § 517.840.

²¹²⁸CALIF. CODE ANN., P.Res. 2710 et seq. (1984 West and 1998 Supp.)

²¹²⁹Id. § 2712

²¹³⁰Id. § 2711

²¹³¹Id. § 2714 (1998 Supp.)

- Other surface mining operations that the Reclamation Board determines to be of an infrequent nature and that involve only minor surface disturbances.
- The solar evaporation of sea water or bay water for the production of salt and related minerals.
- Emergency excavations or grading conducted by the California Department of Water Resources or the Reclamation Board for emergency purposes.
- Surface mining operations conducted on lands owned or leased by the Department of Water Resources for the purpose of the State Water Resources Development System or flood control.
- Excavation or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity,
- This exemption is limited to—
 - excavation and grading that is conducted adjacent to timber operation or forest management, and
 - if slope stability and erosion are controlled²¹³² and upon closure of site in consultation with the Department of Forestry and Fire Protection.
- However, this exemption does not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for material that is sold for commercial purposes.²¹³³
- Excavation, grading, or other earthmoving activities in an oil or gas field that are integral to ongoing operations for the extraction of oil or gas that comply with all required conditions.

The Surface Mining and Reclamation Act of 1975 of California also allows any individual to begin action on ones own behalf against the board, the state geologist, or the director for a writ of mandate,²¹³⁴ and allow any of them to carry out any duty under the provisions of this act.²¹³⁵

The provisions of this act do not limit the following existing powers and rights:²¹³⁶

- City or county police power to declare, prohibit, and abate nuisances.
- Power of attorney general to bring an action to enjoin any pollution or nuisance.
- Power of state agency to enforce or administer any provision of law that specifically authorized or required to do so.
- Right of any person to maintain appropriate action for relief against any private nuisance²¹³⁷ or other private relief.

²¹³²CALIF. CODE ANN. § 3704(f) and 3706(d) of Title 14 of the California Code of Regulations

²¹³³CALIF. CODE ANN., P.Res. 2710 et seq. 2714 (j)

²¹³⁴Chapter 2 of Title 1 of Part 3 of the Code of Civil Procedure

²¹³⁵CALIF. CODE ANN., P.Res. 2710 et seq. 2716 (1988 Supp.)

²¹³⁶CALIF. CODE ANN., P.Res. § 2715 (1988 Supp.)

²¹³⁷Part 3 of Division 4 of the Civil Code

- Power of lead agency²¹³⁸ to adopt policies, standards, or regulations imposing additional requirements on any person if requirements do not prevent the person from complying with the provision of this act.
- City or county power to regulate the use of buildings, structures, and land as between industry, business, residences, open space, and other purposes.

Under this act, the board is required to adopt regulations that establish State policy for the reclamation of mined lands.²¹³⁹ The policy must include the following objectives and criteria:²¹⁴⁰

- Determining the lead agency.²¹⁴¹
- Orderly evaluation of reclamation plans.
- Determining the circumstances, if any, under which the approval of a proposed surface mining operation by a lead agency need not be conditioned on a guarantee assuring reclamation of the mined lands.

Based on the State policy, every lead agency must establish mineral resource management policies in its general plan that—

recognize mineral information classified by the state geologist and transmitted by the board;

assist in the management of land use that affect areas of statewide and regional significance; and

emphasize the conservation and development of identified mineral deposits.²¹⁴²

However, before adoption, each lead agency must submit proposed mineral resource management policies to the board for review and comment.²¹⁴³ In making land use decisions, the board designates areas as being of regional significance²¹⁴⁴ or of statewide significance.²¹⁴⁵

Area of regional significance is an area designated by the board known to contain a deposit of mineral, the extraction of which is judged to be of prime importance in meeting future needs for mineral in a particular region of the State and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of mineral that is of more than local significance.

Area of statewide significance is similar except uses the phrases “in a Particular State ”and” more than local or regional significance.”

For more details regarding designation of areas of statewide or regional significance, see section 2790. The lead agency must comply with mineral resource management policies. In balancing mineral values against alternate land uses, the

²¹³⁸“Lead agency” is the city, county, the San Francisco Bay Conservation and Development Commission, or the board that has the main responsibility for approving a surface mining operation or reclamation plan pursuant to this act. Id. § 2728 (1988 Supp.)

²¹³⁹CALIF. CODE ANN., P.Res. 2710 et seq. 2755

²¹⁴⁰Id. § 2758

²¹⁴¹Id. § 2771

²¹⁴²Id. § 2762(a).

²¹⁴³Id. § 2762(b).

²¹⁴⁴Id. § 2726.

²¹⁴⁵Id. § 2727.

lead agency must also consider the importance of mineral to its market region or to the State as a whole.²¹⁴⁶

To carry out the provisions of this act, the board is authorized to establish districts and appoint one or more district technical advisory committees to advise the board.²¹⁴⁷ In establishing districts and their committees, the board must take into account physical characteristics, such as climate, topography, geology, type of overburden, and main mineral commodities.²¹⁴⁸ In addition, members of the committees must be chosen and appointed on the basis of their professional qualifications.²¹⁴⁹ These members receive no compensation for their services, only actual and necessary expenses incurred in the performance of their duties.²¹⁵⁰

Under this act, before conducting surface mining operations, all individuals are required to obtain permit from, and submit a reclamation plan for approval by, the lead agency.²¹⁵¹ The lead agency with proper jurisdiction must make the necessary evaluation of a proposed surface mining operation. In the event that a dispute arises as to which public agency is the lead agency, any public agency that is a party to the dispute may submit the matter to the board. The board will designate which public agency is the lead agency.²¹⁵²

All individuals who own, lease, or otherwise control or operate on all or any portion of mined lands and who plan to conduct surface mining operations thereon must file reclamation plan with the proper lead agency. The reclamation plan must include the following information and documents:²¹⁵³

- The name and address of operator and name(s) and address(es) of the operator's agent(s).
- The anticipated quantity and type of mineral for which the surface mining operation is to be conducted.
- The proposed dates for commencement and termination of the operation.
- The maximum anticipated depth of the surface mining operation.
- The size and legal description of the lands that will be affected by the operation.
- A description of and plan for the type of surface mining to be employed and a time schedule for the completion of surface mining.
- A description of the proposed use or potential uses of the land after reclamation and evidence that owner(s) of possessory interest in the land have been notified to the proposed use or potential uses.
- A description of the manner in which adequate reclamation for the proposed or potential uses will be accomplished.

²¹⁴⁶CALIF. CODE ANN., P.Res. § 2763.

²¹⁴⁷Id. § 2740.

²¹⁴⁸Id. § 2740.

²¹⁴⁹Id.

²¹⁵⁰Id. § 2741.

²¹⁵¹Id. § 2770

²¹⁵²Id. § 2771

²¹⁵³Id. § 2772

- An assessment of the effect of implementation of the reclamation plan on future mining in the area.
- A statement that the person submitting the plan accepts responsibility for reclaiming the mined lands according with the reclamation plan.
- Any other information that the lead agency may require by ordinance.

Upon receipt of an application for a permit to conduct surface mining operations, the lead agencies must notify the state geologist.²¹⁵⁴ On request of the lead agency, the state geologist must provide technical assistance to assist in the review of reclamation plans.²¹⁵⁵

The act requires that the reclamation plan must be applicable to a specific piece of property(ies) and based on the character of the surrounding area and property characteristics such as type of overburden, soil stability, topography, geology, climate, stream characteristics, and main mineral commodities.²¹⁵⁶

Under the act, every lead agency must adopt ordinances in compliance with State policy to establish procedures for the review and approval of reclamation plans and issuance of permits to conduct surface mining operations.²¹⁵⁷ The ordinances must be periodically reviewed by the lead agency and revised, if needed, to ensure that ordinances continue to be in compliance with State policy. Moreover, such reclamation and permit ordinances must establish procedures requiring at least one public hearing and periodic inspections of surface mining operations. However, such ordinances can include provisions for liens, surety bonds, or other security to ensure reclamation according to the reclamation plan.²¹⁵⁸

The Reclamation Board must review lead agency ordinances and establish permit and reclamation procedures to determine whether each ordinance is in compliance with State policy. The board must then certify the ordinance as being in compliance. The board is required to complete review for certification within 60 days of submittal to the board.²¹⁵⁹

However, if the board determines that the ordinance is deficient, it must notify the lead agency in writing of the deficiencies. Upon receipt of written deficient notice, the lead agency has 90 days to submit a revised ordinance to the board. The board has another 60 days to complete review for certification. If the lead agency does not submit a revised ordinance within 90 days, the board must assume full authority to review and approve reclamation plans.²¹⁶⁰ If the board again finds the revised ordinance not in compliance, the lead agency has a second 90 days to submit another revised ordinance for review. If the board finds that the ordinance is not compliance or no revision is submitted, the board must then assume full authority to review and approve reclamation plans.²¹⁶¹ Although reclamation plans approved

²¹⁵⁴CALIF. CODE ANN., P. Res. § 2774(b).

²¹⁵⁵Id. § 2774(c).

²¹⁵⁶Id. § 2773.

²¹⁵⁷Id. § 2774(a).

²¹⁵⁸Id. § 2774(a).

²¹⁵⁹Id. § 2774.3.

²¹⁶⁰Id. § 2774.5(a).

²¹⁶¹Id. § 2774.5(b).

by the board are not subject to modification by the lead agency at a future date, they may be amended by the board itself.²¹⁶²

Amendments to an approved reclamation plan may be filed detailing proposed changes from the original plan. Substantial deviations from the original plan must be approved by the lead agency.²¹⁶³

Operators who succeed to the interest of another in any surface mining operation by sale, assignment, transfer, conveyance, or exchange will be bound by the provisions of the approved reclamation plan and of this act.²¹⁶⁴

An individual whose request for permit has been denied by a lead agency may appeal to the board within 15 days of exhausting his or her or her rights to appeal in accordance with the procedures of the lead agency.²¹⁶⁵

Reclamation plans, reports, applications, and other documents submitted are public records, unless it can be demonstrated to the lead agency that the release of such information is entitled to protection.²¹⁶⁶

Under the act, the first \$1,100,000 of moneys from mining activities on Federal lands disbursed by the U.S. to California must be deposited in the Surface Mining and Reclamation Account in the General Fund.²¹⁶⁷

Tennessee (regions 11 & 12).—The Tennessee Legislature enacted three particular surface mining laws—

Tennessee Mineral Surface Mining Law of 1972,

Tennessee Coal Surface Mining Law of 1980, and

Tennessee Coal Surface Mining Law of 1987.

Each shall be discussed in turn.

Tennessee Mineral Surface Mining Law of 1972.—Under the Tennessee Mineral Surface Mining Law of 1972,²¹⁶⁸ all individuals interested in engaging in mineral surface mining activities must obtain permits from the commissioner.²¹⁶⁹ All permit applicants must—

pay fees,²¹⁷⁰

possess performance bonds,²¹⁷¹

submit mining and reclamation plans,²¹⁷² and

²¹⁶²CALIF. CODE ANN., P. Res. § 2774.5(d).

²¹⁶³Id. § 2777

²¹⁶⁴Id. § 2779

²¹⁶⁵Id. § 2775(a)

²¹⁶⁶Id. § 2778

²¹⁶⁷Id. § 2795

²¹⁶⁸Tennessee Mineral Surface Mining Law of 1972, TENN. CODE ANN. § 59-8-201 et seq. (1989 & Supp. 1993).

²¹⁶⁹Tennessee Mineral Surface Mining Law of 1972, TENN. CODE ANN. § 59-8-205 (1989).

²¹⁷⁰Id. § 59-8-206.

²¹⁷¹Id. § 59-8-207.

²¹⁷²Id. § 59-8-208 (1989 & Supp. 1993).

submit a revegetation plan.²¹⁷³ The permit holders must file annual reports with the commissioner.²¹⁷⁴ Moreover, if the commissioner notices noncompliance, the performance bonds will be forfeited.²¹⁷⁵

The commissioner is authorized to enter into public and private lands to determine compliance.²¹⁷⁶ The act imposes both civil and criminal penalties on violators of any provisions of the act or adopted rules.²¹⁷⁷ The commissioner can also seek from the court of competent jurisdiction temporary or permanent relief enjoining violators from engaging in such activities.²¹⁷⁸

Tennessee has the power to acquire land affected by surface mining.²¹⁷⁹ The act creates the Tennessee Surface Mine Reclamation Fund,²¹⁸⁰ with which the commissioner is authorized to effect reclamation subject to availability of the funds.²¹⁸¹ Moreover, it specifies that any exploration for minerals that is conducted solely by drilling or any other method which results in a drill hole of a diameter of 6 inches or less must be regulated by the provisions of the Mineral Test Hole Regulatory Act.²¹⁸²

Tennessee Coal Surface Mining Law of 1980—The Tennessee Coal Surface Mining Law of 1980²¹⁸³ creates a Board of Reclamation Review that is composed of seven members and has a number of powers and duties, including—

- hearing appeals from mineral owners, operators, property owners, or other persons with an interest that may be adversely affected by the commissioner's orders, determinations, regulations, permit terms, or rulings;
- representing the unified interest of the government, industry, environmental groups, and private individuals;
- requesting such work as is essential to accomplish the purposes of the board; and
- reviewing the Tennessee surface mining laws and recommending any necessary changes.²¹⁸⁴

However, in 1991 the provision dealing with the board of reclamation review was appealed, thereby terminating the Board of Reclamation Review.²¹⁸⁵

The act requires individuals who mine more than 25 tons of coal within 12 successive calendar months, regardless of size of the mine site, to obtain a permit for such mine from the commissioner or the primary regulatory authority.²¹⁸⁶

²¹⁷³Coal Surface Mining Act of 1987, TENN. CODE ANN. § 59-8-209 (1989).

²¹⁷⁴Id. § 59-8-210.

²¹⁷⁵Id. § 59-8-211.

²¹⁷⁶Id. § 59-8-214.

²¹⁷⁷Id. § 59-8-222.

²¹⁷⁸Id. § 59-8-223.

²¹⁷⁹Id. § 59-8-215.

²¹⁸⁰Id. § 59-8-212.

²¹⁸¹Id. § 59-8-216.

²¹⁸²Id. § 59-8-228.

²¹⁸³Id. § 59-8-301 et seq. (1989 & Supp. 1993).

²¹⁸⁴Id. § 59-8-321 (1989).

²¹⁸⁵Id. § 59-8-321 (Supp. 1993), repealed by Acts 1991, ch. 117, § 2(b).

²¹⁸⁶Id. § 59-8-354.

Tennessee, acting through the department of conservation, has the power to acquire and reclaim land disturbed by past coal mining.²¹⁸⁷ When the commissioner starts to expend money on a project to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on private lands, the commissioner may file with the office of the register of deeds to put a lien on such property.²¹⁸⁸

Moreover, the act also requires all moneys received through the payment of permit and acreage fees, fines, penalties, or the forfeiture of bonds to be deposited to the Tennessee surface mine reclamation fund, which will be used for reclamation and revegetation of land and water affected by mining and exploration operations.²¹⁸⁹

Tennessee Coal Surface Mining Act of 1987.—The Coal Surface Mining Act of 1987²¹⁹⁰ was enacted to establish a regulatory program that will apply to coal surface mining operations that are exempt from the jurisdiction of the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.).²¹⁹¹ Specifically, the Tennessee Surface Mining Act of 1987 does not apply to coal surface mining operations where individuals mine less than 25 tons of coal within 12 successive calendar months, regardless of size of the mine site.²¹⁹²

The commissioner has a number of powers, including—

- administering and enforcing the provisions of the act and adopted regulations;
- conducting and obtaining investigations, research, experiments, training programs, and demonstrations relating to surface mining reclamation;
- promulgating regulations;
- issuing notices of non-compliance, cease orders, and other orders;
- examining, approving or disapproving applications for maps, permits, bonds, and mining and reclamation plans;
- establishing by regulation standards for acceptable mining and reclamation of affected areas;
- making investigations or inspections necessary to ensure compliance;
- employing and commissioning qualified surface mine personnel;
- entering into contracts or other agreements;
- expending money; and
- establishing application forms and process.²¹⁹³

The act requires all operators engaging in coal surface mining operations that affect 2 acres or less to obtain from the commissioner a permit which authorizes the

²¹⁸⁷Coal Surface Mining Act of 1987, TENN. CODE ANN. § 59-8-324 (1989).

²¹⁸⁸Id. § 59-8-325.

²¹⁸⁹Id. § 59-8-326.

²¹⁹⁰Id. § 59-8-401 et seq. (1989 & Supp. 1993).

²¹⁹¹Id. § 59-8-402 (1989). It should be noted that the regulated coal surface mining operation does not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the tonnage of minerals removed for the purposes of commercial use or sale. Id. § 59-8-403(4).

²¹⁹²Id. § 59-8-402(a).

²¹⁹³Coal Surface Mining Act of 1987, TENN. CODE ANN. § 59-8-404.

operator to conduct coal surface mining operations on the area described in the application and approved plan.²¹⁹⁴ The permit applicant must—

- pay a fee and post performance bond,
- submit a copy of the written determination made by the U.S. Office of Surface Mining declaring that the proposed operation is exempt from the Federal Surface Mining Control and Reclamation Act of 1977,
- submit a reclamation plan,
- file a copy of the complete application for public inspection with the register of deeds, and
- obtain an insurance certificate.²¹⁹⁵

The permit applicant has the burden of establishing that ones application is in compliance with all the requirements of the program.²¹⁹⁶ In addition, the act requires the permit holder to complete all mining, regrading and initial seeding within 1 year of permit issuance,²¹⁹⁷ and satisfy all applicable performance standards.²¹⁹⁸

The act provides that before purchasing coal from the operators, all dealers, brokers, or other purchasers of coal must verify that the operator has a valid coal surface mining permit. All dealers, brokers, or other purchasers of coal must keep records of each purchase of coal.²¹⁹⁹ Furthermore, publicly owned mining operations are equally subject to the requirements of this act. However, local governmental entities and State agencies are not subject to the fee or bond requirements.²²⁰⁰

²¹⁹⁴TENN. CODE ANN. § 59-8-406 (1989).

²¹⁹⁵Id. For more detail provision concerning mining and reclamation plan, TENN. CODE ANN. § 59-8-407 (1989 & Supp. 1993). For more detail provision concerning bond requirement, Id. § 59-8-408 (1989). For more detail provision concerning application fee requirement, Id. § 59-8-418 (1989).

²¹⁹⁶Coal Surface Mining Act of 1987, TENN. CODE ANN. § 59-8-409 (1989).

²¹⁹⁷Id. § 59-8-406.

²¹⁹⁸Id. § 59-8-412.

²¹⁹⁹Id. § 59-8-419.

²²⁰⁰Id. § 59-8-420.

