

Arkansas Code Annotated 15-58-101 to 15-58-510

(Act 134 of 1979, as amended)

The Arkansas Surface Coal Mining and Reclamation Act

Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

Chapter 58

THE ARKANSAS SURFACE COAL MINING AND RECLAMATION ACT

15-58-101. Title.

This chapter shall be known and may be cited as the "Arkansas Surface Coal Mining and Reclamation Act of 1979."

History. Acts 1979, No. 134, 1;
A.S.A. 1947, 52-935.

15-58-102. Legislative findings.

The General Assembly of the State of Arkansas finds, and it is declared that:

(1)(A) The extraction of coal from the earth by surface mining in this state is a significant economic activity, is an integral part of the growth and development of this state, and is important to supply energy to the people of this state.

(B) It is, therefore, essential to the people of this state to insure the existence of an expanding and economically healthy surface and underground coal mining industry;

(2) The process of surface coal mining must be accomplished in a manner to reduce so far as practicable the adverse social, economic, and environmental effects of surface mining and to protect the general welfare, health, safety, and property rights of the people of this state; and

(3) Because surface coal mining in this state takes place in areas where the terrain, climate, biological, chemical, and other physical conditions are peculiar to this state, and because the Arkansas Department of Environmental Quality is familiar with these conditions, the Arkansas Department of Environmental Quality has the primary responsibility to develop, issue, and enforce regulations for surface mining and reclamation operations in this state pursuant to this chapter and in compliance with applicable federal laws and regulations;

(4)(A) The Congress of the United States has enacted the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the Department of the Interior over the regulation of surface coal mining and reclamation within the United States. Section 503 of Public Law 95-87 provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state by obtaining approval of a state program of regulation that demonstrates that the state has the capability of carrying out the provisions and meeting the purposes of Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87.

(B) Section 503 of the Surface Mining Control and Reclamation Act of 1977, Pub. L.No. 95-87 further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state must have a state law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87; and

(5)(A) The Congress of the United States has enacted the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87," which provides for the establishment of a nationwide program to promote reclamation of mined areas in the country left without adequate reclamation to be funded by a reclamation fee paid by all surface coal mining operators. Section 402 of Public Law 95-87 provides that each state may develop a state abandoned mine reclamation program to enable the state to develop and carry out projects for the reclamation of abandoned mines within the state.

(B) The Secretary of the Interior will allocate funds to this state under the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, for the purpose of operating the state abandoned mine reclamation program.

(C) Section 405 of the Surface Mining Control and Reclamation Act of 1977, Pub. L.No. 95-87, provides that, prior to approval of the state abandoned mine reclamation plan, the state must have adopted state legislation necessary to carry out the purposes of the Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87.

History. Acts 1979, No. 134, § 2; A.S.A. 1947, § 52-936; Acts 1999, No 1164, § 142; 2011, No. 279, § 1.

Amendments. The 2011 amendment subdivided (1) and (4); subdivided (5) as (5)(A) and (C) and inserted (5)(B); and deleted the last sentence in (5)(A).

15-58-103. Declaration of policy.

The General Assembly of the State of Arkansas declares that it is the purpose of this subchapter to:

(1) Assure that the coal supply essential to society's energy requirements and to its economic and social well being is provided;

(2) Establish a statewide program for surface coal mining and reclamation which is designed to protect society and the environment from the adverse effects of surface coal mining;

(3) Assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface mining operations;

(4) Assure that the surface mining operations are not conducted where reclamation as required by this subchapter is not feasible;

(5) Assure that surface coal mining operations are so conducted as to protect the environment;

(6) Assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations;

(7) Assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established pursuant to this subchapter;

(8) Strike a balance between protection of the environment and agricultural productivity and the state's and the nation's need for coal as an essential source of energy;

(9) Assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state by developing and implementing a state program pursuant to Public Law 95-87 which meets all the requirements of Section 503 of Public Law 95-87 and which thereby will enable the state to assume such exclusive jurisdiction;

(10) Promote reclamation of mined areas in this state, which were left without adequate reclamation prior to August 3, 1977, and which continue in their unreclaimed condition to substantially degrade the quality of the environment, prevent or damage the beneficial use of the land or water resources, or endanger the health or safety of the public by developing and implementing a state abandoned mine reclamation program pursuant to Public Law 95-87 which complies with the requirements for a state abandoned mine reclamation program set forth therein and which shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and of the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and by issuing regulations which will supply the legal authority and programmatic capability to perform such work in conformance with the provisions of Title IV, Public Law 95-87;

(11) Wherever necessary, exercise the full reach of state powers to insure the protection of the public interest through effective control of surface coal mining and reclamation operations.

History. Acts 1979, No. 134, 3; U.S. Code. For compilation of Public Law 95-87 and 503, referred to in this section, see U.S. Code note, 15-58-102. Title IV of Public Law 95-87 is codified as 30 U.S.C. § 1231 - 1243. A.S.A. 1947, 52-937.

15-58-104. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Affected governmental agency" means an agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the surface coal mining operation, or is authorized to develop and enforce environmental standards with respect to that operation;

(2) "Coal" means all forms of coal, including lignite;

(3) "Commission" means the Arkansas Pollution Control and Ecology Commission, or any department, commission, bureau, or agency as shall lawfully succeed to the powers and duties of the commission;

(4) "Department" means the Arkansas Department of Environmental Quality or any department,

bureau, commission, or agency as shall lawfully succeed to the powers and duties of that department;

(5) "Director" means the executive head and active administrator of the Arkansas Department of Environmental Quality;

(6) "Fund" means the Abandoned Mine Reclamation Fund administered by the Secretary of the Interior pursuant to Public Law 95-87. Moneys from the fund may be received by the department through a grant from the Secretary of the Interior pursuant to the state abandoned mine reclamation program;

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

(8) "Operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred fifty (250) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location;

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

(10) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the director;

(11) "Small operator" means an operator whose probable annual production at all locations will not exceed three hundred thousand (300,000) tons of coal per year;

(12) "State program" means a program established by the department and approved by the Secretary of the Interior pursuant to Public Law 95-87, § 503, to regulate surface coal mining and reclamation operations on lands within the state;

(13) "State abandoned mine reclamation program" means a plan established by the department and approved by the Secretary of the Interior pursuant to Title IV, Public Law 95-87, to reclaim mined areas of the state which were left without adequate reclamation prior to August 3, 1977;

(14) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations;

(15) "Surface coal mining operations" means:

(A) Activities conducted on the surface of lands in connection with a surface coal mine and

surface impacts incident to an underground coal mine. The activities include excavation for the purpose of obtaining coal, including such common methods as contours strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching, or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, the loading of coal at or near the mine site; and

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

(16) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this chapter or the regulations issued pursuant to this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of a permit, this chapter, or the regulations issued pursuant to this chapter due to indifference, lack of diligence, or lack of reasonable care;

(17) "Unanticipated event or condition" means an event or condition encountered in a re-mining operation that was not contemplated by the applicable surface coal mining and reclamation permit; and

(18) "Lands eligible for re-mining" means those lands that would otherwise be eligible for expenditures under § 15-58-401.

History. Acts 1979, No. 134, § 4; 1979, 647, § 1;
A.S.A. 1947, § 52-938;
Acts 1993, No. 737, § 1; 1995, No. 500, § 1.

15-58-105. Public agencies, utilities, and corporations.

Any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, which proposes to engage in surface coal mining operations which are subject to the requirements of this chapter shall comply with the provisions of this chapter and the regulations issued pursuant to this chapter.

History. Acts 1979, No. 134, 33;
A.S.A. 1947, 52-967.

15-58-106. Exempt activities.

This chapter does not apply to any of the following activities:

(1)(A) The mining, surface or otherwise, of any minerals or materials other than coal.

(B) All minerals and materials other than coal shall, when applicable, be regulated according to the Arkansas Open-Cut Land Reclamation Act of 1977(repealed) or the Arkansas Quarry Operation, Reclamation, and Safe Closure Act, § 15-57-401 et seq.;

(2) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her;

(3) The extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the Arkansas Pollution Control and Ecology Commission; or

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two thirds percent (16 2/3%) of the tonnage of minerals removed for the purposes of commercial use or sale or for coal exploration.

History. Acts 1979, No. 134, § 34; A.S.A. 1947, § 52-968; Acts 2011, No. 279 § 2.

Amendments. The 2011 amendment subdivided (1) as (1)(A) and (B); and added “or the Arkansas Quarry Operation, Reclamation, and Safe Closure Act, § 15-57-401 et seq.” in (1)(B).

15-58-107. Water rights and replacement.

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

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

History. Acts 1979, No. 134, 35;
A.S.A. 1947, 52-969.

15-58-201. Department – Jurisdiction, powers, and duties.

(a) The Arkansas Department of Environmental Quality is designated as the official agency whose duty it is to establish policies and guidelines, to administer the guidelines contained in this chapter, and to institute other reasonable regulations and guidelines, as they become necessary pursuant to this chapter. The rules and regulations may provide differing terms and provisions for particular conditions, particular mining techniques, types of coal, particular areas of the state, surface mines, and the surface impacts of underground mines, or any other differences which appear relevant and necessary so long as the action taken is consistent with attainment of general intent and purposes of this chapter.

(b) Exclusive jurisdiction over those aspects of surface coal mining and reclamation operations in this state regulated by Public Law 95-87 shall be vested in the Arkansas Department of Environmental Quality.

History. Acts 1979, No. 134, 5; U.S. Code. For compilation of Public Law 95-87, referred to in this section, see U.S. Code note, 15-58-102. A.S.A. 1947, 52-939.

15-58-202. Commission – Powers and duties.

(a) The authority shall be vested in the Arkansas Pollution Control and Ecology Commission to establish policies and guidelines and take such other actions as are necessary to ensure the development, administration, and enforcement of a state program which meets the requirements of Public Law 95-87, and, in doing so, shall have the following duties and powers:

(1) To adopt, amend, and issue rules and regulations in accordance with the procedures set forth herein pertaining to surface coal mining and reclamation operations, in accordance with, but no more restrictive than, Public Law 95-87, consistent with the general intent and purposes of this chapter, and consistent with, but no more restrictive than, the regulations issued by the Secretary of the Interior pursuant to Public Law 95-87, as required for the state to develop an approved state program and to assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations pursuant to § 503 of Public Law 95-87;

(2) To adopt, amend, and issue rules and regulations, in accordance with the procedures set forth in this subchapter, pertaining to the reclamation of abandoned mines in this state in accordance with Public Law 95-87, as required for the state to develop an approved state abandoned mine reclamation program and to assume and retain exclusive jurisdiction over the regulation of abandoned mine reclamation in this state pursuant to Title IV of Public Law 95-87;

(3) To conduct administrative hearings and to perform all necessary functions pursuant thereto and exercise discretionary review pursuant to the provisions of this chapter over all aspects of surface coal mining and reclamation operations performed within this state;

(4) To designate lands unsuitable for all or certain types of surface coal mining in accordance with provisions of this chapter and the regulations issued pursuant to this chapter; and

(5) To perform other duties and acts required by and provided for in this chapter, or reasonably necessary to carry out the purposes of this chapter or the regulations issued pursuant to this chapter.

(b) The commission shall have the authority to promulgate regulations to amend the provisions of this chapter when such amendments are permitted by an amendment to Public Law 95-87 subsequent to the enactment of this chapter.

History. Acts 1979, No. 134, §§ 5, 37;
A.S.A. 1947, §§ 52-939, 52-971;
Acts 1995, No. 500, § 2.

15-58-203. Director – Powers and duties.

(a) The authority shall be vested in the director and such other persons as designated by the

director, to administer and enforce the provisions of this chapter. The director shall seek the accomplishment of the purposes of this chapter by all practicable and economically feasible methods, and in doing so, shall have the following duties and powers:

(1) To make those expenditures which he deems necessary to accomplish the purposes of this chapter;

(2) To issue permits and set permit fees pursuant to the provisions in this chapter;

(3) To conduct settlement conferences pursuant to the provisions in this chapter;

(4) To prepare and require permittees to prepare reports;

(5) To enter on and inspect a surface coal mining operation and all records related thereto which are subject to the provisions of this chapter upon presentation of appropriate identifying credentials;

(6) To issue or modify orders requiring an operator to take actions that are reasonably necessary to comply with this chapter or rules and regulations issued pursuant to this chapter;

(7) To issue an order ordering a cessation of surface coal mining or reclamation operations or revoking the permit of an operator who has failed to comply with an order of the director to take action required by this chapter or rules and regulations issued pursuant to this chapter; or, in the event the permit is revoked, to cause the operator's performance bond, or cash, or collateral securities to be forfeited if it is determined that it is necessary to reclaim the area of land affected by the operator's surface coal mining operation;

(8) To require training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations;

(9) To receive by gift, grant, donation, or otherwise any sum of money, or assistance from any person or the United States, its agencies, the State of Arkansas, or any agency or political subdivision thereof for the enactment and enforcement of, this chapter and the mining and reclamation of land affected by surface coal mining operations;

(10) To conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise;

(11) To collect and disseminate to the public, information considered reasonable and necessary for the proper enforcement of this chapter;

(12) To employ such officers, agents, employees, and professional personnel, including legal counsel, as the director deems necessary for the performance of his powers and duties, and to prescribe the powers and duties and to fix the compensation of officers, agents, employees, and professional personnel;

(13) To contract upon such terms as the director may agree upon, for legal, financial, engineering,

and other professional services necessary to expedite the conduct of the affairs of the Department of Environmental Quality under the provisions of this chapter;

(14) To enter into cooperative projects or contracts with federal agencies, state boards, agencies, and soil and water conservation districts having expertise for the purposes of obtaining professional and technical services necessary to implement the provisions of this chapter; and to transfer funds to those boards, agencies, or districts;

(15) To enter into a cooperative agreement with the Secretary of the Interior to provide for state regulation of surface coal mining and reclamation operations on federal lands within this state;

(16) To represent the state in all matters involving or affecting the interest of the state and its residents relative to the proceedings before any federal agencies, officers, and congressional committees, and in all judicial actions arising out of the proceedings of such agencies, offices, and committees, or in relation thereto, and to appear in the courts and before agencies of this state or in other states in order to carry out the purposes of this chapter;

(17) To commence and prosecute all forms of legal actions as may be necessary to carry out the purposes of this chapter, including legal actions against the Secretary of the Interior and the Office of Surface Mining Reclamation and Enforcement;

(18) To establish, for the purpose of avoiding duplication, a process, for coordinating inspections and the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations;

(19) To submit to the Secretary a state abandoned mine reclamation program, annual projects which will carry out the purpose of the state abandoned mine reclamation program, and other reports as the Secretary may require or as may be necessary in the administration of the state abandoned mine reclamation program; and to submit to the Congress of the United States annual reports on January 1 of each year on operations under the state abandoned mine reclamation program, together with recommendations as to further uses of the fund;

(20) To apply for, receive, and segregate the state abandoned mine reclamation funds into a special account, to spend the moneys in accordance with the provisions of this chapter and the regulations issued by the commission, and to prepare and submit to the Secretary information as required in the administration of the state abandoned mine reclamation program;

(21) To sell land acquired pursuant to the state abandoned mine reclamation program by public sale under a system of competitive bidding, at not less than a fair market value and in accordance with regulations issued by the commission;

(22) To construct and operate plants for the control and treatment of water pollution resulting from mine drainage; and

(23) To perform other duties and acts required by and provided for in this chapter, or reasonably necessary to carry out the purposes of this chapter or the regulations issued pursuant to this chapter.

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

History. Acts 1979, No. 134, 5, 37; U.S. Code. For compilation of Public Law 95-87, referred to in this section, see U.S. Code note, 15-58-102. A.S.A. 1947, 52-939, 52-971.

15-58-204. Adoption of rules and regulations.

(a) Before the adoption, amendment, or repeal of any rule or regulation, the Arkansas Pollution Control and Ecology Commission shall give public notice and the opportunity for a public hearing under §§ 15-58-207 and 15-58-208.

(b)(1) If the commission finds that imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than twenty (20) days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to adopt an emergency rule or regulation.

(2) The rule or regulation may be effective for no longer than one hundred eighty (180) days.

(c)(1) A person has the right to petition for the issuance, amendment, or repeal any rule or regulation.

(2) Within ninety (90) days after submission of a petition, the Arkansas Pollution Control and Ecology Commission shall either deny the petition, stating in writing its reasons for the denial, or shall initiate rulemaking proceedings in accordance with subsection (a) of this section.

(d)(1) The Commission shall file with the Secretary of State a certified copy of each rule or regulation adopted by it.

(2) The Secretary of State shall keep a permanent register of the rule or regulation open to public inspection.

(3)(A) Each rule or regulation shall be effective twenty (20) days after filing, unless a later date is specified by law or in the rule or regulation itself.

(B) However, an emergency rule or regulation may become effective immediately upon filing or at a stated time less than twenty (20) days after filing if the commission finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(C) The commission's finding and a brief statement of the reasons shall be filed with the rule or regulation.

(D) The commission shall take appropriate measures to make emergency rules or regulations known to the persons who may be affected by them.

(e) No rule or regulation shall be valid unless adopted and filed in substantial compliance with this chapter.

History. Acts 1979, No. 134, § 27; A.S.A. 1947, § 52-961; Acts 2011, No. 279 § 3.

Amendments. The 2011 amendment deleted "legislative" preceding "public hearing" in (a); subdivided (b) as (b)(1) and (2); substituted "one hundred eighty (180) days" for "one hundred twenty (120) days" in (b)(2); subdivided (c) as (c)(1) and (2); substituted "the commission" for "the agency" in (c)(2); subdivided (d) as (d)(1) through (d)(3); deleted "Governor and" following "shall file with" in (d)(1); and substituted "commission" for "agency" or variant in (d)(3)(B) through (d)(3)(D).

15-58-205. Inspections.

(a) The director shall require such monitoring and reporting, shall cause to be made such inspections of any surface coal mining and reclamation operations, shall require the maintenance of such signs and markers and shall take such other actions as are necessary to administer, enforce, and to evaluate the administration of this chapter, and to meet the state program requirements. For these purposes the director, or his authorized representatives, upon presentation of appropriate identifying credentials, shall have a right of entry to, upon or through any surface coal mining and reclamation operations and may, at reasonable times and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this chapter or the regulations issued pursuant to this chapter.

(b) The commission shall issue regulations which provide for informing the operator of violations detected by an inspector, for making public all inspection and monitoring reports and other records and reports adequate to enforce the requirements of and to carry out the terms and purpose of this chapter. The regulations shall also provide at a minimum for inspections without prior notice to the permittee or his agents or employees, except for necessary on site meetings with the permittee, on an irregular basis averaging not less than one (1) partial inspection per month and one (1) complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by the permit.

(c)(1) Any person who is, or may be, adversely affected by a surface coal mining operation may notify the director or any representative of the director, in writing, of any violation of this chapter, which he has reason to believe exists at the surface mining site;

(2) Any person who is, or may be, adversely affected by a surface coal mining operation may notify the director or the commission of any failure on behalf of the Department of Environmental Quality to make proper inspections, after which the director or the commission, or their authorized representatives, shall determine whether adequate and complete inspections have been made.

(3) The commission shall, by regulation, establish procedures insuring that adequate and complete inspections have been made, and for the review of reports from interested persons. The regulations shall provide that the interested persons are furnished a written statement of the reasons for the final disposition of the matter.

History. Acts 1979, No. 134, 16; 1979, No. 647, 3;
A.S.A. 1947, 52-950.

15-58-206. Prohibition on enforcement personnel having financial interest.

(a) No person performing any function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment of not more than one (1) year, or by both;

(b) The commission shall publish regulations to establish methods by which the provisions of this section will be monitored and enforced including appropriate provisions for the persons to file for the director's review, statements, and supplements thereto concerning any financial interest which

may be affected by this section.

(c) Any member of the commission who has a director indirect financial interest in an underground or surface coal mining operation may continue to serve on the commission but shall abstain from participating in any matter that relates to underground or surface coal mining operations.

History. Acts 1979, No. 134, 17;
A.S.A. 1947, 52-951.

15-58-207. Public hearing – Procedures.

(a) The Director of the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission shall give public notice of each of the following pending, proposed, or requested actions:

- (1) The director, upon receipt of any completed application for an initial or revised permit or renewal under §§ 15-58-502 --- 15-58-508;
- (2) The director, upon receipt of any request by an operator for a variance or amendment to an issued permit under §§ 15-58-502---15-58-508;
- (3) The commission, upon receipt of any proposal for the designation of lands as unsuitable for surface mining under § 15-58-501;
- (4) The commission, upon receipt of any proposal for the use of land acquired pursuant to the state abandoned mine reclamation program; or
- (5) The commission, in any rulemaking proceeding under § 15-58-204.

(b) Notice shall be circulated in accordance with the regulations issued by the commission to inform interested and potentially interested persons of the pending action.

(c)(1) Interested persons shall be afforded a period of not less than thirty (30) days after the last publication of the above notice to submit written objections or comments.

(2) Comments and objections shall be immediately transmitted to the applicant or permittee and shall be made available to the public.

(3) If a public hearing is requested by an interested person on or before ten (10) days of receipt of the objections and in accordance with the regulations issued by the commission, public notice shall be given in accordance with the regulations issued by the commission.

(4) A public hearing shall be held for the purpose of receiving relevant evidence.

(d) Any person shall be permitted to submit oral or written statements concerning the subject matter of the public hearing, to call witnesses who may present oral statements, and to present recommendations as to an appropriate decision.

(e)(1) An electronic or stenographic record shall be made of the hearing, unless waived by all parties.

(2) All written statements and similar data offered in evidence, subject to exclusion by the examiner for reasons of redundancy, shall be received in evidence and shall constitute part of the record.

(f) If a public hearing is held under this section, the director or the commission shall grant or deny in whole or in part, the requested or proposed action and shall give public notice of its decision within sixty (60) days of the hearing.

(g)(1) If there has been no public hearing held pursuant to this section, the director or the commission shall grant or deny, in whole or in part, the requested or proposed action within a

reasonable time and in accordance with regulations issued by the commission.

(h) Within thirty (30) days of the public notice of the final decision of the director or the commission, any person with an interest which is or may be adversely affected may request review of the reasons for the final determination of the director or the commission in accordance with this chapter.

History. Acts 1979, No. 134, § 28; A.S.A. 1947, § 52-962; Acts 2011, No. 279 § 4.

Amendments. The 2011 amendment substituted "Public" for "Legislative" in the section heading; substituted "public" for "legislative" in (c)(3), (c)(4), (f) and (g)(1); subdivided former (c) as (c)(1) through (c)(4); subdivided former (e) as (e)(1) and (2); substituted "hearing" for "conference" in (f); and subdivided former (g) as (g)(1) through (3).

15-58-208. Public hearing – Examiners.

(a) For the purpose of receiving and responding to written comments and objections and for presiding at a public hearing, the Arkansas Pollution Control and Ecology Commission or the Director of the Arkansas Department of Environmental Quality may designate one (1) or more examiners.

(b) An examiner may:

(1)(A) Set the time and location of the public hearing.

(B) Public notice of the information shall be circulated in accordance with regulations issued by the commission;

(2) Received all information submitted pursuant to the pending action and permit or deny cross-examination of witnesses;

(3) Recommend denial or approval in whole or in part, of the proposed or requested action;

(4) Maintain order at the public hearing;

(5) Generally guide the course of the public hearing; and

(6) Arrange with the applicant, upon request of any party, access to the mining area for the purpose of gathering information relevant to the proceeding.

History. Acts 1979, No. 134, § 28; A.S.A. 1947, § 52-962; Acts 2011, No. 279 § 5.

Amendments. The 2011 amendment substituted "Public" for "Legislative" in the section heading; deleted "legislative" preceding "public hearing" in (a); and subdivided (b)(1).

15-58-209. Adjudicatory hearing - Application for review.

(a) A permittee or any person having an interest which is, or may be, adversely affected by the following may apply to the commission for an adjudicatory review of the specified determination, request, notice, order, or decision:

(1) A final determination regarding the amount of a lien imposed upon land reclaimed pursuant to 15-58-404; or

(2) A final determination to issue or deny an initial or revised permit or renewal thereof or to amend or vary the terms of a permit pursuant to 15-58-207, 15-58-208, or 15-58-502 - 15-58-508 if a legislative public hearing was held; or

(3) A request by an operator for reduction or release of performance bond pursuant to 15-58-509; or

(4) Any notice of violation, cessation order, or order to show cause issued pursuant to 15-58-301 - 15-58-303; or

(5) The assessment of a civil penalty pursuant to 15-58-307; or

(6) Any other final order or decision of the commission, the director, or their authorized representatives for which review is not otherwise provided in this chapter; or

(7) By any modification, vacation, or termination of the determination, request, notice, order or decision.

(b) Application for review must be made within thirty (30) days' of official notification of the action taken in subsection (a) of this section or within thirty (30) days after the director or his authorized agent issues his decision pursuant to the informal mine site hearing provided in 15-58-301(c) and 15-58-302 as determined in regulations issued by the commission.

History. Acts 1979, No. 134, 29; 1979, No. 647, 10; A.S.A. 1947, 52-963.

15-58-210. Adjudicatory hearing - Presiding officers.

(a) The following persons shall preside at an adjudicatory public hearing:

(1) One (1) or more members of the commission; or

(2) One (1) or more examiners or referees designated by the commission.

(b) All presiding officers and all officers participating in decisions shall conduct themselves in an impartial manner and may at any time withdraw if they deem themselves disqualified. No examiner may participate in a proceeding in which he has participated as or on behalf of the charging party in such proceeding. Any party may file an affidavit of personal bias or disqualification, which shall be ruled on by the commission and granted if timely, sufficient, and filed in good faith.

(c) Presiding officers at a public hearing shall have power:

(1) To set the time and place for the public hearing in accordance with regulations issued by the commission;

(2) To issue subpoenas for the attendance and testimony of witnesses and the production of documents or things and to issue the subpoena forthwith on the written application by any party therefor;

(3) To administer oaths and affirmations and permit cross-examination;

(4) To take evidence including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity;

- (5) To maintain order;
- (6) To rule upon all questions arising during the course of a hearing or proceeding;
- (7) To permit discovery by deposition or otherwise;
- (8) To hold conferences for the settlement or simplification of issues;
- (9) To grant stays or temporary relief under conditions they prescribe in accordance with regulations issued by the commission pursuant to this chapter;
- (10) To recommend a final adjudicatory decision to the commission, or, if the commission so designates, to issue a final adjudicatory decision which shall be the decision of the commission; and
- (11) Generally to regulate and guide the course of the pending proceeding.

History. Acts 1979, No. 134, 29; 1979, No. 647, 10; A.S.A. 1947, 52-963.

15-58-211. Adjudicatory hearing - Procedures generally.

(a) In any adjudicatory public hearing, if a person refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness, or thereafter refuses to be examined, the commission, its authorized representative, or the presiding officer of the hearing may apply to any court of general jurisdiction in the county where the proceedings were held, or are being held, for an order directing that person to take the requisite action. The court shall issue the order in its discretion. Should any person willfully fail to comply with an order so issued, the court shall punish him as for contempt.

(b) Opportunity shall be afforded all parties at a public hearing to respond and present evidence and argument on all issues involved.

(c) Nothing in this chapter shall prohibit disposition of the matter through an informal conference before the director if all parties agree, or disposition by stipulation, settlement, consent order, or default.

(d) The record of a public hearing required by this section shall include:

- (1) All pleadings, motions, and intermediate rulings;
- (2) Evidence received or considered including, on request of any party, a transcript of oral proceedings or any part thereof
- (3) A statement of matters officially noticed;
- (4) Offers of proof objections, and rulings thereon;
- (5) Proposed findings and exceptions thereto;

(6) All staff and presiding officer memoranda or data submitted to the presiding officer in connection with its consideration of the case.

(e) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(f) Any person compelled to appear at a public hearing shall have the right to be accompanied and advised by counsel. Parties shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(g) Except as otherwise provided by law, the person contesting a notice, order, or decision in an adjudicatory public hearing shall have the burden of proof. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted of record. When a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(h) Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the commission's specialized knowledge. Parties shall be notified of material so noticed, including any staff memoranda or data, and shall be afforded a reasonable opportunity to show to the contrary.

(i) A final decision or order of the commission shall be issued within thirty (30) days after the adjudicatory public hearing held and shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be served either personally or by mail with a copy of any decision or order.

(j) The final order of assessment of a civil penalty whether by order of the commission after hearing, or by order of the director if the operator fails to petition for review of the assessment within the time provided herein shall, upon filing the order with the circuit clerk of the appropriate county, constitute a judgment against the operator which may be recovered in any manner provided by law for collection of a judgment.

(k) Any party adversely affected by the final order or decision of the commission may obtain judicial review of that decision in accordance with 15-58-212.

History. Acts 1979, No. 134, 29; 1979, No. 647, 10;
A.S.A. 1947, 52-963.

15-58-212. Judicial review.

(a) Any person who participated in the administrative proceeding may institute proceedings for judicial review by filing a petition in the Circuit Court of Pulaski County, or in the circuit court of any county in which the involved surface coal mining operation is located within thirty (30) days

after service upon petitioner of the commission's final decision if that person is aggrieved by:

(1) The final order or the decision rendered in an adjudicatory hearing under 15-58-209 - 15-58-211; or

(2) The final decision of the commission on a petition to designate lands unsuitable for all or certain types of surface coal mining pursuant to 15-58-207 and 15-58-208; or

(3) The final decision of the commission regarding the use of lands under the State Abandoned Mine Reclamation Program pursuant to 15-58-207 and 15-58-208; or

(4) The promulgation of rules or regulations by the commission pursuant to 15-58-207 and 15-58-208.

(b) Copies of the petition shall be served upon the agency and all other parties of record by personal delivery or by mail.

(c) The court, in its discretion, may permit other interested persons to intervene.

(d) Any petition for judicial review of the assessment of a civil penalty shall be accompanied by a bond, with sufficient surety in the amount of the penalty, plus interest at the rate of ten percent (10%) per annum.

(e) The filing of the petition shall not automatically stay enforcement of the commission's action, but the reviewing court may do so if:

(1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

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

(f) Within thirty (30) days after service of the petition or within such further time as the court may allow, but not exceeding an aggregate of ninety (90) days, the commission shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(g) If before the date set for hearing, applications are made to the court for leave to present additional evidence and the court finds that the evidence is material and that the evidence could not, with reasonable diligence, have been discovered and produced at the administrative hearing, the court may order that the additional evidence be taken before the commission upon such conditions as may

be just. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(h) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the commission, not shown in the record, testimony may be taken before the court. The court shall, upon request, hear oral argument and receive written briefs.

(i) The court may affirm the decision of the commission or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the commission's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions or the provisions of this chapter;
- (2) In excess of the authority granted in this chapter;
- (3) Not supported by substantial evidence of record; or
- (4) Arbitrary, capricious, or characterized by abuse of discretion.

History. Acts 1979, No. 134, 30;
A.S.A. 1947, 52-964.

15-58-213. Administrative and judicial review - Costs.

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

History. Acts 1979, No. 134, 31;
A.S.A. 1947, 52-965.

15-58-301. Violations not causing imminent danger or harm – Cessation order.

(a) If the director or his authorized representative determines, on the basis of an inspection or other available information, that a permittee is in violation of a requirement of this chapter or of the regulations issued pursuant to this chapter, or a permit condition required by this chapter or the regulations issued pursuant to this chapter, but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause significant imminent environmental harm to land, air, or water resources, the director or his authorized representative shall issue a notice of violation to the permittee, or his agent fixing a reasonable time but not more than ninety (90) days for the abatement of the violation in accordance with the procedures set out in regulations issued by the commission pursuant to this chapter.

(b) If on expiration of the period of time as originally set in the notice of violation for abatement of the violation, or as subsequently extended, for good cause shown, and on written findings of the director or his authorized representative, the director or his authorized agent finds that the violation has not been abated, he shall immediately issue a cessation order for surface mining operations in accordance with the procedures set out in regulations issued by the commission pursuant to this chapter on that portion of the area relevant to the violation.

(c) The cessation order shall remain in effect until the director or his authorized agent determines that the violation has been abated or until modified, vacated, or terminated by the director or his authorized agent. The cessation order shall expire within thirty (30) days of actual notice to the operator unless an informal hearing is held in accordance with regulations issued by the commission at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the public hearing.

(d) The operator or any person adversely affected by the issuance of a cessation order or a modification, vacation, or termination of the order may, within thirty (30) days after the director or his authorized agent issues his decision pursuant to the informal hearing at the mine site, request an adjudicatory public hearing pursuant to 15-58-209 - 15-58-211.

(e) The cessation order issued by the director or his authorized agent under this section shall designate the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary abatement measures.

History. Acts 1979, No. 134, 22; 1979, No. 647, 6;
A.S.A. 1947, 52-956.

15-58-302. Conditions, practices, and violations causing imminent danger or harm - Cessation order.

(a) If the director or his authorized representative determines, on the basis of an inspection or other available information, that a condition or practice exists or that a permittee is in violation of a requirement of this chapter or of the regulations issued pursuant to this chapter or of a permit condition required by this chapter or the regulations issued pursuant to this chapter, and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, the director, or his authorized representative or agent, shall immediately issue a cessation order in accordance with the procedures set out in regulations issued by the commission pursuant to this chapter requiring the immediate termination of all surface coal mining and reclamation operations on the portion thereof relevant to the condition, practice, or violation.

(b) The cessation order shall remain in effect until the director or his authorized representative determines that the condition, practice, or violation has been abated or until the order has been modified, vacated, or terminated by the director or his authorized representative. The cessation order shall expire within thirty (30) days of actual notice to the operator unless an informal hearing is held in accordance with regulations issued by the commission at the site or within such reasonable

proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(c) The operator or any person adversely affected by the issuance of a cessation order or a modification, vacation, or termination of the order may, within thirty (30) days after the director or his authorized agent issues his decision pursuant to the informal hearing at the mine site request an adjudicatory public hearing pursuant to 15-58-209 - 15-58-211.

(d) Where the director or his authorized representative finds that the ordered cessation of surface coal mining and reclamation operations or any portion thereof will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the director or his authorized representative shall, in addition to and as part of the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps are deemed necessary to abate the imminent danger of the significant environmental harm.

History. Acts 1979, No. 134, 23; 1979, No. 647, 7;
A.S.A. 1947, 52-957.

15-58-303. Pattern violations - Order to show cause.

(a) On the basis of an inspection, if the director or his authorized agent has reason to believe that a pattern of violations of any requirements of this chapter or the regulations issued pursuant to this chapter or any permit conditions required by this chapter or by the regulations issued pursuant to this chapter exists or has existed and if the director or his authorized agent also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this chapter or permit conditions or that the violations are willfully caused by the permittee, the director or his authorized agent shall issue to the permittee forthwith an order to show cause as to why the permit should not be suspended or revoked in accordance with the procedures set out in regulations issued by the commission pursuant to this chapter;

(b) The order to show cause shall set a time and place for a public hearing to be held pursuant to 15-58-209 - 15-58-211;

(c) On failure of a permittee to show cause why the permit should not be suspended or revoked, the commission or its authorized representative shall promptly suspend or revoke the permit.

History. Acts 1979, No. 134, 24;
A.S.A. 1947, 52-958.

15-58-304. Violating a condition of a permit or order - Criminal penalties.

(a) Any person who willfully and knowingly violates a condition of a permit issued under this chapter or fails or refuses to comply with an order authorized by 15-58-301 - 15-58-303 or any order incorporated in a final decision issued by the commission or its authorized representative pursuant to this chapter and the regulations issued pursuant to this chapter or any person engaging in surface coal mining operations without a permit issued under this chapter shall be guilty of a misdemeanor

and may, upon conviction, be punished by a criminal penalty of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than one (1) year, or by both. Each day during which violation or noncompliance exists shall be deemed to be a separate violation.

(b) If a corporate permittee violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued pursuant to 15-58-301 - 15-58-303 or any order incorporated in a final decision issued by the commission or its authorized representative pursuant to this chapter and the regulations issued pursuant to this chapter, a director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be guilty of a misdemeanor and may, upon conviction, be punished by a criminal penalty of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than one (1) year or by both. Each day during which the violation or noncompliance exists shall be deemed to be a separate violation.

History. Acts 1979, No. 134, 19, 20; 1979, No. 647, 5; 1981, No. 328, 1;
A.S.A. 1947, 52-953, 52-954.

15-58-305. Interfering with the director or his agents - Criminal penalties.

Any person who shall, except as permitted by law, willfully resist, prevent, impede, or interfere with the director or any of his authorized representatives in the performance of duties pursuant to this chapter shall be guilty of a misdemeanor and may, upon conviction, be punished by a criminal penalty of not more than five thousand dollars (\$5,000) or by imprisonment for not more than one (1) year, or by both.

History. Acts 1979, No. 134, 19; 1979, No. 647, 5; 1981, No. 328, 1;
A.S.A. 1947, 52-953.

15-58-306. False statement, representation, or certification - Criminal penalties.

A person who knowingly makes a false statement, representation, or certification or who knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under this chapter shall be guilty of a misdemeanor and may, upon conviction, be punished by a criminal penalty of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than one (1) year or by both.

History. Acts 1979, No. 134, 21;
A.S.A. 1947, 52-955.

15-58-307. Civil penalties generally.

(a) Any person who violates any permit condition or who violates any other provision of this chapter or the regulations issued pursuant to this chapter may in accordance with the regulations issued by the commission be assessed a civil penalty by the commission, except that if such violation leads to the issuance of a cessation order, the civil penalty shall be assessed. The penalty shall not exceed five thousand dollars (\$5,000) for each violation and shall be based on a schedule which the commission shall issue by regulation. Each day of continuing violation may be deemed a separate

violation for purposes of penalty assessments.

(b) In determining the amount of any penalty to be assessed, consideration shall be given:

- (1) To the person's history of previous violations at the particular surface coal mining operation;
- (2) To the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;
- (3) To whether the person was negligent; and
- (4) To the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of the violation.

(c) Any operator who fails to complete the corrective measures designated in a notice of violation or a cessation order within the period designated for correction, which period shall not end until the entry of a final order by the commission. If administrative review proceedings are initiated, and the presiding officer orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of a final order of the court, in the case of any judicial review proceedings wherein the court orders suspension of the abatement requirements of the citation, shall, in accordance with regulations issued by the commission, be assessed a civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which such failure continues.

(d) No civil penalties may be assessed until the person charged with the violation has been given the opportunity for a public hearing pursuant to 15-58-209 - 15-58-211. All civil penalties shall be deposited into the Surface Coal Mining Operation Fund established in 15-58-508 and shall be used only for the purposes designated for Surface Coal Mining Operation Funds in 15-58-502 - 15-58-508.

History. Acts 1979, No. 134, 18; 1979, No. 647, 4;
A.S.A. 1947, 52-952.

15-58-308. Civil actions - Injunctions, etc.

(a) The commission or the director may request the Attorney General or an attorney designated by the director to institute without bond or other undertaking a civil action for relief against a permittee or any person engaging in surface coal mining operations without a permit, including an injunction, restraining order, or any other appropriate order in the county in which any part of the surface coal mining and reclamation operation involved is located, or in the county in which the permittee has his principal office. No liability whatsoever shall accrue to the commission, the director, or their authorized representatives on taking any actions pursuant to this section.

(b) The civil action may be instituted whenever the person or his agent:

- (1) Violates or fails or refuses to comply with any order or decision issued by the director or his

authorized representative under this chapter or under the regulations issued pursuant to this chapter;
or

(2) Interferes with, hinders, or delays the director or his authorized representatives in carrying out the provisions of this chapter or the regulations issued pursuant to this chapter; or

(3) Refuses to permit inspection of the mine by the authorized representative; or

(4) Refuses to furnish any information or report requested by the director in furtherance of the provisions of this chapter or the regulations issued pursuant to this chapter; or

(5) Refuses to permit access to, and copying of, records the director determines necessary to carry out the provisions of this chapter or the regulations issued pursuant to this chapter.

History. Acts 1979, No. 134, 25; 1979, No. 647, 8;
A.S.A. 1947, 52-959.

15-58-309. Right of private action.

(a) Any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this chapter or the regulations issued pursuant to this chapter:

(1) Against the State of Arkansas or any other state instrumentality or agency which is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order, or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order, or permit issued pursuant to this chapter; or

(2) Against the director or the commission where there is alleged a failure of the director or the commission to perform any act or duty under this chapter which is not discretionary with the director or with the commission.

(b) No action may be commenced:

(1) Under subsection (a)(1) of this section:

(A) Prior to sixty (60) days after the plaintiff has given notice in writing of the violation:

(i) To the director;

(ii) To the Attorney General; and

(iii) To any alleged violator; or

(B) If the director has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this chapter, or any rule, regulation, order, or permit issued pursuant to this chapter, but in any such action any person may intervene as a matter of right; or

(2) Under subsection (a)(2) of this section prior to sixty (60) days after the plaintiff has given notice in writing of such action to the director in such manner as the commission shall by regulation prescribe, or to the commission, except that the action may be brought immediately after notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c)(1) Any action respecting a violation of this chapter or the regulations thereunder may be brought only in the Circuit Court of Pulaski County, if such action is filed against the State of Arkansas, the commission, the director, or any other state instrumentality or agency, and in Pulaski County or in the county in which the greater part of the surface coal mining operation complained of is located if such action is filed against any other person.

(2) In any action under this section, the director, the commission, or the Department of Environmental Quality, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation including attorney and expert witness fees to any party, whenever the court determines the award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security, provided that no bond shall be required if the temporary restraining order or preliminary injunction is sought by the director, the commission, or the Department of Environmental Quality.

(e) Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement of any of the provisions of this chapter and the regulations thereunder, or seek any other relief including relief against the director, the commission, or the Department of Environmental Quality.

(f) Any person who is injured in his person or property through the violation by any operation of any rule, regulation, order, or permit issued pursuant to this chapter may bring an action for damages including reasonable attorney and expert witness fees only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under the Arkansas Workers' Compensation Act, 11-9-101 et seq.

History. Acts 1979, No. 134, 32;
A.S.A. 1947, 52-966.

15-58-401. Lands eligible.

(a) Lands and water eligible for reclamation or drainage abatement expenditures under this chapter are those which 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 August 3, 1977, and for which there is no continuing reclamation responsibility under

federal or other state laws.

(b) Notwithstanding subsection (a) of this section, lands and water similarly affected by coal mining or other mining processes and abandoned or left in an inadequate reclamation status after August 3, 1977, are also eligible for reclamation or drainage abatement expenditures under this chapter if the director makes either of the following findings:

(1) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before November 21, 1980, and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

(2) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before November 5, 1990, and the surety of such mining operator became insolvent during such period, and, as of March 1, 1995, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

(c)(1) In determining which sites to reclaim pursuant to subsection (b) of this section, the director shall follow the priorities stated in § 15-58-402 (1) and (2).

(2) The director shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

History. Acts 1979, No. 134, § 6;
A.S.A. 1947, § 52-940;
Acts 1993, No. 209, § 1; 1993, No. 371, § 1; 1995, No. 500, § 5.

15-58-402. State priorities.

Expenditure of moneys from the fund on lands and water eligible under § 15-58-401 for the purposes of this chapter shall reflect the following priorities in the order stated:

(1) “Priority I” includes the protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of coal mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect public health, safety, and property from extreme danger of adverse effects of coal mining practices;

(2) “Priority II” includes the protection of public health and safety from adverse effects of coal mining practices, including restoration of land and water resources and the environment that:

(A) Have been degraded by the adverse effects of coal mining practices; and

(B) Are adjacent to a site that has been or will be addressed to protect the public health and safety from the adverse effects of coal mining practices; and

(3)(A) “Priority III” includes the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water, excluding channelization, woodland, fish and

wildlife, recreational resources, and agricultural productivity.

(B) Priority III land and water resources that are geographically contiguous with existing or remediated Priority I or Priority II problems shall be considered adjacent under the definitions of Priority I and Priority II above.

(C) If the state receives any funding under 30 CFR § 872.21, then the state may expend these funds to reclaim priority III lands and waters if either of the following conditions applies:

- (i) Facilitating the Priority I or Priority II reclamation; or
- (ii) Providing reasonable savings towards the objective of reclaiming all Priority III land and water problems within the states jurisdiction.

History. Acts 1979, No. 134, § 7; A.S.A. 1947, § 52-941; Acts 2011, No. 279 § 6.

Amendments. The 2011 amendment rewrote the section.

15-58-403. Costs of projects.

The costs for each proposed project under the abandoned mine reclamation program shall include:

- (1) Actual construction costs;
- (2) Actual operation and maintenance costs of permanent facilities;
- (3) Planning and engineering costs;
- (4) Construction inspection costs; and
- (5) Other necessary administrative expenses.

History. Acts 1979, No. 134, 8;
A.S.A. 1947, 52-942.

15-58-404. Abatement of adverse effects –Lien.

(a) The Director of the Arkansas Department of Environmental Quality or his or her authorized representative, under the state abandoned mine reclamation program, shall make a finding of fact that:

- (1) Land or water resources have been adversely affected by past coal mining practices; and
- (2) The adverse effects are at a state in which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
- (3)(A) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available; or

(B) The owners will not give permission for the state or political subdivisions of the state or their agents, employees, or contractors, to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(b)(1) If the director determines that the conditions listed in subsection (a) of this section exist, the director or his or her authorized representative upon giving notice by mail to the

owners, if known, or if not known, by posting notice upon the premises and advertising one (1) time in a newspaper of general circulation in the county in which the land lies, may enter upon the property adversely affected by past coal mining practice and any other property to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent adverse effects.

(2) The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of property not of trespass thereon.

(3)(A) The moneys expended for the work and the benefits accruing to any premises so entered upon shall be chargeable against the land and shall mitigate or offset any claim or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry.

(B) Subdivision (b)(3)(A) of this section does not create a new right of action or eliminate existing immunities.

(c)(1) A lien exists against the property so reclaimed under this section if the moneys expended for reclamation result in a significant increase in property value.

(2)(A) The lien under subdivision (c)(1) of this section is effective upon the filing by the director of a notice of lien with the circuit clerk of the county in which the land is located and in accordance with the regulations issued by the Arkansas Pollution Control and Ecology Commission.

(B) However, the notice shall constitute a lien upon the land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(d)(1) The lien obtained under this section shall not exceed the amount determined by an independent appraisal to be the increase in the market value of the land as a result of the reclamation undertaken.

(2) The commission by regulations shall establish procedures for determining the amount of the lien.

(3) The landowner or any parties aggrieved by the decision determining the amount of the lien may request an adjudicatory hearing before the commission under §§ 15-58-209 – 15-58-211.

(e) No lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to, participated in, nor exercised control over the mining operation which necessitates the reclamation performed hereunder.

History. Acts 1979, No. 134, § 9; A.S.A. 1947, § 52-943; Acts 2011, No. 279 § 7.

A.C.R.C. Notes. Acts 2011, No. 279, § omitted the previous subsection (d) – the omission was apparently inadvertent. The previous subsection (d) has been set out as subsection (e).

Amendments. The 2011 amendment, subdivided and redesignated the section; added “If the director determines that the conditions listed in subsection (a) of this section exist” in (b)(1); inserted “under this section” in (c)(1); and inserted “under subdivision (c)(1) of this section” in (c)(2)(A).

15-58-405. Right of entry.

(a) The director or his authorized representative pursuant to an approved state abandoned mine reclamation program shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or

prevention of the adverse effects.

(b) The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

History. Acts 1979, No. 134, 10;
A.S.A. 1947, 52-944.

15-58-406. Condemnation.

(a) The director, personally or through his authorized legal representative, pursuant to an approved state abandoned mine reclamation program, may acquire for the state any land, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the director determines that acquisition of such land is necessary to successful reclamation and that:

(1) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open-space benefits; and

(2) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(3) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this chapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(b) Title to all lands acquired pursuant to this section shall be in the name of the state. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

History. Acts 1979, No. 134, 11;
A.S.A. 1947, 52-945.

15-58-407. Use of acquired lands - Public hearing.

(a) The commission, pursuant to an approved state abandoned mine reclamation program, when requested after appropriate public notice, shall hold a public hearing in accordance with 15-58-207 and 15-58-208 in the county or counties in which lands acquired pursuant to this section are located.

(b) The hearing shall be held in accordance with procedures established by the commission through regulations, and at a time which shall afford local citizens and government entities the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

15-58-501. Designation of land as unsuitable.

(a) The commission shall issue regulations that adopt appropriate procedures for identifying and designating land in this state as unsuitable for all or certain types of surface mining, which regulations shall:

(1) Prevent surface coal mining operations on those lands upon which surface coal mining operations are prohibited by Public Law 95-87;

(2) Adopt a procedure for development of a data base and inventory system which will permit proper evaluation of the capacity of different land areas of this state to support and permit by reclamation of surface coal mining operations and which includes methods for integrating and implementing federal, state, and local land use planning decisions;

(3) Integrate into the procedure as closely as possible present and future land use planning and regulation processes at the federal, state, and local levels;

(4) Provide that any person having an interest which is or may be adversely affected may petition the commission to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have a designation terminated. Within ten (10) months after the filing of the petition, the commission shall hold a public hearing in accordance with 15-58-207 and 15-58-208.

(b) Prior to designating any land areas as unsuitable for surface coal mining operations, the commission shall prepare a detailed statement on:

(1) The potential coal resources of the area;

(2) The demand for coal resources; and

(3) The impact of the designation on the environment, the economy, and the supply of coal.

(c)(1) Upon petition pursuant to subsection (a) of this section, the commission shall designate an area as unsuitable for all or certain types of surface coal mining operations if the commission determines that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.

(2) Upon petition pursuant to subsection (a) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if the operations will:

(A) Be incompatible with existing state or local land use plans or programs; or

(B) Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems; or

(C) Affect renewable resource lands in which operations could result in a substantial loss or reduction of long range productivity of water supply or of food or fiber products, and lands include aquifers and aquifer recharge areas; or

(D) Affect natural hazard lands in which operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

History. Acts 1979, No. 134, 26; 1979, No. 647, 9;
A.S.A. 1947, 52-960.

15-58-502. Necessity of permit - Application.

(a) Any person in expectation of conducting surface coal mining and reclamation operations in this state must apply for a permit.

(b) No person shall engage in or carry out on lands within the state any surface coal mining operations unless that person has first obtained a permit issued by the director pursuant to this chapter and in accordance with the regulations issued pursuant to this chapter.

(c) Any person conducting surface coal mining and reclamation operations in this state in compliance with a valid permit and who has filed a permit application may continue to conduct operations until the director approves or denies his application.

History. Acts 1979, No. 134, 13; 1979, No. 647, 2;
A.S.A. 1947, 52-947.

15-58-503. Regulations generally.

(a) The commission shall issue regulations as are required pursuant to the state program requirements of Public Law 95-87, designating the required information, the criteria, and the procedures for submitting, processing, and issuing or denying initial or revised applications for permits and renewals thereof to conduct surface coal mining and reclamation operations in this state.

(1) The regulations shall require inclusion of all the documents, permits, notices, maps, reports, schedules, test results, reclamation and blasting plans, bonds, insurance certificates, and other information as is reasonably necessary to process the application, to ensure compliance with the provisions of this chapter and the regulations issued pursuant to this chapter, and to meet the state program requirements.

(2)(A) The regulations shall specifically provide that all applications shall include a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity, and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding surface areas so that an assessment can be made by the director of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. However, this determination shall not be required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until the information is available and is incorporated into the application.

(B) The costs of the following activities, which shall be performed by a qualified public or private laboratory or other public or private qualified entity designated by the department, shall, upon written request of the small operator, be borne by the department in accordance with regulations issued by the commission:

(i) The determination of the probable hydrologic consequences required by this subdivision (a)(2), including the engineering analysis and designs necessary for the determination; and

(ii) The development of cross-sections, maps, and plans of land to be affected by an application for a surface coal mining and reclamation permit which shall be prepared by or under the direction of a qualified registered professional engineer or geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information:

(a) The nature and depth of the various strata of overburden;

(b) The location of subsurface water, if encountered, and its quality;

(c) The nature and thickness of any coal or rider seam above the coal seam to be mined;

(d) The nature of the stratum immediately below the coal seam to be mined;

(e) All mineral crop lines and the strike and dip of the coal to be mined, within the area of the land to be affected;

(f) Existing or previous surface mining limits;

(g) The location and extent of known workings of any underground mines, including mine openings to the surface;

(h) The location of aquifers;

(i) The estimated elevation of the water table;

(j) The location of spoil, waste, or refuse areas and topsoil preservation areas;

(k) The locations of all impoundments for waste or erosion control;

(l) Any settling or water treatment facility;

(m) Constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and

(n) Profiles at appropriate cross-sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(iii) The geologic drilling and a statement of the result of such test borings or core samplings from the permit area, including:

- (a) Logs of the drill holes;
- (b) The thickness of the coal seam found, and an analysis of the chemical properties of such coal;
- (c) The sulfur content of any coal seam;
- (d) Chemical analysis of potentially acid or toxic-forming sections of the overburden; and
- (e) Chemical analysis of the stratum lying immediately underneath the coal to be mined;

except that the provisions of this subdivision (a)(2)(B)(iii) may be waived by the director with respect to the specific application by a written determination that such requirements are unnecessary;

(iv) The collection of archeological information and any other historical information sufficient to prepare accurate maps to an appropriate scale clearly showing all man-made features and significant known archeological sites existing on the date of application, and the preparation of plans necessitated thereby;

(v) Preblast surveys, as requested by a resident or owner of a man-made dwelling or structure within one-half (1/2) mile of any portion of the permitted area. The applicant or permittee shall conduct the preblast survey of such structures and submit the survey to the director and a copy to the resident or owner making the request;

(vi) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the director under this chapter; and

(vii) The department shall provide or assume the cost of training small operators concerning the preparation of permit applications and compliance with the regulatory program and shall ensure that small operators are aware of the assistance available under this subdivision (a)(2).

(C) A coal operator that has received assistance pursuant to this subdivision (a)(2) shall reimburse the department for the cost of the services rendered if the director finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand (300,000) tons during the twelve (12) months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

(3) The regulations shall provide that no initial or revised permit will be approved unless the application affirmatively demonstrates and the director finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicants, that:

(A) The permit application is accurate and complete and that all the requirements of this chapter and the regulations issued pursuant to this chapter have been complied with;

(B) The applicant has demonstrated that reclamation as required by this chapter and the regulations issued pursuant to this chapter can be accomplished under the reclamation plan contained in the permit application;

(C) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in subdivision (a)(2) of this section has been made by the director and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area;

(D) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to § 15-58-501 or is not within an area under study for such designation in an administrative proceeding commenced pursuant to §§ 15-58-207 and 15-58-208;

(E) Any violation of this chapter or the regulations issued pursuant to this chapter or any law, rule, or regulation of this state, the United States, or agencies of this state or the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application has been corrected or is in the process of being corrected to the satisfaction of the director, department, or agency which has jurisdiction over the violation. No permit shall be issued to an applicant after a finding by the director after opportunity for hearing that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter or the regulations issued pursuant to this chapter of a nature and duration with resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter or the regulations issued pursuant to this chapter;

(F) If the area proposed to be mined contains prime farmland, the operator has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards established by the commission by regulation;

(G) After March 1, 1995, the prohibition of subdivision (a)(3)(E) of this section, shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application. As used in this subdivision (a)(3)(G), the term "violation" has the same meaning as such term has under subdivision (a)(3)(E) of this section.

(4) The regulations shall provide that all permits shall be issued for a term not to exceed five (5) years unless the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of operation.

(5) The regulations shall provide that any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(6) The regulations shall provide that no transfer, assignment, or sale of the rights granted under any permit issued under this chapter shall be made without the written approval of the director. However, the commission may issue regulations providing for a review of outstanding permits, and the director may, in accordance with the regulations, and based upon written findings after notice and public hearing, require reasonable revisions or modifications of the permit during the term of the permit.

(b) The commission shall, by regulation, develop procedures for coordinating the issuance of permits required by federal, state, and local agencies for surface coal mining operations.

(c) The commission shall issue regulations to protect confidential information which is submitted to the Department of Environmental Quality as part of a permit application or pursuant to the coal exploration requirements.

History. Acts 1979, No. 134, § 13; 1979, No. 647, § 2;
A.S.A. 1947, § 52-947;
Acts 1993, No. 737, § 2; 1995, No. 500, §§ 3, 4.

15-58-504. Exploration operations.

(a) Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with coal exploration regulations issued by the commission.

(b) Coal exploration regulations shall provide, at a minimum, that prior to conducting any exploration under this subchapter, any person must file with the Department of Environmental Quality notice of intention to explore, and that no operator shall remove more than two hundred fifty (250) tons of coal pursuant to an exploration permit without the specific written approval of the Department of Environmental Quality.

(c) Coal exploration operations which substantially disturb the natural land surface in violation of this chapter or in violation of the regulations issued pursuant to this chapter shall be subject to the civil and criminal penalties and enforcement provisions of this chapter.

History. Acts 1979, No. 134, 13, 1979, No. 647, 2;
A.S.A. 1947, 52-947.

15-58-505. Filing objections to permits.

Any person having an interest which is or may be adversely affected, or the officer, or head of any federal, state, or local affected governmental agency may, in accordance with 15-58-207 and 15-58-208 and the regulations promulgated by the commission, file written objections to a proposed initial or revised permit for surface coal mining and reclamation operations, or renewal thereof.

History. Acts 1979, No. 134, 13; 1979, No. 647, 2;
A.S.A. 1947, 52-947.

15-58-506. Permit renewal.

(a) Any valid permit issued pursuant to this chapter shall carry with it the right to successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal, and renewal shall be issued unless the opponents of renewal established and the commission finds in writing that:

(1) The terms and conditions of the existing permit are not being satisfactorily met;

(2) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter and the regulations issued pursuant to this chapter;

(3) The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(4) The operator has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the regulatory authority might require pursuant to 15-58-509; or

(5) Any additional revised or updated information required by the regulatory authority has not been provided. Prior to the approval of any renewal of permit, the commission shall provide notice to the appropriate public authorities.

(b) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this chapter.

(c) Any permit renewal shall be for a term not to exceed the period of the original permit established by this chapter. Application for the permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit.

History. Acts 1979, No. 134, 13; 1979, No. 647, 2;
A.S.A. 1947, 52-947.

15-58-507. Termination of permit.

A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the issuance of the permit.

(1) Provided that the director may grant reasonable extensions of time upon a showing that extensions are necessary by reason of litigation precluding such commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee.

(2) With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the person shall be deemed to have commenced surface mining operations when the construction of the synthetic fuel or generating facility is initiated.

History. Acts 1979, No. 134, 13; 1979, No. 647, 2;
A.S.A. 1947, 52-947.

15-58-508. Fees – Surface Coal Mining Operation Fund.

(a) Each application for a surface coal mining permit or renewal of that permit shall be accompanied by an initial application fee as determined by the director in accordance with a fee schedule which the commission shall develop and issue by regulations.

(b) The initial application fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application.

(c) After approval but before issuance of the surface coal mining permit or renewal permit, the applicant shall pay a final application fee which shall not exceed the actual or anticipated cost of administering and enforcing the permit. However, this final application fee may be paid in annual installments apportioned over the term of the permit.

(d) The Department of Environmental Quality shall maintain a separate Surface Coal Mining Operation Fund for the fees which may only be used for the administration and enforcement of this chapter, and as the state's matching percentage share for any grants available to the state for the administration and enforcement of the state program.

History. Acts 1979, No. 134, 13; 1979, No. 647, 2;
A.S.A. 1947, 52-947.

15-58-509. Performance bonds.

(a) After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file a bond with the Department of Environmental Quality. This bond shall be on a form furnished by the Department of Environmental Quality in accordance with the regulations issued by the commission. It shall be for performance or acceptable alternative payable, as appropriate, to the Department of Environmental Quality for the State of Arkansas, and conditioned upon faithful performance of all the requirements of this chapter, the regulations issued pursuant to this chapter and the permit.

(b) All forfeitures collected under this chapter shall be deposited into a separate Mining Reclamation Fund which shall be maintained by the Department of Environmental Quality. The Mining Reclamation Fund may only be used to accomplish reclamation of land covered by forfeitures of performance bonds.

(c) The regulations shall include provisions for posting a bond sufficient to cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit and for filing additional bonds to cover succeeding increments of area within the permit upon which the operator intends to conduct surface coal mining and reclamation operations.

(d) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for that period required to establish successful revegetation in accordance with the regulations issued by the commission.

(e) The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the Department of Environmental Quality in the event of forfeiture. In no case shall the bond for the entire area under one (1) permit be less than ten thousand dollars (\$10,000).

(f) The commission shall issue regulations setting out the criteria and procedures for processing requests for the release of all or any part of a performance bond provided that no bond shall be fully released until all reclamation requirements of this chapter and the regulations issued pursuant to this chapter are fully met. Regulations shall include provisions for public notice of all requests for full or partial releases, an inspection and evaluation of the reclamation work, and a schedule for partial releases.

(g) Any person having an interest which is or may be adversely affected, or the office or head of any federal, state, or local governmental agency may, in accordance with 15-58-209 - 15-58-211, file written objections to the proposed release from bond and request an adjudicatory public hearing.

History. Acts 1979, No. 134, 14;
A.S.A. 1947, 52-948.

15-58-510. Environmental protection performance standards.

(a) Any permit issued pursuant to this chapter to conduct surface coal mining operations and any authorization to conduct coal exploration operations shall require that operations will meet all applicable performance standards of this chapter and the regulations issued pursuant to this chapter.

(b) The commission shall issue regulations which are consistent with and in accordance with, but no more restrictive than, all the applicable environmental protection performance standards found in Public Law 95-87 and in the regulations issued pursuant to that Public Law 95-87.

(c) The commission shall issue regulations requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations.

(d) All departures, variances, and exceptions from the performance standards which are provided in Public Law 95-87 and in the regulations issued pursuant to that chapter and other departures, variances, and exceptions which may be granted through a state program shall be provided for in the regulations issued by the commission pursuant to this chapter. The departures, variances, and exceptions provided for in Public Law 95-87 and in the regulations issued pursuant to that law shall be granted or allowed upon a showing of the same circumstances and conditions required in Public Law 95-87 or in the regulations issued pursuant to that law.

History. Acts 1979, No. 134, 15; U.S. Code. For compilation of Public Law 95-87, referred to in this section, see U.S. Code note, 15-58-503.

A.S.A. 1947, 52-949.