

ALABAMA SURFACE MINING COMMISSION
ADMINISTRATIVE CODE

CHAPTER 880-X-8K

SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMITS AND COAL
EXPLORATION REVIEW, PUBLIC PARTICIPATION, AND APPROVAL OR
DISAPPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

TABLE OF CONTENTS

| | |
|--------------|---|
| 880-X-8K-.01 | Scope |
| 880-X-8K-.02 | Objectives |
| 880-X-8K-.03 | Responsibilities |
| 880-X-8K-.04 | Definitions |
| 880-X-8K-.05 | Public Participation In Permit Processing |
| 880-X-8K-.06 | (Not Used) |
| 880-X-8K-.07 | (Not Used) |
| 880-X-8K-.08 | (Not Used) |
| 880-X-8K-.09 | (Not Used) |
| 880-X-8K-.10 | Review Of Permit Applications |
| 880-X-8K-.11 | Permit Conditions |
| 880-X-8K-.12 | Permit Issuance And Right Of Renewal |
| 880-X-8K-.13 | (Not Used) |
| 880-X-8K-.14 | (Not Used) |
| 880-X-8K-.15 | (Not Used) |
| 880-X-8K-.16 | (Not Used) |
| 880-X-8K-.17 | Improvidently Issued Permits: General Procedures |
| 880-X-8K-.18 | Improvidently Issued Permits: Recission Procedures |

880-X-8K-.01 Scope.

This Rule establishes provisions for --

- (a) Public participation in the permit process;
- (b) The review of permit applications and decisions on these applications by the State Regulatory Authority; and
- (c) Approval or disapproval of permits to conduct surface coal mining and reclamation operations and for the terms and conditions of permits issued.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91, 92, 96.

History:

880-X-8K-.02 Objectives.

The objectives of this Rule are to --

- (a) Provide for public participation in the review of applications and the issuance, or denial of permits;
- (b) Ensure prompt and effective review of each permit application by the State Regulatory Authority; and
- (c) Provide the minimum requirements for the terms and conditions of permits issued and the criteria for approval or denial of a permit.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91, 92, 96.

History:

880-X-8K-.03 Responsibilities.

- (1) The State Regulatory Authority has the responsibility to approve or disapprove permits.
- (2) The State Regulatory Authority and persons applying for permits shall involve the public as required in the permit approval or disapproval process.
- (3) The State Regulatory Authority shall assure implementation of these regulations.
- (4) The applicant shall provide all information in a complete permit application for review by the State Regulatory Authority in accordance with this Rule.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91, 92, 96.

History:

880-X-8K-.04 Definitions.

For a complete listing of the definition of words used in this Rule, see Rule 880-X-2A-.06.

Author:

Statutory Authority: Code of Ala. 1975, §§9-16-71, 73, 74, 75, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91, 92, 96.

History:

880-X-8K-.05 Public Participation In Permit Processing.**(1) Filing and Public Notice.**

(a) Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under Section 880-X-8M-.06, or renewal of a permit under Section 880-X-8M-.07, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted with the permit application to the Regulatory Authority. The advertisement shall contain, at a minimum, the following:

1. The name and business address of the applicant;
2. A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it shall indicate the north direction.
3. The location where a copy of the application is available for public inspection.
4. The name and address of the Regulatory Authority where written comments, objections, or requests for informal conferences on the application may be submitted under paragraphs (2) and (3) of this section.
5. If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with Section 880-X-7B-.09 of this chapter; a concise statement describing the public road, the particular part to be relocated, and the approximate timing and duration of the relocation.
6. If the application includes a request for an experimental practice under Section 880-X-8J-.04, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

(b) The applicant shall make an application for a permit, significant revision under Section 880-X-8M-.06, or renewal of a permit under Section 880-X-8M-.07 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the mining is proposed to occur, or an accessible public office approved by the Regulatory Authority. This copy of the application need not include confidential information exempt from disclosure under paragraph (4) of this section. The application required by this paragraph shall be filed by the first date of newspaper advertisement of the application. The applicant shall file any changes to the application with the public office at the same time the change is submitted to the Regulatory Authority.

(c) Upon receipt of an administratively complete application for a permit, a significant revision to a permit under Section 880-X-8M-.06, or a renewal of a permit under Section 880-X-8M-.07, the Regulatory Authority shall issue written notification indicating the applicant's intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification shall be sent to --

1. Local governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

2. All Federal or State governmental agencies with authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with Section 503(a)(6) or Section 504(h) of the Act, or Section 880-X-8A-.07; or those agencies with an interest in the proposed operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, and the historic preservation officer.

(2) Comments and Objections on Permit Applications.

(a) Within thirty (30) days after the last publication of the newspaper notice required by paragraph (1) of this section, written comments or objections on an application for a permit, significant revision to a permit under Section 880-X-8M-.06, or renewal of a permit under Section 880-X-8M-.07 may be submitted to the Regulatory Authority by public entities

notified under paragraph (1)(c) of this section with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

(b) Written objections to an application for a permit, significant revision to a permit under Section 880-X-8M-.06 or renewal of a permit under Section 880-X-8M-.07 may be submitted to the Regulatory Authority by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any Federal, State, or local government agency or authority, within thirty (30) days after the last publication of the newspaper notice required by paragraph (1) of this section.

(c) The Regulatory Authority shall upon receipt of such written comments or objections --

(i) Transmit a copy of the comments or objections to the applicants; and

(ii) File a copy for public inspection at the same public office where the application is filed.

(3) Informal Conferences.

(a) Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a head of a Federal, State or local government agency, may request in writing that the Regulatory Authority hold an informal conference on the application for a permit, significant revision to a permit under Section 880-X-8M-.06, or renewal of a permit under Section 880-X-8M-.07. The request shall --

1. Briefly summarize the issues to be raised by the requestor at the conference;

2. State whether the requestor desires to have the conference conducted in the locality of the proposed operation; and

3. Be filed with the Regulatory Authority no later than 30 days after the last publication of the newspaper advertisement required under paragraph (1) of this section.

(b) Except as provided in paragraph (3)(c) of this section, if an informal conference is requested in accordance with paragraph (3)(a) of this section, the Regulatory Authority shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:

1. If requested under paragraph (3)(a)(ii) of this section, it shall be held in the locality of the proposed surface coal mining and reclamation operation.

2. The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the Regulatory Authority in a newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least 2 weeks before the scheduled conference.

3. If requested in writing by a conference requestor at a reasonable time before the conference, the Regulatory Authority may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

4. The conference shall be conducted by a representative of the Regulatory Authority, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to Chapter 880-X-9.

(c) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(d) Informal conference held in accordance with this section may be used by the Regulatory Authority as the public hearing required under Section 880-X-7B-.07 on proposed relocation or closing of public roads.

(4) Public Availability Of Permit Applications.

(a) General availability. Except as provided in paragraphs (4)(b) or (4)(c) of this section, all applications for permits, revisions, renewals, and transfers, assignments or sales of permit rights on file with the Regulatory Authority shall be available, at reasonable times, for public inspection and copying.

(b) Limited availability. Except as provided in paragraph (4)(c)(1) of this section, information pertaining to coal seams, test borings, core samplings, or soil samples in an

application shall be made available to any person with an interest which is or may be adversely affected. Information subject to this paragraph shall be made available to the public when such information is required to be on public file pursuant to State Law.

(c) Confidentiality. The Regulatory Authority shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to --

1. Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;

2. Information required under section 16 of the Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;

3. Information on the nature and location of archaeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

Author: Randall C. Johnson

Statutory Authority: Code of Ala. 1975, §§9-16-82 - 9-16-88.

History: Original Filed November 14, 1989; effective: March 7, 1991. **Amended:** Filed August 23, 2001; effective September 27, 2001.

Ed. Note: 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-8K-.06 **(Not Used)**.

Author:

Statutory Authority:

History:

880-X-8K-.07 **(Not Used)**.

Author:

Statutory Authority:

History:

880-X-8K-.08 (Not Used).

Author:

Statutory Authority:

History:

880-X-8K-.09 (Not Used).

Author:

Statutory Authority:

History:

880-X-8K-.10 Review Of Permit Applications.

(1) General.

(a) The Alabama Surface Mining Commission shall review the application for a permit, revision, or renewal, written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision within sixty (60) days following public notice and opportunity for public hearing as provided in Section 880-X-8K-.05. If an informal conference is held pursuant to Section 880-X-8K-.05, the decision shall be made within sixty (60) days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under paragraph (2)(c) of this section.

(b) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.

(2) Review of violations.

(a) Based on available information concerning Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation orders, delinquent civil penalties issued pursuant to any State or Federal regulatory program under 30 USC 1268, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the Regulatory Authority shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the

applicant is currently in violation of the Act or any other law, rule, or regulation referred to in this paragraph. In the absence of a failure-to-abate cessation order, the Alabama Surface Mining Commission may presume that a notice of violation issued pursuant to 880-X-11C-.03 or under a Federal or State program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the Alabama Surface Mining Commission shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either --

1. Submit to the Alabama Surface Mining Commission proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

2. Establish for the Alabama Surface Mining Commission that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within 30 days of the judicial action submit the proof required under paragraph (2)(a)1. of this section.

(b) Any permit that is issued on the basis of proof submitted under paragraph (2)(a)1. of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (2)(a)2. of this section, shall be conditionally issued.

(c) If the Alabama Surface Mining Commission makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of any State or Federal regulatory program under 30 USC 1201, et seq., of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 880-X-8L.

(d)1. Subsequent to October 24, 1992, the prohibitions of paragraph (2) of this section regarding the issuance of a new permit shall not apply to any violation that:

- (i) Occurs after that date;
- (ii) Is unabated; and
- (iii) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:

- (I) Issued before September 30, 2004, or any renewals thereof; and

- (II) Held by the person making application for the new permit.

2. For permits issued under 880-X-8J-.13, an event or condition shall be presumed to be unanticipated for the purposes of this paragraph if it:

- (i) Arose after permit issuance;
- (ii) Was related to prior mining; and
- (iii) Was not identified in the permit.

(3) Written findings for permit application approval. No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the Alabama Surface Mining Commission finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

- (a) The application is complete and accurate and the applicant has complied with all requirements of the Act and the regulatory program.

- (b) The applicant has demonstrated that reclamation as required by the Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.

- (c) The proposed permit area is --

- 1. Not within an area under study or administrative proceedings under a petition, filed pursuant to Chapter 7 to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

2. Not within an area designated as unsuitable for mining pursuant to Chapter 880-X-7 or within an area subject to the prohibitions or limitations of Section 880-X-7B-.06 of these regulations.

(d) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Alabama Surface Mining Commission the documentation required under Section 880-X-8D-.07 and Section 880-X-8G-.07 of this chapter.

(e) The Alabama Surface Mining Commission has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(f) The applicant has demonstrated that any existing structure will comply with Section 880-X-2B-.01, and the applicable performance standards of Chapter 3 or 10.

(g) The applicant has paid all reclamation fees from previous and existing operations as required by 30 C.F.R., Subchapter R.

(h) The applicant has satisfied the applicable requirements of Subchapter 880-X-8J.

(i) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural, postmining land use, in accordance with the requirements of 880-X-10C-.58(4) and 880-X-10D-.52(4).

(j) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(k) The Alabama Surface Mining Commission has taken into account the effect of the proposed permitting action on properties listed or eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Alabama Surface Mining Commission has determined that no additional protection measures are necessary.

(l) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of Section 880-X-10C-.56 or 880-X-10D-.49, the site of the

operation is a previously mined area as defined in Section 880-X-2A-.06.

(m) For permits to be issued under 880-X-8J-.13, the permit application must contain:

1. Lands eligible for remining;
2. An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and
3. Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

(4) Performance bond submittal. If the Alabama Surface Mining Commission decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Chapter 880-X-9.

(5) Final compliance review. After an application is approved, but before the permit is issued, the Alabama Surface Mining Commission shall reconsider its decision to approve the application, based on the compliance review required by paragraph (2)(a) of this section in light of any new information submitted under 880-x-8D-.05(8) or 880-X-8.

Author: Randall C. Johnson

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

History: Original Filed November 14, 1989; effective March 7, 1991. **Amended:** September 12, 1991; effective June 10, 1992.

Amended: Filed: September 21, 1993; effective November 20, 1993.

Amended: Filed July 27, 1998; effective August 31, 1998; operative January 3, 1999. **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-8K-.11 Permit Conditions.

Each permit issued by the Alabama Surface Mining Commission shall be subject to the following conditions:

(1) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to Chapter 880-X-9.

(2) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the Alabama Surface Mining Commission otherwise directs in the permit.

(3) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Act, and the requirements of the regulatory program.

(4) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Secretary and the Alabama Surface Mining Commission to --

(a) Have the right of entry provided for in Chapter 880-X-11; and

(b) Be accompanied by private persons for the purpose of conducting an inspection in accordance with chapter 880-X-11 when the inspection is in response to an alleged violation reported to the Alabama Surface Mining Commission by the private person.

(5) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to --

(a) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(b) Immediate implementation of measures necessary to comply; and

(c) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(6) As applicable, the permittee shall comply with Section 880-X-2B-.01 and Chapter 880-X-3 or 880-X-10 for compliance, modification, or abandonment of existing structures.

(7) The operator shall pay all reclamation fees required by 30 C.F.R. Chapter VII, Subchapter R of federal regulations for

coal produced under the permit for sale, transfer or use, in the manner required by that subchapter.

(8) Within thirty days after a Federal cessation order under 30 C.F.R. 843.11 or a State cessation order under 880-X-11C-.02 is issued for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect the permittee shall either submit to the Alabama Surface Mining Commission the following information, current to the date the cessation order was issued, or notify the Alabama Surface Mining Commission in writing that there has been no change since the immediately preceding submittal of such information:

(a) Any new information needed to correct or update the information previously submitted to the Alabama Surface Mining Commission by the permittee under 880-X-6A-.06(d), or

(b) If not previously submitted, the information required from a permit applicant by 880-X-6A-.06(d).

Author: Randall C. Johnson

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

History: Original Filed November 14, 1989; effective March 7, 1991. **Amended:** September 12, 1991; effective June 10, 1992.

880-X-8K-.12 Permit Issuance And Right Of Renewal.

(1) Decision. If the application is approved, the permit shall be issued upon submittal of a performance bond in accordance with Chapter 880-X-9. If the application is disapproved, specific reasons therefore shall be set forth in the notification required by paragraph (2) of this section.

(2) Notification. The Regulatory Authority shall issue written notification of the decision to the following persons and entities:

(a) The applicant, each person who files comments or objections to the permit application, and each party to an informal conference.

(b) The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land.

(c) The local OSM office.

(3) Permit term. Each permit shall be issued for a fixed term of five (5) years or less. A longer fixed permit term may be granted if --

(a) The application is full and complete for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of equipment and the opening of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.

(4) Right of renewal. Permit application approval shall apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with paragraph (1) of this section shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with Section 880-X-8M-.07.

(5) Initiation of operations.

(a) A permit shall terminate if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The Regulatory Authority may grant a reasonable extension of time for commencement of these operations upon receipt of a written statement showing that such an extension of time is necessary, if --

(i) Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

(ii) There are conditions beyond the control and without fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the Regulatory Authority under this paragraph shall be specifically set forth in the permit, and notice of the extension shall be made public by the Regulatory Authority.

Author: Randall C. Johnson

Statutory Authority: Code of Ala. 1975, §§9-1-71, et seq.

History: Original Filed November 14, 1989; effective March 7, 1991.

880-X-8K-.13 **(Not Used)**.

Author:

Statutory Authority:

History:

880-X-8K-.14 **(Not Used)**.

Author:

Statutory Authority:

History:

880-X-8K-.15 **(Not Used)**.

Author:

Statutory Authority:

History:

880-X-8K-.16 **(Not Used)**.

Author:

Statutory Authority:

History:

880-X-8K-.17 **Improvidentally Issued Permits: General Procedures.**

(1) Permit review. If the Alabama Surface Mining Commission which has reason to believe that it improvidentally issued a surface coal mining and reclamation permit, it shall review the circumstances under which the permit was issued, using the criteria in paragraph (2) of this section. Where the Alabama Surface Mining Commission finds that the permit was improvidentally issued, it shall comply with paragraph (3) of this section.

(2) Review criteria. The Alabama Surface mining Commission shall find that a surface coal mining and reclamation permit was improvidentally issued if:

(a) Under the violations review criteria of the regulatory program at the time the permit was issued:

1. The Alabama Surface Mining Commission should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with Jurisdiction over the violation, but a cessation order subsequently was issued; and

(b) The violation, penalty or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.

(3) Remedial measures. If the Alabama Surface Mining Commission, under paragraph (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, it shall use one or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit under 880-X-8K-.18.

Author: Randall C. Johnson

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

History: Original Filed September 12, 1991; effective: June 10, 1992.

880-X-8K-.18 Improviently Issued Permits: Recission Procedures.

If a decision is made to rescind an improvidently issued permit under 880-X-8K-.17(3) (d), the Alabama Surface Mining Commission shall serve on the permittee a notice of proposed suspension and recission which includes the reasons for the finding under 880-X-8K-.17(2) and states that:

(a) Automatic suspension and recission. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the Alabama Surface Mining commission finds, that:

1. The finding under 880-X-8K-.17(2) was erroneous;
2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;
3. The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or
4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;

(b) Cessation of operations. After permit suspension or recission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the Alabama Surface Mining Commission; and

(c) Right to appeal. The permittee may file an appeal for administrative review of the notice under 880-X-5A.

Author: Randall C. Johnson

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

History: Original Filed September 12, 1991; effective June 10, 1992.