

ALABAMA SURFACE MINING COMMISSION
ADMINISTRATIVE CODECHAPTER 880-X-2A
GENERAL

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880-X-2A-.01 Nomenclature And Effectiveness.

(1) The nomenclature, including Subchapter, Part and Section titles and numbers, of 30 CFR Chapter VII, the Federal regulations governing coal exploration and surface coal mining and reclamation operations, has been adopted where feasible for these regulations. This system is utilized to facilitate a point by point comparison and determination of Federal and State requirements, and further, to provide an easy method for determining the need for, and implementing, future change necessitated by amendments to the Federal regulations. Deviations exist where the subject matter of the Federal Subchapter, Part, or Section is not applicable to the State of Alabama, and where the State has requirements in addition to those addressed in the Federal regulations.

(2) Each and every requirement of these regulations shall be in effect until the occurrence of one of the following events:

(a) The regulation containing the requirement is amended or repealed as provided for in Rule 880-X-2A-.08.

(b) A court of competent jurisdiction rules that the portion of these regulations containing the requirement is without force and effect; or

(c) A court of competent jurisdiction rules that the portion of the corresponding Federal regulations containing the requirement is without force and effect.

(d) That portion of the Act pursuant to which the regulation containing the requirement is promulgated is amended or repealed by legislative action or is enjoined, suspended or declared unconstitutional by a court of competent jurisdiction.

(e) That portion of the Federal law, PL 95-87, pursuant to which the corresponding Federal regulation containing the requirement is amended or repealed by legislative action, or is enjoined, suspended or declared unconstitutional by a court of competent jurisdiction.

(3) Upon the occurrence of one of the events set out in (2)(a) through (2)(e) of this Rule the subject requirement shall cease to have the force of law and the State Regulatory Authority shall initiate a process to alter these regulations, as necessary, to protect the integrity of the State program within the bounds of applicable law.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 76, 80, 85, 87, 90, 91, 92, 95.

History:

880-X-2A-.02 Scope.

These regulations, consisting of Rules 880-X-2A - 880-X-12A establish the procedures through which the Surface Mining Commission will implement the Alabama Surface Mining Control and Reclamation Act of 1981. They are divided into eleven chapters.

(a) Chapter 880-X-2 contains introductory information intended to serve as a guide to the rest of the regulations and other generally applicable guidance along with the definition of words and terms used throughout these regulations.

(b) Chapter 880-X-3 adopts the initial regulatory program which would apply to those persons having existing permitted operations until such time as permanent program permits are issued.

(c) Chapter 880-X-4 is not used at this time.

(d) Chapter 880-X-5 sets forth special rules applicable to surface coal mining hearings and appeals.

(e) Chapter 880-X-6 consists solely of licensing requirements.

(f) Chapter 880-X-7 implements the requirements of the Act for

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1. Designating lands which are unsuitable for all or certain types of surface coal mining operations;
2. Terminating designations no longer found to be appropriate; and
3. Prohibiting surface coal mining and reclamation operations on those lands or areas where the Act states that surface coal mining operations should not be permitted or should be permitted only after specified determinations are made.

(g) Chapter 880-X-8 governs applications for and decisions on permits for surface coal mining and reclamation operations. It also governs coal exploration and permit application and decisions on permits for special categories of coal mining. Regulations implementing the experimental practices provision of the Act are also included in Chapter 880-X-8.

(h) Chapter 880-X-9 sets forth requirements for performance bonds and public liability insurance for both surface mining and underground mining activities.

(i) Chapter 880-X-10 sets forth the environmental and other performance standards which apply to coal exploration and to surface coal mining and reclamation operations. The regulations establish the minimum requirements for operations. Performance standards applicable to special mining situations such as steep slope mining and prime farmlands are included.

(j) Chapter 880-X-11 sets forth the inspection, enforcement, and civil penalty provisions.

(k) Chapter 880-X-12 sets forth the requirements for the training, examination and certification of blasters.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 76, 80, 85, 87, 90, 91, 92, 95.

History:

880-X-2A-.03 Objective.

The objective of these regulations is to accomplish the legislative intent of the Act found in Section 2 in a manner which is consistent with the language of the Act, its legislative history, other applicable laws, and judicial interpretation.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 76, 80, 85, 87, 90, 91, 92, 95.

History:

880-X-2A-.04 Authority State Regulatory Authority.

The Alabama Surface Mining Commission, otherwise referred to in these regulations as the State Regulatory Authority, has the authority and shall enforce the Alabama Surface Mining Control and Reclamation Act of 1981 and these regulations.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 76, 80, 85, 87, 90, 91, 92, 95.

History:**880-X-2A-.05 Responsibility.**

The State Regulatory Authority has responsibility for the regulation of coal exploration and surface coal mining and reclamation operations. The State Regulatory Authority has responsibility for review of and decisions on permits and bonding for surface coal mining and reclamation operations, approval of coal exploration which substantially disturbs the natural land surface and removes more than 250 tons of coal from the earth in any one location, inspection of coal exploration and surface coal mining and reclamation operations for compliance with the Act, permits and exploration approvals, and for enforcement of the State program.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 76, 80, 85, 87, 90, 91, 92, 95.

History:**880-X-2A-.06 Definitions.**

As used throughout these regulations the following terms have the specified meaning except where otherwise indicated:

(1) Acid-drainage means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) Acid-forming materials means earth material that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) Act means the Alabama Surface Mining Control and Reclamation Act of 1981 (Acts 1981, No. 81-435).

(4) Adjacent area means land located outside the permit area, depending on the context in which adjacent area is used where surface or ground water, fish, wildlife, vegetation or other resources protected by the Act may be adversely impacted by surface coal mining and reclamation operations.

(5) Administratively complete application means an application for a permit including coal exploration permit where required, which the State Regulatory Authority determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

(6) Affected area means, with respect to surface mining activities, any land or water upon which those activities are conducted or located. With respect to underground mining activities, affected area means:

(a) Any water or surface land upon or in which those activities are conducted or located; and

(b) land or water which is located above underground mine workings.

(7) Agriculture use means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(8) A Horizon - See definition of soil horizons

(9) Applicant means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from a Regulatory Authority to conduct surface coal mining and reclamation operations or, where required, seeking a permit for coal exploration.

(10) Application means the documents and other information filed with the Regulatory Authority under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

(11) Approximate original contour means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain,

with all highwalls and spoilpiles eliminated. Water impoundments may be permitted where the State Regulatory Authority has determined that they comply with these regulations.

(12) Aquifer means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

(13) Asset ratio means the relation of total assets to total liabilities.

(14) Auger mining means a method of mining coal by drilling holes into an exposed coal seam and transporting the coal along an auger to the surface.

(15) Best technology currently available means equipment, devices, systems, methods, or techniques which:

(a) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and

(b) Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by ASMC, even if they are not in routine use.

The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Rule 880-X-10C-.17 and 880-X-10D-.17. The State Regulatory Authority shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act.

(16) B Horizon -- See definition of soil-horizons.

(17) Bi-monthly means once every two months.

(18) Blaster-in-charge means a certified blaster designated by the operator conducting surface coal mining and reclamation operations to be responsible for assuring that blasting operations at the blast site are conducted in compliance with the blasting standards set forth in these regulations.

(19) Blasting agent means any mixture consisting of fuel and oxidizer intended for blasting, not otherwise defined as an explosive; provided, that the finished product, as mixed for use or shipment cannot be detonated by means of a Number 8 Test Blasting Cap when unconfined.

(20) Blasting crew means persons engaged in preparation for and execution of a blast under the supervision of a certified blaster.

(21) Blasting operation means the use of blasting agents and/or explosives in the blasting of stone, rock, or any other natural formation during surface coal mining operations.

(22) Capital assets for the purpose of self-bonding only means those assets such as land, buildings and equipment held for use in the production or sale of other assets or services.

(23) Cemetery means any area of land where human remains are interred.

(24) Certified blaster means a person who is certified by the State Regulatory Authority in accordance with these regulations as qualified to prepare, execute, and supervise blasts at the blast site in surface coal mining and reclamation operations.

(25) Charge means a quantity of explosives or equivalent that is detonated within a period of five (5) seconds.

(26) C horizon -- See definition of soil horizons.

(27) Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite as ASTM Standard D 388-77 as it appears in various physical forms.

(28) Coal exploration means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) The gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of these regulations.

(29) Coal mine waste means coal processing waste and underground development waste.

(30) Coal preparation means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

(31) Coal processing plant means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating or other processing or preparation. The processing plant includes, but need not be limited to, associated facilities: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas.

(32) Coal processing waste means earth materials which are separated and wasted from the product coal during the cleaning, concentrating or other processing or preparation of coal.

(33) Collateral bond means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the State Regulatory Authority of one or more of the following --

(a) The deposit of cash in one or more federally insured accounts or equivalently protected accounts, payable only to the State Regulatory Authority upon demand;

(b) Negotiable bonds of the United States, the State, or a municipality or other subdivisions of the State, endorsed to the order of, and in the possession of the State Regulatory Authority;

(c) Negotiable certificates of deposit, payable or assigned to the State Regulatory Authority and in its possession or held by a federally insured bank;

(d) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only upon presentation to the State Regulatory Authority.

(e) A perfected, first-lien security interest in real property in favor of the Regulatory Authority; or

(f) Other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the Regulatory Authority.

(34) Combustible material means organic material that is capable of burning, either by fire, or through oxidation,

accompanied by the evolution of heat and a significant temperature rise.

(35) Community or institutional building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historical, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(36) Compaction means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

(37) Complete and accurate application means an application for permit approval including permits for coal exploration where required, which the Regulatory Authority determines to contain all information required under the Act, these regulations, and the regulatory program that is necessary to make a decision on permit issuance.

(38) Consistent with means to meet the minimum requirements of and include all applicable provisions of the Act.

(39) Cropland -- See definition of land use.

(40) Cumulative impact area means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface- and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the Regulatory Authority, and

(d) All operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

(41) Current assets for the purpose of self-bonding only means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

(42) Current liabilities for the purpose of self-bonding only means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

(43) DHA means the Division of Hearings and Appeals within the Alabama Surface Mining Commission.

(44) Delay interval means the time interval in milliseconds between successive detonations of the delay device used.

(45) Developed water resources -- See definition of land use.

(46) Director means the Director of the Alabama Surface Mining Commission.

(47) Direct financial interest means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding(s) in or salary from coal mining operations. Direct financial interest include employment, pensions, creditor, real property and other financial relationships.

(48) Disturbed area means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or non-coal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by Chapter 880-X-9 is released.

(49) Diversion means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

(50) Downslope means the land surface between the projected out-crop of the lowest coal bed being mined along each highwall and a valley floor.

(51) Drinking, domestic or residential water supply means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

(52) Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(53) Employee means:

(a) Any person employed by the State Regulatory Authority who performs any function or duty under the Act; and

(b) Advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions for the State Regulatory Authority under the authority of State law or regulations.

(54) Ephemeral stream means a stream which flows only in direct response to a precipitation event, which has a channel bottom that is always above the local water table and which drains an area of one square mile or greater.

(55) Existing structure means a structure or facility, located on the surface and used in connection with or to facilitate coal mining and reclamation operations for which construction begins prior to the adoption of the Act.

(56) Explosive means any chemical compound, other substance or mechanical system intended for the purpose of producing an explosion, or that contains oxidizing and combustible units or other ingredients in such proportions or quantities that ignition by detonation may produce an explosion.

(57) Extraction of coal as an incidental part means that extraction of coal which is necessary to enable the construction to be accomplished. For purposes of this Part, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and these regulations.

(58) Federal lands means any land, including mineral interest owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands. However, lands or mineral interests east of the 100th meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority are not subject to Sections 714 (surface owner protection) of Public Law 95-87.

(59) Fish and wildlife habitat -- See definition of land use.

(60) Fixed assets for the purpose of self-bonding only means plants and equipment, but does not include land or coal in place.

(61) Forest land -- See definition of land use.

(62) Fragile lands means areas containing natural, ecologic, scientific, or esthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.

(63) Government financing agency means a Federal, State, County, municipal or local unit of government or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction.

(64) Government-financed construction means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation product under Title IV of the Federal Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 et Seq., as amended. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

(65) Gravity discharge means, with respect to underground mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

(66) Grazing land -- See definition of land use.

(67) Ground Cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally on site, expressed as a percentage of the total area of measurement.

(68) Ground water means subsurface water that fills available openings in rock or soil material in the zone of saturation.

(69) Haul road means a road built to carry trucks heavily loaded with coal at a normal speed. The grade is limited on this type of road and usually kept to less than 17% of climb in direction of load movement. These roads shall not be maintained by any government entity.

(70) Head-of-hollow fill means a fill structure placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20° or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10°.

(71) Highwall means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

(72) Highwall remnant means that portion of highwall that remains after backfilling and grading of a remining permit area.

(73) Historic lands means areas containing historic, cultural, or scientific resources. Examples of historic lands include archaeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to Native Americans or religious groups, and properties for which historic designation is pending.

(74) Historically used for cropland means:

(a) Lands that have been used for cropland for any five years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option, the conduction of surface coal mining and reclamation operations;

(b) Lands that the State Regulatory Authority determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

(c) Lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

(75) Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

(76) Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(77) Hydrologist means a person with a minimum of a bachelor's degree from an accredited four-year college or university in a natural science field or a qualified engineer, who has the ability to perform quantitative and qualitative analyses on a hydrologic system.

(78) 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 requirements of the Act in a coal mining and reclamation operations, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the 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 condition or practice given rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(79) Impounding structure means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

(80) Impoundment means all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

(81) In accordance with means to meet the minimum requirements of and include all applicable provisions of the Act.

(82) Indirect financial interest means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor children or other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

(83) Industrial/commercial -- See definition of land use.

(84) In situ processes means activities conducted on the surface or underground in connection with in place distillation, retorting, leaching or other chemical or

physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehold mining, and fluid recovery mining.

(85) Intermittent stream means a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge, and which drains a watershed of at least one square mile or greater.

(86) Irreparable damage to the environment means any damage to the environment, in violation of the Act, the regulatory program, or these regulations, that cannot be corrected by actions of the applicant.

(87) Land use means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the State Regulatory Authority.

(a) Cropland. Means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(b) Pastureland or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(c) Forestland. Land used or managed for the long-term production of wood, wood fiber, or wood derived products.

(d) Grazingland. Includes both grasslands and forest lands where the indigenous vegetation is used for grazing, browsing, or occasional hay production.

(e) Residential. Includes single- and multiple-family housing, mobile home parks, and other residential lodgings.

(f) Industrial/commercial. Land used for --

1. Extraction or transformation of materials for fabrication of products, wholesaling of products or

for long-term storage of products. This includes all heavy and light manufacturing facilities.

2. Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(g) Recreation. Land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) Fish and wildlife habitat. Land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(i) Developed water resources. Includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) Undeveloped lands or no current use or land management. Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(88) Lands eligible for reining means those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87.

(89) Liabilities means for the purpose of self-bonding only obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

(90) License means an authorization issued pursuant to the Act and these regulations which identifies persons eligible to conduct surface coal mining operations in Alabama.

(91) Licensee means a person holding a valid license to conduct surface coal mining operations in Alabama.

(92) Material damage, in the context of 880-X-8I-.10 and 880-X-10D-.58 means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any

current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

(93) Monitoring means the collecting of environmental data by either continuous or periodic sampling methods.

(94) Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(95) Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, severe soil erosion, frequent flooding, and areas of unstable geology.

(96) Net worth for the purpose of self-bonding only means total assets minus total liabilities and is equivalent to owners' equity.

(97) No current use or land management -- See definition of land use.

(98) Non-commercial building means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in this section. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

(99) Noxious Plants means species that have been included on official lists of noxious plants for the State.

(100) Occupied dwelling means any building that is currently being used on a regular or temporary basis for human habitation.

(101) Occupied residential dwelling and structures related thereto means, for purposes of 880-X-8I-.10 and 880-X-10D-.58, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples

of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

(102) Operator means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles within 12 consecutive calendar months in any one location.

(103) Outslope means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(104) Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(105) Owned or controlled and owns or controls means any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition --

(a) 1. Being a permittee of a surface coal mining operation;

2. Based on instruments of ownership or voting securities, owning of record in excess of 50 percent of an entity; or

3. Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(106) Parent corporation for the purpose of self-bonding only means corporation which owns or controls the applicant.

(107) Pastureland or land occasionally cut for hay -- See definition for land use.

(108) Perennial stream means a stream or part of a stream that flows continuously throughout the year as a result of ground water discharge or surface runoff.

(109) Performance bond means a bond arrangement by which the permittee assures faithful performance of all the requirements of the Act, these regulations and requirements of the permit and reclamation plan.

(110) Performing any function or duties under this Act means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

(111) Permanent diversion means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the State Regulatory Authority.

(112) Permanent impoundment means an impoundment which is approved by the Regulatory Authority and, if required, by other State and Federal agencies for retention as part of the postmining land use.

(113) Permit means an authorization issued by the State Regulatory Authority pursuant to the Act and these regulations which allows a licensee to engage in surface coal mining operations at a particular location In Alabama.

(114) Permit area means the area of land within boundaries designated on the permit application maps, as approved by the State Regulatory Authority. This area shall include, at a minimum, all areas where surface coal mining operations are intended to be conducted during the term of the permit.

(115) Permittee means a person holding a permit issued by the State Regulatory Authority to conduct surface coal mining

operations in Alabama pursuant to the Act and these regulations.

(116) Person means an individual partnership, association, society, joint stock company, firm, company, corporation, or other business organization of any governmental entity and any successor or agency of the foregoing.

(a) Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person --

1. Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the State Regulatory Authority; or

2. Whose property is or may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the State Regulatory Authority.

(117) Precipitation event means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval as used in these regulations.

(118) Previously mined area means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR Chapter VII.

(119) Prime farmland shall have the same meaning as prescribed by the United States Secretary of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics, and which historically has been used for cropland.

(120) Principal shareholder means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

(121) Probable cumulative impacts means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regimes.

(122) Probable hydrologic consequences means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing and pattern; the stream channel conditions; and the aquatic habitat on and off the permit area.

(123) Professional Geologist means one with a minimum of a bachelor's degree from a four year accredited college or university in a geoscience field and has a minimum of three years experience in that field.

(124) Program administrator means the Alabama Surface Mining Commission's designee who has the authority and responsibility for overall management of the Small Operator's Assistance Program.

(125) Prohibited Financial Interest means any direct or indirect financial interest in any coal mining operation.

(126) Property to be mined means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

(127) Public building means any structure that is owned or leased, and principally used by a government agency for public business or meetings.

(128) Public Office means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(129) Publicly owned park means a public park that is owned by a Federal, State or local government entity.

(130) Public road means a road -

(a) Which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;

(c) For which there is substantial (more than incidental) public use; and

(d) Which meets road construction standards for other public roads of the same classification in the local jurisdiction.

(131) Qualified laboratory means a designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at 880-X-8N-.10 under the Small Operator's Assistance Program and that meets the standards of 880-X-8N-.11.

(132) Qualified registered professional engineer means an engineer licensed to practice in Alabama and who is qualified through education and experience to perform the duties and certifications required by these regulations.

(133) Reasonably available spoil means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

(134) Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(135) Reclamation means those actions taken to restore mined land as required by these regulations to a postmining land use approved by the State Regulatory Authority.

(136) Recreation -- See definition of land use.

(137) Recurrence interval means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 24-hour precipitation event would be that 24 hour precipitation event expected to occur on the average once in 10 years.

(138) Refuse pile means a surface deposit of coal mine waste that does not impound water, slurry or other liquid or semi-liquid.

(139) Renewable Resource lands means geographic areas which contribute significantly to the long-range productivity of the water supply or of food or fiber products. Such lands to include aquifers and aquifer recharge areas.

(140) Remining means conducting surface coal mining and reclamation operations which affect previously mined areas.

(141) Replacement of water supply means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the

increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

(142) Residential -- see definition of land use.

(143) Retained earnings means stockholder's equity that has arisen from retained assets from earnings in the business. This shall include only earnings from normal operations and not gains from such transactions as the sale of plant assets or investments.

(144) Road means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

(145) Safety factor means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(146) Sedimentation pond means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

(147) Self-bond means an indemnity agreement in a sum certain executed by the applicant or the applicant and any corporate guarantor and made payable to the Regulatory Authority, with or without separate surety.

(148) Semi-monthly means twice every month.

(149) Shrub means a woody perennial plant with multiple stems rather than a single trunk.

(150) Significant forest cover means an existing plant community consisting predominantly of trees and other woody vegetation.

(151) Significant, imminent environmental harm to land, air or water resources means

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(b) An environment harm is imminent, if a condition, practice, or violation exists which --

1. Is causing such harm; or

2. May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time.

(c) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(152) Significant recreational, timber, economic, or other values incompatible with surface coal mining operations means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber management and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) Scenic, historic, archaeologic, aesthetic, fish, wildlife, plants or cultural interests.

(153) Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

(154) Slope means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(155) Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are --

(a) A horizon. The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) E Horizon. The layer commonly near the surface below an A horizon and above the B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) B horizon. The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E or C horizons.

(d) C horizon. The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biological activity.

(156) Soil survey means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in Rule 880-X-8J-.08(2) (a) .

(157) Spoil means overburden that has been removed during surface coal mining operations.

(158) Spring means a surface exposure with a concentrated flow rate of 2 gallons per minute or more.

(159) Stabilize means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as providing a protective surface coating.

(160) State program means the program established and developed under the Alabama Surface Mining Control and Reclamation Act of 1981 (Acts 1981, No. 81-435) and approved by the U. S. Secretary of the Interior pursuant to P.L. 95-87;

to regulate surface coal mining operations in the State of Alabama.

(161) State Regulatory Authority means the Alabama Surface Mining Commission.

(162) Steep slopes means any slope of more than 20 degrees or such lesser slope as may be designated by the State Regulatory Authority after consideration of soil, climate and other characteristics.

(163) Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

(164) Substantially disturb means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

(165) Successor in interest means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(166) Surety Bond means an indemnity agreement in a sum certain payable to the Regulatory Authority, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the State where the operation is located.

(167) Surface coal mining operations means --

(a) Activities conducted on the surface lands in connection with a surface coal mine extracting coal from the earth by removing the strata or material which overlies or is above or between coal seams or otherwise retrieving it from the surface or surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountain-top removal, box cut, open pit, and area mining; the use of explosives and blasting; in

situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing, or preparation of coal; and the loading of coal at or near the mine site; provided that excavation for the purpose of obtaining coal shall include the extraction of coal from coal refuse piles; and

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

(168) Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

(169) Surface coal mining operations which exist on the date of enactment means all surface coal mining operations which were being conducted on August 3, 1977.

(170) Surface mining activities means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

(171) Surface operations and impacts incident to an underground coal mine means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in Section 3(t) of the Act and the definition of surface coal mining operations appearing in this Rule.

(172) Suspended solids or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses. (40 CFR 136).

(173) Tangible net worth for the purpose of self-bonding only means net worth minus intangibles such as goodwill and rights to patents or royalties.

(174) Temporary diversion means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the State Regulatory Authority to remain after reclamation as part of the approved postmining land use.

(175) Temporary impoundment means an impoundment used during surface coal mining and reclamation operations, but not approved by the Regulatory Authority to remain as part of the approved postmining land use.

(176) Ton means 2000 pound avoirdupois (.90718 metric ton).

(177) Topsoil means the A and E soil horizon layers of the four master soil horizons.

(178) Transfer, assignment, or sale of permit rights means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the Regulatory Authority.

(179) Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or users of water.

(180) Toxic mine drainage means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(181) Unanticipated event or condition, as used in 880-X-8K-.10 of this Chapter, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and was not contemplated by the applicable permit.

(182) Underground development waste means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

(183) Underground mining activities means a combination of --

(a) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

(184) Undeveloped land-- See definition of land use.

(185) Valid existing rights means -- a set of circumstances under which a person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where Code of Ala. 1975, §9-16-96(e) and Rule 880-X-7B-.06 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of Rule 880-X-7B-.06 and Code of Ala. 1975, §9-16-96(e). A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Act and the applicable regulatory program.

(a) Property rights demonstration. Except as provided in paragraph (c) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of Rule 880-X-7B-.06 or Code of Ala. 1975, §9-16-96(e). Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

(b) Except as provided in paragraph (c) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:

(1) Good faith/all permits standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith

effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of Rule 880-X-7B-.06 or Code of Ala. 1975, §9-16-96(e). At a minimum, an application must have been submitted for any permit required under Chapter 880-X-8 of these regulations.

(2) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of Rule 880-X-7B-.06 or Code of Ala. 1975, §9-16-96(e). To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Rule 880-X-7B-.06 or Code of Ala. 1975, §9-16-96(e). Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of Rule 880-X-7B-.06 or Code of Ala. 1975, §9-16-96(e) when the regulatory authority approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the regulatory authority making the determination may consider factors such as:

(i) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of Rule 880-X-7B-.06 or Code of Ala. 1975, §9-16-96(e) depend upon use of that land for surface coal mining operations.

(ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of Rule 880-X-7B-.06 or Code of Ala. 1975, §9-16-96(e) rely upon use of that land for surface coal mining operations.

(iii) The extent to which investments in the operation before the land came under the protection of Rule 880-X-7B-.06 or Code of Ala. 1975, §9-16-96(e) rely upon use of that land for surface coal mining operations.

(iv) Whether the land lies within the area identified on the life-of-mine map submitted under Rule 880-X-8F-.08(1)(c) or Rule 880-X-8I-.07(1)(c) of these regulations before the land came under the protection of Rule 880-X-7B-.06.

(c) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by Rule 880-X-7B-.06 or Code of Ala. 1975, §9-16-96(e) must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in Rule 880-X-2A-.06 (167) of these regulations:

(1) The road existed when the land upon which it is located came under the protection of Rule 880-X-7B-.06 or Code of Ala. 1975, §9-16-96(e), and the person has a legal right to use the road for surface coal mining operations.

(2) A properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of Rule 880-X-7B-.06 or Code of Ala. 1975, §9-16-96(e), and, under the document creating the right-of-way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right-of-way or easement for surface coal mining operations.

(3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Rule 880-X-7B-.06 or Code of Ala. 1975, §9-16-96(e).

(4) Valid existing rights exist under paragraphs (a) and (b) of this definition.

(186) Valley fill means a fill structure that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20° or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10°.

(187) Violation notice means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading or other written communication.

(188) Water table means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(189) Willful violation means an act or omission which violates the Act, this chapter, the applicable program, or any permit condition required by the Act, these regulations, or the applicable program, committed by a person who intends the result which actually occurs.

Author: Randall C. Johnson

Statutory Authority: Code of Ala. 1975, §§9-16-71, et seq.

History: May 20, 1982. **Amended:** November 14, 1989; effective March 7, 1991. **Amended:** September 18, 1990; effective August 2, 1991. **Amended:** September 12, 1991; effective June 10, 1992.

Amended: Filed July 27, 1998; effective August 31, 1998; operative January 3, 1999. **Amended:** Filed April 25, 2000; effective May 30, 2000; operative July 22, 2000. **Amended:** Filed August 23, 2001; effective September 27, 2001.

Ed. Note: On December 4, 1998, the Office of Surface Mining approved this rulemaking adopted by the commission on July 16, 1998. The effective date of this rule will be January 3, 1999. On February 5, 2002, the Office of Surface Mining approved this rulemaking adopted by the commission on August 16, 2001. The effective date of this rule will be March 7, 2002.

880-X-2A-.07 Applicability.

(1) These regulations apply to all coal exploration and surface coal mining and reclamation operations, except -

(a) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(b) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction in accordance with Rule 880-X-2D hereof; and

(c) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16-2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale in accordance with Subchapter 880-X-2E.

(2) The Alabama Surface Mining Commission may on its own initiative and shall, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under this section. The Alabama Surface Mining Commission shall give reasonable notice of the request to interested persons. Prior to

the time a determination is made, any person may submit, and the Alabama Surface Mining Commission shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative and judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal.

(3)(a) The Alabama Surface Mining Commission may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when:

1. The Alabama Surface Mining Commission determines in writing that under the initial program, all requirements imposed under Chapter 880-X-3 of this chapter have been successfully completed; or

2. The Alabama Surface Mining Commission determines in writing that under the permanent program, all requirements imposed by these regulations have been successfully completed or, where a performance bond was required, the Alabama Surface Mining Commission has made a final decision in accordance with Chapter 880-X-9 of these regulations to release the performance bond fully.

(b) Following a termination under paragraph (3)(a) of this section, the Alabama Surface Mining Commission shall reassert jurisdiction over a site if it is demonstrated that the bond release or written determination referred to in paragraph (3)(a), of this section was based upon fraud, collusion, or misrepresentation of a material fact.

Author: Randall C. Johnson

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 76, 80, 85, 87, 90, 91, 92, 95.

History: May 20, 1982. **Amended:** September 18, 1990; effective: March 30, 1991

880-X-2A-.08 Petitions To Initiate Rulemaking.

(1) A petition to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the Act shall be in writing, signed by a minimum of 15 citizens of Alabama, and submitted to the State Regulatory Authority.

(2) The petition shall be a concise statement of the facts, technical justification, and law which require issuance,

amendment, or repeal of regulation under the Act and shall indicate whether the petitioner desires a public hearing.

(3) Upon receipt of the petition, the State Regulatory Authority shall determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis. If the State Regulatory Authority determines that the petition has a reasonable basis, a notice shall be published in a newspaper of general circulation for the State of Alabama once a week for two consecutive weeks seeking comments from the public on the proposed change. The State Regulatory Authority may hold a public hearing, may conduct an investigation or take other action to determine whether the petition should be granted.

(4) Within 60 days from receipt of the petition, the State Regulatory Authority shall either:

(a) deny the petition in writing on the merits, stating the reasons for denial, or

(b) initiate rulemaking proceedings on the petition.

Author: Randall C. Johnson

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 76, 80, 85, 87, 90, 91, 92, 95.

History: Filed May 20, 1982. **Amended:** Filed July 27, 1998; effective August 31, 1998; operative January 3, 1999.

Ed. Note: On December 4, 1998, the Office of Surface Mining approved this rulemaking adopted by the commission on July 16, 1998. The effective date of this rule will be January 3, 1999.

880-X-2A-.09 Notice Of Citizen Suits.

(1) A person who intends to initiate a civil action on his or her own behalf under Section 27 of the Act shall give notice of intent to do so, in accordance with this Section.

(2) Notice shall be given by certified mail to the State Regulatory Authority, the Secretary of the U. S. Department of Interior, and the Director of the U. S. Office of Surface Mining. A copy of the notice shall be sent by first class mail to the State Director of the U. S. Office of Surface Mining.

(3) Notice shall be given by certified mail to the alleged violator, if the complaint alleges a violation of the Act or any regulation, order, or permit issued under the Act.

(4) If service of notice under this Section is not complete upon mailing to the last known address, as shown in the Commission's files, of the person being notified, then the person bringing the action shall follow the local trial rules for notice until such notice is complete in accordance with those rules.

(5) A person giving notice regarding an alleged violation shall state, to the extent known - -

(a) Sufficient information to identify the provision of the Act, regulation, order, or permit allegedly violated;

(b) The act or omission alleged to constitute a violation;

(c) The name, address, and telephone numbers of the person or persons responsible for the alleged violation;

(d) The date, time, and location of the alleged violation;

(e) The name, address, and telephone number of the person giving notice; and

(f) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

(6) A person giving notice of an alleged failure by the State Regulatory Authority to perform a mandatory act or duty under the Act shall state, to the extent known --

(a) The provision of the Act containing the mandatory act or duty allegedly not performed;

(b) Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;

(c) The name, address, and telephone number of the person giving notice; and

(d) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 76, 80, 85, 87, 90, 91, 92, 95.

History:

880-X-2A-.10 Availability Of Records.

(1) Records required by the Act to be made available locally to the public shall be retained at the geographically closest office

of the State Regulatory Authority having jurisdiction over the area involved.

(2) Other records or documents in the possession of the State Regulatory Authority maybe requested at the headquarters of the State Regulatory Authority.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 76, 80, 85, 87, 90, 91, 92, 95.

History:

880-X-2A-.11 Computation Of Time.

(1) Except as otherwise provided, computation of time under this Chapter is based on calendar days.

(2) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the State Regulatory Authority is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(3) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 72, 73, 74, 75, 76, 80, 85, 87, 90, 91, 92, 95.

History: