

LOUISIANA SURFACE MINING REGULATIONS

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DEPARTMENT OF NATURAL RESOURCES

Office of Conservation



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Title 43
NATURAL RESOURCES
Part XV. Office of Conservation—Surface Mining
Subpart 1. General Information

Chapter 1. General

§101. Authority

A. The commissioner is authorized to administer the requirements of the Act and regulations promulgated thereunder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§103. Responsibility

A. The commissioner is responsible for exercising the authority delegated to him under the Act, including the following:

1. designation of lands as unsuitable for all or certain types of surface coal mining operations under §922 of the Act;

2. authority to approve or disapprove mining plans to conduct surface coal mining and reclamation operations on state lands.

B. The commissioner is responsible for consulting with state land-managing agencies and agencies with responsibility for natural and historic resources on public lands on actions which may have an effect on their responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§105. Definitions

A. As used in these regulations, the following terms have the specified meaning, except where otherwise indicated.

Abandoned Site—a surface coal mining and reclamation operation for which the office has found in writing that:

a. all surface coal mining and reclamation activities at the site have ceased;

b. the office has issued at least one notice of violation, and either:

i. is unable to serve the notice despite diligent efforts to do so; or

ii. the notice was served and has progressed to a failure-to-abate cessation order;

c. the office:

i. is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

ii. is taking action pursuant to §§918.A, 918.F, 921.A(4) or 921.B of the Act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

d. where the site is, or was, permitted or bonded:

i. the permit has expired or been revoked, or permit revocation proceedings have been initiated and are being pursued diligently; and

ii. the office has initiated and is diligently pursuing forfeiture of, or has forfeited, the performance bond.

Acid Drainage—water with a pH value 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.

Acid-Forming Materials—earth materials that contain sulfide minerals or other materials which, if exposed to air, water or weathering processes, form acids that may create acid drainage.

Acid Test Ratio—the relation of quick assets to current liabilities.

Act—the Louisiana Surface Mining and Reclamation Act, R.S. 30:901-32.

Adjacent Area—land located outside the affected area, permit area or mine plan area, depending on the context in which "adjacent area" is used, where air, surface water or ground water, fish, wildlife, vegetation or resources protected by the Act may be adversely impacted by surface coal mining and reclamation operations.

Affected Area—any land or water surface which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes: the disturbed area; any area upon which surface coal mining and

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reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations; any area covered by surface 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 or shipping areas; any areas upon which are sited structures, facilities or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings.

Agricultural Use—the use of any tract of land for the production of animal or vegetable life.

Applicant—a person applying for a permit.

Applicant/Violator System or *AVS*—an automated information system of applicant, permittee, operator, violation and related data the Office of Surface Mining maintains to assist in implementing the Surface Mining Control and Reclamation Act, as amended.

Application—the documents and other information filed with the commissioner for the issuance of an exploration, development operations or surface mining and reclamation operations permit.

Approximate Original Contour—that surface configuration achieved by backfilling and grading of the mined area 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, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the commissioner determines that they are in compliance with §§5333, 5347 and 5431.

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

Asset Ratio—the relation of total assets to total liabilities.

Assets—cash and current assets that are reasonably expected to be realized in cash or sold or consumed within one year.

Best Technology Currently Available—equipment, devices, systems, methods or techniques which will:

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 the commissioner, 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 §5327. Within the constraints of the permanent program, the commissioner shall have the discretion to determine the best technology currently available on a case-by-case basis.

Capital Assets—those assets such as lands, buildings and equipment held for use in the production and sale of other assets and services.

Cash—all cash items except cash restricted by an agreement, or described as earmarked for a particular purpose; and short term investments such as stocks, bonds, notes and certificates of deposit where the intent and ability to sell them in the near future is established by the operator.

Cemetery—any area of land where human bodies are interred.

Coal—all forms of coal, including lignite.

Coal Exploration, or *Exploration Operations*—the drilling of test holes or core holes for the purpose of, or related to, the determining of the location, quantity or quality of a coal deposit under a permit to be issued by the commissioner; and any other coal exploration operations that will substantially disturb the surface and are not otherwise covered by the Act.

Coal Mine Waste—coal processing waste and underground development waste.

Coal Mining Operation—the business of developing, producing, preparing and loading bituminous coal, subbituminous coal or lignite, or of reclaiming the areas upon which such activities occur. This term applies solely to Chapter 5 of these regulations.

Coal Preparation—chemical or physical processing and the cleaning, concentrating or other processing or preparation of coal.

Coal Preparation Plant—a facility where coal is subjected to chemical or physical processing or cleaning, concentrating or other processing or preparation. It includes facilities associated with coal preparation activities including, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

Coal Processing Waste—earth materials which are separated and wasted from the product coal during cleaning, concentrating or other processing or preparation of coal.

Collateral Bond—an indemnity agreement in a sum certain executed by the permittee as principal which is

supported by the deposit with the office of one or more of the following:

- a. a cash account, which shall be the deposit of cash in one or more federally insured or equivalently protected accounts, payable only to the office upon demand, or the deposit of cash directly with the office;
- b. negotiable bonds of the United States, a state or a municipality, endorsed to the order of, and placed in the possession of, the office;
- c. negotiable certificates of deposit, made payable or assigned to the office and placed 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 to the office upon presentation;
- e. a perfected, first-lien security interest in real property in favor of the office; 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 office.

Commissioner—the commissioner of the Office of Conservation of the state of Louisiana, or such other person or persons who may, from time to time, be designated by the commissioner to administer and enforce the provisions of the Act and these regulations.

Common Size Comparative Balance Sheet—item amounts from a number of the permittee's or applicant's successive yearly balance sheets arranged side-by-side in a single statement followed by common size percentages whereby:

- a. the asset total is assigned a value of 100 percent;
- b. the total of liabilities and owner equity is also assigned a value of 100 percent; and
- c. each individual asset, liability and owner equity item is shown as a fraction of one of the 100 percent totals.

Common Size Comparative Income Statement—an operator's income statement amounts for a number of successive yearly periods arranged side by side in a single statement followed by a common size percentages whereby net sales are assigned a 100 percent value, and then each statement item is shown as a percentage of net sales.

Community or Institutional Building—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, historic, 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.

Compaction—increasing the density of a material by reducing the voids between the particles, and generally

accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track or roller loads from heavy equipment.

Complete Application—an application for exploration or development operations approval or permit, which contains all information required under the Act or these regulations.

Control or Controller (when used in Chapters 23, 31 and 35)—

- a. a permittee of a surface coal mining operation;
- b. an operator of a surface coal mining operation; or
- c. any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

Cropland—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.

Cumulative Impact Area—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: the proposed operation; all existing operations; any operation for which a permit application has been submitted to the office; and all operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

Current Liabilities—debts or other obligations that must be paid or liquidated within a short period of time, usually a year. This shall also include dividends payable on preferred stock within one year.

Current Ratio—the relation of current assets to current liabilities.

Data Gathering Activities—the field gathering of:

- a. surface or subsurface geologic, physical or chemical data by mapping, trenching, drilling, geophysical or other techniques; 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; provided, however, that data gathering activities shall not include those activities defined as exploration operations or development operations as those terms are defined under the Act or these regulations.

Development Operations—all or any part of the process of removing, by power earth moving equipment, coal or overburden for the purpose of determining coal quality or quantity or coal mining feasibility; provided, that if more than 25,000 tons of coal or 10 acres of overburden will be

removed then such operations will be considered surface coal mining operations.

Development Operations Permit—the certification by the commissioner that the named person may conduct the development operations described in the certification during the term of the development operations permit and in the manner established in the certification.

Direct Financial Interest—ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares or other holdings and any other arrangement where the employee may benefit from his or her holdings in, or salary from, coal mining operations. Direct financial interests include employment, pensions, creditor, immovable property and other financial relationships.

Director—the director of the federal Office of Surface Mining Reclamation and Enforcement.

Disturbed Area—an area where vegetation, topsoil or overburden is removed or upon which topsoil, spoil, coal processing waste or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is completed and the performance bond or other assurance of performance required by Subpart 4 is released.

Diversion—a channel, embankment or other man-made structure constructed to divert water from one area to another.

Downslope—the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

Embankment—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.

Employee—

a. any person employed by the Office of Conservation who performs any function or duty under the Act;

b. members of advisory boards and commissions established in accordance with state laws or regulations to represent multiple interests, who perform a function or duty under the Act;

c. advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions for the office under the authority of state law or regulations.

Ephemeral Stream—a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table.

Existing Structure—a structure or a facility used in connection with or to facilitate surface coal mining and

reclamation operations for which construction begins prior to the approval of a state program or implementation of a federal program or federal lands program, whichever occurs first.

Exploration Operations Permit—a permit issued by the commissioner to an applicant to conduct coal exploration as that term is defined in these regulations.

Extraction of Coal as an Incidental Part—the extraction of coal which is necessary to enable the construction to be accomplished. For the purposes of Chapter 7, 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 construction shall be subject to the requirements of the Act and these regulations.

Federal Act—the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87).

Federal Land Program—a program established by the secretary of interior pursuant to §523 of the Federal Act to regulate surface coal mining and reclamation operations on federal lands.

Federal Lands—any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands, but does not include Indian lands.

Federal Office—the Office of Surface Mining Reclamation and Enforcement established under Title II of the Federal Act.

Fixed Assets—plants and equipment, but does not include land or coal in place.

Fragile Lands—geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged or destroyed 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 landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and aesthetic features, areas of recreational value due to high environmental quality and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under §922 of the Act and Chapter 11 of these regulations.

Fugitive Dust—that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haulroads, wind erosion of exposed surfaces, storage piles, spoil piles, reclamation operations and other activities in which material is either removed, stored, transported or redistributed.

Fund—the Abandoned Mine Reclamation Fund established pursuant to §401 of the Federal Act.

Government-Financed Construction—construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent or in kind payments.

Government Financing Agency—a federal, state, parish, 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.

Ground Cover—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.

Ground Water—subsurface water that fills available openings in rock or soil materials to the extent that they are considered water-saturated.

Half-Shrub—a perennial plant with a woody base whose annually produced stems die back each year.

Head-of-Hollow Fill—a fill structure consisting of any material, other than coal-processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20 degrees 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 degrees. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

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

Historic Lands—historic or cultural districts, places, structures or objects, including archaeological sites, National Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.

Historically Used for Cropland—

a. lands that have been used for cropland for any five or more years 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 conduct of surface coal mining and reclamation operations;

b. lands that the office 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 five-year-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 10 years immediately preceding such acquisition, but for the same fact of ownership or control of the land unrelated to the productivity of the land.

Hydrologic Balance—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 between precipitation, runoff, evaporation and changes in surface- and ground-water storage.

Hydrologic Regime—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.

Imminent Danger to the Health and Safety of the Public—the existence of any condition or practice, or any violation of a permit or other requirement of these regulations in a surface coal mining and reclamation operation, which condition, practice or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

Impounding Structure—a dam, embankment or other structure used to impound water, slurry or other liquid or semiliquid material.

Impoundment—a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment or waste.

In Situ Processes—activities conducted on the surface or underground in connection with in-place processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining and fluid recovery mining.

Indian Lands—all lands, including mineral interests, within the exterior boundaries of any federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

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Indian Tribe—any Indian tribe, band, group or community located within the state of Louisiana having a governing body recognized by the secretary of interior.

Indirect Financial Interest—the same financial relationship as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and 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.

Intermittent Stream—a stream or reach of a stream that drains a watershed of at least one square mile or 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 surface runoff and ground-water discharge.

Irreparable Damage to the Environment—any damage to the environment that cannot be corrected by actions of the applicant.

Knowing or Knowingly—a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

Land Use—specific use or management-related activity, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. 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 office.

a. *Cropland*—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. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

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. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

c. *Grazingland*—includes both grasslands and forestlands where the indigenous vegetation is actively managed for grazing, browsing or occasional hay production. Land used for facilities in support of ranching operations which is adjacent to or an integral part of these operations is also included.

d. *Forestry*—land used or managed for the long-term production of wood, wood fiber or wood derived

products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

e. *Residential*—includes single- and multiple-family housing, mobile home parks and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

f. *Industrial/Commercial*—land used for:

i. 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 such as lumber and wood processing, chemical manufacturing, petroleum refining and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road and other transportation facilities;

ii. retail or trade of goods or services, including hotels, motels, stores, restaurants and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities.

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*—land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control and water supply.

j. *Undeveloped Land 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.

Liquidity Ratio—the relation of cash to current liabilities.

Mine Plan Area—the area of land and water within the boundaries of all permit areas during the life of the surface coal mining and reclamation operations. At a minimum, it includes all areas which are or will be affected during the entire life of those operations. Other terms defined in this Section which relate closely to mine plan area are: permit area, which will always be within or the same as the mine plan area; affected area, which will always be within or the same as the permit area; adjacent area, which may surround

or extend beyond the affected area, permit area or mine plan area; and cumulative impact area, which may surround or extend beyond the affected area, permit area or mine plan area, and includes all areas that may be affected by all surface coal mining and reclamation operations.

Moist Bulk Density—the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (one third bar moisture tension). Weight is determined after drying the soil at 105 C.

Monitoring—as used in Chapter 37, the collection of environmental data by either continuous or periodic sampling methods.

Mulch—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.

Natural Hazard Lands—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, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

Net Profit—the bottom line of the income statement after taxes, including taxes based on income, adjustments, all extraordinary income and expense, but before preferred and common stock dividends.

Net Worth—total assets minus total liabilities; equivalent to owner's equity.

Noxious Plants—species that have been included on official Louisiana state lists of noxious plants.

Occupied Dwelling—any building that is currently being used on a regular or temporary basis for human habitation.

Office of Conservation or *Office*—the Office of Conservation of the Louisiana Department of Natural Resources.

Operator—any person, partnership or corporation engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by surface coal mining methods within 12 consecutive calendar months in any one location.

Other Treatment Facilities—any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point-source discharge and that are utilized:

- a. to prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or
- b. to comply with all applicable state and federal water-quality laws and regulations.

Outslope—the face of the spoil or embankment sloping downward from the highest elevation to the toe.

Overburden—material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Own, Owner, or Ownership (as used in Chapters 23, 31 and 35) (except when used in the context of ownership of real property)—being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

Perennial Stream—a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

Performance Bond—a surety bond, collateral bond or self-bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, these regulations, this program and the requirements of the permit and reclamation plan.

Permanent Diversion—a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the office.

Permanent Impoundment—an impoundment which is approved by the office and, if required, by other state and federal agencies, for retention as part of the post-mining land use.

Permit—a permit to conduct surface coal mining and reclamation operations issued by the office pursuant to the Act, but does not include exploration and development permits.

Permit Area—the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the office. This area shall include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit.

Permittee—a person holding a permit or persons required to have a permit.

Person—an individual, partnership, association, society, joint stock company, firm, company, corporation or other business organization.

a. Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person:

- i. who lawfully uses any resources of economic, recreational, aesthetic or environmental value that may be adversely affected by coal exploration, development operations or surface coal mining and reclamation operations or any regulated action of the commissioner or the office; or
- ii. whose property is or may be adversely affected by coal exploration, development operations or surface coal mining and reclamation operations or any related action of the commissioner or the office.

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Precipitation Event—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, precipitation event also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.

Previously Mined Area—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.

Prime Farmland—those lands which are defined by the secretary of agriculture in 7 CFR 657 (*Federal Register*, Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined above.

Principal Shareholder—any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

Probable Cumulative Impacts—as used in Chapter 37, the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.

Probable Hydrologic Consequence—as used in Chapter 37, the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface water and ground water, the surface- or ground-water flow, timing and pattern, the stream channel conditions, and the aquatic habitat on the permit area and other affected areas.

Prohibited Financial Interest—any direct or indirect financial interest in any coal mining operation.

Property to be Mined—both the surface and subsurface areas underneath lands which are within the permit area.

Public Building—any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

Public Office—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.

Public Park—an area dedicated or designated by a federal, state or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

Public Road—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.

Qualified Laboratory—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 §3711 and that meets the standards of §3713.

Quick Assets—cash and current assets that can be quickly turned into cash.

Rangeland—land on which the natural potential (climax) plant cover is principally native grasses, forbs and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

Recharge Capacity—the ability of the soils and underlying minerals to allow precipitation and runoff to infiltrate and reach the zone of saturation.

Reclamation—those actions taken to restore mined land as required by these regulations to a post-mining land use approved by the commissioner.

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

Reference Area—a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally by crop production methods approved by the office. Reference areas must be representative of geology, soil, slope and vegetation in the permit area.

Refuse Pile—a surface deposit of coal mine waste that does not impound water, slurry or other liquid or semiliquid material.

Regional Director—a regional director of the federal office or a regional director's representative.

Renewable Resource Lands—aquifers and areas for the recharge of aquifers and other underground waters; areas for agricultural or silvicultural production of food and fiber; and grazing lands.

Replacement of Water Supply—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 post-mining 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.

Retained Earnings—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.

Return on Investment—the relation of net profit for the last yearly period to ending net worth.

Road—a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations, coal exploration, or development operations. 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, coal exploration, or development operations, 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.

Safety Factor—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.

Secretary—the Secretary of the Louisiana Department of Natural Resources.

Secretary of Interior—the Secretary of the United States Department of the Interior.

Sedimentation Pond—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.

Self-Bond—an indemnity agreement in a sum certain payable to the commissioner executed by the permittee and each individual and business organization capable of influencing or controlling the investment or financial practices of the permittee by virtue of his authority as an officer or ownership of all or a significant part of the permittee.

Significant Forest Cover—an existing plant community consisting predominantly of trees and other woody vegetation.

Significant, Imminent Environmental Harm to Land, Air or Water Resources—

a. an adverse impact on land, air or water resources which include plant and animal life;

b. a condition, practice or violation which is causing harm or may reasonably be expected to cause harm before the end of the reasonable abatement time that would be set under §921.A(3) of the Act; or

c. a harm which is appreciable and not immediately repairable.

Significant Recreational, Timber, Economic or Other Values Incompatible with Surface Coal Mining Operations—those values to be evaluated for their significance which could be damaged 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; and

d. scenic, historic, archeologic, esthetic, fish, wildlife, plants or cultural interests.

Siltation Structure—a sedimentation pond, a series of sedimentation ponds or other treatment facility.

Slope—the 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.

Soil Horizons—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 three major 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. *B Horizon*—the layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron or aluminum than the A or C horizon.

c. *C Horizon*—the deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Soil Survey—a field and other investigation, resulting in a map showing the 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 §2907.A.1.

Spoil—overburden that has been removed during surface coal mining operations.

Stabilize—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 by providing a protective surface coating.

State Regulatory Authority—the Louisiana Office of Conservation.

Steep Slope—any slope of more than 20 degrees or such lesser slope as may be designated by the commissioner after consideration of soil, climate and other characteristics of a region.

Substantial Legal and Financial Commitments—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. Costs of acquiring the coal in place or the right to mine it alone without other significant investments, as described above, are not sufficient to constitute substantial legal and financial commitments.

Substantially Disturb—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.

Successor in Interest—any person who succeeds to rights granted under a permit by transfer, assignment or sale of those rights.

Surety Bond—an indemnity agreement in a sum certain payable to the commissioner executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in this state.

Surface Coal Mining and Reclamation Operations—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.

Surface Coal Mining Operations—

a. activities conducted on the surface of lands in connection with a surface coal mine, the products of which enter commerce or the operations of which directly or indirectly affect commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop 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, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration or development subject to §912 of the Act; and provided, further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles;

b. the areas upon which such 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 excavation, 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, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incidental to such activities.

Surface Mining Activities—those surface coal mining and reclamation operations incidental 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 geology location.

Suspended Solids or Nonfilterable Residue, Expressed as Milligrams per Liter—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 analyses (40 CFR 136).

Tangible Net Worth—net worth minus intangibles such as goodwill and rights to patents or royalties.

Temporary Diversion—a diversion of a stream or overland flow which is used during coal exploration or surface mining and reclamation operations and not approved by the office to remain after reclamation as part of the approved post-mining land use.

Temporary Impoundment—an impoundment used during surface coal mining and reclamation operations, but not approved by the office to remain as part of the approved post-mining land use.

Ton—2,000 pounds avoirdupois (0.90718 metric ton).

Topsoil—the A soil horizon layer of the three major horizons.

Toxic-Forming Materials—earth minerals or wastes which, if acted upon by air, water, weathering or micro-biological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

Toxic Mine Drainage—water that is discharged from active or abandoned mines or other areas affected by coal exploration or development operations 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.

Transfer, Assignment or Sale of Rights—a change of a permittee.

Unwarranted Failure to Comply—the failure of a permittee to prevent or abate the occurrence of any violation of his permit or any requirement of these regulations due to indifference, lack of diligence or lack of reasonable care.

Valid Existing Rights—a set of circumstances under which a person may, subject to office approval, conduct surface coal mining operations on lands where §922.D of the Act and §1105 of these regulations would otherwise prohibit such operations. Possession of *valid existing rights* only confers an exception from the prohibitions of §1105 of these regulations or §922.D of the Act. A person seeking to exercise *valid existing rights* must comply with all other pertinent requirements of the Act and the regulatory program.

a. **Property Rights Demonstration.** Except as provided in §105.*Valid Existing Rights.c*, 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 §922.D of the Act or §1105 of these regulations. Applicable state 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 §105.*Valid Existing Rights.c*, a person claiming *valid existing rights* also must demonstrate compliance with one of the following standards.

i. **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 §922.D of the Act or §1105 of these regulations. At a minimum, an application must have been submitted for any permit required under Subpart 3 of these regulations.

ii. **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 §922.D of the Act or §1105 of these regulations. 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 §922.D of the Act or §1105 of these regulations. 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 §922.D of the Act or §1105 of these regulations when the office 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 office may consider factors such as:

(a). 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 §922.D of the Act or §1105 of these regulations depend upon use of that land for surface coal mining operations;

(b). the extent to which plans used to obtain financing for the operation before the land came under the protection of §922.D of the Act or §1105 of these regulations rely upon use of that land for surface coal mining operations;

(c). the extent to which investments in the operation before the land came under the protection of §922.D of the Act or §1105 of these regulations rely upon use of that land for surface coal mining operations; and

(d). whether the land lies within the area identified on the life-of-mine map submitted under §2535.A.3 before the land came under the protection of §1105.

c. **Roads.** A person who claims *valid existing rights* to use or construct a road across the surface of lands protected by §1105 of these regulations or §922.D of the Act 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 §105:

i. the road existed when the land upon which it is located came under the protection of §1105 of these regulations or §922.D of the Act, and the person has a legal right to use the road for surface coal mining operations;

ii. a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act, 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;

iii. 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 §1105 of these regulations or §922.D of the Act; or

iv. valid existing rights exist under §105.*Valid Existing Rights.a* and b.

Valley Fill—a fill structure consisting of any material other than coal waste and organic material that is placed in a

valley where side slopes of the existing valley measured at the steepest point are greater than 20 degrees 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 degrees.

Violation (when used in the context of the permit application information or permit eligibility requirements of §§907 and 910.C of the Act and related regulations)—

a. a failure to comply with an applicable provision of a federal or state law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

b. a noncompliance for which the Office of Surface Mining has provided one or more of the following types of notice or the office has provided equivalent notice under corresponding provisions of these regulations:

i. a notice of violation under §6503;

ii. a cessation order under §6501;

iii. a final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under Chapters 69 or 71;

iv. a bill or demand letter pertaining to delinquent reclamation fees owed under §906 of the Act; or

v. a notice of bond forfeiture under Chapter 47 when:

(a). one or more violations upon which the forfeiture was based have not been abated or corrected; or

(b). the amount forfeited and collected is insufficient for full reclamation under §4703.D.1, the office orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order.

Violation Notice—any written notification from a governmental entity of a violation of the law, whether by letter, memorandum, legal or administrative pleading or other written communication.

Water Table—the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

Willful or Willfully—a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

a. intentionally, voluntarily, or consciously; and

b. with intentional disregard or plain indifference to legal requirements.

Working Capital—the excess of the operator's current assets over its current liabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441, (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998), LR 29:1492 (August 2003), LR 37:2729 (September 2011).

§107. Applicability

A. This order applies to all coal exploration, development operations and surface coal mining and reclamation operations, except:

1. the extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by the landowner. 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;

2. the extraction of coal as an incidental part of federal, state or local government-financed highway or other construction in accordance with Chapter 7;

3. 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 Chapter 4;

4. the extraction of coal on Indian lands in accordance with 25 CFR 177, Subpart B;

5. coal exploration on federal lands outside a permit area;

6. the office 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 office shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the office 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 or 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;

7.a. the office 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 it determines in writing that under the permanent program all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the office has made a final decision in accordance with Subpart 4 to release the performance bond fully;

b. following a termination under §107.A.7.a. the office shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to in §107.A.7.a was based upon fraud, collusion or misrepresentation of a material fact.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§109. Petitions to Initiate Rulemaking

A. Any person may petition the commissioner to initiate a proceeding for the issuance, amendment or repeal of any regulation under the Act. The petition shall be submitted to the central office of the Office of Conservation in Baton Rouge.

B. The petition shall be a concise statement of facts, technical justification and the law which require issuance, amendment or repeal of a regulation under the Act and shall indicate whether the petitioner desires a public hearing.

C. Upon receipt of the petition, the commissioner shall determine if the petition sets forth facts, technical justification or 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 commissioner determines that he has a reasonable basis, a notice shall be published seeking comments from the public on the proposed change. The commissioner may hold a public hearing, may conduct an investigation or take other action to determine whether the petition should be granted.

D. Within 90 days from receipt of the petition, the commissioner shall issue a written decision either granting or denying the petition. The decision shall constitute the final decision for the office.

1. If the petition is granted, the commissioner shall initiate a rulemaking proceeding in accordance with Louisiana law.

2. If the petition is denied, the commissioner shall notify the petitioner in writing, setting forth the reasons for denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§111. Notice of Citizen Suits

A. A person who intends to initiate a civil action on his or her own behalf under §920 of the Act shall give notice of intent to do so, in accordance with this Section.

B. Notice shall be given by certified mail to the secretary, the director, and the commissioner in all cases. A copy of the notice shall be sent by first class mail to the regional director if the complaint involves or relates to surface coal mining and reclamation operations in a specific region of the federal office.

C. 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.

D. Service of notice under this Section is complete upon mailing to the last known address of the person being notified.

E. A person giving notice regarding an alleged violation shall state, to the extent known:

1. sufficient information to identify the provision of the Act, regulation, order or permit allegedly violated;
2. the act or omission alleged to constitute a violation;
3. the name, address and telephone numbers of the person or persons responsible for the alleged violation;
4. the date, time and location of the alleged violation;
5. the name, address and telephone number of the person giving notice; and
6. the name, address and telephone number of legal counsel, if any, of the person giving notice.

F. A person giving notice of an alleged failure by the commissioner to perform a mandatory act or duty under the Act shall state, to the extent known:

1. the provision of the Act containing the mandatory act or duty allegedly not performed;
2. sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;
3. the name, address and telephone number of the person giving notice; and
4. the name, address and telephone number of legal counsel, if any, of the person giving notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§113. Availability of Records

A. Records required by the Act to be made available to the public shall be retained at the Office of Conservation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§115. Computation of Time

A. Except as otherwise provided, computation of time under these regulations is based on calendar days.

B. 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 office 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.

C. Intermediate Saturdays, Sundays and legal holidays are excluded from the computation when the period of prescribed time is seven days or less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 3. Permanent Regulatory Program

§301. Authority

A. The commissioner is authorized to administer the requirements of the permanent regulatory program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§303. Applicability

A. Any person who conducts surface coal mining and reclamation operations on non-Indian or nonfederal lands shall have a permit issued pursuant to these regulations.

B. The requirements of these regulations shall be effective and shall apply to each surface coal mining and reclamation operation which is required to obtain a permit under the Act, on the earliest date upon which these regulations require a permit to be obtained, except as is provided in §303.C.

C.1. Each structure used in connection with or to facilitate a coal exploration, development or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of these regulations.

a. An existing structure which meets the performance standards of these regulations but does not meet the design requirements of these regulations may be exempted from meeting those design requirements by the office. The office may grant this exemption on non-Indian and nonfederal lands only as part of the permit application process after obtaining the information required by §2705 and after making the findings required in §3117.

b. An existing structure which meets the performance standards of Subchapter B of 30 CFR Chapter VII, which are at least as stringent as the comparable standard of Subpart 5 of these regulations, may be exempted by the office from meeting the design requirements of these regulations. The office may grant this exemption on non-Indian and nonfederal lands only as part of the permit application process after obtaining the information required by §2705 and after making the findings required in §3117.

c. An existing structure which meets a performance standard of Subchapter B of 30 CFR Chapter VII which is less stringent than the comparable performance standards of Subpart 5 of these regulations, or which does not meet a

performance standard of Subpart 5 for which there was no equivalent performance standard in Subchapter B of 30 CFR Chapter VII shall be modified or reconstructed to meet the design standard of these regulations pursuant to a compliance plan approved by the office on non-Indian and nonfederal lands only as part of the permit application as required in §2705 and according to the findings required by §3117.

d. An existing structure which does not meet the performance standards of Subchapter B of 30 CFR Chapter VII and which the applicant proposes to use in connection with or to facilitate exploration, development or surface coal mining and reclamation operations shall be modified or reconstructed to meet the design standards of these regulations prior to issuance of the permit.

2. The exemptions provided in §303.C.1.a and b shall not apply to:

a. the requirements for existing and new waste piles used either temporarily or permanently as dams or embankments;

b. the requirements to restore the approximate original contour of the land.

D.1. Any person conducting coal exploration or development operations on nonfederal and non-Indian lands on or after the date on which the Louisiana state program is approved shall file a notice of intention to explore or develop and obtain approval of the office as required by Chapter 21.

2. Coal exploration and development performance standards in these regulations shall apply to coal exploration or development operations on nonfederal and non-Indian lands which substantially disturb the natural land surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), amended LR 20:447 (April 1994).

Chapter 4. Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

§401. Scope

A. This Chapter implements the exemption contained in §904.V(A) of the Act concerning 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

§403. Definitions

A. As used in this Chapter, the following terms have the meaning specified, except where otherwise indicated.

Cumulative Measurement Period—the period of time over which both cumulative production and cumulative revenue are measured.

a. For purposes of determining the beginning of the cumulative measurement period, subject to approval by the office, the operator must select and consistently use one of the following:

i. for mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977; or

ii. for mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

b. For annual reporting purposes pursuant to §419, the end of the period for which cumulative production and revenue is calculated is either:

i. for mining areas where coal or other minerals were extracted prior to April 1, 1990, March 31, 1990, and every March 31 thereafter; or

ii. for mining areas where extraction of coal or other minerals commenced on or after April 1, 1990, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

Cumulative Production—the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by §415.

Cumulative Revenue—the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

Mining Area—an individual excavation site or pit from which coal, other minerals and overburden are removed.

Other Minerals—is any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

§405. Application Requirements and Procedures

A.1. Any person who plans to commence or continue coal extraction after April 1, 1990, the effective date of the proposed rules, in reliance on the incidental mining exemption shall file a complete application for exemption with the office for each mining area.

2. Following incorporation of an exemption application approval process into the regulatory program, a person may not commence coal extraction based upon the exemption until the office approves such application except as provided in §405.E.3.

B. Existing Operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to April 1, 1990, the effective date of the proposed rules, may continue mining operations for 60 days after such effective date. Coal extraction may not continue after such 60-day period unless that person files an administratively complete application for exemption with the office. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the office makes an administrative decision on such application.

C. Additional Information. The office shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

D. Public Comment Period. Following publication of the newspaper notice required by §407.A.9, the office shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

E. Exemption Determination

1. No later than 90 days after filing of an administratively complete application, the office shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this Chapter, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

2. The determination of exemption shall be based upon information contained in the application and any other information available to the office at that time.

3. If the office fails to provide an applicant with the determination as specified in §405.E.1, an applicant who has not begun may commence coal extraction pending a determination on the application unless the office issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

F. Administrative Review

1. Any adversely affected person may request administrative review of a determination under §405.E within 30 days of the notification of such determination in accordance with procedures established under §3301.

2. A petition for administrative review filed under §3301 shall not suspend the effect of a determination under §405.E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

§407. Contents of Application for Exemption

A. An application for exemption shall include at a minimum:

1. the name and address of the applicant;
2. a list of the minerals sought to be extracted;
3. estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;
4. estimated annual revenues to be derived from bonafide sales of coal and other minerals to be extracted within the mining area;
5. where coal or other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;
6. the basis for all annual production, revenue, and fair market value estimates;
7. a description, including parish, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;
8. an estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;
9. evidence of publication, in a newspaper of general circulation in the parish of the mining area, of a public notice that an application for exemption has been filed with the office (The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation);
10. representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;
11. a map of appropriate scale which clearly identifies the mining area;
12. a general description of mining and mineral processing activities for the mining area;
13. a summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;
14. if the other minerals are to be commercially used by the applicant, a description specifying the use;

15. for operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

- a. any relevant documents the operator has received from the office documenting its exemption from the requirements of the Act;
- b. the cumulative production of the coal and other minerals from the mining area; and
- c. estimated tonnages of stockpiled coal and other minerals; and

16. any other information pertinent to the qualification of the operation as exempt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

§409. Public Availability of Information

A. Except as provided in §409.B, all information submitted to the office under this Chapter shall be made immediately available for public inspection and copying at the local office of the regulatory authority having jurisdiction over the mining operations claiming exemption until at least three years after expiration of the period during which the subject mining area is active.

B. Information submitted to the office under this Chapter may be kept confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this Chapter.

C. Information requested to be held as confidential under §409.B shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

§411. Requirements for Exemption

A. Activities are exempt from the requirements of the Act if all of the following are satisfied.

1. The cumulative production of coal extracted from the mining area determined annually as described in this Section does not exceed 16 2/3 percent of the total cumulative production of coal and other minerals removed during such period for purposes of bone fide sale or reasonable commercial use.

2. Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

3. The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50 percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

B. Persons seeking or that have obtained an exemption from the requirements of the Act shall comply with the following.

1. Each other mineral upon which an exemption under this Chapter is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonable foreseeable future, not to exceed 12 months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

2. If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

§413. Conditions of Exemption and Right of Inspection and Entry

A. A person conducting activities covered by this Chapter shall:

1. maintain on-site or at other locations available to authorized representatives of the office and the Secretary of Interior information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the office;

2. notify the office upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

3. conduct operations in accordance with the approved application or when authorized to extract coal under §405.B or E.3 prior to submittal or approval of an exemption application, in accordance with the standards of this Chapter;

4. authorized representatives of the office and the secretary of interior shall have the right to conduct inspections of operations claiming exemption under this Chapter;

5. each authorized representative of the office and the secretary of interior conducting an inspection under this Chapter:

a. shall have a right of entry to, upon, and through any mining and reclamation operations without advance motive or a search warrant, upon presentation of appropriate credentials;

b. may, at reasonable times and without delay have access to and copy any records relevant to the exemptions; and

c. shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site;

6. no search warrant shall be required with respect to any activity under §413.A.4-5 except that a search warrant may be required for entry into a building.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

§415. Stockpiling of Minerals

A. Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use:

1. up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

2. for a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

B. Other Minerals

1. The office shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this Chapter if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

2. The office may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this Chapter if:

a. the stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

b. except as provided in §415.B.3, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the office on the basis of the exemption application.

3. The office may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in §415.B.2 if the operator can demonstrate to the office's satisfaction that the additional tonnage is

required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

4. The office may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by §415.B.2-3 based on additional information available to the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

§417. Revocation and Enforcement

A. Regulatory Authority Responsibility. The office shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to §419, an on-site inspection and any other information available to the office.

B. If the office has reason to believe that a specific mining area was not exempt under the provisions of this Chapter at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the office shall notify the operator that the exemption may be revoked and the reason(s) therefor. The exemption will be revoked unless the operator demonstrates to the office within 30 days that the mining area in question should continue to be exempt.

C.1. If the office finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the office shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the office shall immediately notify the operator and intervenors.

2. Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under §3301.

3. A petition for administrative review shall not suspend the effect of a decision whether to revoke an exemption.

D. Direct Enforcement

1. An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the regulatory program which occurred prior to the revocation of the exemption.

2. An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of the regulatory program which occur during the period of such activities.

3. Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of the applicable regulatory program with regard to conditions, areas and activities existing at the time of revocation or denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

§419. Reporting Requirements

A.1. Following approval by the office of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the office containing the information specified in §419.B.

2. The report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the definition of *cumulative measurement period* in §403.

3. The information in the report shall cover:

a. annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period; and

b. the cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

B. For each period and mining area covered by the report, the report shall specify:

1. the number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

2. the number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;

3. the number of tons of coal stockpiled;

4. the number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

5. the number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and

6. the number of tons of other commercially valuable minerals removed and stockpiled by the operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

Chapter 5. Restriction of Financial Interests of Employees

§501. Authority

A. The commissioner is authorized to establish, monitor, and enforce the regulations contained in this Chapter. The governor or the commissioner is authorized to expand the provisions in this Chapter in order to meet the particular needs within the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§503. Responsibility

A. The commissioner shall:

1. provide advice, assistance and guidance to all state employees required to file statements pursuant to §507;

2. promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in any surface coal mining operation or underground mining operation;

3. resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violations to the director who is responsible for initiating action to impose the penalties of the Federal Act;

4. certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved and that no other prohibited interests have been identified from the statement;

5. submit to the director such statistics and information as he or she may request to enable preparation of the required annual report to Congress;

6. submit to the director the initial listing and the subsequent annual listings of positions as required by 30 CFR 705.11(b), (c) and (d);

7. furnish a blank statement 45 days in advance of the filing date established by §509.A to each state employee required to file a statement; and

8. inform annually each state employee required to file a statement with the commissioner of the name, address and telephone number of the person whom they may contact for advice and counseling.

B. Office employees performing any duties or functions under the Act shall:

1. have no direct or indirect financial interest in coal mining operations;

2. file a fully completed statement of employment and financial interest 120 days after these regulations become

effective or upon entrance to duty and annually thereafter on the specified filing date; and

3. comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§505. Penalties

A. Criminal penalties are imposed by §917.F of the Act. §917.F prohibits each employee of the office who performs any function or duty under the Act from having a direct or indirect financial interest in any surface coal mining operation. The Act provides that whoever knowingly violates the provisions of §917.F shall, upon conviction, be punished by a fine of not more than \$2,500 or by imprisonment of not more than one year or both.

B. Regulatory penalties are imposed by this Chapter. The provisions in §917.F of the Act make compliance with the financial interest requirements a condition of employment for employees of the office who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required statement will be considered in violation of the intended employment provisions of §917.F and will be subject to removal from his or her position.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§507. Who Shall File

A. Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. An employee who occupies a position which has been determined by the commissioner not to involve performance of any function or duty under the Act or who is no longer employed by the office at the time a filing is due is not required to file a statement.

B. The commissioner shall prepare a list of those positions within the office that do not involve performance of any functions or duties under the Act. Only those employees who are employed in a listed organizational unit or who occupy a listed position will be exempted from the filing requirements of §917.F of the Act.

C. The commissioner shall prepare and submit to the director an initial listing of positions that do not involve performance of any functions or duties under the Act within 60 days of the effective date of these regulations.

D. The commissioner shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the director and must contain a written justification for inclusion of the provisions listed. Proposed

revisions or a certification that revision is not required shall be submitted to the director by no later than September 30 of each year. The commissioner may revise the listing by the addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of the law or the regulations of this Chapter. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§509. When to File

A. Employees performing functions or duties under the Act shall file within 120 days of the effective date of these regulations; and annually on February 1 of each year, or at such other date as may be agreed to by the director, provided that such alternative date will allow sufficient time to obtain information needed by the director for his or her annual report to Congress.

B. New employees hired, appointed or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

C. New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee entering duty on December 1, 1988 would file a statement on that date. Because December 1 is within two months of February 1, the employee would not be required to file his or her next statement until February 1, 1990.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§511. Where to File

A. The commissioner shall file his or her statement with the director. All other employees, as provided in §507, shall file their statement with the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§513. What to Report

A. Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are fulltime residents of the employee's home. The report shall be on forms as provided by the office. The statement consists of three major parts:

1. a listing of all financial interests, including employment, security, real property, creditor and other

financial interests held during the course of the preceding year;

2. a certification that none of the listed financial interests represent a direct or indirect financial interest in any surface coal mining operation or underground mining operation except as specifically identified and described by the employee as part of the certificate; and

3. a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

B. Listing of All Financial Interests. The statement will set forth the following information regarding any financial interest.

1. Employment. Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the office.

2. Securities. Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investments clubs or regulated investment companies not specializing in surface coal mining operations.

3. Real Property. Ownership, lease, royalty or other interests or rights in land or minerals. Employees are not required to report lands developed and occupied for a personal residence.

4. Creditors. Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short-term debts for current and ordinary household and living expenses.

C. Employee Certification and, if Applicable, a Listing of Exceptions

1. The statement will provide for a signed certification by the employee that, to the best of his or her knowledge: none of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions by the employee as part of the certificate; and the information shown on the statement is true, correct and complete.

2. An employee is expected to: have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship or partnership, his or her outside employment and the outside employment of the spouse and other covered relatives; and be aware of the

information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

3. The exceptions shown in the employee certification of the form must provide enough information for the commissioner to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should: list the financial interests; show the number of shares, estimated value or annual income of the financial interests; and include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

4. Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in §505.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§515. Gifts and Gratuities

A. Except as provided in §515.B, employees shall not solicit nor accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value from a coal company which:

1. conducts or is seeking to conduct operations or activities that are regulated by the office; or

2. has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

B. The prohibitions in §515.A do not apply in the context of obvious family or personal relationships, such as those between the parents, children or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the person concerned which are the motivating factors. An employee may accept:

1. food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner or other meeting where an employee may properly be in attendance; and

2. unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

C. Employees found guilty of violating the provisions of this Section will be subject to administrative remedies in accordance with existing or adopted state regulations or policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§517. Resolving Prohibited Interests

A. Actions to be Taken by the Commissioner

1. Remedial Action to Effect Resolution. If an employee has a prohibited financial interest, the commissioner shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days.

2. Remedial action may include: reassignment of the employee to a position which performs no function or duty under the Act; divestiture of the prohibited financial interest; other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

3. Reports of Noncompliance. If, 90 days after an employee is notified to take remedial action, that employee is not in compliance with the requirements of the Act and these regulations, the commissioner shall notify the director of his determination and shall provide a report to the director, including the original or a certified true copy of the employee's statement and any other pertinent information.

B. Actions to be Taken by the Governor

1. Remedial Action to Effect Resolution. Violations of the regulations in this Chapter by the commissioner will be cause for remedial action by the governor or other appropriate state official based on recommendations from the director on behalf of the secretary. The governor or other appropriate state official shall promptly advise the commissioner that remedial action which will resolve the prohibited interest is required within 90 days.

2. Remedial action should be consistent with the procedures prescribed for other state employees by §517.A.2.

3. Reports of Noncompliance. If, 90 days after the commissioner is notified to take remedial action, the governor or other appropriate state official notifies the director that the commissioner is not in compliance with the Act and these regulations, the director shall take such action as may be appropriate under federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§519. Appeals Procedure

A. Employees have the right to appeal an order for remedial action under §517 and shall have 30 days to exercise this right before disciplinary action is initiated.

1. Employees other than the commissioner may file their appeal, in writing, through procedures established by the Department of Natural Resources.

2. The commissioner may file his or her appeal, in writing, with the director who will refer it to the Conflict of Interest Appeals Board within the United States Department of the Interior.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 7. Exemption for Coal Extraction Incident to Government- Financed Highway or Other Construction

§701. Responsibility

A. The office is responsible for enforcing the requirements of this Chapter.

B. Any person conducting coal extraction as an incidental part of government-financed construction is responsible for possessing, on the site of the extraction operation, the documentation required by §705.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§703. Applicability

A. Coal extraction which is an incidental part of government-financed construction is exempt from the Act and these regulations.

B. Any person who conducts or intends to conduct coal extraction which does not satisfy §703.A shall not proceed until a permit has been obtained from the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§705. Information to be Maintained on Site

A. Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than 2 acres shall maintain, on the site of the extraction operation and available for inspection, documents which show:

1. a description of the construction project;
2. the exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and
3. the government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Title 43
NATURAL RESOURCES
Part XV. Office of Conservation—Surface Mining
Subpart 2. Areas Unsuitable for Mining

Chapter 9. General

§901. Authority

A. The office is authorized, under §922 of the Act, to establish a database and inventory system and a petition process to designate any nonfederal and non-Indian land areas of the state as unsuitable for all or certain types of surface coal mining operations.

B. The commissioner is authorized to:

1. conduct a review of public lands to determine whether any area on these lands is unsuitable for all or certain types of surface coal mining operations;

2. establish a process for the public to petition to have an area of public lands designated as unsuitable for all or certain types of surface coal mining operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§903. Responsibility

A. The commissioner shall establish a process that includes a database and inventory system for designating lands unsuitable for surface coal mining operations which shall be available to the public.

B. The office shall integrate as closely as possible decisions to designate lands as unsuitable for surface coal mining operations with present and future land-use planning and regulatory processes at the federal, state and local levels.

C. The office shall establish a process that allows any person, having an interest which is or may be adversely affected, to petition to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have a designation terminated.

D. The office shall prohibit or limit surface coal mining operations on certain lands and in certain locations designated by Congress in §522(e) of the Federal Act, 30 U.S.C. 1272(e).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 11. Areas Designated by Act of Congress

§1101. Authority

A. The office is authorized by §922 of the Act to prohibit or limit surface coal mining operations on or near certain private, federal and other public lands.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1103. Responsibility

A. The office shall comply with Chapters 17 to 37 and determine whether an application for a permit must be denied because surface coal mining operations on those lands are prohibited or limited by §522(e) of the Federal Act, 30 U.S.C. 1272(e), §922 of the Act, and this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§1105. Areas Where Mining Is Prohibited or Limited

A. No surface coal mining operation shall be conducted on the following lands unless the applicant has either valid existing rights, as determined under §2323, or qualifies for the exception for existing operations under §1109:

1. on any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under §5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1276(a), or study rivers or study river corridors as established in any guidelines pursuant to that Act, and National Recreation Areas designated by Act of Congress;

2. on any state or federal lands within the boundaries of any state or national forest; provided, however, that surface coal mining operations may be permitted on state lands if the commissioner finds that there are no significant recreational, timber, economic or other values which may be incompatible with surface coal mining operations;

3. on any lands which will adversely affect any publicly owned park or any place included on the National Register of Historic Places, unless approved jointly by the

office and the federal, state or local agency with jurisdiction over the park or place;

4. within 100 feet measured horizontally of the outside right-of-way line of any public road, except:

a. where mine access roads or haulage roads join such right-of-way line;

b. where the office allows the public road to be relocated or the area affected to be within 100 feet of such road, after public notice and opportunity for a public hearing in accordance with §1107.D, and after making a written finding that the interests of the affected public and landowners will be protected;

5. within 300 feet measured horizontally from any occupied dwelling, unless the owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet;

6. within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park;

7. within 100 feet measured horizontally of a cemetery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:1493 (August 2003).

§1107. Procedures

A. Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the office shall review the application to determine whether surface coal mining operations are limited or prohibited under § 1105 on the lands which would be disturbed by the proposed operation.

B. The office shall reject any portion of the application that would locate surface coal mining operations on land protected under §1105 unless:

1. the site qualifies for the exception for existing operations under §1109;

2. a person has valid existing rights for the land, as determined under §2323;

3. the applicant obtains a waiver or exception from the prohibitions of §1105 in accordance with §1107.D or E; or

4. for lands protected by §1105.A.3, both the office and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with §1107.F.

C. If the office is unable to determine whether the proposed operation includes land within an area specified in §1105.A.1 or is located closer than the limits provided in §1105.A.6 or 7, the office shall transmit a copy of the relevant portions of the permit application to the federal, state or local government agency with jurisdiction over the

protected land, structure or feature for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within 30 days of receipt of the request. The notice must specify that another 30 days is available upon request, and that the office will not necessarily consider a response received after the comment period provided. If no response is received within the 30-day period or within the extended period granted, the office may make the necessary determination based on the information it has available.

D. Section 1107.D does not apply to lands for which a person has valid existing rights, as determined under §2323; lands within the scope of the exception for existing operations in §1109; or access or haul roads that join a public road, as described in §1105.A.4.b. Where the mining operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in §1105.A.4.b) or where the applicant proposes to relocate or close any public road, the office or public road authority designated by the office shall:

1. require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

2. provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected;

3. if a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least two weeks prior to the hearing; and

4. make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operation. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the office or public road authority determines that the interests of the public and affected landowners will be protected.

E.1. Subsection 1107.E does not apply to lands for which a person has valid existing rights, as determined under §2323; lands within the scope of the exception for existing operations in §1109; or access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in §1105.A.5. Where the proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the applicant shall submit with the application a written waiver by lease, deed or other conveyance from the owner of the dwelling clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

2. Where the applicant for a permit after August 3, 1977 had obtained a valid waiver prior to August 3, 1977 from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required.

3.a. Where the applicant for a permit after August 3, 1977 had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

b. A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public-property records pursuant to state laws or if the mining has proceeded to within the 300-foot limit prior to the date of purchase.

F.1. Where the office determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the office shall transmit to the federal, state or local agency with jurisdiction over the park or place a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond. The notice must specify that another 30 days is available upon request, and that failure to interpose a timely objection will constitute approval. The office may not issue a permit for a proposed operation subject to the provisions of this Paragraph unless all affected agencies jointly approve.

2. Subsection 1107.F does not apply to lands for which a person has valid existing rights, as determined under §2323 or lands within the scope of the exception for existing operations in §1109.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:1493 (August 2003).

§1109. Exception for Existing Operations

A. The prohibitions and limitations of §1105 do not apply to surface coal mining operations for which a valid permit, issued under Subpart 3 of these regulations, exists when the land comes under the protection of §1105. This exception applies only to lands within the permit area as it exists when the land comes under the protection of §1105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:1494 (August 2003).

Chapter 13. Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations

§1301. Responsibility

A. The office shall use the criteria in this Chapter for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1303. Criteria for Designating Lands as Unsuitable

A. Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the office determines that reclamation is not technologically and economically feasible under the Act or these regulations.

B. Upon petition an area may be, but is not required to be, designated as unsuitable for certain types of surface coal mining operations, if the operations will:

1. be incompatible with existing state or local land use plans or programs;

2. affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific or aesthetic values or natural systems;

3. affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products;

4. affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1305. Additional Criteria

A. The office may establish additional or more stringent criteria for determining whether lands within the state should be designated as unsuitable for surface coal mining operations.

B. Additional criteria will be determined to be more stringent on the basis of whether they provide for greater protection of the public health, safety and welfare or the environment, such that areas beyond those specified in the criteria of this Chapter would be designated as unsuitable for surface coal mining operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1307. Land Exempt from Designation as Unsuitable for Surface Coal Mining Operations

A. The requirements of this Chapter do not apply to lands covered by a permit issued under the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1309. Exploration or Development on Land Designated as Unsuitable for Surface Coal Mining Operations

A. Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to §922 of the Act and regulations of this Subpart does not prohibit coal exploration or development operations in the area, if conducted in accordance with the Act, these regulations or a federal program and other applicable requirements. Exploration or development operations on any lands designated unsuitable for surface coal mining operations must be approved by the office under Chapter 21, to insure that exploration or development does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 15. State Process for Designating Areas Unsuitable for Surface Coal Mining Operations

§1501. Authority

A. The commissioner has authority to develop procedures and standards, consistent with this Chapter, to designate lands unsuitable for all or certain types of surface coal mining operations and to terminate such designations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1503. Procedures: General Process Requirements

A. The office shall establish a process enabling objective decisions to be made on which, if any, land areas of the state are unsuitable for all or certain types of surface coal mining operations. These decisions shall be based on competent, scientifically sound data and requirements listed in §§1505-1517.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§1505. Procedures: Petitions

A. Right to Petition. Any person having an interest which is or may be adversely affected has the right to petition the office to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated.

B. Designation. The only information that a petitioner need provide is: identification of the petitioned area, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area; allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of surface coal mining operations; a description of how mining of the area has affected or may adversely affect people, land, air, water or other resources; the petitioner's name, address, telephone number and notarized signature; and identification of the petitioner's interest which is or may be adversely affected.

C. Termination. The only information that a petitioner need provide to terminate a designation is:

1. identification of the petitioned area, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area to which the termination petition applies;

2. allegations of facts, with supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, which would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on:

a. the nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in §1303.B;

b. reclamation now being technologically and economically feasible, if the designation was based on the criteria found in §1303.A; or

c. the resources or condition not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in §1303.B;

3. the petitioner's name, address, telephone number and notarized signature;

4. identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§1507. Procedures: Initial Processing, Recordkeeping, and Notification Requirements

A.1. Within 30 days of receipt of a petition, the office shall notify the petitioner by certified mail whether or not the petition is complete under §1505.B or C.

2. The office shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the office finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

3. The office may reject petitions for designations or terminations of designations which are frivolous. Once the requirements of §1505 are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the office pursuant to the procedures of this Chapter.

4. When considering a petition for an area which was previously and unsuccessfully proposed for designation, the office shall determine if the new petition presents new allegations of fact. If the petition does not contain new allegations of fact, the office shall not consider the petition and shall return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

5. If the office determines that the petition is incomplete or frivolous, it shall return the petition to the petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

6. The office shall notify the person who submits a petition of any application for a permit received which proposed to include any area covered by the petition.

7. Any petitions received after the close of the public comment period on a permit application relating to the same mine plan area shall not prevent the office from issuing a decision on that permit application. The office may return any petition received thereafter to the petitioner with a statement why the office cannot consider the petition. For the purposes of this Section, close of the public comment period shall mean the close of any informal conference held under §3109, or, if no conference is requested, at the close of the period for filing written comments and objections under §§3105-3107.

B.1. Within three weeks after the determination that a petition is complete, the office shall circulate copies of the petition to, and request submissions of relevant information from, other interested government agencies, the petitioner, intervenors, persons with an ownership interest of record in the property and other persons known to the office to have an interest in the property.

2. Within three weeks after the determination that a petition is complete, the office shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper of largest circulation in the state and in any official state register of public notices.

C. Until three days before the office holds a hearing under §1509, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain and the intervenor's name, address and telephone number.

D. Beginning immediately after a complete petition is filed, the office shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the office. The office shall make the record available for public inspection free of charge and copying at reasonable cost during all normal business hours at a central location of the parish or multiparish area in which the land petition is located and at the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1509. Procedures: Hearing Requirements

A. Within 10 months after receipt of a complete petition, the office shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be legislative and fact-finding in nature, without cross-examination of witnesses. The office shall make a transcript of the hearing.

B.1. The office shall give notice of the date, time and location of the hearing to:

- a. local, state and federal agencies which may have an interest in the decision on the petition;
- b. the petitioner and the intervenors; and
- c. any person with an ownership or other interest known to the office in the area covered by the petition.

2. Notice of the hearing shall be sent by certified mail and postmarked not less than 30 days before the scheduled date of the hearing.

C. The office shall notify the general public of the date, time and location of the hearing by placing a newspaper advertisement once a week for two consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must begin between four and five weeks before the scheduled date of the public hearing.

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D. The office may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

E. Prior to designating any land areas as unsuitable for surface coal mining operations, the office shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources and the impact of such designation on the environment, the economy and the supply of coal.

F. In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1511. Procedures: Decision

A. In reaching its decision, the office shall use:

1. the information contained in the database and inventory system;
2. information provided by other governmental agencies;
3. the detailed statement prepared under §1509.E; and
4. any other relevant information submitted during the comment period.

B. A final written decision shall be issued by the office, including a statement of reasons, within 60 days of completion of the public hearing or, if no public hearing is held, then within 12 months after receipt of the complete petition. The office shall simultaneously send the decision by certified mail to the petitioner, every other party to the proceeding and to the regional director.

C. The decision of the office with respect to a petition, or the failure of the office to act within the time limits set forth in this Section, shall be subject to judicial review by a court of competent jurisdiction in accordance with state law under §926.E of the Act and §3303 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1513. Data Base and Inventory System Requirements

A. The office shall develop a database and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

B. The office shall include in the system information relevant to the criteria in §1303 including, but not limited to, information received from the U.S. Fish and Wildlife Service, the state historic preservation officer and the agency administering §127 of the Clean Air Act, as amended (42 U.S.C. 7470 et seq.).

C. The office shall add to the database and inventory system information:

1. on potential coal resources of the state, demand for those resources, the environment, the economy and the supply of coal sufficient to enable the office to prepare the statements required by §1509.E; and

2. that becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations and other sources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1515. Public Information

A. The office shall:

1. make the information in the data base and inventory system developed under §1513 available to the public for inspection free of charge and for copying at reasonable cost, except that specific information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the office determines that the disclosure of such information would create a risk of destruction or harm to such properties;

2. provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§1517. Office of Conservation Responsibility for Implementation

A. The office shall not issue permits which are inconsistent with designations made pursuant to Chapters 9, 11, 13 or 15.

B. The office shall maintain a map of areas designated as unsuitable for all or certain types of surface coal mining operations.

C. The office shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment except for proprietary information on the chemical and physical properties of the coal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

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Part XV. Office of Conservation—Surface Mining

**Subpart 3. Surface Coal Mining and Reclamation Operations Permits and Coal
Exploration and Development Procedures Systems**

**Chapter 17. General Requirements
for Permit, Exploration and
Development Procedure Systems**

§1701. Responsibilities

A. Persons seeking to engage in surface coal mining and reclamation operations must submit an application for and obtain a permit for those operations in accordance with this Subpart. Persons seeking to conduct coal exploration or development operations must first file the notice of intention or obtain approval of the office as required under Chapter 21.

B. The office shall review each application for exploration approval and for a permit, approve or disapprove each permit application or exploration application, and issue, condition, suspend or revoke exploration approval, permits, renewals or revised permits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1703. Applicability

A. This Subpart applies to each person who applies for a permit for surface coal mining and reclamation operations or conducts surface coal mining and reclamation operations pursuant to a permit under these regulations and to persons who seek to conduct coal exploration or development operations under these regulations.

B. This Subpart applies to the office and, where specifically provided, to the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

**§1705. Coordination with Requirements under Other
Laws**

A. The office shall provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations. These shall include but not be limited to applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 et seq.); the Migratory Bird Treaty Act of 1918,

as amended (16 U.S.C. 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); and Executive Order 11593.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

**Chapter 19. General Requirements
for Permits and Permit Applications**

§1901. General Requirements for Permits: Operators

A. No person shall engage in or carry out surface coal mining and reclamation operations on nonfederal or non-Indian lands within the state, unless that person has first obtained a valid permit issued by the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1903. Compliance with Permits

A. All persons shall conduct surface coal mining and reclamation operations under permits issued pursuant to the Act and these regulations and shall comply with the terms and conditions of the permit and the requirements of the Act and these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1905. Permit Application Filing Deadlines

A. General. Each person who conducts or expects to conduct new surface coal mining and reclamation operations shall file a complete application for a permit for those operations not less than 120 days prior to the anticipated commencement of operations.

B. Renewal of Valid Permits. An application for renewal of a permit shall be filed with the office at least 180 days before the expiration of the permit involved.

C. Revisions of Permits. Any application for revision of a permit shall be filed with the office before the date on which the permittee expects to revise surface coal mining or

reclamation operations. The office shall determine the time by which that application shall be filed, based on the time required for review of the application and public participation in the process of review, but in no case shall the application be filed later than 60 days prior to the date of expected revision of operations.

D. Succession to Rights Granted under Prior Permits. Any application for a new permit required for a person succeeding by transfer, sale or assignment of rights granted under a permit shall be filed with the office not later than 30 days after that succession is approved by the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1907. Permit Applications: General Requirements for Format and Contents

A. Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the format required by the office. The application shall be complete and include, at a minimum: for surface mining activities, all the applicable information required under Chapters 23, 25, and 27; and, for special types of surface coal mining and reclamation operations, all the information required under Chapter 29.

B. Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the office.

C. All technical data submitted in the application shall be accompanied by: names of persons or organizations which collected and analyzed such data; dates of the collection and analyses; and descriptions of methodology used to collect and analyze the data.

D. Technical analyses shall be planned by or under the direction of a professional qualified in the subject to be analyzed.

E. The application shall state the name, address and position of officials of each private or academic research organization or governmental agency consulted by the applicant in preparation of the application for information on land uses, soils geology, vegetation, fish and wildlife quantity and quality, air quality, and archaeological, cultural and historic features.

F. Maps and Plans: General Requirements

1. Maps submitted with the application shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the United States Geological Survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the remainder of the mine plan area and the adjacent areas shall clearly show the lands and waters within those areas and be

in a scale determined by the office, but in no event smaller than 1:24,000.

2. All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the mine plan area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§1909. Permit Fees

A. Each application for a surface coal mining and reclamation permit pursuant to a regulatory program shall be accompanied by a fee determined by the office. Such fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering and enforcing the permit. The office may develop procedures to allow the fee to be paid over the term of the permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§1911. Verification of Application

A. Applications for permits shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 21. Coal Exploration and Development

§2101. General Requirements: Coal Exploration

A. Any person desiring to conduct exploration operations, as defined herein, shall:

1. file with the commissioner an application, in triplicate, upon forms furnished by the commissioner, for an area permit to engage in exploration operations. Such application shall be filed at least 30 days prior to the requested date of issuance;

2. submit a permit fee of \$50 for each application filed. Each application shall be restricted to a township;

3. submit a bond in the amount of \$3,000 for each township affected; provided, the number of test holes and core holes shall not exceed 72. In the event test holes or core holes are to exceed 72, the bond shall be increased by \$30 for each additional test or core hole; provided that the number of test or core holes for a township is first approved by the office;

4. describe the nature of the exploration operations for which applications are made which shall include a general description of the exploration areas, the methods of ingress and egress to be utilized, verification of permission to conduct the explorations from the owners of the land affected, and further attesting that any substantial disturbances to the surface of the land shall be reported to the commissioner and reclaimed in accordance with §915 of the Act and these regulations.

B. The exploration operations permit shall be valid for a period of one year from the date of issuance and the bond may be increased at any time during this period if the commissioner should deem it necessary. Within six months after expiration of the area permit, the applicant shall submit a report to the commissioner setting forth a record of the location of each test or core hole drilled; the location of each site, if any, of substantial disturbance to the surface, together with a description of the disturbance and the reclamation done; an affidavit attesting that each test or core hole has been properly plugged and abandoned; and that each site of substantial disturbance has been reclaimed according to the standards of §915 of the Act and the regulatory program.

C. The required bond shall be released after the commissioner has:

1. determined that the test or core holes have been properly plugged;

2. determined that each area of substantial disturbance has been properly reclaimed; and

3. been furnished with the core analysis and the logs of each test or core hole drilled, where available. Core analyses and logs shall be due within six months after expiration of the permit and shall be considered confidential if request is made in accordance with §2119.B.1.

D. Exploration which will take place on lands designated as unsuitable for surface coal mining operations under Subpart 2 shall be subject to the permitting requirements under §2111.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2103. General Requirements: Coal Development Operations

A. Any operator proposing to undertake development operations which involve the removal of substantial quantities of overburden with explosives or power earthmoving equipment to determine quality, boiler design criteria, the feasibility of removing lignite or coal and other testing purposes shall submit an application for a development operations permit to the commissioner prior to commencing any such operations. A permit fee of \$75 shall accompany each application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§2105. General Requirements: Data Gathering Activities of 250 Tons or Less

A. Any person who intends to conduct data gathering activities during which less than 250 tons of coal will be removed in the area in which gathering activities will take place shall, prior to conducting the data gathering activities, file with the office a written notice of intention to undertake data gathering activities. Data gathering activities which will take place on lands designated as unsuitable for surface coal mining operations under Subpart 2 shall be subject to the permitting requirements under §2111.

B. The notice shall include:

1. the name, address and telephone number of the person seeking to undertake data gathering activities;

2. the name, address and telephone number of the representative who will be present at and responsible for conducting the data gathering activities;

3. a narrative describing the proposed data gathering area or a map at a scale of 1:24,000, or greater, showing the proposed data gathering area and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines;

4. a statement of the period of intended data gathering activities;

5. if the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting the data gathering activities and reclamation; and

6. a description of the method of data gathering to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts as a result of the data gathering activities.

C. Any person who conducts data gathering activities pursuant to this Section which will substantially disturb the natural land surface shall comply with Chapter 51.

D. The office shall place notices on public file and make them available for public inspection and copying.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§2107. General Requirements: Data Gathering Activities of More Than 250 Tons

A. Any person who intends to undertake data gathering activities in which more than 250 tons of coal will be removed shall be required to obtain a development operations permit in accordance with §2111 and all data

gathering activities shall be undertaken in accordance with the provisions of the regulations applicable thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§2109. General Requirements: Development Operations Involving Removal of 250 Tons or Less

A. If the development operation will involve the removal of 250 tons or less of coal, the application shall contain the following:

1. the name, address and telephone number of the person seeking to develop;
2. the name, address and telephone number of the representative who will be present at and responsible for conducting the development activities;
3. a narrative describing the proposed development operation or a map at a scale of 1:24,000, or greater, showing the proposed development area and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines;
4. a statement of the period of intended development; and
5. if the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting the development operations and reclamation; and
6. a description of the method of development to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts as a result of the development operations.

B. Any person who conducts coal development activities pursuant to this Section which substantially disturb the natural land surface shall comply with Chapter 51.

C. The commissioner shall, except as otherwise provided in §2119, place such applications on public file and make them available for public inspection and copying.

D. The application shall contain a bond in an amount determined by the commissioner to be sufficient to insure performance of the duty to reclaim affected areas as required by the provision of the Act and these regulations.

E. Development operations which will take place on lands designated as unsuitable for surface coal mining operations under Subpart 2 shall be subject to the permitting requirements under §2111.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December

1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§2111. General Requirements: Development Operations Involving Removal of More Than 250 Tons

A. If the development operation will involve the removal of more than 250 tons of coal, but in no event exceed the removal of more than 25,000 tons of coal or 10 surface acres of overburden, the application shall contain the following:

1. the name, address and telephone number of the applicant;
2. the name, address and telephone number of the representative of the applicant who will be present at and be responsible for conducting the development;
3. a development and reclamation operation plan, including:
 - a. a narrative description of the proposed development area, cross-referenced to the map required under §2111.A.5, including surface topography; geological, surface water, and other physical features; vegetative cover, the distribution and important habitats of fish, wildlife, and plants including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (U.S.C. Sec. 1531 et seq.); districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register of Historic Places; known archaeological resources within the proposed exploration area; and any other information which the office may require regarding known or unknown historic or archaeological resources;
 - b. a narrative description of the methods to be used to conduct coal development and reclamation including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction and excavated earth and other debris disposal activities;
 - c. an estimated timetable for conducting and completing each phase of the development and reclamation;
 - d. the estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;
 - e. a statement of why extraction of more than 250 tons of coal is necessary for development operations; and
 - f. a description of the measures to be used to comply with the applicable requirements of §915 of the Act and these regulations;
4. the name and address of the owner of record of the surface and subsurface area to be developed;
5. a map at a scale of 1:24,000 or larger showing the areas of land to be substantially disturbed by the proposed development and reclamation. The map shall specifically show existing roads, occupied dwellings and pipelines; proposed location of trenches, roads and other access routes and structures to be constructed; the location of land

excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, topographic, cultural and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

6. if the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting development and reclamation;

7. a bond in an amount determined by the commissioner to be sufficient to insure performance of the duty to reclaim as otherwise determined from the disclosures in this Section.

8. for any lands listed in §1105, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of §1105, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105.

B. Public Notice and Opportunity to Comment. Public notice of the application and opportunity to comment shall be provided as follows.

1. Within one week after filing, public notice of the filing of the application with the commissioner shall be posted by the applicant at the courthouse or other public office designated by the commissioner in the vicinity of the proposed development area. In addition, the applicant shall provide public notice of the filing of an administratively complete application with the office in a newspaper of general circulation designated as the official journal by the governing authority in the parish of the proposed development operations.

2. The public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address of the commissioner at which written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of development.

3. Any person with an interest which is or may be adversely affected shall have the right to file written comments on the application within 30 days of the date of public notice set forth in §2111.B.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:1494 (August 2003).

§2113. Applications: Approval or Disapproval of Development of More Than 250 Tons

A. The commissioner shall initiate action upon a completed application for approval within 15 days after the close of the comment period as prescribed by §2111.B.

B. The commissioner shall approve a complete application filed in accordance with this Chapter, if he finds in writing, that the applicant has demonstrated that the development and reclamation described in the application:

1. will be conducted in accordance with the Act, these regulations, and the program approved by the secretary of interior;

2. will not jeopardize the continued existence of an endangered or threatened species listed pursuant to §4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

3. will not adversely affect any cultural resources or districts, sites, buildings, structures or objects listed or eligible for listing on the National Register of Historic Places, unless the proposed exploration has been approved by both the office and the agency with jurisdiction over such matters.

4. will, with respect to exploration activities on any lands protected under §1105, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the office will provide reasonable opportunity to the owner of the feature causing the land to come under the protection of §1105, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105, to comment on whether the finding is appropriate.

C. Terms of Approval. Each approval issued by the commissioner shall contain conditions necessary to ensure that the development and reclamation will be in compliance with the Act, these regulations and the program approved by the secretary of interior.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:1494 (August 2003).

§2115. Applications: Notice and Hearing for Development of More Than 250 Tons

A. The commissioner shall notify the applicant, the appropriate local government officials and other commentors on the application, in writing, of his decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. The commissioner shall provide public notice of approval or disapproval of each application,

by publication in a newspaper of general circulation in the general vicinity of the proposed operations.

B. Any persons with interests which are or may be adversely affected by a decision of the commissioner pursuant to §2115.A, shall have the opportunity for administrative and judicial review as set forth in §§925 and 926 of the Act or these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2117. Coal Exploration and Development Compliance Duties

A. All coal exploration and development operations and the reclamation operations attendant thereto shall be conducted in accordance with the requirements of §912 of the Act, these regulations and conditions of approval for exploration, development and reclamation operations imposed by the commissioner.

B. Any person who conducts any coal exploration or development operations in violation of §912 of the Act or these regulations shall be subject to the provisions of §§918 and 921 of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2119. Public Availability of Information

A. Except as provided in §2119.B, all information submitted to the commissioner under this Chapter shall be made available for public inspection and copying at the district office of the Office of Conservation closest to the exploration or development area.

B.1. The commissioner shall not make information available for public inspection if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the commissioner determines that the information is confidential.

2. The commissioner shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration or development.

3. Information requested to be held as confidential under this Section shall not be publicly available until after notice and opportunity to be heard is afforded all persons either seeking or opposing disclosure of the information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 23. Surface Mining Permit Applications: Minimum Requirements for Legal, Financial, Compliance and Related Information

§2301. Responsibility

A. It is the responsibility of the permit applicant to provide to the office all of the information required by this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2303. Applicability

A. This Chapter applies to any person who applies for a permit to conduct surface mining activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2304. Certifying and Updating Existing Permit Application Information

A. If the applicant has previously applied for a permit and the required information is already in AVS, then the applicant may update the information as shown in the following table.

If ...	then the applicant ...
(1) all or part of the information already in AVS is accurate and complete	may certify to the office by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date.
(2) part of the information in AVS is missing or incorrect	must submit to the office the necessary information or corrections and swear or affirm, under oath and in writing, that the information submitted is accurate and complete.
(3) the applicant can neither certify that the data in AVS is accurate and complete nor make needed corrections	must include in the permit application the required information.

B. The applicant must swear or affirm, under oath and in writing, that all information provided in an application is accurate and complete.

C. The office may establish a central file to house identity information, rather than place duplicate information in each permit application file. The office will make the information available to the public upon request.

D. After the office approves an application, but before issuing a permit, the applicant must update, correct, or indicate that no change has occurred in the information previously submitted under this section and §§2305-2307.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2730 (September 2011).

§2305. Identification of Interests

A. An application shall contain the following information, except that the submission of a Social Security number is voluntary:

1. a statement as to whether the applicant and the applicant's operator are corporations, partnerships, single proprietorships, associations or other business entities;

2. the name, address, telephone number and, as applicable, Social Security number and employer identification number of the:

- a. applicant;
- b. applicant's resident agent;
- c. any operator, if different from the applicant;
- d. each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator. For every such business entity, the applicant must also provide the required information for every president, chief executive officer, and director (or persons in similar positions), and every person who owns, of record, 10 percent or more of the entity; and

e. for the applicant and applicant's operator, the information required by §2305.A.2.d must be provided for every officer, partner, member, director, person performing a function similar to a director and person who owns, of record, 10 percent or more of the applicant or operator;

3. for each person identified in §2305.A.:

- a. the person's name, address, Social Security number and employer identification number;
- b. the person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;
- c. the title of the person's position, date position was assumed and, when submitted under §3123.A.6, date of departure from the position;
- d. each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and

e. the application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States;

4. for any surface coal mining operation owned or controlled by either the applicant, the applicant's operator, or by any person who owns or controls the applicant under the definition of owned or controlled and owns or controls in §105, the operation's:

a. name, address, identifying numbers, including employer identification number, federal or state permit number and MSHA number, the date of issuance of the MSHA number, and regulatory authority; and

b. ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

5. the name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

6. the name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area;

7. the MSHA numbers for all mine-associated structures that require MSHA approval;

8. a statement of all lands, interest in lands, options or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this Subsection which is not on public file pursuant to state law shall be held in confidence by the office, as provided under §3111.C.2;

9. after an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under §2305.A.1-4;

10. the applicant shall submit the information required by this Section and by §2307 in any prescribed OSM format that is issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 37:2730 (September 2011).

§2307. Compliance Information

A. Each application shall contain:

1. a statement of whether the applicant, applicant's operator, any subsidiary, affiliate or persons controlled by or under common control with the applicant or applicant's operator has had a federal or state mining permit suspended or revoked in the last five years; or forfeited a mining bond or similar security deposited in lieu of bond;

2. if any such suspension, revocation or forfeiture has occurred, a statement of the facts involved, including:

- a. identification number and date of issuance of the permit or date and amount of bond or similar security;
- b. identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;
- c. the current status of the permit, bond or similar security involved;
- d. the date, location and type of any administrative or judicial proceedings initiated concerning the suspension, revocation or forfeiture; and
- e. the current status of these proceedings;

3. for any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant or the applicant's operator during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant, the applicant's operator, or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

- a. any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuances of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;
- b. a brief description of the particular violation alleged in the notice;
- c. the date, location and type of any administrative or judicial proceedings initiated concerning the violation including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;
- d. the current status of the proceedings and of the violation notice; and
- e. the actions, if any, taken by the applicant to abate the violation;

4. after an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998), LR37:2730 (September 2011).

§2309. Right of Entry and Operation Information

A. Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

B. Where the private mineral estate has been severed from the private surface estate, where such severance is authorized under Louisiana law, the application shall also provide for lands within the permit area:

- 1. a copy of the written consent of the surface owner to the extraction of coal by surface mining methods; or
- 2. a copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or
- 3. if the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that, under the applicable state law, the applicant has the legal authority to extract the coal by these methods.

C. Nothing in this Section shall be construed to afford the office the authority to adjudicate property title disputes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§2311. Relationship to Areas Designated Unsuitable for Mining

A. Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under Chapter 15 or under study for designation in an administrative proceeding under that Chapter.

B. If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required by §1107.E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:1494 (August 2003).

§2313. Permit Term Information

A. Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the mine.

B. If the applicant proposes to conduct the surface mining operations in excess of five years, the application shall contain the information needed for the showing required under §3121.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2315. Personal Injury and Property Damage Insurance Information

A. Each permit application shall contain either a certificate of liability insurance or evidence that the self-insurance requirements in §4309 are satisfied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2317. Identification of Other Licenses and Permits

A. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

1. type of permit or license;
2. name and address of issuing authority;
3. identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses;
4. if a decision has been made, the date of approval or disapproval by each issuing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2319. Identification of Location of Public Office for Filing of Application

A. Each application shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection under §3103.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2321. Newspaper Advertisement and Proof of Publication

A. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the office and made a part of the complete application, not later than four weeks after the last date of publication required under §3103.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2323. Valid Existing Rights Determination

A. OSM is responsible for determining valid existing rights for federal lands listed at §1105. The office is responsible for determining valid existing rights for all non-Federal lands listed at §1105. The provisions of this Section apply when the office is responsible for determining valid existing rights.

B. A request for a valid existing rights determination must be submitted if surface coal mining operations will be conducted on the basis of valid existing rights under §1105. This request may be submitted before submitting an application for a permit or boundary revision.

1. Requirements for property rights demonstration. If the request relies upon the good faith/all permits standard or the needed for and adjacent standard in §105. *Valid Existing Rights.b*, the applicant must provide a property rights demonstration under §105. *Valid Existing Rights.a*. This demonstration must include the following items:

- a. a legal description of the land to which the request pertains;
- b. complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which your request pertains;
- c. a complete chain of title for the surface and mineral estates of the land to which the request pertains;
- d. a description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;
- e. a description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with Louisiana property law;
- f. complete documentation of the nature and ownership, as of the date that the land came under the protection §1105, of all property rights for the surface and mineral estates of the land to which the request pertains;
- g. names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;
- h. if the coal interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of the applicant's property rights claims;

i. any comments that the applicant received in response to the notification provided under §2323.B.1.h.

2. Requirements for Good Faith/All Permits Standard. If the request relies upon the good faith/all permits standard in §105.*Valid Existing Rights*.b.i, the applicant must submit the information required under §2323.B.1. The applicant also must submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains:

a. approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant or a predecessor in interest obtained before the land came under the protection of §1105;

b. application dates and identification numbers for any permits, licenses, and authorizations for which the applicant or a predecessor in interest submitted an application before the land came under the protection of §1105;

c. an explanation of any other good faith effort that the applicant or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of §1105.

3. Requirements for Needed for and Adjacent Standard. If the request relies upon the needed for and adjacent standard in §105.*Valid Existing Rights*.b.ii, the applicant must submit the information required under §2323.B.1. In addition, the applicant must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration 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 §1105.

4. Roads. If the request relies upon one of the standards for roads in §105.*Valid Existing Rights*.c.i-iii, documentation must show that:

a. the road existed when the land upon which it is located came under the protection of §1105 of these regulations or §922.D of the Act, and the applicant has a legal right to use the road for surface coal mining operations;

b. a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act, and, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right-of-way or easement to conduct surface coal mining operations; or

c. 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 §1105 of these regulations or §922.D of the Act.

C. Initial Review of Request

1. The office shall conduct an initial review to determine whether the request includes all applicable components of the submission requirements of §2323.B. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

2. If the request does not include all applicable components of the submission requirements of §2323.B, the office shall notify the applicant and establish a reasonable time for submission of the missing information.

3. When the request includes all applicable components of the submission requirements of §2323.B, the office shall implement the notice and comment requirements of §2323.D.

4. If the information requested under §2323.C.2 is not provided within the time specified or as subsequently extended, the office shall issue a determination that valid existing rights have not been demonstrated, as provided in §2323.E.4.

D. Notice and Comment Requirements and Procedures

1. When the request satisfies the completeness requirements of §2323.C, the applicant must publish a public notice in accordance with §3103.A. This notice must invite comment on the merits of the request. The notice shall contain, at a minimum:

a. the location of the land to which the request pertains;

b. a description of the type of surface coal mining operations planned;

c. a reference to and brief description of the applicable standards under the definition of *Valid Existing Rights* in §105;

i. if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in §105.*Valid Existing Rights*.b, the notice also must include a description of the property rights claimed and the basis for that claim;

ii. if the request relies upon the standard in §105.*Valid Existing Rights*.c.i, the notice also must include a description of the basis for the claim that the road existed when the land came under the protection of §1105 of these regulations or §922.D of the Act. In addition, the notice must include a description of the basis for the claim that the applicant has a legal right to use that road for surface coal mining operations;

iii. if the request relies upon the standard in §105.*Valid Existing Rights*.c.ii, the notice also must include a description of the basis for the claim that a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act. In addition, the notice must include a description of the basis for the claim that, under the document creating the right-of-way or easement, and under any subsequent conveyances, the

applicant has a legal right to use or construct a road across the right-of-way or easement to conduct surface coal mining operations;

d. if the request relies upon one or more of the standards in §105.*Valid Existing Rights*.b, c.i, and c.ii, a statement that the office will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by §2323.D.3, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim;

e. a description of the procedures that the office will follow in processing the request;

f. the closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice;

g. a statement that interested persons may obtain a 30-day extension of the comment period upon request; and

h. the name and address of the office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

2. The office shall promptly provide a copy of the notice required under §2323.D.1 to:

a. all reasonably locatable owners of surface and mineral estates in the land included in the request; and

b. the owner of the feature causing the land to come under the protection of §1105, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of §1105.

3. The letter transmitting the notice required under §2323.D.2 must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the agency responsible for the determination of valid existing rights may grant additional time for good cause upon request. The agency need not necessarily consider comments received after the closing date of the comment period.

E. How a Decision Will Be Made

1. The office must review the materials submitted under §2323.B, comments received under §2323.D, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the office must notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the office deems necessary to remedy the inadequacy.

2. Once the record is complete and adequate, the office must determine whether the applicant has demonstrated valid existing rights. The decision document

must explain how the applicant has or has not satisfied all applicable elements of the definition of valid existing rights in §105. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

3. Impact of Property Rights Disagreements. This Paragraph applies only when the request relies upon one or more of the standards in §105.*Valid Existing Rights*.b, c.i, and ii.

a. The office must issue a determination that the applicant has not demonstrated valid existing rights if property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The office will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This Paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under §§2323.D.1 or D.3.

b. If the record indicates disagreement as to the accuracy of property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the office must evaluate the merits of the information in the record and determine whether the applicant has demonstrated that the requisite property rights exist under §105.*Valid Existing Rights*.a, c.i, or ii, as appropriate. The office must then proceed with the decision process under §2323.E.2.

4. The office must issue a determination that the applicant has not demonstrated valid existing rights if information that the office requests under §§2323.C.2 or E.1 is not submitted within the time specified or as subsequently extended. The office will make this determination without prejudice, meaning that the applicant may refile a revised request at any time.

5. After making a determination, the office must:

a. provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of §1105, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105; and

b. publish notice of the determination in a newspaper of general circulation in the parish in which the land is located.

F. Administrative and Judicial Review. A determination that the applicant has or does not have valid existing rights is subject to administrative and judicial review under §§3301 and 3303.

G. Availability of Records. The office must make a copy of that request available to the public in the same manner as the office must make permit applications available to the public under §2119. In addition, the office must make records associated with that request, and any subsequent

determination under §2323.E, available to the public in accordance with the requirements and procedures of §6311.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:1494 (August 2003).

Chapter 25. Surface Mining Permit Applications: Minimum Requirements for Information on Environmental Resources

§2501. Responsibilities

A. It is the responsibility of the applicant to provide, except where specifically exempted in this Chapter, all information required by this Chapter in the application.

B. It is the responsibility of state and federal government agencies to provide information for applications as specifically required by this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2503. General Requirements

A. Each permit application shall include a description of the existing, premining environmental resources within the proposed mine plan area and adjacent areas that may be affected or impacted by the proposed surface mining activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2505. General Environmental Resources Information

A. Each application shall describe and identify:

1. the size, sequence and timing of the subareas of the mine plan area for which it is anticipated that individual permits for mining will be requested over the estimated total life of the proposed surface mining activities;

2. the nature of cultural, historic and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological features within the proposed mine plan and adjacent areas. The description shall be based on all available information including, but not limited to, data of state and local archaeological, historical and cultural preservation agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2507. Description of Hydrology and Geology: General Requirements

A. Each application shall contain a description of the geology, hydrology, and water quality and quantity of all lands within the proposed mine plan area, the adjacent area and the cumulative impact area. The description shall include information on the characteristics of all surface water and ground water within the cumulative impact area, and any water which will flow into or receive discharges of water from the cumulative impact area. The description shall be prepared according to §§2507-2513 and conform to the following.

1.a. Information on hydrology, water quality and quantity, and geology related to hydrology of areas outside the proposed mine plan area and within the cumulative impact area shall be provided by the office, to the extent that this data is available from an appropriate federal or state agency.

b. **Sampling and Analysis Methodology.** All water quality analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 15th edition of "Standard Methods for the Examination of Water and Wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this Section shall be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater" is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 15th Street, NW., Washington, D.C. 20036. This document is also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C.; at the office of the OSM Administrative Record, U.S. Department of the Interior, Room 5315, 1100 L Street, NW., Washington, D.C.; at the OSM Eastern Technical Center, U.S. Department of the Interior, Building 10, Parkway Center, Pittsburgh, PA.; and at the OSM Western Technical Center, U.S. Department of the Interior, Brooks Tower, 1020 15th Street, Denver, CO.

c. If this information is not available from those agencies, the applicant may gather and submit this information to the office as part of the permit application.

d. The permit shall not be approved by the office until this information is made available in the application.

2. The use of modeling techniques may be included as part of the permit application, but the same surface- and ground-water information may be required for each site as when models are not used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2509. Geology Description

A. General. Each application shall include geologic information in sufficient detail to assist in determining:

1. the probable hydrologic consequences of the operation upon the quality and quantity of surface water and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary;

2. all potentially acid- or toxic-forming strata down to and including the stratum immediately below the lowest coal seam to be mined; and

3. whether reclamation as required by this Chapter can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

B. Geologic information shall include, at a minimum, the following:

1. a description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The description shall include the areal and structural geology of the permit and adjacent areas and other parameters which influence the required reclamation, and the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground waters. It shall be based on:

a. the cross-sections, maps and plans required by §2537;

b. the information obtained under §2509.B.2 and C; and

c. geologic literature and practices;

2. analyses of samples collected from test borings, drill cores, or fresh, unweathered, uncontaminated samples from rock outcrops from the permit area, down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest seam to be mined which may be adversely impacted by mining. The analyses shall result in the following:

a. logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

b. chemical analyses identifying those strata that may contain acid- or toxic-forming or alkalinity-producing materials and determining their content, except that the office may find that the analysis for alkalinity-producing materials is unnecessary; and

c. chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the office may find that the analysis of pyritic sulfur content is unnecessary.

C. If determined to be necessary to protect the hydrologic balance or to meet the performance standards of

these regulations, the office may require the collection, analysis and description of geologic information in addition to that required by §2509.B.

D. An applicant may request the office to waive in whole or in part the requirements of §2509.B.2. The waiver may be granted only if the office finds in writing that the collection and analysis of such data are unnecessary because other equivalent information is available to the office in a satisfactory form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2511. Ground-Water Information

A. The application shall include the location and ownership for the permit and adjacent areas of existing wells, springs and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25 C, pH, total iron and total manganese. Ground-water quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2513. Surface-Water Information

A. The application shall include the name, location, ownership and description of all surface-water bodies such as streams, lakes and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25 C, pH, total iron and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2515. Supplemental Information

A. If the determination of the probable hydrologic consequences (PHC) required by §2523 indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or

toxic-forming material is present that may result in the contamination of surface- or ground-water supplies, then information supplemental to that required under §§2511 and 2513 shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2517. Baseline Cumulative Impact Area Information

A. Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface- and ground-water systems as required by §2525 shall be provided to the office if available from appropriate federal or state agencies.

B. If the information is not available from such agencies, then the applicant may gather and submit this information to the office as part of the permit application.

C. The permit shall not be approved until the necessary hydrologic and geologic information is available to the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2519. Modeling

A. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the office for each site even when such techniques are used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2521. Alternative Water Source Information

A. If the PHC determination required by §2523 indicates that the proposed mining operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application shall contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved post-mining land uses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2523. Probable Hydrologic Consequences Determination

A. The application shall contain a determination of the probable hydrologic consequences (PHC) of all anticipated mining within the permit area upon the quality and quantity of surface water and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

B. The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

C. The PHC determination shall include findings on:

1. whether adverse impacts may occur to the hydrologic balance;
2. whether acid- or toxic-forming materials are present that could result in the contamination of surface-water or ground-water supplies;
3. whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose; and
4. what impact the proposed operation will have on:
 - a. sediment yield from the disturbed area;
 - b. acidity, total suspended and dissolved solids and other important water quality parameters of local impact;
 - c. flooding or streamflow alteration;
 - d. ground- and surface-water availability; and
 - e. other characteristics as required by the office.

D. An application for a permit revision shall be reviewed by the office to determine whether a new or updated PHC determination shall be required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2525. Cumulative Hydrologic Impact Assessment

A. The office shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface- and ground-water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The office may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

B. An application for a permit revision shall be reviewed by the office to determine whether a new or updated CHIA shall be required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2527. Climatological Information

A. When requested by the office, the application shall contain a statement of the climatological factors that are representative of the proposed mine plan area, including:

1. the average seasonal precipitation;
2. the average direction and velocity of prevailing winds; and
3. seasonal temperature ranges.

B. The office may request such additional data as deemed necessary to ensure compliance with the requirements of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2529. Vegetation Information

A. The permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

B. Sufficient adjacent areas shall be included on the map or aerial photograph to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under §2713.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2531. Soil Resources Information

A. The applicant shall provide adequate soil survey information of the permit area consisting of the following: a map delineating different soils; soil identification; soil description; and present and potential productivity of existing soils.

B. Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under §5311.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2533. Land-Use Information

A. The application shall contain a statement of the condition, capability and productivity of the land within the proposed permit area, including:

1. a map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described;

2. a narrative of land capability and productivity, which analyzes the land-use description under §2533.A in conjunction with other environmental resources information required under this Chapter. The narrative shall provide analyses of:
 - a. the capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and
 - b. the productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the United States Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

3. the application shall state whether the proposed mine plan area has been previously mined and, if so, the following information, if available:
 1. the type of mining method used;
 2. the coal seams or other mineral strata mined;
 3. the extent of coal or other minerals removed;
 4. the approximate dates of past mining; and
 5. the uses of the land preceding mining.

C. The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed mine plan and adjacent areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

A. The permit application shall include maps showing:

1. all boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

§2535. Maps: General Requirements

A. The permit application shall include maps showing:

1. all boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

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2. the boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

3. the boundaries of all areas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of size, sequence and timing of the mining of subareas for which it is anticipated that additional permits will be sought;

4. the location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

5. the location of surface and subsurface man-made features within, passing through or passing over the proposed permit area including, but not limited to, major electric transmission lines, pipelines and agricultural drainage tile fields;

6. the location and boundaries of any proposed reference areas for determining the success of revegetation;

7. the locations of water supply intakes for current users of water flowing into, out of, and within a hydrologic area defined by the office, and those surface waters which will receive discharges from affected areas in the proposed mine plan area;

8. each public road located in or within 100 feet of the proposed permit area;

9. the boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archaeological sites within the mine plan or adjacent areas;

10. each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area;

11. any land within the proposed mine plan area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under §5(a) of the Wild and Scenic Rivers Act or the Louisiana Scenic Rivers Act; and

12. other relevant information required by the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2537. Cross-Sections, Maps and Plans

A. The application shall include cross-sections, maps and plans showing:

1. elevations and locations of test borings and core samplings;

2. elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application;

3. nature, depth and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;

4. all coal crop lines and the strike and dip of the coal to be mined within the proposed mine plan area;

5. location and extent of known workings of active, inactive or abandoned underground mines, including mine openings to the surface within the proposed mine plan and adjacent areas;

6. location and extent of subsurface water, if encountered, within the proposed mine plan or adjacent areas;

7. location of surface-water bodies such as streams, lakes, ponds, springs, constructed or natural drains and irrigation ditches within the proposed mine plan and adjacent areas;

8. location and extent of existing or previously surface-mined areas within the proposed mine plan area;

9. location and dimensions of existing areas of spoil, waste and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

10. location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the mine plan area and adjacent area;

11. maps, plans and cross-sections included in a permit application which are required by this Section shall be prepared by or under the direction of and certified by a qualified registered professional engineer or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture and shall be updated as required by the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998).

§2539. Prime Farmland Investigation

A. All permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The office, in consultation with the U.S. Soil Conservation Service, shall determine the nature and extent of the required reconnaissance inspection.

B. Land shall not be considered prime farmland where the applicant can demonstrate one of the following:

1. the land has not been historically used as cropland;

2. the slope of the land is 10 percent or greater;

3. other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season,

more often than once in two years, and the flooding has reduced crop yields;

4. on the basis of a soil survey of lands within the mine plan area, there are no soil map units that have been designated prime farmland by the United States Soil Conservation Service.

C. If the reconnaissance inspection establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant shall submit a statement that no prime farmland is present. The statement shall identify the basis upon which such a conclusion was reached.

D. If the investigation indicates that lands within the proposed mine plan area may be prime farmlands, the applicant shall contact the United States Soil Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed mine plan area, the applicant shall cause such a survey to be made:

1. when a soil survey of lands within the proposed mine plan area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application in accordance with §2907 for such designated land;

2. when a soil survey for lands within the proposed mine plan area contains soil map units which have not been designated as prime farmland after review by the United States Soil Conservation Service, the applicant shall submit a request for negative determination for nondesignated land with the permit application establishing compliance with §2539.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 27. Surface Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plan

§2701. Responsibilities

A. It is the responsibility of the applicant to provide to the office the information required by this Chapter, except where specifically exempted in this Chapter.

B. It is the responsibility of state and federal governmental agencies to provide information to the office where specifically required in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2703. Operation Plan: General Requirements

A. Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed mine plan area including, at a minimum, the following:

1. a narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations;

2. a narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for post-mining land use as specified in §5431):

- a. dams, embankments and other impoundments;
- b. overburden and topsoil handling and storage areas and structures;
- c. coal removal, handling, storage, cleaning, and transportation areas and structures;
- d. spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
- e. mine facilities; and
- f. water and air pollution control facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2705. Operation Plan: Existing Structures

A. Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

1. location;
2. plans of the structure which describe its current condition;
3. approximate dates on which construction of the existing structure was begun and completed; and
4. a showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Subpart 5 (Permanent Program Performance Standards).

B. Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

1. design specifications for the modification or reconstruction of the structure to meet the design and performance standards of Subpart 5;

2. a construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

3. provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of Subpart 5 are met; and

4. a showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2707. Operation Plan: Blasting

A. Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of §§5353-5363 and including the following:

1. information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations;

2. types and approximate amounts of explosives to be used for each type of blasting operation to be conducted;

3. description of procedures and plans for recording and retention of information on the following during blasting:

- a. drilling patterns, including size, number, depths and spacing of holes;
- b. charge and packing of holes;
- c. types of fuses and detonation controls; and
- d. sequence and timing of firing holes;

4. description of blasting warning and site access control equipment and procedures;

5. description of types, capabilities, sensitivities and locations of use of any blast monitoring equipment and procedures proposed to be used;

6. description of plans for recording and reporting to the office the results of preblasting surveys, if required;

7. description of unavoidable hazardous conditions for which deviations from the blasting schedule will be needed under §5357.A.3;

8. blasting operations within 500 feet of active underground mines require approval of the state and federal regulatory authorities concerned with the health and safety of underground miners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2709. Operation Plan: Maps and Plans

A. Each application shall contain maps and plans of the proposed mine plan and adjacent areas as follows.

1. The maps and plans shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under §§2535-2537.

2. The following shall be shown for the proposed permit area unless specifically required for the mine plan area or adjacent area by the requirements of this Section:

- a. buildings, utility corridors and facilities to be used;
- b. the area of land to be affected within the proposed mine plan area, according to the sequence of mining and reclamation;
- c. each area of land for which a performance bond or other equivalent guarantee will be posted under Subpart 4;
- d. each coal storage, cleaning and loading area;
- e. each topsoil, spoil, coal waste and noncoal waste storage area;
- f. each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;
- g. each air pollution collection and control facility;
- h. each source of waste and each waste disposal facility relating to coal processing or pollution control;
- i. each facility to be used to protect and enhance fish and wildlife and related environmental values;
- j. each explosive storage and handling facility; and
- k. location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with §2725, and fill area for the disposal of excess spoil in accordance with §2735.

3. Maps, plans and cross-sections required under §2709.A.2.d-f, j, and k shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture, except that maps, plans and cross-sections for sedimentation ponds and spoil disposal facilities may only be prepared by a qualified registered professional engineer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2711. Air Pollution Control Plan

A. The application shall contain an air pollution control plan which includes the following:

1. an air quality monitoring program, if required by the office, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under §2711.A.2 to comply with applicable federal and state air quality standards;

2. a plan for fugitive dust control practices, as required under §5397.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2713. Fish and Wildlife Plan

A. Resource Information. Each application shall include fish and wildlife resource information for the permit area and adjacent area.

1. The scope and level of detail for such information shall be determined by the office in consultation with state and federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under §2713.B.

2. Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

a. listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), or those species or habitats protected by similar state statutes;

b. habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

c. other species or habitats identified through agency consultation as requiring special protection under state or federal law.

B. Protection and Enhancement Plan. Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall:

1. be consistent with the requirements of §5399;
2. apply, at a minimum, to species and habitats identified under §2713.A; and
3. include:

a. protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity;

b. enhancement measures that will be used during the reclamation and post-mining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

C. Fish and Wildlife Service Review. Upon request, the office shall provide the resource information required under §2713.A and the protection and enhancement plan required under §2713.B to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within 10 days of receipt of the request from the service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2715. Reclamation Plan: General Requirements

A. Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with §915 of the Act, Subpart 5 of these regulations, and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under §§2715-2739.

B. Each plan shall contain the following information for the proposed permit area:

1. a detailed timetable for the completion of each major step in the reclamation plan;

2. a detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Subpart 4 with supporting calculations for the estimates;

3. a plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with §§5405-5415;

4. a plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of §§5309-5317;

5. a plan for revegetation as required in §§5417-5423, including, but not limited to, descriptions of the:

a. schedule of revegetation;

b. species and amounts per acre of seeds and seedlings to be used;

- c. methods to be used in planting and seeding;
 - d. mulching techniques;
 - e. irrigation, if appropriate, and pest and disease control measures, if any;
 - f. measures proposed to be used to determine the success of revegetation as required in §5423; and
 - g. a soil-testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;
6. a description of the measures to be used to maximize the use and conservation of the coal resource as required in §5351;
7. a description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with §§5389 and 5409, and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;
8. a description, including appropriate cross-sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with §§5303-5307; and
9. a description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2717. Reclamation Plan: Protection of Hydrologic Balance

A. The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Chapter 53, including §§5319-5323, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbances to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to meet applicable federal and state water quality laws and regulations; and to protect the rights of present water users. The plan shall include the measures to be taken to: avoid acid or toxic drainage; prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water-treatment facilities when needed; control drainage; restore approximate premining recharge capacity; and protect or replace rights of present water users. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared

under §2523 and shall include preventive and remedial measures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2719. Ground-Water Monitoring Plan

A. The application shall include a ground-water monitoring plan based upon the PHC determination required under §2523 and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved post-mining land uses and to the objectives for protection of the hydrologic balance set forth in §2717. It shall identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25 C, pH, total iron, total manganese and water levels shall be monitored and data submitted to the office at least every three months for each monitoring location. The office may require additional monitoring.

B. If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:441 (July 1988), amended LR 20:447 (April 1994).

§2721. Surface-Water Monitoring Plan

A. The application shall include a surface-water monitoring plan based upon the PHC determination required under §2523 and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved post-mined land uses and to the objectives for protection of the hydrologic balance as set forth in §2717, as well as the effluent limitations found at 40 CFR Part 434.

B. The plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

1. At all monitoring locations in the surface-water bodies such as streams, lakes and impoundments that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25 C, total

suspended solids, pH, total iron, total manganese and flow shall be monitored.

2. For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123 and 434 and as required by the National Pollutant Discharge Elimination System permitting authority.

C. The monitoring reports shall be submitted to the office every three months. The office may require additional monitoring.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:441 (July 1988), amended LR 20:447 (April 1994).

§2723. Reclamation Plan: Post-Mining Land Uses

A. Each plan shall contain a detailed description of the proposed use, following reclamation of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

1. how the proposed post-mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;
2. where range or grazing is the proposed post-mining use, the detailed management plans to be implemented;
3. where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under §5431;
4. the consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.

B. The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2725. Reclamation Plan: Ponds, Impoundments, Banks, Dams and Embankments

A. General. Each application shall include a general plan and a detailed design plan for each proposed siltation structure, sedimentation pond, water impoundment, and coal processing waste bank, dam or embankment within the proposed mine plan area.

1. Each general plan shall:

- a. be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or by a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture;

- b. contain a description, map and cross-section of the structure and its location;

- c. contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

- d. contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

- e. contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the office. The office shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

2. Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release Number 60 (210-VI-TR60, Oct. 1985), *Earth Dams and Reservoirs*, Technical Release Number 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order Number PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, D.C. or at the Office of the *Federal Register*, 800 North Capitol Street, NW, Suite 700, Washington, D.C. Each detailed design plan for a structure that meets or exceeds the size or other criteria of MSHA, Sec. 77.216(a) of this chapter shall:

- a. be prepared by, or under the direction of, and certified by a qualified registered professional engineer, experienced in the design of similar earth and waste structures, with assistance from experts in related fields such as geology, land surveying and landscape architecture;

- b. include any geotechnical investigation, design and construction requirements for the structure;

- c. describe the operation and maintenance requirements for each structure; and

- d. describe the timetable and plans to remove each structure, if appropriate.

3. Each detailed design plan for a structure not included in §2725.A.2 shall:

a. be prepared by, or under the direction of, and certified by a qualified registered professional engineer, experienced in the design of similar earth and waste structures; except that all coal processing waste dams and embankments covered by §§5375-5395 shall be certified by a qualified, registered, professional engineer;

b. include any design and construction requirements for the structure, including any required geotechnical information;

c. describe the operation and maintenance requirements for each structure; and

d. describe the timetable and plans to remove each structure, if appropriate.

B. Sedimentation Ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of §5327. Any sedimentation pond or earthen structure which will remain on the proposed mine plan area as a permanent water impoundment shall also be designed to comply with the requirements of §5333. Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

C. Permanent and Temporary Impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of §5333. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

1. For impoundments not included in §2725.A.2, engineering design standards shall ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in §5333.

D. Coal Processing Waste Banks. Coal processing waste banks shall be designed to comply with the requirements of §§5375-5381.

E. Coal Processing Waste Dams and Embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of §§5391-5395. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

1. the number, location and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions;

2. the character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment or reservoir site shall be considered;

3. all springs, seepage, and ground-water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan;

4. consideration shall be given to the possibility of mudflows, rock-debris falls or other landslides into the dam, embankment or impounded material.

F. If the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a) each plan under §2725.B, C and E shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternatively considered in selecting the specific design parameters and construction methods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998).

§2727. Reclamation Plan: Surface Mining near Underground Mining

A. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with §5373.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2729. Diversions

A. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions to be constructed within the proposed permit area to achieve compliance with §5323.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2731. Protection of Public Parks and Historic Places

A. For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used:

1. to prevent adverse impacts; or

2. if valid existing rights exist or joint agency approval is to be obtained under §1107.F, to minimize adverse impacts.

B. The office may require the applicant to protect historic or archeological properties listed on or eligible for

listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:1497 (August 2003).

§2733. Relocation or Use of Public Roads

A. Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under §1107.D, the applicant seeks to have the office approve conduction of the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way, or seeks approval for relocating a public road.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:1497 (August 2003).

§2735. Disposal of Excess Spoil

A. Each application shall contain descriptions, including appropriate maps and cross-sections, of the proposed disposal site and design of the spoil disposal structures according to §§5365-5371. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the site and structures.

B. Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

1. the character of bedrock and any adverse geologic conditions in the disposal area;
2. a survey identifying all springs, seepage, and ground-water flow observed or anticipated during wet periods in the area of the disposal site;
3. a survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;
4. a technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and
5. a stability analysis including, but not limited to, strength parameters, pore parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

C. If, under §5365.J, rock-toe buttresses or key-way cuts are required, the application shall include the following:

1. the number, location and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and
2. engineering specifications utilized to design the rock-toe buttress or key-way cuts which shall be determined in accordance with §2735.B.5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2737. Road Systems

A. Plans and Drawings. Each applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in §105, to be constructed, used or maintained within the proposed permit area. The plans and drawings shall:

1. include a map, appropriate cross-sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings and drainage structures;
2. contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the office in accordance with §5433.D.1;
3. contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the office in accordance with §5435.A.3.b;
4. contain a description of measures to be taken to obtain approval of the office for alteration or relocation of a natural stream channel under §5435.A.4.e;
5. contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the office can maximize the protection of the stream in accordance with §5435.A.4.f; and
6. describe the plans to remove and reclaim each road that would not be retained under an approved post-mining land use, and the schedule for this removal and reclamation.

B. Primary Road Certification. The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified, registered professional engineer as meeting the requirements of this Chapter; current, prudent engineering practices; and any design criteria established by the office.

C. Standard Design Plans. The office may establish engineering design standards for primary roads through the state program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in §5435.A.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2739. Support Facilities

A. Each applicant for a surface coal mining and reclamation permit shall submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross-sections, design drawings and specifications sufficient to demonstrate compliance with §5439 for each facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 29. Requirements for Permits for Special Categories of Mining

§2901. Experimental Practices Mining

A. Experimental practices provide a variance from environmental protection performance standards of the Act, Subpart 5, and the regulatory program for experimental or research purposes, or to allow an alternative post-mining land use, and may be undertaken if they are approved by the office and the director of the Office of Surface Mining and if they are incorporated in a permit or permit revision issued in accordance with the requirements of Subpart 3.

B. An application for an experimental practice shall contain descriptions, maps, plans and data which show:

1. the nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted;

2. how use of the experimental practice encourages advances in mining and reclamation technology or allows a post-mining land use for industrial, commercial, residential or public use (including recreation facilities) on an experimental basis;

3. that the experimental practice:

a. is potentially more, or at least as, environmentally protective during and after mining operations as would otherwise be required by standards promulgated under Subpart 5; and

b. will not reduce the protection afforded public health and safety below that provided by the requirements of Subpart 5; and

4. that the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program shall ensure the collection, analysis and reporting of reliable

data that are sufficient to enable the office and the director of the Office of Surface Mining to:

a. evaluate the effectiveness of the experimental practice; and

b. identify, at the earliest possible time, potential risk to the environment and public health and safety which may be caused by the experimental practice during and after mining.

C. Applications for experimental practices shall comply with the public notice requirements of §§3103-3111.

D. No application for an experimental practice under this Section shall be approved until the office first finds in writing and the director of the Office of Surface Mining then concurs that:

1. the experimental practice encourages advances in mining and reclamation technology or allows a post-mining land use for industrial, commercial, residential or public use (including recreational facilities) on an experimental basis;

2. the experimental practice is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under Subpart 5;

3. the mining operations approved for a particular land use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and

4. the experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under Subpart 5.

E. Experimental practices granting variances from the special environmental protection performances standards of §915 of the Act applicable to prime farmland shall be approved only after consultation with the U.S. Department of Agriculture, Soil Conservation Service.

F. Each person undertaking an experimental practice shall conduct the periodic monitoring, recording and reporting program set forth in the application, and shall satisfy such additional requirements as the office or the director may impose to ensure protection of the public health and safety and the environment.

G. Each experimental practice shall be reviewed by the office at a frequency set forth in the approved permit, but no less frequently than every 2 1/2 years. After review, the office may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the office shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of Chapter 33.

H. Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of §3505 and approved by the office. Any revisions which propose significant alterations in the experimental practice shall, at a minimum, be subject to the

notice, hearing and public participation requirements of §§3103-3111 and concurrence by the director of the Office of Surface Mining. Revisions that do not propose significant alterations in the experimental practice shall not require concurrence by the director of the Office of Surface Mining.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§2903. Steep Slope Mining

A. This Section applies to any person who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except:

1. where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds; or

2. to the extent that a person obtains a permit incorporating a variance under §2905.

B. Any application for a permit for surface coal mining and reclamation operations covered by this Section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of §5703.

C. No permit shall be issued for any operations covered by this Section, unless the office finds, in writing, that in addition to meeting all other requirements of this Subpart, the operation will be conducted in accordance with the requirements of §5703.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2905. Permits Incorporating Variances from Approximate Original Contour Restoration Requirements for Steep Slope Mining

A. This Section applies to steep slope surface coal mining and reclamation operations under a regulatory program where the operation is not to be reclaimed to achieve the approximate original contour required by §§5405-5415 and 5703.B.

B. The objective of this Section is to allow for a variance from approximate original contour restoration requirements on steep slopes for surface coal mining and reclamation operations to:

1. improve watershed control of lands within the permit area and on adjacent lands; and

2. make land within the permit area, after reclamation, suitable for an industrial, commercial, residential or public use, including recreational facilities.

C. The office may issue a permit for surface mining activities incorporating a variance from the requirement for restoration of the affected lands to their approximate original contour only if it first finds, in writing, on the basis of a complete application, that all of the following requirements are met:

1. the applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential or public post-mining land use;

2. the proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use;

3. the applicant has demonstrated compliance with the requirements for acceptable alternative post-mining land uses of §5431;

4. the applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations. The watershed will only be deemed improved if:

a. there will be a reduction in the amount of total suspended solids or other pollutants discharged to ground water or surface water from the permit area as compared to such discharges prior to mining, so as to improve public or private uses or the ecology of such waters; or, there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws;

b. the total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface water or ground water;

c. the appropriate state environmental agency approves the plan;

5. the applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operations under §2309 and shall show an understanding that the variance could not be granted without the surface owner's request;

6. the applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of §5705;

7. all other requirements of the Act and these regulations will be met by the proposed operations.

D. If a variance is granted under this Section:

1. the requirements of §5705 shall be made a specific condition of the permit;

2. the permit shall be specifically marked as containing a variance from approximate original contour.

E. Any permits incorporating a variance issued under this Section shall be reviewed by the office to evaluate the progress and development of the mining activities, to establish that the operator is proceeding in accordance with the terms of the variance:

1. within the sixth month preceding the third year from the date of its issuance;
2. before each permit renewal; and
3. not later than the middle of each permit term.

F. If the permittee demonstrates to the office at any of the times specified in §2905.E that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, the requirements of the Act and these regulations, the review required at that time need not be held.

G. The terms and conditions of a permit incorporating a variance under this Section may be modified at any time by the office, if it determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of the Act and these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2907. Prime Farmlands

A. Application Contents for Prime Farmland. If land within the proposed permit area is identified as prime farmland under §2539, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, as a minimum:

1. a soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbook 436 "Soil Taxonomy" (U.S. Soil Conservation Service, 1975), as amended on March 22, 1982 and October 5, 1982, and Handbook 18, "Soil Survey Manual" (U.S. Soil Conservation Service, 1951), as amended on December 18, 1979, May 7, 1980, May 9, 1980, September 11, 1980, June 9, 1981, June 29, 1981, and November 16, 1982. The U.S. Soil Conservation Service establishes the standards of the National Cooperative Soil Survey and maintains a National Soils Handbook which gives current acceptable procedures for conducting soil surveys. This National Soils Handbook is available for review at area and state SCS offices;

- a. U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they exist on the date of adoption of this Section. Notices of changes made to these publications will be periodically published by OSM in the *Federal Register*. The handbooks are on file and available for inspection at the OSM Central Office, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C., at each OSM Technical Center and Field

Office, and at the Office of Conservation, Baton Rouge, Louisiana. Copies of these documents are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402, Stock Nos. 001-000-02597-0 and 001-000-00688-6, respectively. In addition, these documents are available for inspection at the national, state and area offices of the Soil Conservation Service, U.S. Department of Agriculture, and at the *Federal Register* library, 1100 L Street, NW., Washington, D.C. Incorporation by reference provisions were approved by the director of the *Federal Register* on June 29, 1981;

- b. the soil survey shall include a description of soil mapping units and a representative soil profile as determined by the U.S. Soil Conservation Service, including, but not limited to, soil-horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the State Conservationist, U.S. Soil Conservation Service;

2. the proposed method and type of equipment to be used for removal, storage and replacement of the soil in accordance with Chapter 55;

3. the moist bulk density of each major horizon of each prime farmland soil in the permit area. The moist bulk density shall be determined by laboratory tests of samples taken from within the permit area according to procedures set forth in "Soil Survey Laboratory Methods and Procedures for Collecting Soil Samples" (Soil Survey Investigations Report No. 1, United States Department of Agriculture, Soil Conservation Service, 1972). Other standard on-site methods of estimating moist bulk density may be used where these methods correct for particle size distribution and moisture content and are approved by the Soil Conservation Service. In lieu of laboratory data from samples taken within the permit area, the office may permit use of moist bulk density values representing the soil series where such values have been established by the Soil Conservation Service;

4. the location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;

5. if applicable, documentation, such as agricultural school studies or other specific data from comparable areas, that supports the use of other suitable material, instead of the A, B or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as on nonmined prime farmlands in the surrounding area under equivalent levels of management;

6. plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond or equivalent guarantee under Subpart 4. Proper adjustments for seasons must be proposed so that final

graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions;

7. available agricultural school studies or other scientific data for areas with comparable soils, climate and management (including water management) that demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining;

8. the productivity prior to mining, including the average yield of food, fiber, forage or wood products obtained under a high level of management;

9. in all cases, soil productivity for prime farmlands shall be returned to equivalent levels of yield as nonmined prime farmland of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to §2907.A.1.

B. Consultation with Secretary of Agriculture. Before any permit is issued for areas that include prime farmlands, the office shall consult with the secretary of agriculture.

C. Issuance of Permit. A permit for the mining and reclamation of prime farmland may be granted by the office, if it first finds, in writing, upon the basis of a complete application, that:

1. the approved proposed post-mining land use of these prime farmlands will be cropland;

2. the permit incorporates as specific conditions the contents of the plan submitted under §2907.A, after consideration of any revisions to that plan suggested by the secretary of agriculture under §2907.B;

3. the applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management;

4. the proposed operations will be conducted in compliance with the requirements of Chapter 55 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program;

5. the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2284 (December 1998).

§2909. Coal Processing Plants or Support Facilities Not Located within the Permit Area of a Specified Mine

A. This Section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine. Any person who operates such a preparation plant shall obtain a permit from the office in accordance with the requirements of this Section.

B. Any application for a permit for operations covered by this Section shall contain in the mining and reclamation plan specific plans, including descriptions, maps and cross-sections, of the construction, operation, maintenance and removal of the processing plants and associated support facilities. The plan shall demonstrate that those operations will be conducted in compliance with Chapter 59.

C. No permit shall be issued for any operation covered by this Section, unless the office finds, in writing, that, in addition to meeting all other applicable requirements of this Subpart, the operations will be conducted in compliance with the requirements of Chapter 59.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§2911. In Situ Processing Activities

A. This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

B. An application for a permit for operations covered by this Section shall be made according to all requirements of 30 CFR Subchapter G applicable to underground mining activities, which are, for the specific and limited purposes of this Section, hereby adopted and made a part hereof. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of Chapter 61, including:

1. delineation of proposed holes and wells and production zone approval of the office;

2. specification of drill holes and casings proposed to be used;

3. a plan for treatment, confinement or disposal of all acid-forming, toxic-forming, or radioactive gases, solids or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

4. plans for monitoring surface water and ground water and air quality, as required by the office.

C. No permit shall be issued for operations covered by this Section, unless the office first finds, in writing, upon the basis of a complete application made in accordance with

§2911.B, that the operation will be conducted in compliance with all requirements of this Subpart relating to Chapter 61.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended 6:252 (June 1980), LR 6:734 (December 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§2913. Lands Eligible for Remining

A. This Section contains permitting requirements to implement §3113.H. Any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with this Section.

B. An application for a permit under this Section shall be made according to all requirements of Subpart 3 of the regulations applicable to surface coal mining and reclamation operations. In addition, the application shall:

1. to the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions; and

2. with regard to potential environmental and safety problems referred to in §2913.B.1, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2730 (September 2011).

Chapter 31. Public Participation, Approval of Permit Applications and Permit Terms and Conditions

§3101. Responsibilities

A. The office has the responsibility to approve or disapprove permits.

B. The office and persons applying for permits under regulatory programs shall involve the public throughout the permit process of regulatory programs.

C. The office shall assure implementation of the requirements of this Chapter.

D. The applicant shall provide all information in a complete permit application for review by the office in accordance with this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3103. Public Notices of Filing of Permit Applications

A. An applicant for a permit shall place an advertisement in a local newspaper of general circulation designated as the official journal by the governing authority in the parish of the proposed surface coal mining and reclamation operations at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the office. The advertisement shall contain, at a minimum, the following information:

1. the name and address of the applicant;
2. a map or description which shall:

a. clearly show or describe towns, rivers, streams or other bodies of water, local landmarks, and any other information, including routes, streets or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

b. clearly show or describe the exact location and boundaries of the proposed permit area;

c. state the name of the United States Geological Survey 7.5-minute quadrangle map(s) which contains the area shown or described; and

d. if a map is used, indicate the north point;

3. the location where a copy of the application is available for public inspection under §3103.C;

4. the name and address of the office in order that written comments, objections, or requests for informal conferences on the application may be submitted under §§3105-3109;

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 or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with §1107.D, a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

6. if the application includes a request for an experimental practice under §2901, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

B. Upon receipt of a complete application for a permit, the office shall issue written notification of:

1. the applicant's intention to surface mine a particularly described tract of land;
2. the application number;
3. where a copy of the application may be inspected; and

4. where comments on the application may be submitted under §3105.

C. The written notifications shall be sent to:

1. federal, state and local government agencies with jurisdiction over or an interest in the area of the proposed operations including, but not limited to, 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 state historic preservation officer;

2. local governmental agencies with jurisdiction to act with regard to land use, air or water quality planning in the area of the proposed operations;

3. sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment or distribution facilities located in these areas; and

4. the federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application.

D.1. The applicant shall make a full copy of his or her complete application for a permit, permit revisions, renewals, transfers, assignments and sales of permit rights on file with the office available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the office with the recorder at the courthouse of the parish where the mining is proposed to occur, or if approved by the office, at another equivalent public office, if it is determined that that office will be more accessible to local residents than the parish courthouse.

2. The applicant shall file the copy of the complete application under §3103.D.1 by the first date of newspaper advertisement of the application. The applicant shall file any subsequent revision of the application with the public office at the same time the revision is submitted to the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:1497 (August 2003).

§3105. Opportunity for Submission of Written Comments on Permit Applications

A. Written comments on permit applications may be submitted to the office by the public entities to whom notification is provided under §3103.B and C with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

B. These comments shall be submitted to the office in written form within 30 days of notice.

C. The office shall immediately transmit a copy of all such comments for filing and public inspection at the public

office where the applicant filed a copy of the application for permit under §3103.D. A copy shall also be transmitted to the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3107. Right to File Written Objections

A. Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority shall have the right to file written objections to an initial or revised application for a permit with the office, within 30 days after the last publication of the newspaper notice required by §3103.A.

B. The office shall, immediately upon receipt of any written objections:

1. transmit a copy of them to the applicant;

2. file a copy for public inspection at the public office where the applicant filed a copy of the application for permit under §3103.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3109. Informal Conferences

A. Procedure for Requests. Any person whose interests are or may be adversely affected by the issuance of the permit, or the officer or head of any federal, state or local government agency or authority may, in writing, request that the office hold an informal conference on any application for a permit. 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 mining operations; and

3. be filed with the office not later than 30 days after the last publication of the newspaper advertisement placed by the application under §3103.A.

B. Except as provided in §3109.C below, if an informal conference is requested in accordance with §3109.A, the office shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted according to the following:

1. if requested under §3109.A.2, it shall be held in the locality of the proposed mining;

2. the date, time and location of the informal conference shall be advertised by the office in a newspaper of general circulation in the locality of the proposed mine at least two weeks prior to the scheduled conference;

3. if requested, in writing, by a conference requestor in a reasonable time prior to the conference, the office may arrange with the applicant to grant parties to the conference access to the mine plan area for the purpose of gathering information relevant to the conference;

4. neither the requirements of §5 of the Administrative Procedure Act, as amended (5 U.S.C. 554), nor the requirements of the Louisiana Administrative Procedure Act shall apply to the conduct of the informal conference. The conference shall be conducted by a representative of the office, 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 proceeding, unless waived by 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 Subpart 4.

C. If all parties requesting the informal conference stipulate agreement before the requested informal conference and withdraw their request, the informal conference need not be held.

D. Informal conferences held in accordance with this Section may be used by the office as the public hearing required under §1107.C on proposed uses or relocation of public roads.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3111. Public Availability of Information in Permit Applications on File with the Office

A. General Availability. Except as provided in §3111.B or C, all applications for permits, revisions, renewals, transfers, assignments or sales of permit rights on file with the office shall be available, at reasonable times, for public inspection and copying.

B. Limited Availability. Except as provided in §3111.C.1, 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 Subsection shall be made available to the public when such information is required to be on public file pursuant to state law.

C. Confidentiality. The office 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 §908 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 Archaeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3113. Review of Permit Applications

A. Process

1. 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 office.

2. The office shall review the complete application and written comments, written objections submitted, and records of any informal conference held under §§3105-3109.

3. The office shall determine the adequacy of the fish and wildlife plan submitted pursuant to §2713, in consultation with state and federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed surface coal mining and reclamation operations.

B. If the office 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 Subpart 4.

C. Entry of Information Into AVS

1. Based on an administratively complete application, the office must undertake the reviews required under Subsections D-F of this Section.

2. The office will submit to the federal office, which will then enter into AVS:

- a. the information required under §2305; and
- b. the information submitted under §2307 pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired.

3. The office will update the information referred to in Paragraph C.2 of this Section upon verification of any additional information submitted or discovered during permit application review.

D. Review of Applicant, Operator, and Ownership and Control Information. The office will rely upon the information required under §2305, information from AVS, and any other available information, to review the

applicant's and operator's organizational structure and ownership or control relationships. This review will be conducted before making a permit eligibility determination under Subsection G of this Section.

E. Review of Permit History

1. The office will rely upon the permit history information submitted under §2305, information from AVS, and any other available information to review the applicant's and operator's permit histories. This review will be conducted before making a permit eligibility determination under Subsection G of this Section.

2. The office will determine whether the applicant or operator have previous mining experience.

3. If the applicant or operator do not have any previous mining experience, the office may conduct an additional review under §3521. The purpose of this review will be to determine if someone else with mining experience controls the surface coal mining and reclamation operation.

F. Review of Compliance History. The office will rely upon the violation information submitted under §2307, a report from AVS, and any other available information to review histories of compliance with the Act or these regulations, and any other applicable air or water quality laws, for the applicant, the operator, and surface coal mining and reclamation operations which the applicant or operator own or control. This review will be conducted before making a permit eligibility determination under Subsection G of this Section.

G. Permit Eligibility Determination. Based on the reviews required under Subsections D-F of this Section, the office will determine whether the applicant is eligible for a permit under section 910.C of the Act.

1. Except as provided in §§3113 and 3114, the applicant is not eligible for a permit if the office finds that any surface coal mining and reclamation operation that:

- a. the applicant directly owns or controls has an unabated or uncorrected violation; or
- b. the applicant or operator indirectly control has an unabated or uncorrected violation and the control was established or the violation was cited after November 2, 1988.

2. The office will not issue a permit if the applicant or operator are permanently ineligible to receive a permit under §3521.C.

3. After permit approval under §3115, the office will not issue the permit until the applicant complies with the information update and certification requirement of §2304.D. After the applicant completes that requirement, the office will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect the applicant's permit eligibility under Paragraphs G.1 and 2 of this Section. The office will request this report no more than five business days before permit issuance under §3119.

4. If the applicant is ineligible for a permit under this Section, the office will send written notification of the decision setting forth the reasons for this decision and including notice of appeal rights under Chapter 33.

H. Unanticipated Events or Conditions at Remining Sites

1. The applicant is eligible for a permit under Subsection G of this Section if an unabated violation:

- a. occurred after October 24, 1992; and
- b. resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.

2. For permits issued under §2913, an event or condition is presumed to be unanticipated for the purpose of this Section if it:

- a. arose after permit issuance;
- b. was related to prior mining; and
- c. was not identified in the permit application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 37:2731 (September 2011).

§3114. Eligibility for Provisionally Issued Permits

A. This Section applies to an applicant who owns or controls a surface coal mining and reclamation operation with:

1. a notice of violation issued under §6503 for which the abatement period has not yet expired; or
2. a violation that is unabated or uncorrected beyond the abatement or correction period.

B. The office will find an applicant eligible for a provisionally issued permit under this Section if he or she demonstrates that one or more of the following circumstances exists with respect to all violations listed in Subsection A of this Section:

1. for violations meeting the criteria of Subsection A of this Section, the applicant certifies that the violation is being abated to the satisfaction of the office, and there is no evidence to the contrary;
2. as applicable, the applicant, the applicant's operator, and operations that the applicant or the applicant's operator own or control are in compliance with the terms of any abatement plan (or, for delinquent fees or penalties, a payment schedule) approved by the agency with jurisdiction over the violation;
3. the applicant is pursuing a good faith:
 - a. challenge to all pertinent ownership or control listings or findings under §§3131-3135; or

b. administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

4. the violation is the subject of a good faith administrative or judicial appeal contesting the validity of the violation, unless there is an initial judicial decision affirming the violation and that decision remains in force.

C. The office will consider a provisionally issued permit to be improvidently issued, and must immediately initiate procedures under §§3127 and 3129 to suspend or rescind that permit, if:

1. violations included in Paragraph B.1 of this Section are not abated within the specified abatement period;

2. the applicant, the applicant's operator, or operations that the applicant or the applicant's operator own or control do not comply with the terms of an abatement plan or payment schedule mentioned in Paragraph B.2 of this Section;

3. in the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in Paragraphs B.3 or 4 affirms the validity of the violation or the ownership or control listing or finding; or

4. the initial judicial review decision referenced in Subparagraphs B.3.b or B.4 affirms the validity of the violation or the ownership or control listing or finding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2731 (September 2011).

§3115. Criteria for Permit Approval or Denial

A. No permit or revision application shall be approved, unless the application affirmatively demonstrates and the office finds, in writing, on the basis of information set forth in the application, or from information otherwise available, which is documented in the approval and made available to the applicant, that:

1. the permit application is accurate and complete and that all requirements of the Act and these regulations have been complied with;

2. the applicant has demonstrated that surface coal mining and reclamation operations, as required by the Act and these regulations, can be feasibly accomplished under the mining and reclamation operations plan contained in the application;

3. the assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance, as described in §2525, has been made by the office, and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed permit area;

4. the proposed permit area is:

a. not included within an area designated unsuitable for surface coal mining operations under Chapter 15; or

b. not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under Chapter 15, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit; or

c. not on any lands subject to the prohibitions or limitations of §1105; or

d. not within 100 feet of the outside right-of-way line of any public road, except as provided for in §1107.C; or

e. not within 300 feet from any occupied dwelling, except as provided for in §1107.D;

5. the proposed operations will not adversely affect any publicly owned parks or places included on the National Register of Historic Places, except as provided for in §1105.C;

6. for operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, where such severance is authorized under Louisiana law, the applicant has submitted to the office the documentation required under §2309.B;

7. the applicant has either:

a. submitted the proof required by §3113.C.1.a; or

b. made the demonstration required by §3113.C.1.b;

8. the applicant has submitted proof that all reclamation fees have been paid;

9. the applicant, anyone who owns or controls the applicant, or the operator specified in the application does not control and has not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act;

10. surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area;

11. the applicant will submit the performance bond or other equivalent guarantee required under Subpart 4 prior to the issuance of the permit;

12. the applicant has, with respect to prime farmland, obtained either a negative determination or satisfied the requirements of §2907;

13. the proposed post-mining land use of the permit area has been approved by the office in accordance with the requirements of §5431;

14. the office has made all specific approvals required under Subpart 5;

15. the office has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.);

16. the office has taken into account the effect of the proposed permitting action on properties listed on and 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 office has determined that no additional protection measures are necessary.

17. for a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of §5414, the site of the operation is a previously mined area as defined in §105;

18. for permits to be issued under §2913, the permit application must contain:

- a. lands eligible for remining;
- b. 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
- c. 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;

19. the applicant is eligible to receive a permit, based on the reviews under §§3113-3114.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:1497 (August 2003), LR 37:2732 (September 2011).

§3117. Criteria for Permit Approval or Denial: Existing Structures

A. No application for a permit or revision which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the office finds, in writing, on the basis of information set forth in the complete application that:

1. if the applicant proposes to use an existing structure in accordance with the exemption provided in §303.C.1.a:
 - a. the structure meets the performance standards of the Act and Subpart 5; and
 - b. no significant harm to the environment or public health or safety will result from use of the structure;

2.a. if the applicant proposes to use an existing structure in accordance with the exemption provided in §303.C.1.b:

- i. the structure meets the performance standards of the Act and Subchapter B of 30 CFR Chapter VII;
- ii. no significant harm to the environment or public health or safety will result from use of the structure; and
- iii. the performance standards of Subchapter B of 30 CFR Chapter VII are at least as stringent as the performance standards of Subpart 5;

b. if the office finds that the structure meets the criteria of §303.C.1.a and b, but does not meet the criteria of §303.C.1.c, the office shall require the applicant to submit a compliance plan for modification or reconstruction of the structure and shall find prior to the issuance of the permit that:

- i. the modification or reconstruction of the structure will bring the structure into compliance with the design and performance standards of Subpart 5 as soon as possible, but not later than six months after issuance of the permit;
- ii. the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and
- iii. the applicant will monitor the structure to determine compliance with the performance standards of Subpart 5.

B. Should the office find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant will be required to abandon the existing structure. The structure shall not be used for or to facilitate surface coal mining operations after the effective date of issuance of the permanent regulatory program permit. Abandonment of the structure shall proceed on a schedule approved by the office, in compliance with §5429.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3119. Permit Approval or Denial Actions

A. The office shall approve, require modification of, or deny all applications for permits under regulatory programs on the basis of:

1. complete applications for permits and revisions or renewals thereof;
2. public participation as provided for in this Subpart;
3. compliance with any applicable provisions of Chapter 29;
4. processing and review of applications as required by this Chapter.

B. The office shall take action as required under §3119.A, within the following times.

1. Except as provided for in §3119.B.2, a complete application submitted to the office shall be processed by the office, so that an application is approved or denied within the following times:

a. if an informal conference has been held under §3109, within 60 days of the close of the conference; or

b. if no informal conference has been held under §3109, then within 30 days after the receipt by the office of all comments or objections to the permit. The office may allow additional time for processing, taking into account:

i. the time needed for proper investigation of the proposed permit and adjacent areas;

ii. the complexity of the application; and

iii. whether written objections to or comments on the complete application have been filed with the office.

2. Notwithstanding any of the foregoing provisions of this Section, no time limit under the Act or this Section requiring the office to act shall be considered expired from the time the office initiates a proceeding under §3113.D until the final decision of the hearing body.

C. If an informal conference is held under §3109, the office shall give its written findings to the permit applicant and to each person who is a party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.

D. If no such informal conference has been held, the office shall give its written findings to the permit applicant approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.

E. Simultaneously, the office shall:

1. give a copy of its decision to each person and government official who filed a written objection or comment with respect to the application, and to the local OSMRE office together with a copy of any permit issued;

2. publish a summary of its decision in a newspaper or similar periodical of general circulation in the general area of the proposed operation.

F. Within 10 days after the granting of a permit, including the filing of the performance bond or other equivalent guarantee which complies with Subpart 4, the office shall notify the local government officials, in the local political subdivision in which the area of land to be affected is located, that a permit has been issued and shall describe the location of the lands within the permit area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§3121. Permit Terms

A. Each permit shall be issued for a fixed term not to exceed five years. A longer fixed permit term may be granted, if:

1. the application is full and complete for the specified longer term;

2. 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.

B. Termination, Extension

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

2. The office may grant reasonable extensions of time for commencement of these operations, upon receipt of a written statement showing that such extensions of time are necessary, if litigation precludes the commencement or threatens substantial economic loss to the permittee, or there are conditions beyond the control and without the fault or negligence of the permittee.

3. 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.

4. Extensions of time granted by the office under this Subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

C. Permits may be suspended, revoked, or modified by the office, in accordance with §§2901, 2903, 2905, 3503 and Chapters 63, 65 and 69.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§3123. Conditions of Permits: General and Right of Entry

A. Each permit issued by the office shall ensure that:

1. except to the extent that the office otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the complete application;

2. the permittee shall allow the authorized representatives of the secretary of interior, including, but not limited to, inspectors and fee compliance officers, and the office, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to have the rights of entry provided for in §§6303 and 6305,

and be accompanied by private persons for the purpose of conducting an inspection in accordance with Chapter 63, when the inspection is in response to an alleged violation reported to the office by the private person;

3. the permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the maps submitted under Chapters 25-27 and approved for the term of the permit and which are subject to the performance bond or other equivalent guarantee in effect pursuant to Subpart 4;

4. the operator shall pay all reclamation fees required by Subchapter R of 30 CFR Chapter VII for coal produced under the permit for sale, transfer or use, in the manner required by that Subchapter;

5. the office shall require in the permit that adequate bond coverage be in effect at all times;

6. within 30 days after a cessation order is issued under §6501 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 office the following information, current to the date the cessation order was issued, or notify the office 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 office by the permittee under §2305.A.3; or

b. if not previously submitted, the information required from a permit applicant by §2305.A.3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3125. Conditions of Permits: Environment, Public Health and Safety

A. Each permit issued by the office shall ensure and contain specific conditions requiring that the:

1. 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;

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;

2. the permittee shall dispose of solids, sludge, filter back-wash or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner

required by Subpart 5, the regulatory program, and which prevents violation of any other applicable state or federal law;

3. the permittee shall conduct the operations:

a. in accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public;

b. utilizing any methods specified in the permit by the office in approving alternative methods of compliance with the performance standards of the Act and the regulatory program, in accordance with the provisions of the Act, and §3115.A.13 and Subpart 5 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3127. Improvidently Issued Permits: General Procedures

A. When the office has reason to believe that it improvidently issued a surface coal mining and reclamation permit, it shall review the circumstances under which the permit was issued. The office will make a preliminary finding that the permit was improvidently issued if, under the permit eligibility criteria section 910.C of the Act in effect at the time of permit issuance, the permit should not have been issued because the applicant or the applicant's operator owned or controlled a surface coal mining and reclamation operation with an unabated or uncorrected violation.

B. The office will make a finding under §3127.A only if the applicant or the applicant's operator:

1. continue to own or control the operation with the unabated or uncorrected violation;

2. the violation remains unabated or uncorrected; and

3. the violation would cause the applicant to be ineligible under the permit eligibility criteria in the current regulations.

C. When the office makes a preliminary finding under §3127.A, it must serve the applicant with a written notice of the preliminary finding, which must be based on evidence sufficient to establish a prima facie case that the permit was improvidently issued.

D. Within 30 days of receiving a notice under §3127.C, the applicant may challenge the preliminary finding by providing the office with evidence as to why the permit was not improvidently issued under the criteria in §3127.A and B.

E. The provisions of §§3131-3135 apply when a challenge under §3127.D concerns a preliminary finding under §3127.A and B.1 that the applicant or the applicant's operator currently own or control, or owned or controlled, a surface coal mining operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994), amended LR 37:2732 (September 2011).

§3129. Improvidently Issued Permits: Suspension or Rescission Procedures

A. The office must suspend or rescind the permit upon expiration of the time specified in §3129.A.1.

1. Automatic Suspension and Rescission. 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 applicant submits proof, and the office finds, that:

a. the finding of the office under §3127.B was erroneous;

b. the applicant or the applicant’s operator has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

c. the violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the applicant or applicant’s operator is complying to the satisfaction of the responsible agency; or

d. since the finding was made, the applicant or applicant’s operator 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.

2. Cessation of Operations. After permit suspension or rescission, the office shall issue written notice that the applicant 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 office.

3. The office shall post the notice at the conservation office closest to the permit area.

4. Right to Appeal. The applicant may obtain administrative and judicial review of the notice under §§3301 and 3303.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994), amended LR 37:2732 (September 2011).

§3131. Challenges to Ownership or Control Listings and Findings

A. The applicant may challenge a listing or finding of ownership or control using the provisions under §§3133 and 3135 if he or she is:

1. listed in a permit application or AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof;

2. found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under §§3127 or 3521.G; or

3. an applicant or permittee affected by an ownership or control listing or finding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2733 (September 2011).

§3133. Challenging an Ownership or Control Listing or Finding

A. To challenge an ownership or control listing or finding, the applicant must submit a written explanation of the basis for the challenge, along with any evidence or explanatory materials he or she wishes to provide under §3135.B, to the regulatory authority, as identified in the following table.

If the challenge concerns...	Then submit a written explanation to...
(1) a pending state or federal permit application	the regulatory authority with jurisdiction over the application.
(2) applicant’s ownership or control of a surface coal mining operation, and he or she is not currently seeking a permit	the regulatory authority with jurisdiction over the surface coal mining operation.

B. The provisions of this Section and of §§3135 and 3137 apply only to challenges to ownership or control listings or findings. The applicant may not use these provisions to challenge liability or responsibility under any other provision of the Act or these regulations.

C. When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit must consult the regulatory authority with jurisdiction over the violation and the AVS office to obtain additional information.

D. A regulatory authority responsible for deciding a challenge under §3133.A may request an investigation by the AVS Office.

E. At any time, the applicant, a person listed in AVS as an owner or controller of a surface coal mining operation, may request an informal explanation from the AVS office as to the reason he or she is shown in AVS in an ownership or control capacity. Within 14 days of the request, the AVS Office will provide a response describing why the applicant is listed in AVS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2733 (September 2011).

§3135. Burden of Proof for Ownership or Control Challenges

A. When the applicant challenges a listing of ownership or control, or a finding of ownership or control made under

§3521.G, the applicant must prove by a preponderance of the evidence that he or she either:

1. does not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or
2. did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.

B. In meeting the burden of proof, the applicant must present reliable, credible, and substantial evidence and any explanatory materials to the office. The materials presented in connection with the challenge will become part of the permit file, an investigation file, or another public file. If the applicant requests, the office will hold as confidential any information submitted under this paragraph which is not required to be made available to the public under §6311.

C. Materials the applicant may submit in response to the requirements of §3135.B include, but are not limited to:

1. notarized affidavits containing specific facts concerning the duties that the applicant performed for the relevant operation, the beginning and ending dates of ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation;

2. certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;

3. certified copies of documents filed with or issued by any state, municipal, or federal governmental agency;

4. an opinion of counsel, when supported by:
 - a. evidentiary materials;
 - b. a statement by counsel that he or she is qualified to render the opinion; and
 - c. a statement that counsel has personally and diligently investigated the facts of the matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2733 (September 2011).

§3137. Written Decision on Challenges to Ownership or Control Listings or Findings

A. Within 60 days of receipt of the challenge under §3133.A, the regulatory authority identified under §3133.A, will review and investigate the evidence and explanatory materials submitted and any other reasonably available information bearing on the challenge and issue a written decision. The decision must state whether the applicant owns or controls the relevant surface coal mining operation, or owned or controlled the operation, during the relevant time period.

B. The office will promptly provide the applicant with a copy of this decision by either:

1. certified mail, return receipt requested; or
2. any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, or its state regulatory program counterparts.

C. Service of the decision on the applicant is complete upon delivery and is not incomplete if delivery is refused.

D. The office will post all decisions made under this Section on AVS.

E. Any person who receives a written decision under this Section, and who wishes to appeal that decision, must exhaust administrative remedies under Chapter 33 before seeking judicial review.

F. Following the written decision or any decision by a reviewing administrative or judicial tribunal, the office must review the information in AVS to determine if it is consistent with the decision. If it is not, the office must promptly revise the information in AVS to reflect the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2734 (September 2011).

Chapter 33. Administrative and Judicial Review of Decisions by the Office of Conservation on Permit Applications

§3301. Administrative Review

A. Within 30 days after the applicant or permittee is notified of the final decision of the office concerning the application for the permit, revision or renewal thereof, permit, application for transfer, sale or assignment of rights, or concerning an exploration or development operation under §2115, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with this Section.

1. The office shall commence the hearing within 30 days of such request. This hearing shall be of record, adjudicatory in nature, and no person who presided at an informal conference under §3109 shall either preside at the hearing, or participate in the decision following the hearing, or in any administrative appeal therefrom.

2. The office may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:
 - a. all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

b. the person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding;

c. the relief is not to affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air or water resources;

d. the relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the office.

3. Hearing Authority

a. For the purpose of such hearing, the hearing authority may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

b. A verbatim record of each public hearing required by this Section shall be made, and a transcript made available on the motion of any party or by order of the hearing authority.

c. Ex parte contacts between representatives of the parties before the hearing authority and the hearing authority shall be prohibited.

4. Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant, and each person who participated in the hearing, with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal.

5. The burden of proof at such hearings shall be on the party seeking to reverse the decision of the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§3303. Judicial Review

A. Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to appeal as provided in §3303.B, if:

1. the applicant or person is aggrieved by the decision of the hearing authority in an administrative review proceeding conducted pursuant to §3301; or

2. either the office or the hearing authority for administrative review under §3301 fails to act within time limits specified in the Act, or these regulations, whichever applies.

B. State Programs. Action of the office or hearing authority identified in §3303.A shall be subject to judicial

review by a court of competent jurisdiction, but the availability of such review shall not be construed to limit the operation of the rights established in §920 of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 35. Permit Reviews and Renewals; Transfer, Sale and Assignment of Rights Granted under Permits; Post-Permit Issuance Requirements; and Other Actions Based on Ownership, Control and Violation Information

§3501. Responsibilities

A. The office shall:

1. ensure that permits are revised prior to changes in surface coal mining and reclamation operations;

2. ensure that all permits are regularly reviewed to determine that surface coal mining and reclamation operations under these permits are conducted in compliance with the Act and these regulations;

3. effectively review and Act on applications to renew existing permits, in a timely manner, to ensure that surface coal mining and reclamation operations continue, if they comply with the Act and these regulations;

4. ensure that no person conducts surface coal mining and reclamation operations through the transfer, sale or assignment of rights granted under permits without the prior approval of the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3503. Office of Conservation Review of Outstanding Permits

A. The office shall review each permit issued and outstanding under an approved regulatory program during the term of the permit. This review shall occur not later than the middle of the permit term and as required by §§2901 and 2905. For permits of longer than five year terms, a review of the permit shall be no less frequent than the permit midterm or every five years, whichever is more frequent.

B. After this review, the office may, by order, require reasonable revision or modification of the permit provisions to ensure compliance with the Act and these regulations.

C. Copies of the decision of the office shall be sent to the permittee.

D. Any order of the office requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of Chapter 33.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3505. Permit Revisions

A. A revision to a permit shall be obtained for all departures from the method of conduct of mining or reclamation operations contemplated by the permit in accordance with this Section.

1. The permittee shall submit to the office an application for permit revision setting forth the proposed departure from the method of conduct of mining or reclamation operations for review and determination by the office of whether the proposed departure constitutes a significant departure. Significant departures would include any change in permit area, mining method or reclamation procedure which would, in the opinion of the commissioner, significantly change the effect the mining operation would have on either those persons impacted by the permitted operation or on the environment. Within 15 days of receipt of a complete application, the office shall notify the permittee of its determination that the proposed departure set forth in the application does or does not constitute a significant departure. Within 45 days after the office determines that the proposed departure is not a significant departure, the office shall issue to the permittee approval or disapproval of the permit revision for such departure.

2. For departures from the surface coal mining or reclamation operations described in the original application and approved under the original permit which are determined by the office to constitute a significant departure, the permittee shall file an application for revision in accordance with §3505.C.

B. An application for a revision to a permit shall also be required to be filed by the permittee:

1. when required by an order issued under §3503;
2. in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the original permit was issued; or
3. as otherwise required under these regulations.

C. The application for revision required under §3505.A.2 and B shall be filed in accordance with the following:

1. the permittee shall submit the application to the office within the time provided for by §1905.C;
2. the scale or extent of permit application information requirements and procedures, including notice and hearings, applicable to revision requests shall be as required by the

office. Any application for a revision which proposes significant departure in the operations described in the materials submitted in the application for the original permit under Chapters 23, 25, 27 or 29 or in the conditions of the original permit shall, at a minimum, be subject to the requirements of Chapters 31 and 33;

3. the office shall approve or disapprove the complete application for revision, in accordance with the requirements of Chapter 31, within 15 days after the close of the comment period prescribed therein.

D. Any extensions to the area covered by the permit, except for incidental boundary revisions, shall be made by application for a new permit and shall not be approved under this Chapter.

E. In the event that an approved permit is revised in accordance with this Section, the office shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as reviewed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§3507. Permit Renewals: General Requirements

A. Any valid, existing permit issued pursuant to a regulatory program shall carry with it the right of successive renewal upon expiration of the term of the permit, in accordance with §§3509-3513. Successive renewal shall be available only for those areas which were specifically approved by the office on the application for the existing permit as within the boundaries of the permit.

B. Permit renewal shall not be available for conducting surface coal mining and reclamation operations on the lands beyond the boundaries of the permit area approved under the existing permit. Approval of permits to conduct operations on these lands including, but not limited to, any remainder of the mine plan area described in the application for the existing permit shall be obtained in accordance with §3509.B.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§3509. Permit Renewals: Completed Applications

A. Contents. Complete applications for renewals of a permit shall be made within the time prescribed by §1905.B. Renewal applications shall be in a form and with contents required by the office and in accordance with §3509.B.2 including, at a minimum, the following:

1. a statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any changes to the matters set forth in the original application for a permit or prior renewal;

2. a copy of the newspaper notice and proof of publication of same under §3103.A;

3. evidence that liability insurance policy or adequate self-insurance under §4309 will be provided by the applicant for the proposed period of renewal;

4. the bond value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.

B. Processing and Review

1. Complete applications for renewal shall be subject to the requirements of public notification and participation contained in §§3103-3109.

2. If a complete application for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the complete application for renewal of the valid permit which addresses any new land areas shall be subject to the full standards applicable to new permit applications under the Act, and Chapters 19, 23, 25, 27, 29, 31, 33, 35 and any other applicable portion of these regulations.

3. Before finally acting to grant the permit renewal, the office shall require any additional performance bond needed by the permittee to comply with the requirements of §3513.A.5 to be filed with the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§3511. Permit Renewals: Terms

A. Any permit renewal shall be for a term not to exceed the period of the original permit established under §3121.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3513. Permit Renewals: Approval or Denial

A. The office shall, upon the basis of a complete application for renewal, and completion of all procedures required under §§3509-3511, issue a renewal of a permit within 120 days of the filing of the application for renewal, unless it is established and written findings are made by the office that:

1. the terms and conditions of the existing permit are not being satisfactorily met;

2. the present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under the Act and these regulations;

3. the requested renewal substantially jeopardizes the operator's continuing responsibility to comply with the Act and these regulations on existing permit areas;

4. the operator has not provided evidence of having liability insurance or self-insurance as required in §4309;

5. the operator has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the office might require pursuant to Subpart 4; or

6. any additional revised or updated information required by the office has not been provided by the applicant.

B. In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal. If the office, prior to the issuance of a renewal in accordance with §3513.A, determines that a condition exists which will prevent issuance of a permit renewal, the office shall immediately provide the applicant with notice of such condition and provide the applicant an opportunity prior to the expiration of the original permit to initiate action to correct the condition. A violation of the Act, these regulations, or a permit condition shall not be cause for denial of a permit renewal if the office determines, prior to the expiration of the existing permit, that the violation:

1. has been corrected; or

2. is in the process of being corrected; or

3. the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation.

C. The office shall send copies of its decision to the applicant, any person who filed objections or comments to the renewal, and to any persons who were parties to any informal conference held on the permit renewal, and to OSM if OSM is not the regulatory authority.

D. Any person having an interest which is or may be adversely affected by the decision of the office shall have the right to administrative and judicial review set forth in Chapter 33.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§3515. Transfer, Assignment or Sale of Permit Rights: General Requirements

A. No transfer assignment, or sale of the rights granted under any permit issued pursuant to a regulatory program shall be made without the prior written approval of the office, in accordance with §§3515-3519.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3517. Transfer, Assignment or Sale of Permit Rights: Obtaining Approval

A. Any person seeking to succeed by transfer, assignment or sale to the rights granted by a permit issued under this regulatory program shall, prior to the date of such transfer, assignment or sale:

1. obtain the performance bond coverage of the original permittee by:

- a. obtaining transfer of the original bond;
- b. obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the office. If such an agreement is reached, the office may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement;
- c. providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; or
- d. such other methods as would provide that reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee;

2. provide the office with an application for approval of such proposed transfer, assignment or sale, including:

- a. the name and address of the existing permittee;
- b. the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent;
- c. for surface mining activities, the same information as is required by §§2305, 2307, 2309, 2311.B, 2315 and 2317 for applications for new permits for those activities; or

3. obtain the written approval of the office for transfer, assignment or sale of rights, according to §3517.C.

B.1. The person applying for approval of such transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in the newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent under this Paragraph.

2. Any person whose interests are or may be adversely affected including, but not limited to, the head of any local, state or federal government agency may submit written comments on the application for approval to the office,

within the time required by the regulations of the particular regulatory program.

C. The office may, upon the basis of the applicant's compliance with the requirements of §3517.A-B, grant written approval for the transfer, sale or assignment of rights under a permit, if it first finds, in writing, that:

1. the applicant is eligible to receive a permit in accordance with §§3113.G and 3115;
2. the person seeking approval will conduct the operations covered by the permit in accordance with the criteria specified in Chapter 29 and §§3115 and 3117 and the requirements of the Act and these regulations;
3. the applicant has, in accordance with §3517.A.1, submitted a performance bond or other guarantee as required by Subpart 4 and at least equivalent to the bond or other guarantee of the original permittee;
4. the applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until it has obtained a new permit in accordance with this Subpart as required in §3519.

D. Notification

1. The office shall notify the permittee, the successor, commentors, and OSM, if OSM is not the regulatory authority, of its findings.

2. The successor shall immediately provide notice to the office of the consummation of the transfer, assignment or sale of permit rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 37:2734 (September 2011).

§3519. Requirements for New Permits for Persons Succeeding to Rights

A. A successor in interest to a permittee who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee.

B. Pursuant to §3517.C.4, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall:

1. make application for a new permit under Chapters 19-33, if the change involves conducting operations outside the original permit area; or
2. make application for a revised permit under §3505.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3521. Post-Permit Issuance Requirements for Regulatory Authorities and Other Actions Based on Ownership, Control, and Violation Information

A. For the purposes of future permit eligibility determinations and enforcement actions, the office must enter into AVS the data shown in the following table.

Enter into AVS all...	Within 30 days after...
(1) permit records	the permit issued or subsequent changes made.
(2) unabated or uncorrected violations	the abatement or correction period for a violation expires.
(3) changes to information initially required to be provided by an applicant under 30 CFR 778.11	receiving notice of a change.
(4) changes in violation status	abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

B. If, at any time, the office discovers that any person owns or controls an operation with an unabated or uncorrected violation, the office will determine whether enforcement action is appropriate under §§6501 or 6503. The office must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

C. The office must serve a preliminary finding of permanent permit ineligibility under section 910.C of the Act on the applicant or operator if the criteria in §3521.C.1 and C.2 are met. In making a finding under this Paragraph, the office will only consider control relationships and violations which would make, or would have made, the applicant ineligible for a permit under §3113.G.1 and G.2. The office must make a preliminary finding of permanent permit ineligibility if it finds that:

1. the applicant controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under section 910.C of the Act; and
2. the violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate the applicant's intent not to comply with the Act, these regulations, the regulatory program, or the permit.

D. The applicant may request a hearing on a preliminary finding of permanent permit ineligibility under Chapter 33.

E. Entry into AVS

1. If the applicant does not request a hearing, and the time for seeking a hearing has expired, the office will enter our finding into AVS.
2. If the applicant requests a hearing, the office will enter its finding into AVS only if that finding is upheld on administrative appeal.

F. At any time, the office may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If such a person is identified, the office must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

G. After the office issues a written preliminary finding under §3521.F, the office will allow the person subject to the preliminary finding, 30 days in which to submit any information tending to demonstrate his or her lack of ownership or control. If, after reviewing any information submitted, the office is persuaded that the person is not an owner or controller, the will serve the person a written notice to that effect. If, after reviewing any information submitted, the office still finds that the person is an owner or controller, or if no information is submitted within the 30-day period, we will issue a written finding and enter our finding into AVS.

H. If we identify the applicant as an owner or controller under Paragraph G of this Section, the applicant may challenge the finding using the provisions of §§3131-3137.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2734 (September 2011).

§3523. Post-Permit Issuance Information Requirements for Permittees

A. Within 30 days after the issuance of a cessation order under §6501, the permittee must provide or update all the information required under §2305.

B. The permittee does not have to submit information under §3523.A if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

C. Within 60 days of any addition, departure, or change in position of any person identified in §2305.C, the permittee must provide:

1. the information required under §2305.D; and
2. the date of any departure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2735 (September 2011).

Chapter 37. Small Operator Assistance

§3701. Authority

A. The commissioner shall provide financial and other assistance under §907.C of the Act to the extent funds are appropriated by the legislature specifically for this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3703. Responsibilities: General

A. The Office of Conservation shall:

1. review requests for assistance and determine qualified operators;
2. develop and maintain a list of qualified laboratories, and select and pay laboratories for services rendered;
3. conduct periodic on-site evaluations of the Louisiana Surface Mining Program activities with the appropriate small operator; and
4. participate with the Office of Surface Mining in data coordination activities with the U.S. Geological Survey, U.S. Environmental Protection Agency, and other appropriate agencies or institutions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3705. Eligibility for Assistance

A. An applicant is eligible for assistance if he or she:

1. intends to apply for a permit pursuant to the Act;
2. establishes that his or her probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his or her permit or during the first five years after issuance of his or her permit, whichever period is shorter, will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:
 - a. the pro rata share, based upon percentage of ownership of the applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;
 - b. the pro rata share, based upon percentage of ownership of the applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;
 - c. all coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management; and
 - d. all coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them.
3. is not restricted in any manner from receiving a permit under the permanent regulatory program; and

4. does not organize or reorganize his or her company solely for the purpose of obtaining assistance under the Small Operator Assistance Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:1497 (August 2003).

§3707. Filing for Assistance

A. Each applicant shall submit the following information to the office at any time after initiation of the Small Operator Assistance Program within the state:

1. a statement of intent to file permit applications;
2. the names and addresses of:
 - a. the potential permit applicant; and
 - b. the potential operator if different from the applicant;
3. a schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under §3705. The schedule shall include for each location:
 - a. the name under which coal is or will be mined;
 - b. the permit number and Mining Health and Safety Administration identification number;
 - c. the actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant; and
 - d. the estimated coal production for each year of the proposed permit and that portion attributed to the applicant;
4. a description of:
 - a. the method of surface coal mining operations proposed;
 - b. the anticipated starting and termination date of mining operations;
 - c. the number of acres of land to be affected by the proposed mining; and
 - d. a general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated;
5. a U.S. Geological Survey topographic map of 1:24,000 scale or larger or other topographic map of equivalent detail which clearly shows:
 - a. the area of land to be affected and the natural drainage above and below the affected area;
 - b. the names of property owners in the area to be affected and of adjacent lands;

c. the location of existing structures and developed water sources within the area to be affected and on adjacent lands;

d. the location of existing and proposed test boring or core sampling; and

e. the location and extent of known working of any underground mines;

6. copies of documents which show that:

a. the applicant has a legal right to enter and commence mining within the permit area; and

b. a legal right of entry has been obtained for the Office of Surface Mining, the office, and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§3709. Application Approval and Notice

A. If the office finds the applicant eligible, and it does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall:

1. determine the minimal data requirements necessary to meet the provisions of §3711;

2. select the services of one or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work order and the final approved report shall be provided to the applicant.

B. The office shall inform the applicant, in writing, if the application is denied and shall state the reasons for denial.

C. The granting of assistance under this Chapter shall not be a factor in decisions by the office on a subsequent permit application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3711. Program Services and Data Requirements

A. To the extent possible with available funds, the commissioner shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in §3711.B for eligible operators who request assistance.

B. The commissioner shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the commissioner shall be sufficient to satisfy the requirements for:

1. the determination of the probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with §2523 and any other applicable provisions of these regulations; and

2. the drilling and the statement of the results of test borings or core samplings for the proposed permit area in accordance with §2509.B. and any other applicable regulations;

3. the development of cross-section maps and plans required by §2537;

4. the collection of archaeological and historic information and related plans required by §§2505.A.2 and 2731 and any other archaeological and historic information required by the office;

5. pre-blast surveys required by §2707; and

6. the collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by §2713, and information and plans for any other environmental values required by the office under the Act.

C. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

D. Data collected under this program shall be made publicly available in accordance with §3111. The commissioner shall develop procedures for interstate coordination and exchange of data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2284 (December 1998).

§3713. Qualified Laboratories

A. General

1. As used in this Section, qualified laboratory means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination or statement under this program.

2. The Office of Surface Mining shall establish and periodically publish in the *Federal Register* a list of qualified laboratories which may be used by regulatory authorities under the procedures of this Section. The office may designate qualified laboratories under procedures included in the program.

3. Persons who desire to be included in the list of qualified laboratories established by the Office of Surface Mining shall apply to the Office of Surface Mining and provide such information as is necessary to establish the qualifications required by §3713.B.

B. Basic Qualifications

1. To qualify for designation, the laboratory shall demonstrate that it:

a. is staffed with experienced, professional personnel in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry applicable to the work to be performed;

b. is capable of collecting necessary field data and samples;

c. has adequate space for material preparation, cleaning and sterilizing necessary equipment, storage and space to accommodate periods of peak work loads;

d. meets the requirements of the Occupational Safety and Health Act or the equivalent state safety and health program;

e. has the financial capability and business organization necessary to perform the work required;

f. has analytical, monitoring and measuring equipment capable of meeting the applicable standards; and

g. has the capability of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic engineering or analytical methods, or by those appropriate methods or guidelines for data acquisition recommended by the Office of Surface Mining or other federal or state agencies.

2. The qualified laboratory shall be capable of performing either the determination or statement under §3711.B.1 or 2. Subcontractors may be used to provide the services required provided their use is defined in the application for designation and approved by the Office of Surface Mining.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3715. Assistance Funding

A. Use of Funds. Funds authorized for this program shall not be used to cover state administrative costs or the costs of test boring or core sampling.

B. Allocation of Funds. The office shall to the extent practicable establish a formula for allocating funds among eligible small operators if available funds are less than those required to provide the services pursuant to this Chapter. This formula shall include such factors as the applicant's:

1. anticipated date of filing a permit application;
2. anticipated date for commencing mining; and
3. performance history.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3717. Applicant Liability

A. A coal operator shall reimburse the office for the cost of the services rendered pursuant to this Chapter if:

1. the applicant submits false information, fails to submit a permit application within one year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;

2. the commissioner finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit; or

3. the permit is sold, transferred or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000-ton annual production limit during the 12 months immediately following the date on which the permit was originally issued. Under this Paragraph the applicant and its successor are jointly and severally obligated to reimburse the office.

B. The office may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2284 (December 1998).

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Part XV. Office of Conservation—Surface Mining

Subpart 4. Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations

Chapter 39. General Requirements for Bonding of Surface Coal Mining and Reclamation Operations under Regulatory Program

§3901. Requirement to File a Bond

A. After a permit application under Subpart 3 has been approved, but before a permit is issued, the applicant shall file with the office, on a form prescribed and furnished by the office, a bond or bonds for performance made payable to the office and conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit and the reclamation plan. The amount, duration, form, conditions and terms of the performance bond shall conform to Chapters 41 and 43.

B. An operator shall not disturb surface acreage or extend any operations prior to receipt of approval from the office of the performance bond covering the surface acreage to be affected.

1. The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit.

2. As surface coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file with the office an additional bond or bonds to cover such increments in accordance with this Section.

3. The operator shall identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application and shall specify the bond amount to be provided for each area or increment.

4. Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the office become necessary pursuant to Chapter 47.

C. An operator shall not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels or operations prior to acceptance by the office of the required performance bond.

D. The applicant shall file, with the approval of the office, a bond or bonds under one of the following schemes

to cover the bond amounts for the permit area as determined in accordance with §4101:

1. a performance bond or bonds for the entire permit area;
2. a cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or
3. an incremental-bond schedule and the performance bond required for the first increment in the schedule.

E. The amount, duration, form, conditions and terms of the performance bond shall conform to Chapters 41 and 43.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3903. Requirement to File a Certificate of Liability Insurance

A. Each applicant for a permit shall submit to the office, as part of the permit application:

1. a certificate issued by an insurance company authorized to do business in the United States; the amount, duration, form, conditions and terms of this insurance shall conform to §4309; or
2. evidence that it satisfies applicable state or federal self-insurance requirements and that self-insurance for liability is otherwise consistent with §4309.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§3905. Office of Conservation Responsibilities

A. The office shall prescribe and furnish the form for filing a performance bond.

B. The office shall prescribe terms and conditions for performance bonds and insurance by regulations which meet, at a minimum, the requirements of Chapters 41 and 43.

C. The office shall determine the amount of the performance bond required for the permit area, including adjustments to the initial amount from time-to-time as land acreages in the permit area are revised, or when other

relevant conditions change according to the minimum requirements of §4101.A.1.

D. The office may not accept a self-bond in lieu of a surety or collateral bond, unless the permittee meets the requirements of §4305 and any additional requirements in the program.

E. The office shall release the permittee from his bond and insurance requirements consistent with Chapter 45.

F. The office shall cause all or part of a bond to be forfeited consistent with Chapter 47.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 41. Amount and Duration of Performance Bond

§4101. Determination of Bond Amount

A. The standard applied by the office in determining the amount of performance bond shall be the estimated cost to the office if it had to perform the reclamation, restoration and abatement work of a person who conducts surface coal mining and reclamation operations under the Act, these regulations and the permit, and such additional work as would be required to achieve compliance with the general standards for revegetation in §5423.A.5 in the event the permittee fails to implement an approved alternative post-mining land use plan within the two years required by §5423.B.4. This amount shall be based on, but not be limited to:

1. the estimated costs submitted by the permittee in accordance with §2715;
2. the additional estimated costs to the office which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration and abatement work;
3. all additional estimated costs necessary, expedient and incident to the satisfactory completion of the requirements identified in this Section;
4. an additional amount based on factors of cost changes during the preceding five years for the types of activities associated with the reclamation to be performed;
5. such other cost information as may be required by or available to the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§4103. Minimum Amount

A. The amount of the bond for surface coal mining and reclamation operations shall be \$10,000, at a minimum, for

the entire area under one permit and be sufficient to assure performance of reclamation, restoration and abatement work required of a person who conducts surface coal mining and reclamation operations under the Act, these regulations and the provisions of the permit, if the work had to be performed by the office in the event of forfeiture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§4105. Period of Liability

A. Liability under performance bond(s) applicable to a permit shall continue until all reclamation, restoration and abatement work required of persons who conduct surface coal mining and reclamation operations under requirements of the Act, these regulations, the regulatory program and the provisions of the permit has been completed, and the permit terminated by release of the permittee from any further liability in accordance with Chapter 45.

B. In addition to the period necessary to achieve compliance with all requirements of the Act, these regulations, the regulatory program and the permit, including the standards for the success of revegetation as required by §5423, the period of liability under performance bond shall continue for a minimum period beginning with the last year of augmented seeding, fertilizing, irrigation or other work. The minimum period of liability shall continue for not less than five full years. The period of liability shall begin again whenever augmented seeding, fertilizing, irrigation or other work is required or conducted on the site prior to bond release.

C. If the office approves a long-term intensive agricultural post-mining land use, in accordance with §5431, the applicable five-year period of liability shall commence at the date of initial planting for such long-term intensive agricultural land use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§4107. Adjustment of Amount

A. The amount of the performance bond liability applicable to a permit shall be adjusted by the office as the acreage in the permit area is revised, methods of mining operation change, standards of reclamation change or when the cost of future reclamation, restoration or abatement work changes. The office shall notify the permittee, the surety and any person with a property interest in collateral posted as bond of any proposed bond adjustment and provide the permittee an opportunity for an informal conference on the adjustment. The office shall review each outstanding performance bond at the time that permit reviews are conducted under §3503, and re-evaluate those performance bonds in accordance with the standards in §4101.

B. A permittee may request reduction of the required performance bond amount upon submission of evidence to the office proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the office to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall be considered as a request for partial bond release in accordance with the procedures of Chapter 45.

C. In the event that an approved permit is revised in accordance with §3505, the office shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 43. Form, Conditions and Terms of Performance Bonds and Liability Insurance

§4301. Form of the Performance Bond

A. The form for the performance bond shall be prescribed by the office in accordance with this Chapter. The office shall allow for either:

1. a surety bond;
2. a collateral bond; or
3. a self-bond.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§4303. Terms and Conditions of the Bond

A. The performance bond shall be in an amount determined by the office as provided in §§4101 and 4103.

B. The performance bond shall be payable to the office.

C. The performance bond shall be conditioned upon faithful performance of all of the requirements of the Act, these regulations and the conditions of the permit, and shall cover the entire permit area or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit.

D. The duration of the bond shall be for the time period provided in §4105.

E. Surety bonds shall be subject to the following conditions.

1. The office shall not accept the bond of a surety company unless the bond shall not be cancellable by the surety at any time for any reason including, but not limited to, nonpayment of premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for

permitted lands not disturbed may be cancelled with the consent of the office; provided, the surety gives at least 60 days notice to both the permittee and the office of the intent to cancel prior to cancellation. Such notice shall be by certified mail and shall not be effective until received by both the permittee and office. Cancellation shall not be effective for lands subject to bond coverage which are disturbed after receipt of notice, but prior to approval by the office. The office may approve such cancellation only if a replacement bond is filed by the permittee prior to the cancellation date, or the permit is amended so that the surface coal mining operations approved under the permit are reduced to the degree necessary to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with Chapter 41 and the remaining performance bond liability.

2. The office shall not accept surety bonds in excess of 10 percent of the surety company's capital surplus account as shown on the balance sheet certified by a certified public accountant, unless otherwise provided by law.

3. The office shall not accept surety bonds from a surety company for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided by state law, or, in the absence of state law, as provided in §4303.E.2.

4. The office may provide in the bond that the amount shall be confessed to judgment upon forfeiture.

5. The bond shall provide that the surety and the permittee shall be liable jointly, severally and in solido.

6. The bond shall provide that:

a. the surety will give prompt notice to the permittee and the office of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business;

b. in the event the surety becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately to the permittee and the office;

c. upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the office. The office, upon notification received through the procedures of §4303.E.6.a or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of §5429 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the office has determined that an acceptable bond has been posted.

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F. Collateral bonds, except for letters of credit, shall be subject to the following conditions.

1. The office shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in this Subpart.

2. The office shall value collateral at their current market value, not face value.

3. The office shall require that all collateral bonds comply with the provisions of §105. *Collateral Bond*.

4. The office shall require that certificates of deposit be assigned to the office, in writing, and upon the books of the bank issuing such certificates.

5. The office shall not accept an individual certificate for a denomination in excess of \$40,000, or maximum insurable amount as determined by FDIC and FSLIC.

6. The office shall require the banks issuing these certificates to waive all rights of set off or liens which it has or might have against those certificates.

7. The office shall only accept automatically renewable certificates of deposit.

8. The office shall require the applicant to deposit a sufficient amount of certificates of deposit to assure that the office will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this Subpart.

9. The estimated bond value of all collateral posted as assurance under this Section shall be subject to a margin which is the ratio of bond value to market value, as determined by the office. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations which might affect the net cash available to the office to complete reclamation.

10. The bond value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.

11. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the office at the time collateral is offered.

G. Letters of credit shall be subject to the following conditions.

1. The letter may only be issued by a bank organized or authorized to do business in the United States.

2. Letters of credit shall be irrevocable during their term. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the office if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date.

3. The letter must be payable *only* to the office in part or in full upon demand and receipt from the office of a notice of forfeiture issued in accordance with Chapter 47.

4. The office shall not accept a letter of credit in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.

5. The office shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided by state law or, in the absence of state law, as provided in §4303.E.2.

6. The office may provide in the indemnity agreement that the amount shall be confessed to judgment upon forfeiture.

7. The bond shall provide that:

a. the bank will give prompt notice to the permittee and the office of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business;

b. in the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the office;

c. upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the office. The office, upon notification received through the procedures of §4303.G.7.a or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of §5429 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the office has determined that an acceptable bond has been posted.

8. Persons with an interest in the letter of credit, and who desire notification of actions pursuant to the letter, shall request the notification in writing to the office at the time the letter is offered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§4305. Self-Bonding

A. The office may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor.

1. The applicant designates a suitable agent to receive service of process in the state.

2. The applicant has been in continuous operation as a business entity for a period of not less than five years. Continuous operation shall mean that business was conducted over a period of five years immediately preceding the time of application.

a. The office may allow a joint venture or syndicate with less than five years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least five years immediately preceding the time of application.

b. When calculating the period of continuous operation, the office may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.

3. The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

a. the applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

b. the applicant has a tangible net worth of at least \$10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

c. the applicant's fixed assets in the United States total at least \$20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

4. The applicant submits:

a. financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

b. unaudited financial statements for completed quarters in the current fiscal year; and

c. additional unaudited information as requested by the office.

B.1. The office may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of §4305.A.1-4 as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

a. if the applicants fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the

office sufficient to complete the reclamation plan, but not to exceed the bond amount;

b. the corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the office at least 90 days in advance of the cancellation date, and the office accepts the cancellation;

c. the cancellation may be accepted by the office if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.

2. The office may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of §4305.A.1-3, and the guarantor meets the conditions of §4305.A.1-4. Such a written guarantee shall be referred to as a "nonparent corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of §4305.B.1.a-c. The office may require the applicant to submit any information specified in §4305.A.3 in order to determine the financial capabilities of the applicant.

C. For the office to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the office to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States. For the office to accept a nonparent corporate guarantee, the total amount of the nonparent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

D. If the office accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements.

1. The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally.

2. Corporations applying for a self-bond, and parent and nonparent corporations guaranteeing an applicant's self-bond, shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the office along with an affidavit certifying that such an agreement is valid under all applicable federal and state laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

3. If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party

who has a beneficial interest, directly or indirectly, in the applicant.

4. Pursuant to Chapter 47, the applicant, parent or nonparent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the office an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under state law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

E. The office may require self-bonded applicants, parent and nonparent corporate guarantors to submit an update of the information required under §4305.A.3-4 within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

F. If at any time during the period when a self-bond is posted, the financial conditions of the applicant, parent or nonparent corporate guarantor change so that the criteria of §4305.A.3 and C are not satisfied, the permittee shall notify the office immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of §4303.E.6 shall apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

§4307. Replacement of Bonds

A. The office may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds, if the liability which has accrued against the permittee on the permit area is transferred to such replacement bonds.

B. The office may allow the permittee to replace existing surety or collateral bonds with a self-bond, provided that the permittee meets the requirements of self-bonding as provided in §4305.

C. The office shall not release existing performance bonds until the permittee has submitted and the office has approved acceptable replacement performance bonds. A replacement of performance bonds pursuant to this Section shall not constitute a release of bond under Chapter 45.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§4309. Terms and Conditions for Liability Insurance

A. The office shall require the applicant to submit at the time of permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The certificate shall provide for personal injury and property

damage protection in an amount adequate to compensate all persons injured or property damaged as a result of surface coal mining and reclamation operations, including use of explosives and damage to water wells, and entitled to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury shall be \$300,000 for each occurrence and \$500,000 aggregate; and minimum insurance coverage for property damage shall be \$300,000 for each occurrence and \$500,000 aggregate.

B. The policy shall be maintained in full force during the life of the permit or any renewal thereof, including completion of all reclamation operations under these regulations.

C. The policy shall include a rider requiring that the insurer notify the office whenever substantive changes are made in the policy, including any termination or failure to renew.

D. The office may accept from the applicant, in lieu of a certificate for public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable state self-insurance requirements.

NOTE: This Subsection will become effective only upon the promulgation of regulations by the office or other appropriate state agency regarding self-insurance requirements of the state of Louisiana and approval of these regulations by the Secretary of Interior.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 45. Procedures, Criteria and Schedule for Release of Performance Bond

§4501. Procedures for Seeking Release of Performance Bond

A. Bond Release Application and Contents. The permittee or any person authorized to act on his behalf may file an application with the office for release of all or part of the performance bond.

1. Applications may only be filed at times or seasons that allow the office to evaluate properly the reclamation operations alleged to have been completed. The times or seasons appropriate for the evaluation of certain types of reclamation shall be identified in the mining and reclamation operations plan required in Subpart 3 of these regulations and approved by the office.

2. The application shall include copies of letters sent to adjoining property owners, surface owners, local government bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the permit area notifying them of the permittee's intention to seek release of performance bond(s). These letters shall be sent before the permittee files the application for release.

3. The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

4. Within 30 days after filing the application for release, the permittee shall submit proof of publication of the advertisement required by §4501.B. Such proof of publication shall be considered part of the bond release application.

B. Newspaper Advertisement of Application. At the time of filing an application under this Section, the permittee shall advertise the filing of the application in a newspaper of general circulation designated as the official journal by the governing authority in the parish of the permit area. The advertisement shall:

1. be placed in the newspaper at least once a week for four consecutive weeks;

2. show the name of the permittee, including the number and date of issuance or renewal of the permit;

3. show the precise location and the number of acres of the lands subject to the application;

4. show the total amount of bond in effect for the permit area and the amount for which release is sought;

5. summarize the reclamation, restoration or abatement work done including, but not limited to, backstowing or mine sealing, if applicable, and give the dates of completion of that work;

6. describe the reclamation results achieved, as they relate to compliance with the Act, these regulations, and the approved mining and reclamation plan and permit; and

7. state that written comments, objections and requests for a public hearing or informal conference may be submitted to the office; provide the address of the office; and provide the closing date by which comments, objections and requests must be received.

C. Objections and Requests for Hearing. Written objections to the proposed bond release and requests for an informal conference may be filed with the office by any affected person within 30 days following the last advertisement of the filing of the application. For the purpose of this Section, an affected person is:

1. any person with a valid legal interest which might be adversely affected by bond release; or

2. the responsible officer or head of any federal, state or local government agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved, or is authorized to develop and enforce environmental standards with respect to surface coal mining and reclamation operations.

D. Inspection by Office of Conservation

1. Upon receipt of the bond release application the office shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface water or ground water is occurring, the probability of future occurrence of such pollution and the estimated cost of abating such pollution. The surface owner, agent or lessee shall be given notice of such inspection and may participate with the office in making the bond release inspection. The office may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

2. Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to Chapter 45 or within 30 days after a public hearing has been held pursuant to Chapter 45, the office shall notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under §4303, and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

E. Informal Conference. Under the regulations providing for an informal conference on proposed bond releases, the office shall schedule a conference if written objections are filed and a conference is requested. The conference shall be held in the locality of the permit area for which bond release is sought.

1. Notice of an informal conference shall be published in the official state publication, and in a newspaper of general circulation in the locality of the conference, at least two weeks before the date of the conference.

2. The informal conference shall be held within 30 days from the date of the notice.

3. Neither the requirements of §5 of the Administrative Procedure Act (5 U.S.C. Sec. 554) nor the requirements of the Louisiana Administrative Procedure Act shall apply to the conduct of the informal conference.

4. An electronic or stenographic record shall be made of the conference and the record maintained for access by the parties, until final release of the bond, unless recording is waived by all of the parties to the conference.

5. The office shall, in response to a specific request therefor, arrange with the applicant for reasonable public access to the area which forms the subject of the conference. Such access shall be made available at a specific date and time at least one week before the date of the conference. The specific information regarding access shall be included with the notice of informal conference. Any member of the public who enters upon the subject area in accordance with this Section shall comply with all state and federal laws and regulations regarding health and safety on a minesite including, but not limited to, regulations promulgated by the

Office of Conservation, the Office of Surface Mining, the Mine Safety and Health Administration and the Occupational Health and Safety Administration. The applicant will have available, in various sizes, any special equipment to be worn under the foregoing laws and regulations including, but not limited to, mandated types of headgear, footgear and eyewear.

F. Office of Conservation Review and Decision

1. The office shall consider, during inspection evaluation, hearing and decision:

a. whether the permittee has met the criteria for release of the bond under §4503;

b. the degree of difficulty in completing any remaining reclamation, restoration or abatement work; and

c. whether pollution of surface water or ground water is occurring, the probability of future pollution or the continuance of any present pollution, and the estimated cost of abating any pollution.

2. If no informal conference has been held under §4501.E, the office shall notify the permittee and any other interested parties in writing of its decision to release or not to release all or part of the performance bond or deposit within 60 days from the receipt of the completed application, or within 30 days from the close of the public comment period if comments were received, whichever occurs last.

3. If there has been an informal conference held under §4501.E, the notification of the decision shall be made to the permittee and all interested parties within 30 days after conclusion of the conference.

4. The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee and all interested parties of their right to request a public hearing in accordance with §4501.G-H.

5. If the office disapproves the application for release of the bond or portion thereof, the office shall notify the permittee, the surety, and any person with an interest in collateral as provided for in §4303.F.11 and G.8, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

6. The office shall not release the bond until:

a. the town, city or other municipality nearest to, or the parish in which the surface coal mining and reclamation operation is located, has received at least 30 days notice of the release by certified mail;

b. the right to request a public hearing pursuant to §4501.G has not been exercised, or a final decision by the hearing authority approving the release has been issued pursuant to §4501.H.

G. Administrative Review: Public Hearings. Following receipt of the decision of the office under §4501.F, the permittee or any affected person may request a public

hearing on the reasons for that decision. Requests for hearings shall be filed within 30 days after the permittee and other parties are notified of the decision of the office under §4501.F.

H. Public Hearings. Public hearings required under this Section shall be conducted as follows: The office shall inform the permittee, local government and the objecting party of the time, date and place of the hearing, and publish notice of the hearing in the official state publication, if any, and in a newspaper of general circulation in the locality of the permit area twice a week for two consecutive weeks before the hearing. The hearing shall be adjudicatory in nature and be held within 30 days of the receipt of the request, in the town or city nearest the permit area, or the state capital, at the option of the objector. The office may subpoena witnesses and printed materials and compel the attendance of witnesses and production of the materials at the hearing. A verbatim record of the hearing shall be made and the transcript made available on the motion of any party or by order of the office. The decision of the hearing authority shall be made within 30 days of the hearing. Parties seeking to reverse the decision or any part of the decision of the office which is the subject of the hearing shall have the burden of presenting a preponderance of evidence, to persuade the hearing authority that the decision cannot be supported by the reasons given in the notification of the office's decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2284 (December 1998).

§4503. Criteria and Schedule for Release of Performance Bond

A. The office may release all or part of the bond for the entire permit area or all or part of an incremental area if the office is satisfied that all the reclamation or a phase of reclamation, as defined in §4503.E, covered by the bond or portion thereof has been accomplished.

B. The maximum liability under performance bonds applicable to a permit which may be released at any time prior to the release of all acreage from the permit or incremental area shall be calculated by multiplying the ratio between the acreage on which a reclamation phase has been completed and the total acreage in the permit or incremental area, times the total liability under performance bonds applicable to a permit, times:

1. six-tenths, if reclamation Phase I has been completed;

2. one-fourth, if reclamation Phase II has been completed.

C. Acreage may be released from the permit or incremental area only after reclamation Phase III has been completed. The maximum performance bond liability applicable to a permit which may be released at any time

prior to the completion of reclamation Phase III on the entire permit or incremental area shall be calculated by multiplying the ratio between the acreage on which reclamation Phase III has been completed and the total acreage in the permit area, times the total liability under performance bonds applicable to a permit, times 0.15.

D. The office shall not release any liability under the performance bonds applicable to a permit if such release would reduce the total remaining liability under performance bonds to an amount less than that necessary for the office to complete the approved reclamation plan, achieve compliance with the requirements of the Act, these regulations or the permit, and abate any significant environmental harm to air, water or land resources or danger to the public health and safety which might occur prior to the release of all lands from the permit area. Where the permit includes an alternative post-mining land use plan approved pursuant to §5431, the office shall also retain sufficient liability for the office to complete any additional work which would be required to achieve compliance with the general standards for revegetation in §5423.A.5 in the event the permittee fails to implement the approved alternative post-mining land use plan within the two years required by §5423.B.4.

E. For the purposes of this Chapter:

1. reclamation Phase I shall be deemed to have been completed when the permittee completes backfilling, topsoil replacement, regrading and drainage control in accordance with the approved reclamation plan;

2. reclamation Phase II shall be deemed to have been completed when:

a. revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met;

b. the lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of §915.B(10) of the Act, Subpart 5 of these regulations or the permit;

c. with respect to prime farmlands, soil productivity has been returned to the level of yield as required by §2907 and Chapter 55 when compared with nonmined prime farmland in the surrounding area as determined from the soil survey performed under §907.B(16) of the Act and the plan approved under §2907;

d. the provisions of a plan approved by the office for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the office;

3. reclamation Phase III will be deemed to have been completed when the permittee has successfully completed all surface coal mining and reclamation operations in accordance with the approved reclamation plan, including the implementation of any alternative land use plan approved pursuant to §5431, and has achieved compliance with the requirements of the Act, these regulations, the regulatory program, and the permit, and the applicable

liability period under §915.B(20) of the Act and §4105.B of this Subpart has expired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 47. Performance Bond Forfeiture Criteria and Procedures

§4701. General

A. The office shall forfeit all or part of a bond for any permit where required or authorized by §4705.

B. The office may withhold forfeiture, if the permittee and surety, if applicable, agree to a compliance schedule to comply with the violations of the permit or bond conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§4703. Procedures

A. In the event forfeiture of the bond is required by §§4701 and 4705, the office shall:

1. send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if applicable, of the office's determination to forfeit all or part of the bond and the reasons for the forfeiture, including a finding of the amount to be forfeited;

2. advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to:

a. agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan and the regulatory program and a demonstration that such party has the ability to satisfy the conditions; or

b. the office may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the office may approve partial release authorized under Chapter 45, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including the applicable liability periods of §4105;

3. proceed in an action for collection on the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this Section, for the amount forfeited, if an appeal is not filed within a time established by the office and a stay of collection issued by the hearing authority or such appeal is unsuccessful;

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4. if an appeal is filed, defend the action;

5. use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

B. The written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, shall be a final decision by the office.

C. The office may forfeit any or all bond deposited for an entire permit area, in order to satisfy §§4701-4707. Liability under any bond, including separate bond increments or indemnity agreements applicable to a single operation, shall extend to the entire permit area.

D.1. In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The office may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

2. In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the office to the party from whom they were collected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§4705. Criteria for Forfeiture

A. A bond shall be forfeited if the office finds that:

1. the permittee has violated any of the terms or conditions of the bond; or

2. the permittee has failed to conduct the surface mining and reclamation operations in accordance with the Act, the conditions of the permit or these regulations within the time required by the Act, these regulations and the permit; or

3. the permit for the area under bond has been revoked, unless the operator assumes liability for completion of reclamation work; or

4. the permittee has failed to comply with a compliance schedule approved pursuant to §4701.B.

B. A bond may be forfeited if the office finds that:

1. the permittee has become insolvent, failed in business, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver or had a receiver appointed by any court; or a creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials, facilities at the permit area or on the collateral pledged to the office;

2. the permittee cannot demonstrate or prove the ability to continue to operate in compliance with the Act, these regulations and the permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§4707. Determination of Forfeiture Amount

A. The office shall either:

1. determine the amount of the bond to be forfeited on the basis of the estimated cost to the office or its contractor to complete the reclamation plan and other regulatory requirements in accordance with the Act, these regulations and the requirements of the permit; or

2. forfeit the entire amount of the bond for which liability is outstanding and deposit the proceeds thereof in an interest-bearing escrow account for use in the payment of all costs and administrative expenses associated with the conduct of reclamation, restoration or abatement activities by the office. In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the office to the party from whom they were collected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

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Part XV. Office of Conservation—Surface Mining
Subpart 5. Permanent Program Performance Standards

**Chapter 49. Permanent Program
Performance Standards: General
Provisions**

§4901. Authority

A. The commissioner shall promulgate minimum coal exploration, development operations and surface mining and reclamation operations performance standards and design requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§4903. Responsibility

A. The commissioner shall ensure that performance standards and design requirements are implemented and enforced.

B. Each person conducting coal exploration, development operations or surface coal mining and reclamation operations is responsible for complying with performance standards and design requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

**Chapter 51. Permanent Program
Performance Standards: Coal
Exploration and
Development Operations**

**§5101. General Responsibility of Persons Conducting
Coal Exploration or Development**

A. Each person who conducts coal exploration or development which substantially disturbs the natural land surface and in which 250 tons or less of coal are removed shall apply for a permit required under §§2101 and 2109 and shall comply with §5105.

B. Each person who conducts coal exploration or development which substantially disturbs the natural land surface and in which more than 250 tons of coal are removed in the area described by the written approval from the office shall comply with the procedures described in the

exploration or development and reclamation operations plan approved under §2113 and shall comply with §5105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§5103. Required Documents

A. Each person who conducts coal exploration or development which substantially disturbs the natural land surface and which removes more than 250 tons of coal shall, while in the exploration or development area, possess written approval of the office for the activities granted under §2111. The written approval shall be available for review by the authorized representative of the office upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

**§5105. Performance Standards for Coal Exploration or
Development**

A. The performance standards in this Section are applicable to coal exploration or development which substantially disturbs the land surface.

1. Habitats of unique or unusually high value for fish, wildlife and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not be disturbed during coal exploration.

2. The person who conducts coal exploration or development shall, to the extent practicable, measure important environmental characteristics of the exploration or development area during the operations to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit under Subpart 3.

3. All roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of §§5433.B - F, 5437 and 5439.

4. If excavations, artificial flat areas or embankments are created during exploration or development, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration or development.

5. Topsoil shall be removed, stored and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the office.

6. Revegetation of areas disturbed by coal exploration or development operations shall be performed by the person who conducts the exploration or development, or his or her agent. All areas disturbed by coal exploration activities shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective and permanent vegetative cover. Revegetation shall be accomplished in accordance with the following.

a. All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area. If both the pre-exploration or predevelopment and post-exploration or post-development land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this Subsection.

b. The vegetative cover shall be capable of stabilizing the soil surface against erosion.

7. Diversions of overland flows and ephemeral, perennial or intermittent streams shall be made in accordance with §5323.

8. Each exploration or development hole, borehole, well or other exposed underground opening created during exploration or development must meet the requirements of §§5303, 5305, and 5307.

9. All facilities and equipment shall be removed from the exploration or development area promptly when they are no longer needed for exploration or development, except for those facilities and equipment that the office determines may remain to:

- a. provide additional environmental quality data;
- b. reduce or control the on- and off-site effects of the exploration or development activities; or
- c. facilitate future surface mining and reclamation operations by the person conducting the exploration or development, under an approved permit.

10. Coal exploration or development shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, in accordance with §§5319-5333. The office may specify additional measures which shall be adopted by the person engaged in coal exploration or development.

11. Toxic- or acid-forming materials shall be handled and disposed of in accordance with §§5331 and 5409. If specified by the office, additional measures shall be adopted by the person engaged in coal exploration or development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§5107. Commercial Use or Sale

A. Except as provided under §5107.B, any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit shall first obtain a permit to conduct surface coal mining operations for those operations from the office under Chapters 17-29.

B. With the prior approval of the office, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the office. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

1. the name of the testing firm and the locations at which the coal will be tested;

2. if the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

a. the specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

b. the amount of coal necessary for the test and why a lesser amount is not sufficient; and

c. a description of the specific tests that will be conducted;

3. evidence that sufficient reserves of coal are available to the person conducting exploration, or its principals, for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve;

4. an explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 53. Permanent Program Performance Standards: Surface Mining Activities

§5301. Signs and Markers

A. Specifications. Signs and markers required under this Chapter shall:

1. be posted and maintained by the person who conducts the surface mining activities;
2. be of a uniform design throughout the operation that can be easily seen and read;
3. be made of durable material; and
4. conform to local ordinances and codes.

B. Duration of Maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain.

C. Mine and Permit Identification Signs

1. Identification signs shall be displayed at each point of access to the permit area from public roads.

2. Signs shall show the name, business address and telephone number of the person who conducts the surface mining activities and the identification number of the current permit authorizing surface mining activities.

3. Signs shall be retained and maintained until after the release of all bonds for the permit area.

D. Perimeter Markers. The perimeter of a permit area shall be clearly marked before the beginning of surface mining activities.

E. Buffer Zone Markers. Buffer zones shall be marked along their boundaries as required under §5349.

F. Blasting Signs. If blasting is conducted incident to surface mining activities, the person who conducts these activities shall:

1. conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within 50 feet of any road within the permit area, or within 100 feet of any public road right of way;

2. conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes as required by §5359.B;

3. place at all entrances to the permit area from public roads or highways conspicuous signs which state "Warning—Explosives in Use," which clearly explain the blast warning and all clear signals that are in use and which explain the marking of blast areas and charged holes within the permit area.

G. Topsoil Markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under §5313, the stockpiled material shall be clearly marked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§5303. Casing and Sealing of Drilled Holes: General Requirements

A. Each exploration hole, other drill or borehole, well or other exposed underground opening shall be cased, sealed or otherwise managed, as approved by the office, to prevent acid or other toxic drainage from entering the ground water or surface water, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the mine plan and adjacent area. If these openings are uncovered or exposed by surface mining activities within the permit area, they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the office. Use of a drilled hole, borehole or monitoring well as a water well must meet the provisions of §5341. This Section does not apply to holes solely drilled and used for blasting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5305. Casing and Sealing of Drilled Holes: Temporary

A. Each exploration or development hole, other drill or borehole, well or other exposed underground opening which has been identified in the approved permit application for use to return coal processing waste or water to underground workings, or to be used to monitor ground-water conditions, shall be temporarily sealed before use and protected during use by barricades, fences or other protective devices approved by the office. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the surface mining activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§5307. Casing and Sealing of Drilled Holes: Permanent

A. When no longer needed for monitoring or other use approved by the office upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under §5341, each exploration hole, other drill or borehole, well or other exposed underground opening shall be capped, sealed, backfilled or otherwise properly managed, as required by the office, under §5303 and consistent with 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery, and to keep acid or other toxic drainage from entering the ground water or surface water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5309. Topsoil: General Requirements

A. Before disturbance of an area, topsoil and subsoils to be saved under §5311 shall be separately removed and segregated from other material.

B. After removal, topsoil shall either be immediately redistributed as required under §5315 or stockpiled pending redistribution as required under §5313.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5311. Topsoil: Removal

A. Timing. Topsoil shall be removed after vegetative cover that would interfere with the use of the topsoil is cleared from the areas to be disturbed, but before any drilling, blasting, mining or other surface disturbance.

B. Materials to be Removed. All topsoil shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the office in accordance with §5311.E. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.

C. Materials to be Removed in Thin Topsoil Situations. If the topsoil is less than 6 inches, a 6-inch layer that includes the A horizon and the unconsolidated materials immediately below the A horizon, or the A horizon and all unconsolidated material if the total available is less than 6 inches, shall be removed and the mixture segregated and redistributed as the surface soil layer, unless topsoil substitutes are approved by the office pursuant to §5311.E.

D. Subsoil Segregation. The B horizon and portions of the C horizon or other underlying layers demonstrated to have qualities for comparable root development shall be segregated and replaced as subsoil, if the office determines that either of these is necessary or desirable to ensure soil productivity consistent with the approved post-mining land use.

E. Topsoil Substitutes and Supplements

1. Selected overburden materials may be substituted for or used as a supplement to topsoil, if the office determines that the resulting soil medium is equal to or more suitable for sustaining revegetation than is the available topsoil and the substitute material is the best available to support revegetation. This determination shall be based on:

a. analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH and areal extent of the different kinds of soils. The office may also require that results of fieldsite trials or greenhouse tests be used to

demonstrate the feasibility of using these overburden materials;

b. results of analyses, trials and tests shall be submitted to the office. Certification of trials and tests shall be made by a laboratory approved by the office stating that:

i. the proposed substitute material is equal to or more suitable for sustaining the vegetation than is the available topsoil;

ii. the substitute material is the best available material to support the vegetation;

iii. the trials and tests were conducted using standard testing procedures.

2. Substituted or supplemental material shall be removed, segregated and replaced in compliance with the requirements for topsoil under this Section.

F. Limits on Topsoil Removal Area. Where the removal of vegetative material, topsoil or other materials may result in erosion which may cause air or water pollution:

1. the size of the area from which topsoil is removed at any one time shall be limited;

2. the surface soil layer shall be redistributed at a time when the physical and chemical properties of topsoil can be protected and erosion can be minimized;

3. such other measures shall be taken as the office may approve or require to control erosion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5313. Topsoil: Storage

A. Topsoil and other materials removed under §5311 shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

B. Stockpiled materials shall be selectively placed on a stable area within the permit area, not disturbed, and protected from wind and water erosion, unnecessary compaction and contaminants which lessen the capability of the materials to support vegetation when redistributed.

1. Protection measures shall be accomplished either by:

a. an effective cover of non-noxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or

b. other methods demonstrated to and approved by the office to provide equal protection.

2. Unless approved by the office, stockpiled topsoil and other material shall not be moved until required for redistribution on a regraded area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5315. Topsoil: Redistribution

A. After final grading and before the replacement of topsoil and other materials segregated in accordance with §5313, regraded land shall be scarified or otherwise treated as required by the office to eliminate slippage surfaces and to promote root penetration. If the person who conducts the surface mining activities shows, through appropriate tests, and the office approves, that no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoiling.

B. Topsoil and other materials shall be redistributed in a manner that:

1. achieves an approximate uniform, stable thickness consistent with the approved post-mining land uses, contours and surface water drainage system;
2. prevents excess compaction of the topsoil; and
3. protects the topsoil from wind and water erosion before and after it is seeded and planted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5317. Topsoil: Nutrients and Soil Amendments

A. Nutrients and soil amendments in the amounts determined by soil tests shall be applied to the redistributed surface soil layer so that it supports the approved post-mining land use and meets the revegetation requirements of §§5417-5423. All soil tests shall be performed by a qualified laboratory using standard methods approved by the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§5319. Hydrologic Balance: General Requirements

A. Surface mining activities shall be planned and conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas and to prevent material damage to the hydrologic balance outside the permit area.

B. Changes in water quality and quantity, in the depth to ground water, and in the location of surface-water drainage channels shall be minimized so that the approved post-mining land use of the permit area is not adversely affected.

C. In no case shall federal and state water quality statutes, regulations, standards or effluent limitations be violated.

D. Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

1. Each person who conducts surface mining activities shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

2. Acceptable practices to control and minimize water pollution include, but are not limited to:

- a. stabilizing disturbed areas through land shaping;
- b. diverting runoff;
- c. achieving quickly germinating and growing stands of temporary vegetation;
- d. regulating channel velocity of water;
- e. lining drainage channels with rock or vegetation;
- f. mulching; and
- g. selectively placing waste materials in backfill areas.

3. If the practices listed at §5319.D.2 are not adequate to meet the requirements of this Chapter, the person who conducts surface mining activities shall operate and maintain the necessary water treatment facilities for as long as treatment is required under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5321. Hydrologic Balance: Water Quality Standards and Effluent Limitations

A. Discharges of water from areas disturbed by surface mining activities shall be made in compliance with all applicable state and federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§5323. Hydrologic Balance: Diversions

A. General Requirements

1. With the approval of the office, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of §5327 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage

outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the office under §5345.

2. The diversion and its appurtenant structures shall be designed, located, constructed, maintained and used to:

- a. be stable;
- b. provide protection against flooding and resultant damage to life and property;
- c. prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and
- d. comply with all applicable local, state and federal laws and regulations.

3. Temporary diversions shall be removed promptly when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this Chapter. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

4. The office may specify design criteria for diversions to meet the requirements of this Section.

B. Diversion of Perennial and Intermittent Streams

1. Diversion of perennial and intermittent streams within the permit area may be approved by the office after making the finding relating to stream buffer zones that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream.

2. The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

3. The requirements of §5323.A.2.b shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

4. The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this Chapter and any design criteria set by the office.

C. Diversion of Miscellaneous Flows

1. Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the office. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

2. The design, location, construction, maintenance and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in §5323.A.

3. The requirements of §5323.A.2.b shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and floodplain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§5325. Hydrologic Balance: Sediment Control Measures

A. Appropriate sediment control measures shall be designed, constructed and maintained using the best technology currently available to:

1. prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area;
2. meet the more stringent of applicable state or federal effluent limitations;
3. minimize erosion to the extent possible.

B. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

1. disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in §5417.A;
2. stabilizing the backfill material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of §5405;
3. retaining sediment within disturbed areas;
4. diverting runoff away from disturbed areas;

5. diverting runoff using protected channels or pipes through disturbed areas so as to not cause additional erosion;

6. using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment;

7. treating with chemicals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5327. Hydrologic Balance: Siltation Structures

A. Definitions. For the purposes of this Section only:

Disturbed Area—shall not include those areas:

a. in which the only surface mining activities include diversion ditches, siltation structures or roads that are designed, constructed and maintained in accordance with this Chapter; and

b. for which the upstream area is not otherwise disturbed by the operator.

Other Treatment Facilities—any chemical treatments, such as flocculation, or mechanical structures, such as clarifiers, that have a point-source discharge and that are utilized to prevent additional contributions of suspended solids to streamflow or runoff outside the permit area.

Siltation Structure—a sedimentation pond, a series of sedimentation ponds or other treatment facility.

B. General Requirements

1. Additional contributions of suspended solids sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.

2. Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

3. Any siltation structure which impounds water shall be designed, constructed, and maintained in accordance with §5333.

4. Siltation structures shall be maintained until removal is authorized by the office and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than two years after the last augmented seeding.

5. When a siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and §§5417-5423. Sedimentation ponds approved by the office for retention as permanent impoundments may be exempted from this requirement.

C. Sedimentation Ponds

1. When used, sedimentation ponds shall:

a. be used individually or in series;

b. be located as near as possible to the disturbed area and out of perennial streams unless approved by the office; and

c. be designed, constructed and maintained to:

i. provide adequate sediment storage volume;

ii. provide adequate detention time to allow the effluent from the ponds to meet state and federal effluent limitations;

iii. contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the office based on terrain, climate, other site-specific conditions, and on a demonstration by the operator that the effluent limitations of §5321 will be met;

iv. provide a nonclogging dewatering device adequate to maintain the detention time required under §5327.C.1.c.ii;

v. minimize, to the extent possible, short-circuiting;

vi. provide periodic sediment removal sufficient to maintain adequate volume for the design event;

vii. ensure against excessive settlement;

viii. be free of sod, large roots, frozen soil, and acid- or toxic-forming coal-processing waste; and

ix. be compacted properly.

2.a. Sedimentation ponds meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall comply with all the requirements of that Section, and shall have principal and emergency spillways that in combination will safely pass a 100-year, 6-hour precipitation event.

b. Sedimentation ponds not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall provide a combination of principal and emergency spillways that will safely discharge a 25-year, 6-hour precipitation event. Such ponds may use a single spillway if the spillway:

i. is an open channel of nonerodible construction and capable of maintaining sustained flows; and

ii. is not earth-lined.

D. Other Treatment Facilities

1. Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the office based on terrain, climate, other site-specific conditions, and a demonstration by the operator that the effluent limitations of §5321 will be met.

2. Other treatment facilities shall be designed in accordance with the applicable requirements of §5327.C.

E. Exemptions. Exemptions to the requirements of this Section may be granted if:

1. the disturbed drainage area within the total disturbed area is small; and
2. the operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under §5321 and the applicable state and federal water quality standards for the receiving waters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:441 (July 1988), amended LR 20:447 (April 1994).

§5329. Hydrologic Balance: Discharge Structures

A. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled by energy dissipators, riprap channels and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering-design procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5331. Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil

A. Drainage from acid-forming and toxic-forming spoil into ground water and surface water shall be avoided by:

1. identifying, burying and treating, where necessary, spoil which, in the judgment of the office, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;
2. preventing water from coming into contact with acid-forming and toxic-forming spoil in accordance with §5409, and other measures as required by the office;
3. burying or otherwise treating all acid-forming or toxic-forming spoil within 30 days after it is first exposed on the mine site, or within a lesser period required by the office. Temporary storage of the spoil may be approved by the office upon a finding that burial or treatment within 30 days is not feasible and will not result in any material risk or water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5333. Hydrologic Balance: Impoundments

A. General Requirements. The requirements of this Subsection apply to both temporary and permanent impoundments.

1. Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release Number 60 (210-VI-TR60, Oct. 1985), *Earth Dams and Reservoirs*, 1985 shall comply with "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 and the requirements of this section. The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order Number PB 87-157509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, Washington, D.C., or at the Office of the *Federal Register*, 800 North Capitol Street, NW., Suite 700, Washington, D.C.

2. Impoundments meeting the criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and §5333.

3. Design Certification. The design of impoundments shall be certified in accordance with §2725.A as designed to meet the requirements of Chapter 53 using current prudent engineering practices and any design criteria established by the office. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

4. Stability

a. An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

b. Impoundments not included in §5333.A.4.a, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of §2725.C.1.

5. Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

6. Foundation

a. Foundation and abutments for the impounding structure shall be designed to be stable under all phases of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed in order to determine the design requirements for

foundation stability. For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

b. All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

7. Slope protection shall be provided to protect against surface erosion at the site and to protect against sudden drawdown.

8. Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

9. Spillways. An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in §5333.A.9.a, designed and constructed to safely pass the applicable design precipitation event specified in §5333.A.9.b, except as set forth in §5333.C.2.

a. The office may approve a single open-channel spillway that is:

i. of nonerodible construction and designed to carry sustained flows; or

ii. earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

b. Except as specified in §5333.C.2, the required design precipitation event for an impoundment meeting the spillway requirements of §5333.A.9 is:

i. for an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60, or greater event as specified by the office;

ii. for an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the office;

iii. for an impoundment not included in §5333.A.9.b.i and ii, a 25-year 6-hour or greater event as specified by the office.

10. The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

11. Inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

a. Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

b. The qualified registered professional engineer, upon completion of construction, shall promptly provide to the office a certified report that the impoundment has been constructed as designed and in accordance with the approved plan and these regulations. In addition, the qualified registered professional engineer shall, after each annual inspection, promptly provide to the office a certified report that the impoundment has been maintained in accordance with the approved plan and these regulations. Each such report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

c. A copy of the report shall be retained at or near the minesite.

12. Impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Impoundments not meeting the SCS Class B or C criteria for dams in TR-60, or subject to 30 CFR 77.216, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the appearance of structural weakness and other hazardous conditions.

13. Emergency Procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the office of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the office shall be notified immediately. The office shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

B. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the office in the approved permit, based upon the following demonstration:

1. the size and configuration of such impoundment will be adequate for its intended purposes;

2. the quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards;

3. the water level will be sufficiently stable and be capable of supporting the intended use;

4. final grading will provide for adequate safety and access for proposed water users;

5. the impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses;

6. the impoundment will be suitable for the approved post-mining land use;

7. the design precipitation event for the spillways for a permanent impoundment meeting the size or other criteria of 30 CFR 77.216(a) is a 100-year, 6-hour event, or greater event as specified by the office;

8. the design precipitation event for the spillways for a permanent impoundment not meeting the size or other criteria of 30 CFR 77.216(a) is a 25-year, 6-hour event, or greater event as specified by the office.

C. Temporary Impoundments

1. The office may authorize the construction of temporary impoundments as part of a surface coal mining operation.

2. In lieu of meeting the requirements in §5333.A.9.a, the office may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

a. impoundments meeting the SCS Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event specified by the office;

b. impoundments not included in §5333.C.2.a shall be designed to control the precipitation of the 100-year 6-hour event, or greater event specified by the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2285 (December 1998).

§5335. Hydrologic Balance: Ground-Water Protection

A. Backfilled materials shall be placed so as to minimize contamination of ground-water systems with acid, toxic or otherwise harmful mine drainage, to minimize adverse effects of mining on ground-water systems outside the permit area, and to support approved post-mining land uses.

B. To control the effects of mine drainage, pits, cuts and other mine excavations or disturbances shall be located, designed, constructed and utilized in such manner as to

prevent or control discharge of acid, toxic or otherwise harmful mine drainage waters into ground-water systems and to prevent adverse impacts on such ground-water systems or on approved post-mining land uses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:557 (April 1994).

§5337. Hydrologic Balance: Protection of Ground-Water Recharge Capacity

A. Surface mining activities shall be conducted in a manner that facilitates reclamation which will restore approximate premining recharge capacity, through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, to transmit water to the ground-water system. The recharge capacity shall be restored to a condition which:

1. supports the approved post-mining land use;
2. minimizes disturbances to the prevailing hydrologic balance in the mine plan area and in adjacent areas; and
3. provides a rate of recharge that approximates the premining recharge rate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5339. Hydrologic Balance: Surface- and Ground-Water Monitoring

A. Ground-Water Monitoring

1. Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under §2719. The office may require additional monitoring when necessary.

2. Ground-water monitoring data shall be submitted every three months to the office or more frequently as prescribed by the office. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, the operator shall promptly notify the office and immediately take the actions provided for in §2717.

3. Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. The office may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this Paragraph, that:

- a. the operator has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to

support approved post-mining land uses; and the water rights of other users have been protected or replaced; or

b. monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under §2719.

4. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of ground water onsite and offsite shall be properly installed, maintained and operated and shall be removed by the operator when no longer needed.

B. Surface-Water Monitoring

1. Surface-water monitoring shall be conducted according to the surface-water monitoring plan approved under §2721. The office may require additional monitoring when necessary.

2. Surface-water monitoring data shall be submitted every three months to the office or more frequently as prescribed by the office. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the operator shall promptly notify the office and immediately take the actions provided for in §2717. The reporting requirements of this Paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements.

3. Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. The office may modify the monitoring requirements, except those required by the NPDES permitting authority, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under this Paragraph, that:

a. the operator has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved post-mining land uses; and the water rights of other users have been protected or replaced; or

b. monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under §2719.

4. Equipment, structures and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained and operated and shall be removed by the operator when no longer needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5341. Hydrologic Balance: Transfer of Wells

A. An exploratory or monitoring well may only be transferred by the person who conducts surface mining activities for further use as a water well with the prior approval of the office. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the office for that approval.

B. Upon an approved transfer of a well, the transferee shall:

1. assume primary liability for damages to persons or property from the well;

2. plug the well when necessary, but in no case later than abandonment of the well; and

3. assume primary responsibility for compliance with §§5303-5307 with respect to the well.

C. Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under §5341.B until release of the bond or other equivalent guarantee required by Subpart 4 for the area in which the well is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5343. Hydrologic Balance: Water Rights and Replacement

A. Any person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution or interruption proximately resulting from the surface mining activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5345. Hydrologic Balance: Discharge of Water into an Underground Mine

A. Surface water shall not be diverted or otherwise discharged into underground mine workings, unless the person who conducts the surface mining activities demonstrates to the office that this will:

1. abate water pollution or otherwise eliminate public hazards resulting from surface mining activities;

2. be discharged as a controlled flow, meeting the effluent limitations of §5321 for pH and total suspended solids, except that the pH and total suspended solid limitations may be exceeded, if approved by the office, and is limited to:

- a. coal processing waste;
- b. fly ash from a coal-fired facility;
- c. sludge from an acid mine drainage treatment facility;
- d. flue gas desulfurization sludge;
- e. inert materials used for stabilizing underground mines; or
- f. underground mine development wastes;

3. in any event, the discharge from underground mines to surface waters will not cause, result in or contribute to a violation of applicable water quality standards or effluent limitations;

4. minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities; and

5. meets with the approval of the Mine Safety and Health Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5347. Hydrologic Balance: Post-Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments and Treatment Facilities

A. Before abandoning a permit area or seeking bond release, the operator shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments and treatment facilities meet the requirements of this Chapter for permanent structures and impoundments. The operator shall renovate such structures if necessary to meet the requirements of this Chapter and to conform to the approved reclamation plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5349. Hydrologic Balance: Stream Buffer Zones

A. No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities, unless the office specifically authorizes surface mining activities closer to, or through, such a stream. The office may authorize such activities only upon finding:

1. surface mining activities will not cause or contribute to the violation of applicable state or federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

2. if there will be a temporary or permanent stream-channel diversion, it will comply with §5323.

B. The area not to be disturbed shall be designated as a buffer zone and the operator shall mark it as specified in §5301.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5351. Coal Recovery

A. Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that re-affecting the land in the future through surface coal mining operations is minimized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5353. Use of Explosives: General Requirements

A. Each operator shall comply with all applicable state and federal laws and regulations in the use of explosives.

B. Blasts that use more than five pounds of explosive or blasting agent shall be conducted according to the schedule required under §5357.

C. Blasters

1. All blasting operations in the state shall be conducted under the direction of a certified blaster and in accordance with Policy Statement No. PS-1 entitled "Blasters Certification Requirements, Surface Coal Mining and Reclamation Operations." All such blasting operations in the state shall be conducted by competent, experienced persons who understand the hazards involved.

2. Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations.

3. A blaster and at least one other person shall be present at the firing of a blast.

4. Any blaster who is responsible for conducting blasting operations at a blasting site shall:

a. be familiar with the blasting plan and site-specific performance standards; and

b. give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

D. Blast Design

1. An anticipated blast design shall be submitted if blasting operations will be conducted within:

a. 1,000 feet of any building used as a dwelling, public building, school, church, community or institutional building outside the permit area; or

b. 500 feet of an active or abandoned underground mine.

2. The blast design may be presented as part of a permit application or at a time, before the blast, approved by the office.

3. The blast design shall contain sketches of the drill patterns, delay periods and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock and ground-vibration standards in §5361.

4. The blast design shall be prepared and signed by a certified blaster.

5. The office may require changes to the design submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5355. Use of Explosives: Preblasting Survey

A. At least 30 days before initiation of blasting the operator shall notify, in writing, all residents or owners of dwellings or other structures located within 1/2 mile of the blast area how to request a preblasting survey.

B. A resident or owner of a dwelling or structure within 1/2 mile of any part of the permit area may request a preblasting survey. This request shall be made, in writing, directly to the operator or to the office, who shall promptly notify the operator. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications or renovations shall be performed by the operator if requested by the resident or owner.

C. The operator shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells and other water systems warrant special attention. However, the assessment of these structures may be limited to surface conditions and other readily available data.

D. The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the office and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the office a detailed description of the specific areas of disagreement.

E. Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5357. Use of Explosives: Blasting Schedule

A. General Requirements

1. The operator shall conduct blasting operations at times approved by the office and announced in the blasting schedule. The office may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.

2. All blasting shall be conducted between sunrise and sunset, unless nighttime blasting is approved by the office based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The office may specify more restrictive time periods for blasting.

3. Unscheduled blasts may be conducted only where public or operator health and safety so require and for emergency blasting actions. When an operator conducts an unscheduled blast, the operator, using audible signals, shall notify residents within 1/2 mile of the blasting site and document the reason for the unscheduled blast in accordance with §5363.A.16.

B. Blasting Schedule Publication and Distribution

1. The operator shall publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least 10 days, but not more than 30 days, before beginning a blasting program.

2. The operator shall distribute copies of the schedule to local governments and public utilities and to each local residence within 1/2 mile of the proposed blasting site described in the schedule.

3. The operator shall republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least 10 days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement.

C. Blasting Schedule Contents. The blasting schedule shall contain, at a minimum:

1. name, address and telephone number of operator;
2. identification of the specific areas in which blasting will take place;
3. dates and time periods when explosives are to be detonated;
4. methods to be used to control access to the blasting area; and

5. type and patterns of audible warning and all-clear signals to be used before and after blasting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5359. Use of Explosives: Blasting Signs, Warnings and Access Control

A. Blasting Signs. Blasting signs shall meet the specifications of §5301. The operator shall:

1. conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public road right-of-way, and at the point where any other road provides access to the blasting area; and

2. at all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use", which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

B. Warnings. Warning and all-clear signals of different character or pattern that are audible within a range of 1/2 mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within 1/2 mile of the permit area shall be notified of the meaning of the signals in the blasting schedule.

C. Access Control. Access within the blasting area shall be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that:

- 1. no unusual hazards, such as imminent slides or undetonated charges, exist; and
- 2. access to and travel within the blasting area can be safely resumed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5361. Use of Explosives: Control of Adverse Effects

A. General Requirements. Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel or availability of surface water or ground water outside the permit area.

B. Airblast

1. Limits

a. Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, community or institutional building outside the permit area, except as provided in §5361.E.

Lower Frequency Limit of Measuring System, in Hz (+/- 3 dB)	Maximum Level (in dB)
0.1 Hz or lower—flat response ¹	134 peak
2 Hz or lower—flat response	133 peak
6 Hz or lower—flat response	129 peak
C-weighted—slow response n ¹	105 peak dBC

¹Only when approved by the office.

b. If necessary to prevent damage, the office shall specify lower maximum allowable airblast levels than those of §5361.B.1.a for use in the vicinity of a specific blasting operation.

2. Monitoring

a. The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The office may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

b. The measuring systems shall have an upper-end flat-frequency response of at least 200 Hz.

C. Flyrock. Flyrock traveling in the air or along the ground shall not be cast from the blasting site:

- 1. more than one-half the distance to the nearest dwelling or other occupied structure;
 - 2. beyond the area of control required under §5359.C;
- or
- 3. beyond the permit boundary.

D. Ground Vibration

1. General. In all blasting operations, except as otherwise authorized in §5361.E, the maximum ground vibration shall not exceed the values approved in the blasting plan required under §2707. The maximum ground vibration for protected structures listed in §5361.D.2.a shall be established in accordance with either the maximum peak-particle-velocity limits of §5361.D.2, the scaled-distance equation of §5361.D.3, the blasting-level chart of §5361.D.4, or by the office under §5361.D.5. All structures in the vicinity of the blasting area not listed in §5361.D.2.a, such as water towers, pipelines and other utilities, tunnels, dams, impoundments and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator in the blasting plan and approved by the office.

2. Maximum Peak Particle Velocity

a. The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, community or institutional building outside the permit area.

Distance (D) from	Maximum Allowable	Scaled Distance
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the Blasting Site, in Feet	Peak Particle Velocity (V max) for Ground Vibration, in Inches/Second ¹	Factor to be Applied without Seismic Monitoring ² (Ds)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

¹ Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

² Applicable to the scaled-distance equation of §5361.D.3.a.

b. A seismographic record shall be provided for each blast.

3. Scaled-Distance Equation

a. An operator may use the scaled-distance equation, $W = (D/D_s)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and Ds = the scaled-distance factor, which may initially be approved by the office using the values for scaled-distance factor listed in §5361.D.2.a.

b. The development of a modified scaled-distance factor may be authorized by the office on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of §5361.D.2.a, at a 95-percent confidence level.

4. Blasting-Level Chart

a. An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

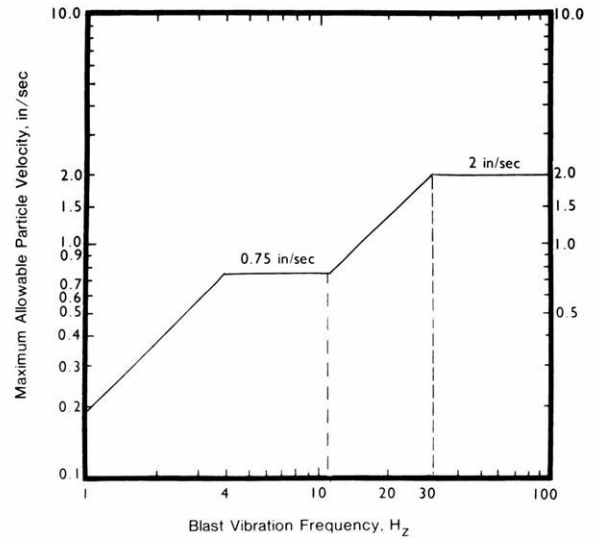


Figure 1. Alternative Blasting Level Criteria (Source: Modified from Figure B-1, Bureau of Mines R18507)

b. If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the office before application of this alternative-blasting criterion.

5. The maximum allowable ground vibration shall be reduced by the office beyond the limits otherwise provided by this Section, if determined necessary to provide damage protection.

6. The office may require an operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

E. The maximum airblast and ground-vibration standards of §5361.B and D shall not apply at the following locations:

1. at structures owned by the permittee and not leased to another person; or
2. at structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the office before blasting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5363. Use of Explosives: Records of Blasting Operations

A. The operator shall retain a record of all blasts for at least three years. Upon request, copies of these records shall be made available to the office and to the public for inspection. Such records shall contain the following data:

1. name of the operator conducting the blast;
2. location, date and time of the blast;
3. name, signature and certification number of the blaster conducting the blast;
4. identification, direction and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in §5361.E;
5. weather conditions, including those which may cause possible adverse blasting effects;
6. type of material blasted;
7. sketches of the blast pattern including number of holes, burden, spacing, decks and delay pattern;
8. diameter and depth of holes;
9. types of explosives used;
10. total weight of explosives used per hole;
11. the maximum weight of explosives detonated in an 8-millisecond period;
12. initiation system;
13. type and length of stemming;
14. mats or other protections used;
15. seismographic and airblast records, if required, which shall include:
 - a. type of instrument, sensitivity and calibration signal or certification of annual calibration;
 - b. exact location of instrument and the date, time and distance from the blast;
 - c. name of the person and firm taking the reading;
 - d. name of the person and firm analyzing the seismographic record; and
 - e. the vibration and/or airblast level recorded;
16. reasons and conditions for each unscheduled blast.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5365. Disposal of Excess Spoil: General Requirements

A. Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be hauled, or conveyed to, and placed in designated disposal areas within a permit area, if the disposal areas are

authorized for such purposes in the approved permit application in accordance with §§5365-5371. The spoil shall be placed in a controlled manner to ensure:

1. that leachate and surface runoff from the fill will not degrade surface water or ground water or exceed the effluent limitations of §5321;
2. stability of the fill; and
3. that the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

B. Design Certification

1. The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet any design criteria established by the office. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

2. The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

C. All vegetative and organic material shall be removed from the disposal area and the topsoil shall be removed, segregated and stored or replaced under §§5309-5317. If approved by the office, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

D. Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of §5323. All disturbed areas, including diversion ditches that are not ripped, shall be vegetated upon completion of construction.

E. The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the office. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench or berm.

F. Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with §5311. The office may approve a design which incorporates placement of excess spoil in horizontal lifts other than 4 feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

G. The final configuration of the fill must be suitable for post-mining land uses approved in accordance with §5431,

except that no depressions or impoundments shall be allowed on the completed fill.

H. Terraces may be utilized to control erosion and enhance stability if approved by the office and consistent with §5407.B. The grade of the outslope between terrace benches shall not be steeper than 1v:2h (50 percent).

I. Excess spoil that is acid- or toxic-forming or combustible shall be adequately covered with nonacid, nontoxic and noncombustible material, or treated, to control the impact on surface water and ground water in accordance with §5319, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved post-mining land use.

J. Where the slope in the disposal area exceeds 1v:2.8h (36 percent), or such lesser slope as may be designated by the office based on local conditions, key way cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with §2735.C to determine the size of rock-toe buttresses and key-way cuts.

K. Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

1. Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

- a. foundation preparation, including the removal of all organic material and topsoil;
- b. placement of underdrains and protective filter systems;
- c. installation of final surface drainage systems; and
- d. the final graded and revegetated fill. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.

2. The qualified registered professional engineer shall provide a certified report to the office promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and this Section. The report shall include appearances of instability, structural weakness and other hazardous conditions.

3.a. The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

b. Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with §5371, color photographs shall be taken of the underdrain as the underdrain system is being formed.

c. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

4. A copy of each inspection report shall be retained at or near the mine site.

L. Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is:

1. placed in accordance with §5381;
2. demonstrated to be non-toxic- and non-acid-forming; and
3. demonstrated to be consistent with the design stability of the fill.

M. If the disposal area contains springs, natural or man-made watercourses or wet weather seeps, an underdrain system consisting of durable non-acid-, non-toxic-forming rock that does not slake in water or degrade to soil material, and which is free of coal, clay or other nondurable material shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

N. The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5367. Disposal of Excess Spoil: Valley Fills

A. Valley fills shall meet all of the requirements of §5365 and the additional requirements of this Section.

1. The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design and accepted engineering analyses.

2. A subdrainage system for the fill shall be constructed in accordance with the following:

- a. a system of underdrains constructed of durable rock shall meet the requirements of §5367.A.2.d; and

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- i. be installed along the natural drainage system;
- ii. extend from the toe to the head of the fill; and
- iii. contain lateral drains to each area of potential drainage or seepage;

b. a filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods;

c. in constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. Rock used in underdrains shall meet the requirements of §5367.A.2.d. The minimum size of the main underdrain shall be:

Total Amount of Fill Material	Predominant Type of Fill Materials	Minimum Size of Drain, in Feet	
		Width	Height
Less than 1,000,000 yd ³	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd ³	Sandstone	16	8
Do	Shale	16	16

d. underdrains shall consist of nondegradable, non-acid or non-toxic-forming rock such as natural sand and gravel, sandstone, limestone or other durable rock that will not slake in water and will be free of coal, clay or shale.

3. Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the office, in lifts no greater than 4 feet or less if required by the office to:

- a. achieve the densities designed to ensure mass stability;
- b. prevent mass movement;
- c. avoid contamination of the rock underdrain or rock core; and
- d. prevent formation of voids.

4. Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, 6-hour precipitation event or larger event specified by the office. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, 6-hour precipitation event. Diversion design shall comply with the requirements of §5323.

5. The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (5 percent). The vertical distance between terraces shall not exceed 50 feet.

6. Drainage shall not be directed over the outslope of the fill.

7. The outslope of the fill shall not exceed 1v:2h (50 percent). The office may require a flatter slope.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§5369. Disposal of Excess Spoil: Head-of-Hollow Fills

A. Disposal of spoil in the head-of-hollow fill shall meet all standards set forth in §§5365 and 5367 and the additional requirements of this Section.

1. The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in §5367 with diversion of runoff around the fill. A fill associated with contour mining and placed at or near the coal seam, and which does not exceed 250,000 cubic yards, may use the rock-core chimney drain.

2. The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows.

a. The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of §5367.A.2.

b. A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

c. The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (3 percent). Instead of the requirements of §5365.G, a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3 to 5 percent grade toward the fill and a 1 percent slope toward the rock core.

3. The drainage control system shall be capable of passing safely the runoff from a 100-year, 6-hour precipitation event, or larger event specified by the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5371. Disposal of Excess Spoil: Durable Rock Fills

A. In lieu of the requirements of §§5367 and 5369, the office may approve alternate methods for disposal of hard rock spoil, including fill placement of dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this Section and §5365 are met. For this Section, hard rock spoil shall be defined as rockfill consisting of at least 80 percent by volume of durable, non-acid- and non-toxic-forming rock (e.g., sandstone or limestone) that does not slake in water and will not degrade to soil material. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the office.

1. Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

a. The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this Section.

b. Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials shall comprise no more than 20 percent of the fill volume as determined by tests performed by a registered engineer and approved by the office.

2.a. Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings, and laboratory tests.

b. The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the following factors of safety.

Case	Design Condition	Minimum Factor of Safety
I	End of Construction	1.5
II	Earthquake	1.1

3. The design of a head-of-hollow fill shall include an internal drainage system which will insure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

a. Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

b. All granular material used for the drainage system shall be free of clay and consist of durable particles

such as natural sands and gravels, sandstone, limestone, or other durable rock which will not slake in water.

c. The internal drain shall be protected by a properly designed filter system.

4. Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a 100-year, 6-hour precipitation event. Diversion design shall comply with the requirements of §5323.

5. The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (5 percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

6. Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, 6-hour precipitation event. Diversion design shall comply with the requirements of §5323.

7. Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved post-mining land use plan. Terraces shall meet the following requirements.

a. The slope of the outslope between terrace benches shall not exceed 1v:2h (50 percent).

b. To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (5 percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

c. Terrace ditches shall have a five percent slope toward the channel specified in §5371.A.6, unless steeper slopes are necessary in conjunction with approved roads.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5373. Protection of Underground Mining

A. No surface coal mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that:

1. the nature, timing and sequence of the operations are jointly approved by the office, the Mine Safety and Health Administration, and the state agency, if any, responsible for the safety of mine workers; and

2. the activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

B. Surface mining activities shall be designed to protect disturbed surface areas, including spoil disposal sites, so as to not endanger any present or future operations of either surface or underground mining activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§5375. Coal Processing Waste Banks: General Requirements

A. All coal processing waste shall be hauled or conveyed and placed in new and existing disposal areas approved by the office for this purpose. These areas shall be within a permit area. The disposal area shall be designed, constructed and maintained in accordance with §§5365 and 5367, this Section, and §§5377-5387, and to prevent combustion.

B. Coal processing waste materials from activities located outside a permit area, such as those activities at other mines or abandoned mine waste piles may be disposed of in the permit area only if approved by the office. Approval shall be based on the showing by the person who conducts surface mining activities in the permit area, using hydrologic, geotechnical, physical and chemical analysis, that disposal of these materials does not:

1. adversely affect water quality, water flow or vegetation;
2. create public health hazards; or
3. cause instability in the disposal areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5377. Coal Processing Waste Banks: Site Inspection

A. Inspections. A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

1. Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

- a. foundation preparation including the removal of all organic material and topsoil;
- b. placement of underdrains and protective filter systems;
- c. installation of final surface drainage systems; and
- d. the final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until

the refuse pile has been finally graded and revegetated or until a later time as required by the office.

2. The qualified registered professional engineer shall provide a certified report to the office promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and these regulations. The report shall include appearances of instability, structural weakness and other hazardous conditions.

3. The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

4. A copy of each inspection report shall be retained at or near the minesite.

B. If any inspection discloses that a potential hazard exists, the office shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the office shall be notified immediately. The office shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public from the coal processing waste area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5379. Coal Processing Waste Banks: Water Control Measures

A. Unless the operator can demonstrate that an alternative would ensure structural integrity of the waste bank and protection of water quality, a properly designed subdrainage system shall be provided. The subdrainage system shall:

1. intercept all ground-water sources;
2. be protected by an adequate filter; and
3. be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

B. All surface drainage from the area above the coal processing waste bank and from the crest and face of the waste bank disposal area shall be diverted, in accordance with §5367.A.4.

C. Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not ripped, shall be vegetated upon completion of construction.

D. All water discharged from a coal processing waste bank shall comply with §§5319, 5321, 5325, 5327, 5339 and 5345.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5381. Coal Processing Waste Banks: Construction Requirements

A. Coal processing waste banks shall be constructed in compliance with §§5365 and 5367, except to the extent that the requirements of those Sections are varied in this Section.

B. Coal processing waste banks shall have a minimum static safety factor of 1.5.

C. Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this Subsection, instead of those specified in §5367.A.3. The coal processing waste shall be:

1. spread in layers no more than 24 inches in thickness; and

2. compacted to attain 90 percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) specification T99-74 (twelfth edition) (July 1978) or an equivalent method.

D. Following grading of the coal processing waste bank, the site shall be covered with a minimum of 4 feet of the best available nontoxic and noncombustible material, in accordance with §5311.E, and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with §§5417-5423. The office may allow less than 4 feet of cover material based on physical and chemical analyses which show that the requirements of §§5417-5423 will be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5383. Coal Processing Waste: Burning

A. Coal processing waste fires shall be extinguished by the person who conducts the surface mining activities in accordance with a plan approved by the office and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5385. Coal Processing Waste: Burned Waste Utilization

A. Before any burned coal processing waste, other materials or refuse is removed from a disposal area, approval shall be obtained from the office. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and method of compliance with this Chapter, shall be submitted to the office. Consideration shall be given in the plan to potential hazards which may be created by removal to persons working or living in the vicinity of the structure. The plan shall be certified by a qualified engineer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5387. Coal Processing Waste: Return to Underground Workings

A. Coal processing waste may be returned to underground mine workings only in accordance with the following requirements.

1. Each mining plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the office and the Mine Safety and Health Administration.

2. Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

3. The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed back-fill, retention of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

4. The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

5. The requirements of §5387.A.1-4 shall also apply to pneumatic backfilling operations, except where the operations are exempted by the office from requirements specifying hydrologic monitoring.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§5389. Disposal of Noncoal Wastes

A. Noncoal wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustibles generated during surface mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall insure that leachate and surface runoff do not degrade surface water or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

B. Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with §§5417-5423. Operation of the disposal site shall be conducted in accordance with all local, state and federal requirements.

C. At no time shall any solid waste material be deposited at refuse embankments or impoundment sites, nor shall any excavation for solid waste disposal be located within eight of any coal outcrop or coal storage area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5391. Coal Processing Waste: Dams and Embankments—General Requirements

A. New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of §5375.

1. Sections 5391-5395 apply to dams and embankments constructed of coal processing waste or intended to impound coal-processing waste, whether they were completed before adoption of the regulatory program or are intended to be completed thereafter.

2. Waste shall not be used in the construction of dams and embankments unless it has been demonstrated to the office that the stability of such a structure conforms with the requirements of §5395.A. It shall also be demonstrated that the use of waste material shall not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or embankment. All demonstrations shall be submitted to and approved by the office.

3. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the office in accordance with §2725.

4. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with §5333. Such structures may not be retained permanently as part of the approved post-mining land use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5393. Coal Processing Waste: Dams and Embankments—Site Preparation

A. Before coal processing waste is placed at a dam or embankment site:

1. All trees, shrubs, grasses and other organic material shall be cleared and grubbed from the site, and all combustibles shall be removed and stockpiled in accordance with the requirements of this Chapter.

2. Surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with the requirements of §5323. Adequate outlets for discharge from these diversions shall be in accordance with §5329. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak runoff from a 100-year, 6-hour precipitation event. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with §5329. Sediment control measures shall be provided at the discharge of each diversion ditch before entry into natural watercourses in accordance with §§5319-5327.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5395. Coal Processing Waste: Dams and Embankments—Design and Construction

A. The design of each dam and embankment constructed of coal processing waste or intended to impound such waste shall comply with the requirements of §5333.A and C, modified as follows.

1. The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet.

2. The dam and embankment shall have a minimum safety factor of 1.5 for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least 1.2.

3. The dam or embankment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or

embankment for all loading conditions appearing in §5395.A.2 and for all increments of construction.

4. Each dam or embankment constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a six-hour precipitation event, or greater event as specified by the office.

B. Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

C. Dams or embankments constructed of or impounding waste materials shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period.

D. For dams or embankments constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5397. Air Resources Protection

A. Fugitive Dust. Each person who conducts surface mining activities shall plan and employ fugitive dust control measures as an integral part of site preparation, coal mining and reclamation operations. The office shall approve the control measures appropriate for use in planning, according to applicable federal and state air quality standards, climate, existing air quality in the area affected by mining, and the available control technology.

B. Control Measures. The fugitive dust control measures to be used, depending on applicable federal and state air quality standards, climate, existing air quality, size of operation and type of operation, shall include, as necessary, but not be limited to:

1. periodic watering of unpaved roads, with the minimum frequency of watering approved by the office;
2. chemical stabilization of unpaved roads with proper application of nontoxic soil cement or dust palliatives;
3. paving of roads;
4. prompt removal of coal, rock, soil and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface;
5. restricting the speed of vehicles to reduce fugitive dust caused by travel;

6. revegetating, mulching or otherwise stabilizing the surface of all areas adjoining roads that are sources of fugitive dust;

7. restricting the travel of unauthorized vehicles on other than established roads;

8. enclosing, covering, watering or otherwise treating loaded haul trucks and railroad cars to reduce loss of material to wind and spillage;

9. substituting conveyor systems for haul trucks and covering conveyor systems when conveyed loads are subjected to wind erosion;

10. minimizing the area of disturbed land;

11. prompt revegetation of regraded lands;

12. use of alternatives for coal handling methods, restriction of dumping procedures, wetting of disturbed materials during handling, and compaction of disturbed areas;

13. planting of special windbreak vegetation at critical points in the permit area;

14. control of dust from drilling using water sprays, hoods, dust collectors or other controls;

15. restricting the areas to be blasted at any one time;

16. restricting activities causing fugitive dust during periods of air stagnation;

17. extinguishing any areas of burning or smoldering coal and periodically inspecting for burning areas whenever the potential for spontaneous combustion is high;

18. reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization;

19. restricting fugitive dust at spoil and coal transfer and loading points with water sprays, negative pressure systems and baghouse filters, chemicals or other practices.

C. Additional Measures. Where the office determines that application of fugitive dust control measures listed in §5397.B is inadequate, the office may require additional measures and practices as necessary.

D. Monitoring. Air monitoring equipment shall be installed and monitoring shall be conducted in accordance with the air-monitoring plan required under §2711 and approved by the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5399. Protection of Fish, Wildlife and Related Environmental Values

A. Any person conducting surface mining activities shall, to the extent possible using the best technology currently available, minimize disturbances and adverse

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impact of the activities on fish, wildlife and related environmental values, and achieve enhancement of such resources where practicable.

B. Endangered and Threatened Species. No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary of interior or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The operator shall promptly report to the office any state- or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the office shall consult with appropriate state and federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

C. Bald and Golden Eagles. No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest or any of its eggs. The operator shall promptly report to the office any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the office shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the state fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

D. Nothing in this Section shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest or any of its eggs in violation of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1537 et seq.), or the Bald Eagle Protection Act, as amended, (16 U.S.C. 668 et seq.).

E. Each operator shall, to the extent possible using the best technology currently available, ensure that electric powerlines and other transmission facilities used for or incidental to surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the office determines that such requirements are unnecessary.

F. Each person who conducts surface mining activities shall, to the extent possible using the best technology currently available:

1. locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state and federal laws;

2. fence roadways where specified by the office to guide locally important wildlife to roadway underpasses. No new barrier shall be created in known and important wildlife migration routes;

3. fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;

4. restore, enhance where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife;

5. restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes and other wetland areas;

6. afford protection to aquatic communities by avoiding stream channels as required in §5349 or restoring stream channels as required in §5323;

7. not use persistent pesticides on the area during surface mining and reclamation activities, unless approved by the office;

8. to the extent possible prevent, control and suppress range, forest and coal fires which are not approved by the office as part of a management plan;

9. avoid disturbances to, enhance where practicable, restore or replace wetlands and riparian vegetation along rivers and streams and bordering ponds and lakes. Surface mining activities shall avoid disturbances to, enhance where practicable, or restore habitats of unusually high value for fish and wildlife;

10. if fish and wildlife habitat is to be a primary or secondary post-mining land use, the operator shall in addition to the requirements of §§5417-5423:

- a. select plant species to be used on reclaimed areas, based on the following criteria:

- i. their proven nutritional value for fish and wildlife;

- ii. their use as cover for fish and wildlife; and

- iii. their ability to support and enhance fish and wildlife habitat after release of bonds;

- b. distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover and other benefits for fish and wildlife;

11. where cropland is to be the post-mining land use and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished;

12. where the primary land use is to be residential, public service or industrial land use, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals, unless such greenbelts are inconsistent with the approved post-mining land use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5401. Slides and Other Damage

A. An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the office as is needed to assure stability. The barrier shall be retained in place to prevent slides and erosion.

B. At any time a slide occurs which may have a potential adverse affect on public property, health, safety or the environment, the person who conducts the surface mining activities shall notify the office by the fastest available means and comply with any remedial measures required by the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5403. Contemporaneous Reclamation

A. Reclamation efforts including, but not limited to, backfilling, grading, topsoil replacement and revegetation of all land disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5405. Backfilling and Grading: General Requirements**A. Timing of Backfilling and Grading**

1. Contour Mining. Rough backfilling and grading shall follow removal by not more than 60 days or 1,500 linear feet. The office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under §2715.B.3, that additional time is necessary.

2. Open Pit Mining with Thin Overburden. Rough backfilling and grading shall occur in accordance with the time schedule approved by the office, on the basis of the materials submitted under §2715.B.3, which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.

3. Area Strip Mining. Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under §2715.B.3, that additional time is necessary.

B. Method for Backfilling and Grading

1. All disturbed areas shall be returned to their approximate original contour, except as provided in §§2905, 5411 and 5413. All spoil shall be transported, backfilled, compacted (where advisable to insure stability or to prevent

leaching), and graded to eliminate all highwalls, spoil piles and depressions, except as provided in §5407.C.

2. Open Pit Mining with Thin Overburden. Rough backfilling and grading shall occur in accordance with the approved post-mining land use.

3. The post-mining graded slopes need not be of uniform slope.

4. Cut-and-fill terraces may be used only in those situations expressly identified in §5407.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5407. Backfilling and Grading: General Grading Requirements

A. The final graded slopes shall not exceed in grade either the approximate premining slopes, or any lesser slopes approved by the office based on consideration of soil, climate or other characteristics of the surrounding area. Post-mining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. The requirements of this Section may be modified by the office where the surface mining activities are re-affecting previously mined lands that have not been restored to the standards of this Chapter and sufficient spoil is not available to otherwise comply with this Section. The person who conducts surface mining activities shall, at a minimum:

1. retain all overburden and spoil on the solid portion of existing or new benches;

2. backfill and grade to the most moderate slope possible to eliminate the highwall which does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum static safety factor of 1.3. In all cases the highwall shall be eliminated.

B. On approval by the office in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved post-mining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements.

1. The width of the individual terrace bench shall not exceed 20 feet, unless specifically approved by the office as necessary for stability, erosion control, or roads included in the approved post-mining land use plan.

2. The vertical distance between terraces shall be as specified by the office, to prevent excessive erosion and to provide long-term stability.

3. The slope of the terrace outslope shall not exceed 1v:2h (50 percent). Outslopes which exceed 1v:2h (50 percent) may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of

the land prior to mining. In no case may highwalls be left as part of terraces.

4. Culverts and underground rock drains shall be used on the terrace only when approved by the office.

C. Small depressions may be constructed, if they:

1. are approved by the office to minimize erosion, conserve soil moisture, create and enhance wildlife habitat, or promote revegetation;

2. do not restrict normal access;

3. are not inappropriate substitutes for lower grades on the reclaimed lands.

D. All surface mining activities on slopes above 20 degrees, or on lesser slopes that the office defines as steep slopes, shall meet the provisions of Chapter 57.

E. All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour is hazardous to equipment operators, then grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases grading, preparation or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5409. Backfilling and Grading: Covering Coal and Acid- and Toxic-Forming Materials

A. Cover

1. Exposed coal seams, acid- and toxic-forming materials and combustible materials exposed, used or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface water and ground water in accordance with §5331, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved post-mining land use.

2. If necessary, these materials shall be treated to neutralize toxicity in order to prevent water pollution and sustained combustion and minimize adverse effects on plant growth and land uses.

3. Where necessary to protect against upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth for plant growth, or otherwise to meet local conditions, the office shall specify thicker amounts of cover using nontoxic material, or special compaction and isolation from ground-water contact.

4. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

B. Stabilization. Backfilled materials shall be selectively hauled or conveyed, and compacted wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface water or ground water and wherever necessary to insure stability of the backfilled materials. The method and design specifications of compacting material shall be approved by the office before acid-forming or toxic-forming materials are covered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5411. Backfilling and Grading: Thin Overburden

A. *Thin Overburden*—insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour.

1. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

a. closely resemble the surface configuration of the land prior to mining; or

b. blend into and complement the drainage pattern of the surrounding terrain.

B. In surface mining activities carried out continuously in the same limited pit area for more than one year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials over the mine plan area is demonstrated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards:

1. haul or convey, backfill and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3, and to provide adequate drainage and long-term stability of the regraded areas and cover all acid-forming and toxic-forming materials;

2. eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (50 percent), or such lesser slopes as the office may specify to reduce erosion, maintain the hydrologic balance, or allow the approved post-mining land use;

3. haul or convey, backfill, grade and revegetate in accordance with §§5417-5423 to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the mine plan area; and

4. haul or convey, backfill and grade to ensure impoundments are constructed only where:

a. it has been demonstrated to the satisfaction of the office that all requirements of §§5319-5347 have been met;

b. the impoundments have been approved by the office as suitable for the approved post-mining land use and as meeting the requirements of this Chapter and all other applicable federal and state laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2286 (December 1998).

§5413. Backfilling and Grading: Thick Overburden

A. *Thick Overburden*—more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour.

1. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

a. closely resemble the surface configuration of the land prior to mining; or

b. blend into and complement the drainage pattern of the surrounding terrain.

B. In surface mining activities where the volume of spoil over the mine plan area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards:

1. haul or convey, backfill and grade all spoil and wastes, not required to achieve the approximate original contour of the mine plan area, to the lowest practicable grade, to achieve a static factor of safety of 1.3 and cover all acid-forming and toxic-forming materials;

2. haul or convey, backfill and grade excess spoil and wastes only within the permit area and dispose of such materials in accordance with §§5365-5371;

3. haul or convey, backfill and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with §§5319-5347 and to provide long-term stability by preventing slides, erosion and water pollution;

4. haul or convey, backfill, grade and revegetate wastes and excess spoil to achieve an ecologically sound land use approved by the office as compatible with the prevailing land uses in unmined areas surrounding the mine plan area;

5. eliminate all highwalls by backfilling with spoil and suitable waste materials; and

6. meet the revegetation requirements of §§5417-5423 for all disturbed areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December

1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2286 (December 1998).

§5414. Backfilling and Grading: Previously Mined Areas

A. Remining operations on previously mined areas that contain a preexisting highwall shall comply with the requirements of §§5405-5413 and 5703, except as provided in this Section.

B. The requirements of §5405.B.1 requiring the elimination of highwalls shall not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the office to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

1. all spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area;

2. the backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability;

3. any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate, to the satisfaction of the office, that the highwall remnant is stable; and

4. spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2735 (September 2011).

§5415. Regrading or Stabilizing Rills and Gullies

A. When rills and gullies deeper than nine inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded or otherwise stabilized and the area reseeded or replanted according to §§5417-5423. The office shall specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted if the rills or gullies are disruptive to the approved post-mining land use or may result in additional erosion and sedimentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5417. Revegetation: General Requirements

A. Each person who conducts surface mining activities shall establish on regraded areas and on all other disturbed

areas, except water areas and surface areas of roads that are approved as part of the post-mining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

1. diverse, effective and permanent;
2. comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved post-mining land use and approved by the office;
3. at least equal in extent of cover to the natural vegetation of the area; and
4. capable of stabilizing the soil surface from erosion.

B. The reestablished plant species shall:

1. be compatible with the approved post-mining land use;
2. have the same seasonal characteristics of growth as the original vegetation;
3. be capable of self-regeneration and plant succession;
4. be compatible with the plant and animal species of the area;
5. meet the requirements of applicable state and federal seed, poisonous and noxious plant, and introduced species laws or regulations; and
6. not be Kudzu, pueraria lobata or any vine of the Kudzu family.

C. The office may grant exception to the requirements of §5417.B.2-3 when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

D. When the office approves a cropland post-mining land use, the office may grant exception to the requirements of §§5417.A.1 and 3, and 5417.B.2-3. The requirements of Chapter 55 apply to areas identified as prime farmland.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 20:447 (April 1994).

§5419. Revegetation Timing

A. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded and planted, as contemporaneously as practicable with the completion of backfilling and grading, with a temporary cover of small grains, grasses or legumes until a permanent cover is established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5421. Revegetation: Mulching and Other Soil Stabilizing Practices

A. Suitable mulch and other soil stabilizing practices shall be used on all regraded and topsoiled areas to control erosion, promote germination of seeds, or increase the moisture retention capacity of the soil. The office may, on a case-by-case basis, suspend the requirement for mulch, if the permittee can demonstrate that alternative procedures will achieve the requirements of §5423 and do not cause or contribute to air or water pollution.

B. When required by the office, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.

C. Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the office determines that they will provide adequate soil erosion control and will later be replaced by perennial species approved for the post-mining land use.

D. Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the post-mining land use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5423. Revegetation: Standards for Success

A. Success of revegetation shall be judged on the effectiveness of the vegetation for the approved post-mining land use, the extent of perennial cover compared to the cover occurring in natural vegetation of the area, and the general requirements of §5417.

1. Techniques for estimating cover shall be chosen from the following.

a. Pin Method. In the pin method, a pinpoint is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed pin is considered one sample unit.

b. Point Frame Method. In the point frame method, a group of pinpoints is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed frame is considered one sample unit.

c. Line Intercept Method. The sampling unit is a tape at least 100 feet long that is stretched from a random starting point in a randomly selected direction. The procedure consists of recording the length of tape underlain by vegetation, then dividing by the total length of tape to obtain the percentage of cover. Each randomly located tape is considered one sampling unit.

2. Techniques for estimating production shall be chosen from the following.

a. Clipping. A quadrat of appropriate size is randomly located within the area to be measured. Plants within the volumetric vertical projection are clipped and retained. All production samples shall be oven dried and weighed. The average oven-dried weight per sample is then converted to a production amount for the entire area.

b. Haying. A total harvest of the area to be measured may be used to establish production. The area is cut at a uniform height, the cuttings are windrowed and dried, and the air-dried hay is baled. Randomly selected bales are weighed. These weights are converted to a production amount for the entire area to be measured by multiplying the total number of bales by the average weight of the bales sampled.

c. Double Sampling. Each randomly located cluster is counted as one sampling unit. Plants will be clipped and reported by life form.

3. Technique for Estimating Live Stems Per Acre—Fixed Area Method. Sample locations are randomly established. The live stems within a specified radius of the sample point are counted. The average number of stems per plot is converted to stems per acre by multiplying by the appropriate conversion factor for the radius of the circle used.

4. Estimates of the mean for particular parameters shall be statistically valid. Sample adequacy shall be determined by the following formula:

$$N_{\min} = (t^2 s^2) / (dx)^2$$

where:

N_{\min} = the minimum number of observations needed;

t = 1.64 (the t table value for a double-tailed t test with infinite degrees of freedom at the 90 percent confidence level);

s^2 = the sample standard deviation;

d = the level of precision for the estimate of the mean; and

x = the sample mean.

Minimum sample size shall be 10. Sample adequacy must be met for cover, production, and/or woody plant densities.

5. Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval

(e.g., one-sided test with a 0.10 alpha error, two-sided test with a 0.05 alpha, etc.).

B. Standards for success shall be applied in accordance with the approved post-mining land use and shall be selected from the following.

1. For areas developed for use as pastureland, the ground cover and production of living plants on the revegetated area shall be at least equal to the standard for success selected from the following methods.

a. Reference Area. An area of at least 1 acre which will not be disturbed by mining and which is used in a direct comparison with reclaimed areas. As stated in §105, the reference area is to be maintained under appropriate management for the purpose of measuring the referenced vegetative parameters, and should be representative of the geology, soil, slope, and vegetation in the permit area.

i. Direct reference area comparisons are appropriate for pastureland.

b. The Historic Record. A suitable database for the historic record would consist of at least four growing seasons of data, collected to achieve sample adequacy. The historic record shall be based on vegetation data collected from premining areas or areas with plant communities comparable (cover, production, density, diversity) to the disturbed area and shall be established for each plant community or group of plant communities that will be disturbed by mining. The mean value for each parameter for each yearly sampling would be averaged to obtain an overall mean. This value would then be established as the success standard.

c. Technical Documents. Standards established by reference to technical documents of the USDA, USDI, or other authorities are allowed when specifically approved by the office. The office should be consulted prior to the use of this approach.

d. The criteria to be used by the office in approving technical documents for use in determining success standards in accordance with §§5423.B.1.b-c, 5423.B.2.b-c, or 5423.B.3.b-c are as follows:

i. the technical documents are published by state or federal governmental agencies or educational institutions with a recognized expertise in agronomics, rain sciences or related disciplines;

ii. the technical documents are applicable to the area in which the permittee's operations are conducted;

iii. the technical documents are generally available to the public and to the office; and

iv. any technical document submitted for approval shall be considered an amendment to Louisiana's approved state program and shall be subject to the state program amendment process.

e. The criteria and procedures for determining ground cover and production success are found at §5424.

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2. For areas developed for use as grazingland, the ground cover and production of living plants on the revegetated area shall be at least equal to the standard for success selected from the following methods.

a. Reference Area. An area of at least 1 acre which will not be disturbed by mining and which is used in a direct comparison with reclaimed areas. As stated in §105, the reference area is to be maintained under appropriate management for the purpose of measuring the referenced vegetative parameters, and should be representative of the geology, soil, slope, and vegetation in the permit area.

b. The Historic Record. A suitable database for the historic record would consist of at least four growing seasons of data, collected to achieve sample adequacy. The historic record shall be based on vegetation data collected from premining areas or areas with plant communities comparable (cover, production, density, diversity) to the disturbed area and shall be established for each plant community or group of plant communities that will be disturbed by mining. The mean value for each parameter for each yearly sampling would be averaged to obtain an overall mean. This value would then be established as the success standard.

c. Technical Documents. Standards established by reference to technical documents of the USDA, USDI, or other authorities are allowed when specifically approved by the office. The office should be consulted prior to the use of this approach.

3. For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to the standard for success selected from the following methods.

a. Reference Area. An area of at least 1 acre which will not be disturbed by mining and which is used in a direct comparison with reclaimed areas. As stated in §105, the reference area is to be maintained under appropriate management for the purpose of measuring the referenced vegetative parameters, and should be representative of the geology, soil, slope, and vegetation in the permit area.

b. The Historic Record. A suitable database for the historic record would consist of at least four growing seasons of data, collected to achieve sample adequacy. The historic record shall be based on vegetation data collected from premining areas or areas with plant communities comparable (cover, production, density, diversity) to the disturbed area and shall be established for each plant community or group of plant communities that will be disturbed by mining. The mean value for each parameter for each yearly sampling would be averaged to obtain an overall mean. This value would then be established as the success standard.

c. Technical Documents. Standards established by reference to technical documents of the USDA, USDI, or other authorities are allowed when specifically approved by the office. The office should be consulted prior to the use of this approach.

4. For areas developed for forestry, the ground cover and live stems per acre on the revegetated area shall be at least equal to the following standard for success.

a. At the time of final bond release there shall be 450 well-distributed free-to-grow live pine trees of the same age per acre or 250 well-distributed free-to-grow live hardwood trees of the same age per acre. Countable stems shall have utility for the approved post-mining land use, be healthy, and be a minimum of three years old. This standard has been developed after consultation and approval by the Louisiana Department of Agriculture and Forestry.

Free-to-Grow—pine seedlings or saplings without significant hardwood competition. Competing vegetation shades the pine's crown on less than 30 percent of the crown's circumference and the pines are judged to have better than a 90 percent chance of capturing a place in the crown canopy.

(a). This standard has been developed after consultation and approval by the Louisiana Department of Agriculture and Forestry.

(b). Vegetative ground cover shall not be less than 70 percent. This standard has been developed after consultation and approval by the Louisiana Department of Agriculture and Forestry.

Well-Distributed—uniform stocking levels over an entire planting site.

5. For areas developed for residential use, the vegetative ground cover shall not be less than 70 percent.

6. For areas developed for industrial/commercial use, the vegetative ground cover shall not be less than 70 percent.

7. For areas developed for recreation use, the vegetative ground cover shall not be less than 70 percent. The planting success standard for trees and shrubs will be established after consultation and approval by the Louisiana Department of Wildlife and Fisheries on a permit-specific basis. Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved post-mining land use. At the time of bond release, at least 80 percent of the trees and shrubs shall have been in place for 60 percent of the five-year responsibility period. Trees and shrubs counted in determining such success shall be healthy and in place for not less than two growing seasons.

8. For areas developed for fish and wildlife habitat, the vegetative ground cover shall not be less than 70 percent. The planting success standard for trees and shrubs will be established after consultation and approval by the Louisiana Department of Wildlife and Fisheries on a permit-specific basis. Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved post-mining land use. At the time of bond release, at least 80 percent of the trees and shrubs shall have been in place for 60 percent of the five-year responsibility period. Trees and shrubs

counted in determining such success shall be healthy and in place for not less than two growing seasons.

a. The criteria and procedures for determining ground cover and stocking success are found at §5425.

9. For areas with a post-mine designation of undeveloped, the vegetative ground cover, production or stocking shall be comparable to the standard for success for the highest and best managed land use that area is capable of supporting based on the information required by §2533.A.2.a.

10. For areas previously disturbed by mining that were not reclaimed to the requirements of this Subpart and that are remined or otherwise redisturbed by surface coal mining operations, the vegetative ground cover shall be, at a minimum, not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

C.1. The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation or other work, excluding husbandry practices that are approved by the office in accordance with §5423.C.3.

2. In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than five full years. Vegetation parameters identified in §5423.B for grazing land or pasture land and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in §5423.B shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

3. The office may approve selective husbandry practices, excluding augmented seeding, fertilization or irrigation, provided it obtains prior approval from the director in accordance with 30 CFR 732.17 that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the post-mining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved post-mining land use of the disturbed area, including such practices as disease, pest and vermin control; and any pruning, reseeding or transplanting specifically necessitated by such actions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 21:1082 (October 1995), LR 29:1497 (August 2003).

§5424. Revegetation: Standards for Success—Post-Mining Land Use of Pastureland

A. Introduction

1. This Section describes the criteria and procedures for determining ground cover and production success for areas being restored to pastureland.

2. Pursuant to §5423, ground cover and production success on pastureland must be determined on the basis of the following conditions:

- a. general revegetation requirements of the approved permit;
- b. ground cover density; and
- c. production.

3. The permittee is responsible for determining and measuring ground cover and production and submitting this data to the commissioner for evaluation. Procedures for making these determinations are described below.

B. Success Standards and Measurement Frequency

1. Ground Cover

a. Ground cover shall be considered acceptable if it is at least 90 percent of the approved success standard at a 90 percent statistical confidence level for any two of the last four years of the five-year responsibility period. The success standard for ground cover shall be 90 percent.

i. Ground cover must be measured over each noncontiguous area that is proposed for release. The aggregate of areas with less than 90 percent ground cover must not exceed 5 percent of the release area. These areas must not be larger than 1 acre and must be completely surrounded by desirable vegetation that has a ground cover of 90 percent. Areas void of desirable vegetation may not be larger than 1/4 acre and must be surrounded by desirable vegetation that has a ground cover of 90 percent. Refer to sampling technique for ground cover in §5424.C.2.a.

b. Ground cover shall consist of the species mixture approved in the original permit or an approved acceptable species mixture as recommended by the USDA/Natural Resources Conservation Service (NRCS) for use in that area. No more than 15 percent of the stand can be approved species not listed in the permit.

c. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Whenever ground cover is equal to or exceeds the success standard, the statistical confidence interval test does not have to be determined.

d. Ground cover success and forage production success need not be met during the same year.

e. Ground cover shall be sampled once per year during any two of the last four years of the five-year responsibility period to verify cover data.

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2. Forage Production

a. The success standard for production of hay on pastureland shall be 90 percent of an approved reference area, if a reference area is established, or 90 percent of the estimated yield found in the Soil Conservation Service (now Natural Resources Conservation Service (NRCS)) parish soil survey. The estimated yields are those expected under a high level of management and were determined by the NRCS based on records of farmers, conservationists and extension agents.

b. Production shall be sampled for at least two separate years. Any two of the last four years of the five-year responsibility period may be selected.

3. Reference Area Requirements

a. Reference areas must be representative of soils, slope, aspect, and vegetation in the premined permit area. However, in cases where differences exist because of mixing of several soil series on the reclaimed area or unavailability of a reference area as herein described, yields must be adjusted.

b. Reference area pastureland must be under the same management as pastureland in the reclaimed area. This means that it must:

- i. consist of similar plant species and diversity as approved in the permit;
- ii. be currently managed under the same land use designation as the proposed mined release area;
- iii. consist of soils in the same land capability class;
- iv. be located in the general vicinity of the mined test area to minimize the impact of differing weather;
- v. use the same fertilizer and pest management techniques;
- vi. use fertilizer rates based on the same yield goal;
- vii. be mowed at the same time to the same height as the reclaimed area;
- viii. use identical harvest dates and plant populations; and
- ix. use any other commonly used management techniques not listed above such as adequate weed and insect control, provided the pastureland area and the reference plot are treated identically.

c. Reference areas shall consist of a single plot (whole plot) at least 4 acres in size. Either statistically adequate subsampling or whole plot harvesting may be used to determine yields.

d. Reference plot forage yields must be at a level that is reasonably comparable to the parish average for the given crop. Reference plot yields that are less than 80 percent of the parish average are highly suspect and may be rejected.

e. Reference areas may be located on undisturbed acreage within permitted areas. If not so located, the permittee must obtain from the landowner(s) a written agreement allowing use of the property as a reference area and allowing right of entry for regulatory personnel.

f. When release areas and reference plots fall on different soil series, adjustments must be made to compensate for the productivity difference.

C. Sampling Procedures

1. Random Sampling

a. To assure that the samples truly represent the vegetative characteristics of the whole release or reference area, the permittee must use methods that will provide:

- i. a random selection of sampling sites;
- ii. a sampling technique unaffected by the sampler's preference; and
- iii. sufficient samples to represent the true mean of the vegetation characteristics.

b. Sampling points shall be randomly located by using a grid overlay on a map of the release or reference area and by choosing horizontal and vertical coordinates. Each sample point must fall within the release or reference area boundaries and be within an area having the vegetative cover type being measured. Additionally, at least one ground cover sample point must be measured in each noncontiguous unit, if the release area does not consist of a single unit.

c. The permittee shall notify the office 10 days prior to conducting sampling or other harvesting operations to allow regulatory personnel an opportunity to monitor the sampling procedures.

2. Sampling Techniques

a. Ground Cover. There are several approved methods for measuring ground cover. As stated at §5423.A.1, these are: pin method, point frame method and line intercept method. The first contact, or "hit," of vegetation shall be classified by species as acceptable or unacceptable as follows.

Acceptable	Unacceptable
Vegetation approved in permit	Vegetation not approved in permit
Dead vegetation or litter from acceptable species	Rock or bare ground
Acceptable—not approved in permit	

i. Pin Method. In the pin method, a pinpoint is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed pin is considered one sample unit. An acceptable type of pin method would include recording each pin contact at one-foot intervals along a 100-foot tape. Each

randomly placed 100-foot tape would be considered one sample unit.

ii. Point Frame Method. In the point frame method, a group of pinpoints is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed frame is considered one sample unit.

iii. Line Intercept Method. The sampling unit is a tape at least 100 feet long that is stretched from a random starting point in a randomly selected direction. The procedure consists of recording the length of tape underlain by vegetation, then dividing by the total length of tape to obtain the percentage of cover. Each randomly located tape is considered one sampling unit.

b. Productivity

i. When evaluating productivity, two components that may potentially influence the end results of production yields are time of harvest and moisture content.

(a). Time of Harvest. Herbaceous species must be harvested at times and frequencies appropriate to the plant species (i.e., cool-season species should be sampled in the winter or spring; warm-season species should be sampled in the summer or fall). Sampling should be timed to coincide with seed ripeness or the mature stage of the target vegetative species. Plant communities that are comprised of both cool- and warm-season species should be sampled when the overall plant community production is at a peak. If an area has not had herbaceous biomass removed (i.e., mowing, baling, grazing) since the last sampling, then sampling must not be conducted until the vegetation is removed and regrowth has taken place.

(b). Moisture Content. The moisture content of harvested herbaceous biomass and other vegetative components must be standardized, in order to eliminate weight variations due to moisture content. The weight of harvested vegetation is to be standardized by oven-drying at 60° C for 24 hours or until the weight stabilizes.

ii. Productivity can be evaluated by hand-harvesting or with mechanized agricultural implements. Productivity measurements must be obtained during the growing season of the primary vegetation species. Productivity is estimated from only the current season's growth. There are two methods that can be used to evaluate production: using sampling frames for harvesting plots or whole-field harvests.

(a). Sampling Frames. A sampling frame shall be an enclosure, of known dimension appropriate for sampling pasture lands, capable of enclosing the sample location. A sample location shall be established at each of the randomly chosen sites, such that the center of the sampling frame is the random point. The permittee shall clip the biomass 2 inches above ground level within the frame. The biomass to be clipped shall be from all plant species growth whose

base lies within the sampling frame. This biomass shall then be weighed and recorded. As each frame is clipped and weighed, the biomass shall be put into a bag for oven drying. Samples shall be oven-dried to a constant weight and reweighed to determine dried weight. All data collected from the clippings within the sampling frame shall be recorded and analyzed.

(b). Whole Area Harvesting. If whole release area harvesting is chosen as the method for data collection, the entire area shall be harvested and the data recorded and analyzed.

iii. If truckloads of bales are weighed for hay production when a whole area is harvested, at least three truckloads from each 100 acres are weighed. Each truckload should have at least three large round bales or 20 square bales. A sample will consist of the average bale weight per truckload. A statistically adequate sample size must be obtained. Multiply the number of hay bales per area by the average bale weight to obtain total production for that area. Total production is then compared to 90 percent of the reference or target yield, using a 90 percent or greater statistical confidence level.

iv. If performing statistical comparisons for hay production when a whole field is harvested, the weights of either 10 percent or 15 bales, whichever is greater, are converted to pounds per acre (lbs/ac) by taking their average weight and multiplying that figure by the total number of bales, divided by the number of acres harvested. Total production is then compared to 90 percent of the reference or target yield, using a 90 percent or greater statistical confidence level.

v. To determine which bales to weigh, randomly select a number from one to ten then count and weigh every tenth bale thereafter until the minimum number or 10 percent of the bales have been weighed. The first and last bale of any noncontiguous field or site should not be weighed. The bales shall be counted, but if the random number falls on either of the two bales mentioned, either advance one bale or select the bale immediately previous to the last bale produced.

3. Sample Adequacy

a. Ground Cover Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed.

$$n = (t^2 s^2) / (0.1x)^2$$

where:

- n = minimum number of samples needed;
- t² = squared t-value from the T-Table;
- s² = initial estimate of the variance of the release (or reference) area; and
- (0.1x)² = the level of accuracy expressed as 10 percent of the average cover (note that this term is squared).

ii. If the formula reveals that the required number of samples is equal to or less than the initial minimum number, the initial sampling will satisfy the sampling requirements. If the number of samples needed is greater than the initial minimum number, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

b. Productivity Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed.

$$n = (t^2 s^2) / (0.1x)^2$$

(the variance (s²) must be based on oven dry weight)

where:

- n = minimum number of samples needed;
- t² = squared t-value from the T-Table;
- s² = initial estimate of the variance of the release (or reference) area; and
- (0.1x)² = the level of accuracy expressed as 10 percent of the average weight (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

D. Data Submission and Analysis

1. If the data shows that revegetation success has been met, the permittee shall submit the data to the commissioner for review. Ground cover or production for the release area will be considered successful when it has been measured with an acceptable method, has achieved sample adequacy, and where the average ground cover or production value is equal to or greater than the success standard.

2. When the data indicates that the average ground cover and average forage production was insufficient, but close to the standards, the permittee may submit the data to the commissioner to determine if the production was acceptable when statistically compared to the standards using a t-test at a 90-percent statistical confidence interval.

3. Raw yield data from reclaimed areas and raw data from reference areas must first be oven dried to remove moisture, then adjusted by the parish soil survey average yields before statistical comparisons can be made.

E. Maps

1. When a proposed reclamation Phase III release is submitted to the office, it must be accompanied by maps showing:

- a. the location of the area covered by the proposed release;
- b. the location of reference plots; and
- c. all permit boundaries.

2. When data from a previously approved plan is submitted to the office, it must be accompanied by maps showing:

- a. the location of and reference plots;
- b. the location of each sample point;
- c. the area covered by the sampling; and
- d. all permit boundaries.

F. Mitigation Plan

1. Ground cover and forage productivity must equal or exceed the standards for reclamation Phase III liability release for at least two sampling years during the second through the fifth years following completion of the last augmented seeding. If productivity is not achieved by these dates, the permittee must submit a mitigation plan to the commissioner that includes the following:

- a. a statement outlining the problem;
- b. a discussion of what practices, beyond normal farming practices, the operator intends to use to enable the area to finally meet the release standards; and
- c. a new Phase III release proposal.

2. If renovation, soil substitution or any other practice that constitutes augmentation is employed, the five-year responsibility period shall restart after the mitigation plan is approved and the practices are completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:1497 (August 2003).

§5425. Revegetation: Standards for Success—Post-Mining Land Use of Wildlife Habitat

A. Introduction

1. This Section describes the criteria and procedures for determining ground cover and stocking success for areas developed for wildlife habitat.

2. Pursuant to §5423, ground cover and stocking success on wildlife habitat must be determined on the basis of the following conditions:

- a. general revegetation requirements of the approved permit;
- b. ground cover; and
- c. tree or shrub stocking and survival.

3. The permittee is responsible for measuring and determining ground cover and stocking and submitting this

data to the commissioner for evaluation. Procedures for making these determinations are described below.

B. Success Standards and Measurement Frequency

1. Ground Cover

a. Ground cover shall be considered acceptable if it has at least 70 percent density with a 90 percent statistical confidence for the last year of the five-year responsibility period.

b. The aggregate of areas with less than 70 percent ground cover must not exceed five percent of the release area. These individual areas must not be larger than 1 acre and must be completely surrounded by desirable vegetation that has a ground cover of not less than 70 percent. Areas void of desirable vegetation may not be larger than 1/4 acre and must be surrounded by desirable vegetation that has a ground cover of not less than 70 percent.

c. No more than 35 percent of the stand can consist of approved species not listed in the permit.

2. Tree and Shrub Stocking Rate

a. The stocking rate for trees and shrubs shall be determined on a permit-specific basis after consultation and approval by the Louisiana Department of Wildlife and Fisheries. Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved post-mining land use. When this requirement is met and acceptable ground cover is achieved, the five-year responsibility period shall begin.

b. Tree and shrub stocking rate shall be sampled once during the last year of the five-year responsibility period. The woody plants established on the revegetated site must be equal to or greater than 90 percent of the stocking rate approved in the permit with 90 percent statistical confidence. Trees and shrubs counted shall be healthy and in place for not less than two growing seasons. At the time of final bond release at least 80 percent of the trees and shrubs used to determine success shall have been in place for 60 percent of the applicable minimum period of responsibility. The permittee must provide documentation of this in the form of paid receipts, reclamation status reports, and normal correspondence.

C. Sampling Procedures

1. Random Sampling

a. To assure that the samples truly represent the vegetative characteristics of the whole release or reference area, the permittee must use methods that will provide:

- i. a random selection of sampling sites;
- ii. a sampling technique unaffected by the sampler's preference; and
- iii. sufficient samples to represent the true mean of the vegetative characteristics.

b. Sampling points shall be randomly located by using a grid overlay on a map of the release or reference area and by choosing horizontal and vertical coordinates. Each sample point must fall within the release or reference area boundaries and be within an area having the vegetative cover type being measured. Additionally, if the release area does not consist of a single unit, at least one sample point must be measured in each noncontiguous unit.

c. The permittee shall notify the office 10 days prior to conducting sampling or other harvesting operations to allow regulatory personnel an opportunity to monitor the sampling procedures.

2. Sampling Techniques

a. Ground Cover. There are several approved methods for measuring ground cover. As stated at §5423.A.1, these are: pin method, point frame method and line intercept method. The first contact, or "hit," of vegetation shall be classified by species as acceptable or unacceptable as follows.

Acceptable	Unacceptable
Vegetation approved in permit	Vegetation not approved in permit
Dead vegetation or litter from acceptable species	Rock or bare ground
Acceptable—not approved in permit	

i. Pin Method. In the pin method, a pinpoint is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed pin is considered one sample unit. An acceptable type of pin method would include recording each pin contact at 1-foot intervals along a 100-foot tape. Each randomly placed 100-foot tape would be considered one sample unit.

ii. Point Frame Method. In the point frame method, a group of pinpoints is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed frame is considered one sample unit.

iii. Line Intercept Method. The sampling unit is a tape at least 100 feet long that is stretched from a random starting point in a randomly selected direction. The procedure consists of recording the length of tape underlain by vegetation, then dividing by the total length of tape to obtain the percentage of cover. Each randomly located tape is considered one sampling unit.

b. Sampling Circles (Trees/Shrubs)

i. A sampling circle shall be a round area of known radius. The permittee shall establish a sampling circle at each randomly selected sampling point such that the

center of the sampling circle is the random point. Permittee may draw the circle by attaching a string to a stake fixed at the random point and then sweeping the end of the string (tightly stretched) in a circle around the stake. The permittee shall count all living trees and shrubs within each of the sampling circles. In more mature tree/shrub areas, the stakes may need to be extended to elevate the string above the growth.

ii. To count as a living tree or shrub, the tree or shrub must be healthy and must have been in place for at least two years. At the time of liability release, 80 percent must have been in place for three years.

3. Sample Adequacy

a. Ground Cover Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed.

$$n = (t^2 s^2) / (0.1x)^2$$

where:

- n = minimum number of samples needed;
- t² = squared t-value from the T-Table;
- s² = initial estimate of the variance of the release (or reference) area; and
- (0.1x)² = the level of accuracy expressed as 10 percent of the average cover (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

b. Sampling Circles (Trees/Shrubs) Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed.

$$n = (t^2 s^2) / (0.1x)^2$$

(the variance (s²) must be based on oven dry weight)

where:

- n = minimum number of samples needed;
- t² = squared t-value from the T-Table;
- s² = initial estimate of the variance of the release (or reference) area; and
- (0.1x)² = the level of accuracy expressed as 10 percent of the average weight (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two

Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

D. Data Submission and Analysis

1. If the data shows that revegetation success has been met, the permittee shall submit the data to the commissioner for review. Ground cover or stocking for the release area will be considered successful when it has been measured with an acceptable method, has achieved sample adequacy, and where the average ground cover or stocking value is equal to or greater than the success standard.

2. When the data indicates that the average ground cover and/or tree and shrub average stocking density is insufficient, but close to the standards, the permittee may submit the data to the commissioner to determine if the revegetation is acceptable when statistically compared to the standards using a t-test at a 90-percent statistical confidence interval.

E. Maps

1. When a proposed reclamation Phase III release is submitted to the office, it must be accompanied by maps showing:

- a. the location of the area covered by the proposed release;
- b. the location of reference plots; and
- c. all permit boundaries.

2. When data from a previously approved plan is submitted to the office, it must be accompanied by maps showing:

- a. the location of each transect and sampling circle location;
- b. the area covered by the sampling; and
- c. all permit boundaries.

F. Mitigation Plan

1. Ground cover must be greater than or equal to 70 percent coverage and tree and shrub stocking must achieve the revegetation standards by the fifth year of the five-year responsibility period. If these standards are not achieved by this date, the permittee must submit a mitigation plan to the commissioner that includes the following:

- a. a statement outlining the problem;
- b. a discussion of what practices, beyond normal agronomic practices, the operator intends to use to enable the area to finally meet the release standards; and
- c. a new Phase III release proposal.

2. If renovation, soil substitution, or any other practice that constitutes augmentation is employed, the five-year responsibility period shall restart after the mitigation plan is approved and the practices are completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:1500 (August 2003).

§5427. Cessation of Operations: Temporary

A. Each person who conducts surface mining activities shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of their obligation to comply with any provisions of the approved permit.

B. Before temporary cessation of mining and reclamation operations for a period of 30 days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, persons who conduct surface mining activities shall submit to the office a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished and identification of the backfilling, regrading, revegetation, environmental monitoring and water treatment activities that will continue during the temporary cessation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5429. Cessation of Operations: Permanent

A. Persons who cease surface mining activities permanently shall close, backfill or otherwise permanently reclaim all affected areas, in accordance with these regulations and the permit approved by the office.

B. All underground openings, equipment, structures or other facilities not required for monitoring, unless approved by the office as suitable for the post-mining land use or environmental monitoring, shall be removed and the affected land reclaimed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5431. Post-Mining Land Use

A. General. All affected areas shall be restored in a timely manner to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or to higher or better uses achievable under the criteria and procedures of this Section.

B. Determining Premining Use of Land. The premining uses of land to which the post-mining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and has been properly managed.

1. The post-mining land use for land that has been previously mined and not reclaimed shall be judged on the

basis of the land use that existed prior to any mining, provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the post-mining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

2. The post-mining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

3. If the premining use of the land was changed within five years of the beginning of mining, the comparison of post-mining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

C. Prior to the Release of Lands from the Permit Area. In accordance with §4503.B the permit area shall be restored in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses may be approved by the office after consultation with the landowner or the land management agency having jurisdiction over the lands, if the following criteria are met.

1. The proposed post-mining land use is compatible with adjacent land use and, where applicable, with existing local, state or federal land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans is submitted to the office within 60 days of notice by the office and before surface mining activities begin. Any required approval, including any necessary zoning or other changes required for land use by local, state or federal land management agencies, is obtained and remains valid throughout the surface mining activities.

2. Specific plans are prepared and submitted to the office which show the feasibility of the post-mining land use as related to projected land use trends and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and will be sustained. The office may require appropriate demonstrations to show that the planned procedures are feasible, reasonable and integrated with mining and reclamation, and that the plans will result in successful reclamation.

3. Provision of any necessary public facilities is ensured as evidenced by letters of commitment from parties other than the person who conducts surface mining activities, as appropriate, to provide the public facilities in a manner compatible with the plans submitted under §2723. The letters shall be submitted to the office before surface mining activities begin.

4. Specific and feasible plans are submitted to the office which show that financing, attainment and

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maintenance of the post-mining land use are feasible and, if appropriate, are supported by letters of commitment from parties other than the person who conducts the surface mining activities.

5. Plans for the post-mining land use are designed under the general supervision of a registered professional engineer who will ensure that the plans conform to applicable, accepted standards for adequate land stability, drainage, vegetative cover and esthetic design appropriate for the post-mining use of the site.

6. The proposed use will neither present actual or probable hazard to public health or safety nor will it pose any actual or probable threat of water flow diminution or pollution.

7. The use will not involve unreasonable delays in reclamation.

8. Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife and related environmental values and threatened or endangered plants is obtained from the office, and appropriate state and federal fish and wildlife management agencies have been provided a 60-day period in which to review the plan before surface mining activities begin.

9. Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland or pasture to a post-mining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization or other similar practices to be practicable, or to comply with applicable federal, state and local laws, are reviewed by the office to insure that:

a. there is a firm commitment by the person who conducts surface mining activities or by the landowner or land manager to provide sufficient crop management after release of applicable performance bonds under Subpart 4 and §§5417-5423, to assure that the proposed post-mining cropland use remains practical and reasonable;

b. there is sufficient water available and committed to maintain crop production;

c. topsoil quality and depth are sufficient to support the proposed use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5433. Roads: General

A. Road Classification System

1. Each road, as defined in §105, shall be classified as either a primary road or an ancillary road.

2. A primary road is any road which is:

a. used for transporting coal or spoil;

b. frequently used for access or other purposes for a period in excess of six months; or

c. to be retained for an approved post-mining land use.

B. Performance Standards. Each road shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

1. control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

2. control or prevent damage to fish, wildlife or their habitat and related environmental values;

3. control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

4. neither cause nor contribute to, directly or indirectly, the violation of state or federal water quality standards applicable to receiving waters;

5. refrain from seriously altering the normal flow of water in streambeds or drainage channels;

6. prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by act of Congress; and

7. use non-acid- and non-toxic-forming substances in road surfacing.

C. Design and Construction Limits and Establishment of Design Criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the office.

D. Location

1. No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the office in accordance with applicable §§5319-5323, 5331, 5335, 5339-5345 and 5349.

2. Roads shall be located to minimize downstream sedimentation and flooding.

E. Maintenance

1. A road shall be maintained to meet the performance standards of this Section and any additional criteria specified by the office.

2. A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

F. Reclamation. A road not to be retained under an approved post-mining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

1. closing the road to traffic;
2. removing all bridges and culverts unless approved as part of the post-mining land use;
3. removing or otherwise disposing of road-surfacing materials that are incompatible with the post-mining land use and revegetation requirements;
4. reshaping cut and fill slopes as necessary to be compatible with the post-mining land use and to complement the natural drainage pattern of the surrounding terrain;
5. protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and
6. scarifying or ripping the roadbed; replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with §§5309-5317 and 5417-5423.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5435. Primary Roads

A. Primary roads shall meet the requirements of §5433 and the additional requirements of this Section.

1. Certification. The construction or reconstruction of primary roads shall be certified in a report to the office by a qualified, registered professional engineer. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

2. Safety Factor. Each primary road embankment shall have a minimum static factor of 1.3 or meet the requirements established under §2737.C.

3. Location

a. To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

b. Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the office as temporary routes during periods of road construction.

4. Drainage Control. In accordance with the approved plan:

a. each primary road shall be constructed, or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the office;

b. drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets;

c. drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

d. culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

e. natural stream channels shall not be altered or relocated without the prior approval of the office in accordance with applicable §§5319-5323, 5331, 5335, 5339-5345 and 5349;

f. except as provided in §5435.A.3.b structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed and maintained using current, prudent engineering practices. The office shall ensure that low-water crossings are designed, constructed and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

5. Surfacing. Primary roads shall be surfaced with material approved by the office as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5437. Other Transportation Facilities

A. Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways or other transportation facilities shall be designed, constructed or reconstructed, maintained and the area restored to:

1. prevent to the extent possible, using the best technology currently available:

a. damage to fish, wildlife and related environmental values; and

b. additional contributions of suspended solids to streamflow or runoff outside the permit area in excess of limitations of state or federal law;

2. control and minimize diminution or degradation of water quality and quantity;

3. control and minimize erosion and siltation;

4. control and minimize air pollution; and
5. prevent damage to public or private property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5439. Support Facilities and Utility Installations

A. Support facilities required for, or used incidentally to, the operation of the mine including, but not limited to, mine buildings, coal loading facilities at or near the minesite, coal storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops and other buildings shall be designed, constructed or reconstructed and located to prevent or control erosion and siltation, water pollution and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained and used in a manner which prevents, to the extent possible using the best technology currently available:

1. damage to fish, wildlife and related environmental values;
2. additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

B. All surface mining activities shall be conducted in a manner which minimizes damage, destruction or disruption of services provided by oil and gas pipelines, railroads, electric and telephone lines, and water and sewage lines which pass over, under or through the permit area, unless otherwise approved by the owner of those facilities and the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 55. Special Permanent Program Performance Standards: Operations on Prime Farmland

§5501. Prime Farmland: Special Requirements

A. Surface coal mining and reclamation operations conducted on prime farmland shall meet the following requirements.

1. A permit shall be obtained for those operations under §2907.
2. Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting or mining, in accordance with §5503 and in a manner that prevents mixing or contaminating these materials with undesirable material. Where removal of soil materials results in erosion that may cause air and water

pollution, the office shall specify methods to control erosion or exposed overburden.

3. Revegetation success on prime farmlands shall be measured upon the basis of a comparison of actual crop production from the disturbed area, compared to the reference crop yield approved by the office in the permit in accordance with §2907.C.3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5503. Prime Farmland: Soil Removal

A. Surface coal mining and reclamation operations on prime farmland shall be conducted to:

1. separately remove the topsoil, or remove other suitable soil materials where such other soil materials will create a final soil having a greater productive capacity than that which exists prior to mining;
2. separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material to provide the thickness of suitable soil required by §5507.A.1 that will create a reconstructed soil of equal or greater productive capacity than that which existed before mining, except as approved by the regulatory authority where the B or C soil horizons would not otherwise be removed and where soil capabilities can be retained;
3. separately remove the underlying C horizons, other strata, or a combination of horizons or other strata to be used instead of the B horizon. When replaced, these combinations shall be equal to, or more favorable for plant growth than, the B horizon.

B. The minimum depth of soil and soil material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacement requirements of §5507.A.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2287 (December 1998).

§5505. Prime Farmland: Soil Stockpiling

A. If not utilized immediately, the A horizon or other suitable soil materials specified in §5503.A.1 and the B horizon or other suitable soil materials specified in §5503.A.2 and 3 shall be stored separately from each other and from spoil. These stockpiles shall be placed within the permit area where they are not disturbed or exposed to excessive water or wind erosion before the stockpiled horizons can be redistributed. Stockpiles in place for more than 30 days shall meet the requirements of §5313.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5507. Prime Farmland: Soil Replacement

A. Surface coal mining and reclamation operations on prime farmland shall be conducted according to the following.

1. The minimum depth of soil and soil material to be reconstructed for prime farmland shall be 48 inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The office shall specify a depth greater than 48 inches wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties or water supply capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity.

2. Replace soil material only on land which has been first returned to final grade and scarified according to §§5405-5413 unless site-specific evidence is provided and approved by the office showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield.

3. Replace and regrade the soil horizons or other suitable soil material with proper compaction and uniform depth.

4. Replace the B horizon, C horizon, or other suitable material specified in §5503.A.2 to the thickness needed to meet the requirements of §5507.A.1. In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore premining capabilities.

5. Replace the A horizon or other suitable soil materials specified in §5503.A.1 as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil, as determined in §2907.A.1.b, and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted.

6. Apply nutrients and soil amendments as needed to quickly establish vegetative growth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2287 (December 1998).

§5509. Prime Farmland: Revegetation

A. Each person who conducts surface coal mining and reclamation operations on prime farmland shall meet the following revegetation requirements during reclamation.

1. Prime farmland soil productivity shall be restored in accordance with the following provisions.

a. Measurement of soil productivity shall be initiated within 10 years after completion of soil replacement.

b. Soil productivity shall be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under §5509.A.1.f. A statistically valid sampling technique at a 90-percent or greater statistical confidence level shall be used as approved by the office in consultation with the U.S. Soil Conservation Service.

c. The measurement period for determining average annual crop production (yield) shall be a minimum of three crop years prior to release of the operator's performance bond.

d. The level of management applied during the measurement period shall be the same as the level of management used on nonmined prime farmland in the surrounding area.

e. Restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

f. The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops.

g. Reference crop yields for a given crop season are to be determined from:

i. the current yield records of representative local farms in the surrounding area, with concurrence by the U.S. Soil Conservation Service; or

ii. the average parish yields recognized by the U.S. Department of Agriculture, which have been adjusted by the U.S. Soil Conservation Service for local yield variation within the parish that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop.

h. Under either procedure in §5509.A.1.g, the average reference crop yield may be adjusted, with the concurrence of the U.S. Soil Conservation Service, for:

i. disease, pest and weather-induced seasonal variations; or

ii. differences in specific management practices where the overall management practices of the crops being compared are equivalent; or

iii. differences in annual precipitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 57. Special Permanent Program Performance Standards: Operations on Steep Slopes

§5701. Applicability

A. Any surface coal mining and reclamation operations on steep slopes shall meet the requirements of this Chapter.

B. The standards of this Chapter do not apply to mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5703. Steep Slopes: Performance Standards

A. Surface coal mining and reclamation operations subject to this Chapter shall comply with requirements of Subpart 3 and the following, except to the extent a variance is approved under §5705.

1. The person engaged in surface coal mining and reclamation operations shall prevent the following materials from being placed or allowed to remain on the downslope: spoil, waste materials including waste mineral matter, debris including that from clearing and grubbing of haul road construction, and abandoned or disabled equipment.

2. Nothing in this Subsection shall prohibit the placement of material in road embankments located on the downslope, so long as the material used and embankment design comply with the requirements of §§5433-5435 and the material is moved and placed in a controlled manner.

B. The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of §§5405-5415 including, but not limited to, the return of the site to the approximate original contour. The person who conducts the surface coal mining and reclamation operation must demonstrate to the office, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3.

C. Land above the highwall shall not be disturbed, unless the office finds that the disturbance facilitates compliance with the requirements of this Chapter.

D. Material in excess of that required by the grading and backfilling provisions of §5703.B shall be disposed of in accordance with the requirements of §§5365-5371.

E. Woody materials shall not be buried in the backfilled area unless the office determines that the proposed method for placing woody material beneath the highwall will not deteriorate the stable condition of the backfilled area as

required in §5703.B. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the office.

F. Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the office as stable and not subject to erosion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5705. Steep Slopes: Limited Variances

A. Persons may be granted variances from the approximate original contour requirements of §5703.B for steep slope surface coal mining and reclamation operations, if the following standards are met and a permit incorporating the variance is approved under §2905.

1. The highwall shall be completely backfilled with spoil material, in a manner which results in a static factor of safety of at 1.3 using standard geotechnical analysis.

2. The watershed control of the area within which the mining occurs shall be improved by reducing the peak flow from precipitation or thaw and reducing the total suspended solids or other pollutants in the surface-water discharge during precipitation or thaw. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface water or any existing or planned public or private use of surface water or ground water.

3. Land above the highwall may be disturbed only to the extent that the office deems appropriate and approves as necessary to facilitate compliance with the provisions of this Chapter and if the office finds that the disturbance is necessary to:

a. blend the solid highwall and the backfilled material;

b. control surface runoff; or

c. provide access to the area above the highwall.

4. The landowner of the permit area has requested, in writing, as part of the permit application under §2905, that the variance be granted.

5. The operations are conducted in full compliance with a permit issued in accordance with §2905.

6. Only the amount of spoil as is necessary to achieve the post-mining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and these regulations shall be placed in accordance with §§5365-5371 and 5405-5407.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 59. Special Permanent Program Performance Standards: Coal Processing Plants and Support Facilities Not Located at or near the Minesite or Not within the Permit Area for a Mine

§5901. Applicability

A. Each person who conducts surface coal mining and reclamation operations, which includes the operation of a coal processing plant or support facility which is not located within the permit area for a specific mine, shall obtain a permit in accordance with §2909 to conduct those operations and comply with §5903.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§5903. Coal Processing Plants: Performance Standards

A. Construction, operation, maintenance, modification, reclamation and removal activities at operations covered by this Chapter shall comply with the following.

1. Signs and markers for the coal processing plant, coal processing waste disposal area and water treatment facilities shall comply with §5301.

2. Roads, transport and associated structures shall be constructed, maintained and reclaimed in accordance with §§5433-5435.

3. Any stream or channel realignment shall comply with §5323.

4. If required by the office, any disturbed area related to the coal processing plant or associated facilities shall have sediment control structures, in compliance with §§5325 and 5327, and all discharges from these areas shall meet the requirements of §§5319-5321 and any other applicable state or federal law.

5. Permanent impoundments associated with coal processing plants shall meet the requirements of §§5333 and 5347. Dams constructed of or impounding coal processing waste shall comply with §§5391-5395.

6. Use of water wells shall comply with §5341 and water rights shall be protected in accordance with §5343.

7. Disposal of coal processing waste, solid waste and any excavated material shall comply with §§5375-5387, 5389, and 5365-5371, respectively.

8. Discharge structures for diversions and sediment control structures shall comply with §5329.

9. Air pollution control measures associated with fugitive dust emissions shall comply with §5397.

10. Fish, wildlife and related environmental values shall be protected in accordance with §5399.

11. Slide areas and other surface areas shall comply with §5401.

12. Reclamation shall include proper topsoil handling procedures, revegetation and abandonment in accordance with §§5309-5317, 5347, 5403-5415, 5417-5423, and 5427-5431.

13. Conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system related to the coal processing plant shall comply with Chapter 53.

14. Any coal processing plant or associated structures located on prime farmland shall meet the requirements of Chapter 55.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 61. Special Permanent Program Performance Standards: In Situ Processing

§6101. In Situ Processing: Performance Standards

A. The person who conducts in situ processing activities shall comply with Chapter 53.

B. In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

1. avoiding discharge of fluids into holes or wells, other than as approved by the office;

2. injecting process recovery fluids only into geologic zones or intervals approved as production zones by the office;

3. avoiding annular injection between the wall of the drill hole and the casing; and

4. preventing discharge of process fluid into surface waters.

C. Each person who conducts in situ processing activities shall submit for approval as part of the application for permit under §2911, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids or liquids constituting a fire, health, safety or environmental hazard and caused by the mining and recovery process are promptly treated, confined or disposed of in a manner that prevents contamination of ground water and surface water, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

D. Each person who conducts in situ processing activities shall prevent flow of the process recovery fluid:

1. horizontally beyond the affected area identified in the permit; and
2. vertically into overlying or underlying aquifers.

E. Each person who conducts in situ processing activities shall restore the quality of affected ground water in the mine plan and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§6103. In Situ Processing: Monitoring

A. Each person who conducts in situ processing activities shall monitor the quality and quantity of surface water and ground water and the subsurface flow and storage characteristics, in a manner approved by the office under §5339, to measure changes in the quantity and quality of water in surface- and ground-water systems in the mine plan and in adjacent areas.

B. Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the office as necessary according to appropriate federal and state air and water quality standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 63. Inspections

§6301. Inspections

A. Authorized representatives of the commissioner may conduct inspections of surface coal mining and reclamation operations as necessary to enforce the provisions of the Act, these regulations and any permit, and to determine whether any notice of violation or cessation order issued during an inspection authorized under this Section has been complied with.

B. Basis for Inspections

1. An authorized representative of the commissioner shall immediately conduct an inspection to enforce any requirement of the Act, these regulations, or any condition of a permit or an exploration or development operations approval imposed under the Act or these regulations, when the authorized representative has reason to believe, on the basis of information available to him or her (other than information resulting from a previous inspection), that there exists a violation of the Act, these regulations, or any condition of a permit or an exploration or development operations approval, or that there exists any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can

reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources.

2. An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in §6301.B.1.

C. The office shall conduct inspections of all coal exploration, development operations and surface coal mining and reclamation operations under its jurisdiction. These inspections shall average at least:

1. one partial inspection per month of each surface coal mining and reclamation operation. A partial inspection is an onsite or aerial review of a person's compliance with some of the permit conditions and requirements imposed under these regulations, during which the inspector collects evidence with respect to every violation of any such condition or requirement observed;

2. one complete inspection per calendar quarter of each surface coal mining and reclamation operation. A complete inspection is an onsite review of a person's compliance with all permit conditions and requirements imposed under these regulations within the entire area disturbed or affected by surface coal mining and reclamation operations, including the collection of evidence with respect to every violation of any such condition or requirement;

3. periodic inspections of all coal exploration or development operations required to comply in whole or part with the Act, or these regulations, including the collection of evidence with respect to every violation of any condition of the exploration or development operations approval, or any requirement of the Act or these regulations;

- 4.a. aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected;

- b. any potential violation observed during an aerial inspection shall be investigated on-site within three days, provided, that any indication of a condition, practice, or violation constituting cause for the issuance of a cessation order under §6501.A.2 shall be investigated on-site immediately, and provided further that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of §6301.C.1 and 2.

D. The inspections required under §6301.C shall:

1. be carried out on an irregular basis so as to monitor compliance at all operations, including those which operate nights, weekends or holidays;

2. occur without prior notice to the person being inspected or any of his agents or employees, except for necessary onsite meetings; and

3. include the prompt filing of inspection reports adequate to enforce the requirements of, and to carry out the

terms and purposes of, the applicable program, any condition of an exploration or development operations approval or permit imposed under the Act or these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6303. Citizens' Requests for Inspections

A. A citizen may request an inspection under §6301.B by furnishing to an authorized representative of the commissioner a signed, written statement, or an oral report followed by a signed, written statement, giving the authorized representative reason to believe that a violation, condition or practice referred to in §6301.B.1 exists and setting forth a phone number and address where the citizen can be contacted.

B. The identity of any person supplying information to the office relating to a possible violation or imminent danger or harm shall remain confidential with the office, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under other state law.

C. If an inspection is conducted as a result of information provided to the office by a citizen as described in §6303.A, the citizen shall be notified as far in advance as practicable as to when the inspection is to occur and shall be allowed to accompany the authorized representative of the commissioner during the inspection. Such person has a right of entry to, upon and through the coal exploration, development or surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

D. Within 10 days of the inspection or, if there is no inspection, within 15 days of receipt of the citizen's written statement, the office shall send the citizen the following:

1. if an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

2. if no inspection was conducted, an explanation of the reason why;

3. an explanation of the citizen's right, if any, to informal review of the action or inaction of the office under §6309.

E. The office shall give copies of all materials in §6303.D.1 and 2 within the time limits specified in those paragraphs to the person alleged to be in violation, except

that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under §6303.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6305. Right of Entry

A. Each authorized representative of the commissioner conducting an inspection under §6301:

1. shall have a right of entry to, upon and through any coal exploration, development or surface coal mining and reclamation operation, without advance notice or a search warrant, upon presentation of appropriate credentials;

2. may, at reasonable times and without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required under the Act, these regulations, or any condition of an exploration or development operations approval or permit imposed under the Act or these regulations.

B. No search warrant shall be required with respect to any activity under §6305.A except that a search warrant may be required for entry into a building.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6307. Review of Adequacy and Completeness of Inspection

A. Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration or development operation may notify the commissioner in writing of any alleged failure on the part of the office to make adequate complete or periodic inspections as provided in §6301.B.1, C and D. The notification shall include sufficient information to create a reasonable belief that §6301.B.1, C or D are not being complied with and to demonstrate that the person is or may be adversely affected. The commissioner shall within 15 days of receipt of the notification determine whether §6301.B.1, C and D are being complied with and, if not, shall immediately order an inspection to remedy the noncompliance. The commissioner shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6309. Review of Decision Not to Inspect or Enforce

A. Any person who is or may be adversely affected by a coal exploration, development or surface coal mining and reclamation operation may ask the commissioner to review

informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under §6303. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

B. The commissioner shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required under applicable state law.

C. Informal review under this Section shall not affect any right to formal review under §925 of the Act or to a citizen's suit under §920 of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6311. Availability of Records

A. Copies of all records, reports, inspection materials or information obtained by the office under the Act or these regulations shall be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except that the office may refuse to make available:

1. investigatory records compiled for law enforcement purposes; and
2. information not required to be made available under §§2101.C.3, 2119 or 3111.

B. The office shall ensure compliance with §6311.A by either:

1. making copies of all records, reports, inspection materials and other subject information available for public inspection at a federal, state or local government office in the parish where the mining is occurring or proposed to occur; or
2. at the office's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur, provided, that the office shall maintain for public inspection, at a federal, state or local government office in the parish where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.

C. In order to protect preparation for hearings and enforcement proceedings, the director and the commissioner may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 65. Enforcement

§6501. Cessation Orders

A.1. An authorized representative of the commissioner shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he or she finds, on the basis of any inspection, any condition or practice, or any violation of the Act, these regulations, or any condition of an exploration or development operations approval or permit imposed under any such program, the Act or these regulations, which:

- a. creates an imminent danger to the health or safety of the public; or
- b. is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

2. Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations:

- a. are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or
- b. were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the state.

3. If the cessation ordered under §6501.A.1 will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

B.1. An authorized representative of the commissioner shall immediately order a cessation of coal exploration, development or surface coal mining and reclamation operations, or of the relevant portion thereof, when a notice of violation has been issued under §6503.A and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative.

2. A cessation order issued under this Paragraph shall require the person to whom it is issued to take all steps the authorized representative deems necessary to abate the

violations covered by the order in the most expeditious manner physically possible.

C. A cessation order issued under §6501.A or B shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

1. the nature of the violation;
2. the remedial action of affirmative obligation required, if any, including interim steps, if appropriate;
3. the time established for abatement, if appropriate, including the time for meeting any interim steps; and
4. a reasonable description of the portion of the coal exploration, development or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by an authorized representative of the commissioner.

D. Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

E. An authorized representative of the commissioner may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

F. An authorized representative of the commissioner shall terminate a cessation order, by written notice to the person to whom the order was issued, when he or she determines that all conditions, practices, or violations listed in the order have been abated. Termination shall not affect the right of the office to assess civil penalties for those violations under Chapter 69.

G. Within 60 days after issuing a cessation order, the office shall notify in writing the permittee, the operator, and any person who has been identified under §§3123.A.6 and 2305.A.3-4 as an owner or controller of the surface coal mining and reclamation operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 37:2735 (September 2011).

§6503. Notice of Violation

A. An authorized representative of the commissioner shall issue a notice of violation if on the basis of an inspection he finds a violation of the Act, these regulations, or any condition of a permit or an exploration or development operations approval imposed under the Act or these regulations which does not create an imminent danger or harm for which a cessation order must be issued under §6501.

B. A notice of violation issued under this Section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

1. the nature of the violation;
2. the remedial action required, which may include interim steps;
3. a reasonable description of the portion of the coal exploration, development operation, or surface coal mining and reclamation operation to which it applies; and
4. a reasonable time for abatement which may include time for accomplishment of interim steps.

C. An authorized representative of the commissioner may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in §6503.F. An extended abatement date pursuant to this Section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

D. If the person to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the authorized representative shall issue a cessation order under §6501.B.

E. An authorized representative of the commissioner shall terminate a notice of violation by written notice to the person to whom it was issued, when he or she determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the office to assess civil penalties for those violations under Chapter 69.

F. Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

1. where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;
2. where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;
3. where the permittee cannot abate within 90 days due to a labor strike;
4. where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

5. where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§6505. Suspension or Revocation of Permits

A.1. Except as provided in §6505.B, the commissioner shall issue an order to a permittee requiring him or her to show cause why his permit and right to mine under the Act should not be suspended or revoked, if the commissioner determines that a pattern of violations of any requirements of the Act, these regulations or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Willful violation means an act or omission which violates the Act, these regulations, 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. Unwarranted failure to comply means the failure of the permittee to prevent the occurrence of any violation of the permit or any requirement of the Act, due to indifference, lack of diligence or lack of reasonable care, or the failure to abate any violation of such permit or the Act, due to indifference, lack of diligence or lack of reasonable care. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

2. The commissioner may determine that a pattern of violations exists or has existed, based on two or more inspections of the permit area within any 12-month period, after considering the circumstances, including:

- a. the number of violations, cited on more than one occasion, of the same or related requirements of the Act, these regulations or the permit;
- b. the number of violations, cited on more than one occasion, of different requirements of the Act, these regulations or the permit; and
- c. the extent to which the violations were isolated departures from lawful conduct.

3. The commissioner shall determine that a pattern of violations exists, if he or she finds that there were violations of the same or related requirements of the Act, these regulations or the permit during three or more inspections of the permit area within any 12-month period.

B. The commissioner may decline to issue a show cause order, or may vacate an outstanding show cause order, if he or she finds, taking into account exceptional factors present in the particular case, that it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for

this finding shall be fully explained and documented in the records of case.

C. At the same time as the issuance of the order, the commissioner shall:

- 1. if practicable, publish notice of the order, including a brief statement of the procedure for intervention in the proceeding, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations;
- 2. post the notice at the conservation office closest to the area of the surface coal mining and reclamation operations.

D. If the permittee files an answer to the show cause order and requests a hearing, a public hearing may be provided. The office shall give 30 days notice of the date, time and place of the hearing to the commissioner, the permittee, and any intervenor. Upon receipt of the notice, the commissioner shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the conservation office closest to those operations.

E. Within 60 days after the hearing, the office shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the office revokes or suspends the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

- 1. if the permit and the right to mine under the Act are revoked, complete reclamation within the time specified in the order;
- 2. if the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

F. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the commissioner shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this Section, and shall issue an order to show cause as appropriate pursuant to §6909.B.3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§6507. Service of Notices of Violation and Cessation Orders

A. A notice of violation or cessation order shall be served on the person to whom it is directed or his or her designated agent promptly after issuance, as follows:

- 1. by tendering a copy at the coal exploration, development or surface coal mining and reclamation operation to the designated agent or to the individual who,

based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration, development or surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept;

2. as an alternative to §6507.A.1, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under the Louisiana Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

B. A show cause order may be served on the person to whom it is issued in either manner provided in §6507.A.2.

C. Designation by any person of an agent for service of notices and orders shall be made in writing to the office.

D. The office may furnish copies to any person having an interest in the coal exploration, development, surface coal mining and reclamation operation, or the permit area, such as the owner of title, a corporate officer of the permittee or entity conducting coal exploration, or the bonding company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2287 (December 1998).

§6509. Informal Public Hearing

A. Except as provided in §6509.B and C, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served, unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the office and the person to whom the notice or order was issued. The conservation office nearest to the mine site shall be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the office. Expiration of a notice or order shall not affect the commissioner's right to assess civil penalties for the violations mentioned in the notice or order under Chapter 69. For purposes of this Section, mining means extracting coal from the earth or coal waste piles and transporting it within or from the permit area.

B. A notice of violation or cessation order shall not expire as provided in §6509.A if the condition, practice or violation in question has been abated or if the informal public hearing has been waived.

C. The office shall give as much advance notice as is practicable of the time, place and subject matter of the informal public hearing to:

1. the person to whom the notice or order was issued; and

2. any person who filed a report which led to the notice or order.

D. The office shall also post notice of the hearing at the conservation office closest to the mine site and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

E. The Louisiana Administrative Procedure Act provisions regarding requirements for formal adjudicatory hearings shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the office, who may accept oral or written arguments and any other relevant information from any person attending.

F. Within five days after the close of the informal public hearing, the office shall affirm, modify or vacate the notice or order in writing. The decision shall be sent to:

1. the person to whom the notice or order was issued; and

2. any person who filed a report which led to the notice or order.

G. The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under §§918.B, 921.A(4) or 925 of the Act. At such formal review proceedings, no evidence as to statements made or evidence produced at an informal public hearing shall be introduced as evidence or to impeach a witness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6511. Formal Review of Citations

A. A person issued a notice of violation or cessation order under §§6501 or 6503, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing within 30 days after receiving notice of the action.

B. The filing of an application for review and request for a hearing under this Section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6513. Failure to Give Notice and Lack of Information

A. No notice of violation, cessation order, show cause order or order revoking or suspending a permit may be vacated because it is subsequently determined that the office did not have information sufficient, under §6301.B.1 and 2, to justify an inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6515. Inability to Comply

A. No cessation order or notice of violation issued under this Chapter may be vacated because of inability to comply.

B. Inability to comply may not be considered in determining whether a pattern of violations exists.

C. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under Chapter 69 and of the duration of the suspension of a permit under §6505.E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6517. Injunctive Relief

A. The office may request legal counsel or the attorney general of the state to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in a state court of competent jurisdiction whenever the person to whom a notice of violation or order has been issued, either:

1. violates or fails or refuses to comply with any order or decision of the commissioner or an authorized representative of the commissioner under the Act or these regulations;

2. interferes with, hinders or delays the commissioner or an authorized representative of the commissioner in carrying out the provisions of the Act or these regulations;

3. refuses to admit an authorized representative of the commissioner to a mine;

4. refuses to permit inspection of a mine by an authorized representative of the commissioner;

5. refuses to furnish any required information or report;

6. refuses to permit access to or copying of any required records; or

7. refuses to permit inspection of monitoring equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 67. Special Rules Applicable to Surface Coal Mining Review Hearings and Appeals

Subchapter A. General

§6701. Parties

A. All persons indicated in the Act as parties to administrative review proceedings under the Act shall be considered statutory parties. Such statutory parties include:

1. in a civil penalty proceeding, the office as represented by the commissioner and any person against whom a proposed assessment is made who files a petition;

2. in a review proceeding, the office as represented by the commissioner; and

a. if a permittee files an application for review, the permittee; and

b. if any other person having an interest which is or may be adversely affected files an application for review, the permittee and the person filing such application;

3. in a proceeding to suspend or revoke a permit, the office as represented by the commissioner and the permittee who is ordered to show cause why the permit should not be suspended or revoked.

B. Any other person claiming a right to participate as a party may seek leave to intervene in a proceeding by filing a petition to do so as available under this Chapter.

C. If any person has a right to participate as a full party in a proceeding under the Act and fails to exercise that right by participating in each stage of the proceeding, that person may become a participant with the rights of a party by order of the commissioner or his authorized representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§6703. Hearing Sites

A. Unless the Act requires otherwise, hearings shall be held in a location established by the commissioner or his authorized representative; however, the commissioner or his authorized representative shall give due regard to the convenience of the parties or their representatives and witnesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6705. Filing of Documents

A. Any pleadings in a proceeding to be conducted or being conducted under these rules shall be filed by hand or by mail with the Office of Conservation, Surface Mining Section, 625 North Fourth Street, Baton Rouge, Louisiana.

B. Any person filing pleadings or a notice of appeal with the commissioner shall furnish an original and one copy.

C. Any person who has initiated a proceeding under these rules or filed a notice of appeal with the commissioner shall file proof of service with the same in the form of a return receipt where service is by registered or certified mail, or an acknowledgment by the party served or a verified return where service is made personally. A certificate of service shall accompany all other documents filed by a party in any proceeding.

D. The effective filing date for documents shall be the date the document is received in the Office of Conservation, Surface Mining Section, Baton Rouge, Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6707. Form of Documents

A. Any document filed with the commissioner in any proceeding brought under the Act shall be captioned with:

1. the names of the parties;
2. the name of the mine to which the document relates; and
3. if review is being sought under §925 of the Act, identification by number of any notice or order sought to be reviewed.

B. After a docket number has been assigned to the proceeding by the office, the caption shall contain such docket number.

C. The caption may include other information appropriate for identification of the proceeding, including the permit number.

D. Each document shall contain a title that identifies the contents of the document following the caption.

E. The original of any document filed shall be signed by the person submitting the document or by that person's attorney.

F. The address and telephone number of the person filing the document, or of that person's attorney, shall appear beneath the signature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6709. Service

A. Any party initiating a proceeding under the Act shall serve copies of the initiating documents on the commissioner at the Office of Conservation, Surface Mining Section, 625 North Fourth Street, Baton Rouge, Louisiana. Any party or other person shall serve any other documents being filed subsequently with the commissioner on all other parties and all other persons participating in the proceeding.

B. Copies of documents by which any proceeding is initiated shall be served on all statutory parties personally or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally or by first class mail.

C. Service of copies of documents initiating a proceeding is complete at the time of personal service or, if service is made by mail, upon receipt. Service of all subsequent documents is complete at the time of personal service, or, if service is by mail, upon mailing.

D. Whenever an attorney has entered an appearance for a party in a proceeding before the commissioner or his authorized representative, service thereafter shall be made upon the attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6711. Intervention

A. Any person, including a state, the office or OSM may petition for leave to intervene at any stage of a proceeding under the Act.

B. A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why his interest is or may be adversely affected.

C. The commissioner or his authorized representative shall grant intervention where the petitioner:

1. had a statutory right to initiate the proceeding in which he wishes to intervene; or
2. has an interest which is or may be adversely affected by the outcome of the proceeding.

D. If neither §6711.C.1 nor 2 apply, the commissioner or his authorized representative shall consider the following in determining whether intervention is appropriate:

1. the nature of the issues;
2. the adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;
3. the ability of the petitioner to present relevant evidence and argument; and
4. the effect of intervention on the agency's implementation of its statutory mandate.

E. Any person, including a state, the office or OSM granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the commissioner or his authorized representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6713. Voluntary Dismissal

A. Any party who initiated a proceeding before the commissioner may seek to withdraw by moving to dismiss at any stage of a proceeding and the commissioner or his authorized representative may grant such a motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6715. Motions

A. Except for oral motions made in proceedings on the record, or where the commissioner or his authorized representative otherwise directs, each motion shall:

1. be in writing; and
2. contain a concise statement of supporting grounds.

B. Unless the commissioner or his authorized representative orders otherwise, any party to a proceeding in which a motion is filed under §6715.A shall have 15 days from service of the motion to file a statement in response.

C. Failure to make a timely motion or to file a statement in response may be construed as a waiver of objection.

D. The commissioner or his authorized representative shall rule on all motions as expeditiously as possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6717. Consolidation of Proceedings

A. When proceedings involving a common question of law or fact are pending before the commissioner or his authorized representatives, such proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the commissioner or his authorized representatives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6719. Advancement of Proceedings

A. Except in expedited review proceedings under §6803, at any time after commencement of a proceeding any party may move to advance the scheduling of a proceeding.

B. Except as otherwise directed by the commissioner or his authorized representatives, any party filing a motion under this Section shall:

1. make the motion in writing;
2. describe the exigent circumstances justifying advancement;
3. describe the irreparable harm that would result if the motion is not granted; and
4. incorporate in the motion affidavits to support any representations of fact.

C. Service of a motion under this Section shall be accomplished by personal delivery or by telephonic or telegraphic communication followed by mail. Service is complete upon mailing.

D. Unless otherwise directed by the commissioner or his authorized representatives, all parties to the proceeding in which the motion is filed shall have 10 days from the date of service of the motion to file a statement in response to the motion.

E. Following the timely receipt by the commissioner or his authorized representatives of statements in response to the motion, the commissioner or his authorized representatives may schedule a hearing regarding the motion. If the motion is granted, the commissioner or his authorized representatives may advance pleading schedules, prehearing conferences and the hearing, as deemed appropriate, provided, a hearing on the merits shall not be scheduled with less than five working days notice to the parties, unless all parties consent to an earlier hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§6721. Waiver of Right to Hearing

A. Any person entitled to a hearing before the commissioner or his authorized representatives under the Act may waive such right in writing. Where parties are directed by any rule in these regulations to file a responsive pleading on or before a specified time, any party who fails to file such responsive pleading by the time specified may be deemed to have waived his right to a hearing. Unless all parties to a proceeding who are entitled to a hearing waive, or are deemed to have waived such right, a hearing will be held.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§6723. Status of Notices of Violation and Orders of Cessation Pending Review

A. Except where temporary relief is granted pursuant to §§925.C or 926.C of the Act, notices of violation and orders of cessation issued under the Act shall remain in effect during the pendency of review before the commissioner or his authorized representatives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

Subchapter B. Evidentiary Hearings

§6725. Presiding Officers

A. The commissioner or his authorized representatives shall preside over any hearing required by the Act to be conducted pursuant to the Act or to the Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6727. Powers of the Commissioner or His Authorized Representatives

A. Under the regulations of this Chapter, the commissioner or his authorized representatives may:

1. administer oaths and affirmations;
2. issue subpoenas;
3. issue appropriate orders relating to discovery;
4. rule on procedural requests or similar matters;
5. hold conferences for settlement or simplification of the issues;
6. regulate the course of the hearing;
7. rule on offers of proof and receive relevant evidence;
8. take other actions authorized by this Chapter, by the Louisiana Administrative Procedure Act, or by the Act; and
9. make or recommend decisions in accordance with the Louisiana Administrative Procedure Act.

B. The commissioner or his authorized representatives may order a prehearing conference:

1. to simplify and clarify issues;
2. to receive stipulations and admissions;
3. to explore the possibility of agreement disposing of any or all of the issues in dispute; and
4. for such other purposes as may be appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6729. Notice of Hearing

A. The commissioner or his authorized representatives shall give notice to the parties of the time, place and nature of any hearing.

B. Except for expedited review proceedings and temporary relief proceedings where time is of the essence, notice given under this Section shall be in writing.

C. In an expedited proceeding when there is only opportunity to give oral notice, the commissioner or his authorized representatives shall enter that fact contemporaneously on the record by a signed and dated memorandum describing the notice given.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6731. Summary Decision

A. At any time after a proceeding has begun, a party may move for summary decision of the whole or part of a case.

B. The moving party under this Section shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions or documents produced upon request to verify such allegations.

C. The commissioner or his authorized representatives may grant a motion under this Section if the record, including the pleadings, depositions, answers to interrogatories, admissions and affidavits, shows that:

1. there is no disputed issue as to any material fact; and
2. the moving party is entitled to summary decision as a matter of law.

D. If a motion for summary decision is not granted for the entire case or for all the relief requested and an evidentiary hearing is necessary, the commissioner or his authorized representatives shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. He shall thereupon issue an order specifying the facts that appear without substantial controversy and direct such further proceedings as deemed appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6733. Proposed Findings of Fact and Conclusions of Law

A. The commissioner or his authorized representatives shall allow the parties to a proceeding an opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the commissioner or his authorized representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6735. Initial Orders and Decisions

A. An initial order or decision disposing of a case shall incorporate:

1. findings of fact and conclusions of law and the basis and reasons therefor on all the material issues of fact, law and discretion presented on the record; and

2. an order granting or denying relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6737. Effect of Initial Order or Decision

A. An initial order or decision shall become final if that order or decision is not timely appealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6739. Certification of Record

A. Except in expedited review proceedings, within five days after the initial decision has been rendered the commissioner or his authorized representatives shall certify the official record of the proceedings, including all exhibits, and transmit the official record for filing in the Office of Conservation, Surface Mining Section, Baton Rouge, Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Subchapter C. Discovery

§6741. Discovery Methods

A. Parties may obtain discovery by one or more of the following methods:

1. depositions upon oral examination or upon written interrogatories;

2. written interrogatories;

3. production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and

4. requests for admission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6743. Time for Discovery

A. Following the initiation of a proceeding, the parties may initiate discovery at any time as long as it does not interfere with the conduct of the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6745. Scope of Discovery

A. Unless otherwise limited by order of the commissioner or his authorized representative in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

B. It is not ground for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

C. A party may obtain discovery of documents and tangible things otherwise discoverable under §6745.A and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the proceeding.

D. Upon motion by the party or the person from whom discovery is sought, and for good cause shown, the commissioner or his authorized representative may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

1. the discovery not be had;

2. the discovery may be had only on specified terms and conditions, including a designation of the time or place;

3. the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

4. certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;

5. discovery be conducted with no one present except persons designated by the commissioner or his authorized representative; or

6. a trade secret or other confidential research, development or commercial information may not be disclosed or be disclosed only in a designated way.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6747. Sequence and Timing of Discovery

A. Unless the commissioner or his authorized representative upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6749. Supplementation of Responses

A. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows.

1. A party is under a duty to supplement timely his response with respect to any question directly addressed to:

a. the identity and location of persons having knowledge of discoverable matters; and

b. the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify and the substance of his testimony.

2. A party is under a duty to amend timely a prior response if he later obtains information upon the basis of which:

a. he knows the response was incorrect when made; or

b. he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

3. A duty to supplement responses may be imposed by order of the commissioner or his authorized representative or agreement of the parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6751. Motion to Compel Discovery

A. If a deponent fails to answer a question propounded, or a party upon whom a request is made pursuant to, or a party upon whom answers to interrogatories are served fails to adequately respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the discovering party may move the commissioner or his authorized representative for an order compelling a response or inspection in accordance with the request.

B. The motion shall set forth:

1. the nature of the questions or request;
2. the response or objection of the party upon whom the request was served; and
3. arguments in support of the motion.

C. For purposes of this Section, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.

D. In ruling on a motion made pursuant to this Section, the commissioner or his authorized representative may make such a protective order as he is authorized to make on a motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6753. Failure to Comply with Orders Compelling Discovery

A. If a party or an officer, director or other agent of a party fails to obey an order to provide or permit discovery, the commissioner or his authorized representative before whom the action is pending may make such orders in regard to the failure as are just including but not limited to the following:

1. an order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

2. an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters into evidence; or

3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or

rendering a judgment by default against the disobedient party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6755. Depositions upon Oral Examination or upon Written Questions

A. Any party desiring to take the testimony of any other party or other person by deposition upon oral examination or written questions shall, without leave of the commissioner or his authorized representative, give reasonable notice in writing to every other party, to the person to be examined and to the commissioner or his authorized representative of:

1. the proposed time and place of taking the deposition;
2. the name and address of each person to be examined and, if known, a general description sufficient to identify him or the particular group or class to which he belongs;
3. the matter upon which each person will be examined; and
4. the name or descriptive title and address of the officer before whom the deposition is to be taken.

B. A deposition may be taken before any officer authorized to administer oaths by the laws of the state of Louisiana or of the place where the examination is held.

C. The actual taking of the deposition shall proceed as follows:

1. the deposition shall be on the record;
2. the officer before whom the deposition is to be taken shall put the witness on oath or affirmation;
3. examination and cross-examination shall proceed as at a hearing;
4. all objections made at the time of the examination shall be noted by the officer upon the deposition; and
5. the officer shall not rule on objections to the evidence, but evidence objected to shall be taken subject to the objections.

D. When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature, unless examination and signature is waived by the deponent. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign.

E. Where the deposition is to be taken upon written questions, the party taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and address of the officer before whom they are to be

taken. Within 30 days after service, any other party may serve cross-questions. The questions, cross-questions and answers shall be recorded and signed, and the deposition certified, as in the case of a deposition on oral examination.

F. A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts.

G. A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the state, to be paid by the party at whose instance the deposition is taken.

H. The deponent may be accompanied, represented and advised by legal counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6757. Use of Depositions

A. At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition, or who had reasonable notice thereof, in accordance with any of the following provisions:

1. any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness;
2. the deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent or a person designated to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose; or
3. the deposition of a witness, whether or not a party, may be used by a party for any purpose if the commissioner or his authorized representative finds that:
 - a. the witness is dead;
 - b. the witness is at a distance greater than 100 miles from the place of hearing, or is outside the state, unless it appears that the absence of the witness was procured by the party offering the deposition;
 - c. the witness is unable to attend or testify because of age, illness, infirmity or imprisonment;
 - d. the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
 - e. such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6759. Written Interrogatories to Parties

A. Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or, if the party served is a public or private corporation, or a partnership, association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be served on the commissioner or his authorized representative and upon all parties to the proceeding.

B. Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answer and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within 30 days after service of the interrogatories, or within such shorter or longer period as the commissioner or his authorized representative may allow.

C. Interrogatories may relate to any matters which can be inquired into under §6745. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the commissioner or his authorized representative may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6761. Production of Documents and Things and Entry upon Land for Inspection and Other Purposes

A. Any party may serve on any other party a request to:

1. produce and permit the party making the request, or a person acting on his behalf, to inspect and copy any designated documents, or to inspect and copy, test or sample any tangible things within the scope of §6745 and which are in the possession, custody or control of the party upon whom the request is served; or

2. permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property (including the air, water and soil) or any designated object or operation thereon, within the scope of §6745.

B. The request may be served on any party without leave of the commissioner or his authorized representative.

C. The request shall:

1. set forth the items to be inspected either by individual item or by category;

2. describe each item or category with reasonable particularity; and

3. specify a reasonable time, place and manner of making the inspection and performing the related acts.

D. The party upon whom the request is served shall serve on the party submitting the request a written response within 30 days after service of the request.

E. The response shall state with respect to each item or category:

1. that inspection and related activities will be permitted as requested; or

2. that objection is made in whole or in part, in which case the reasons for objection shall be stated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6763. Admissions

A. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

B. Each matter of which an admission is requested is admitted unless, within 30 days after service of the request or such shorter or longer time as the commissioner or his authorized representative may allow, the party to whom the request is directed serves on the requesting party:

1. a sworn statement denying specifically the relevant matters of which an admission is requested;

2. a sworn statement setting forth in detail the reasons why he can neither truthfully admit nor deny them; or

3. written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

C. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

D. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the commissioner or his authorized representative determines that an objection is justified, he shall order that an answer be served. If the commissioner or his authorized representative determines that an answer does not comply with the requirements of this Section, he may

order either that the matter is admitted or that an amended answer be served. The commissioner or his authorized representative may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

E. Any matter admitted under this Section is conclusively established unless the commissioner or his authorized representative on motion permits withdrawal or amendment of the admission.

F. Any admission made by a party under this Section is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Subchapter D. Petitions for Review of Proposed Assessments of Civil Penalties

§6765. Who May File

A. Any person charged with a civil penalty may file a petition for review of a proposed assessment of that penalty with the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6767. Time for Filing

A. A petition for review of a proposed assessment of a civil penalty must be filed within 30 days of receipt of the proposed assessment; or

B. if a timely request for a conference has been made, a petition for review must be filed within 15 days from service of notice by the conference officer that the conference is deemed completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6769. Contents of Petition; Payment Required

A. The petition shall include:

1. a short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;

2. if the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula was misapplied, along with a proposed civil penalty utilizing the civil penalty formula;

3. identification by number of all violations being contested;

4. the identifying number of the cashier's check, certified check, bank draft, personal check or bank money order accompanying the petition; and

5. a request for a hearing site.

B. The petition shall be accompanied by:

1. full payment of the proposed assessment in the form of a cashier's check, certified check, bank draft, personal check or bank money order made payable to commissioner of conservation, state of Louisiana, to be placed in an escrow account pending final determination of the assessment; and

2. on the face of the payment an identification by number of the violations for which payment is being tendered.

C. As required by §918.C of the Act, failure to make timely payment of the proposed assessment in full shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6771. Answer

A. The office shall have 30 days from receipt of a copy of the petition within which to file an answer to the petition with the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6773. Review of Waiver Determination

A. Within 10 days of the filing of a petition under this Subchapter, petitioner may move the commissioner or his authorized representative to review the granting or denial of a waiver of the civil penalty formula.

B. The motion shall contain a statement indicating all alleged facts relevant to the granting or denial of the waiver.

C. Review shall be limited to the written determination of the commissioner granting or denying the waiver, the motion, and responses to the motion. The standard of review shall be abuse of discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6775. Burden of Proof in Civil Penalty Proceedings

A. In civil penalty proceedings the office shall have the burden of going forward to establish a prima facie case and

the ultimate burden of persuasion as to the fact of violation and as to the amount of the penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6777. Summary Disposition

A. In a civil penalty proceeding where the person against whom the proposed civil penalty is assessed fails to comply on time with any prehearing order of the commissioner or his authorized representative, the commissioner or his authorized representative shall issue an order to show cause why:

1. that person would not be deemed to have waived his right to a hearing; and
2. the proceedings should not be dismissed.

B. If the order to show cause is not satisfied as required, the commissioner or his authorized representative shall order the proceedings summarily dismissed and shall refer the case to the office who shall enter the assessment as the final order of the commissioner.

C. Where the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person will be deemed to have waived his right to a hearing and the commissioner or his authorized representative may assume for purposes of the assessment:

1. that each violation listed in the notice of violation or order occurred; and
2. the truth of any facts alleged in such notice or order.

D. In order to issue an initial decision assessing the appropriate penalty when the person against whom the proposed civil penalty is assessed fails to appear at the hearing, the commissioner or his authorized representative shall either conduct an ex parte hearing or require the office to furnish proposed findings of fact and conclusions of law.

E. Nothing in this Section shall be construed to deprive the person against whom the penalty is assessed of his opportunity to have the office prove the violations charged in open hearing with confrontation and cross-examination of witnesses, except where the person fails to comply with a prehearing order or fails to appear at the scheduled hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6779. Determination by the Commissioner

A. The commissioner or his authorized representative shall incorporate in his decision concerning the civil penalty findings of fact on each of the four criteria set forth in §6905.B and conclusions of law.

B. If the commissioner or his authorized representative finds that:

1. a violation occurred or that the fact of violation is uncontested, he shall establish the amount of penalty, but in so doing he shall adhere to the point system and conversion table contained in §§6905 and 6907, except that the commissioner or his authorized representative may waive the use of such point system where he determines that a waiver would further abatement of violations of the Act. However, the commissioner or his authorized representative shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the Act;

2. no violation occurred, he shall issue an order that the proposed assessment be returned to the petitioner.

C. If the commissioner or his authorized representative makes a finding that no violation occurred or if the commissioner or his authorized representative reduces the amount of the civil penalty below that of the proposed assessment and a timely petition for review of his decision is not filed, the office shall have 30 days from the expiration of the date for filing a petition if no petition is filed, or 30 days from the date the commissioner refuses to grant such a petition, within which to remit the appropriate amount to the person who made the payment, with interest at the rate of 6 percent per annum.

D. If the commissioner or his authorized representative increases the amount of the civil penalty above that of the proposed assessment, the commissioner or his authorized representative shall order payment of the appropriate amount within 30 days of receipt of the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 6:296 (June 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6781. Appeals

A. Any party may petition the commissioner to review the decision of the commissioner or his authorized representative concerning an assessment according to the procedures set forth in §6831.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

Subchapter E. Review of §921 Notices of Violation and Orders of Cessation

§6783. Scope

A. These regulations govern applications for review of:

1. notices of violation, or the modification, vacation or termination of a notice of violation under §921.A(3) of the Act; and

2. orders of cessation which are not subject to expedited review under §6805, or the modification, vacation or termination of such an order of cessation under §§921.A(2) or 921.A(3) of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§6785. Who May File

A. A permittee issued a notice or order by the secretary pursuant to the provisions of §§921.A(2) or 921.A(3) of the Act or any person having an interest which is or may be adversely affected by a notice or order subject to review under §6783 may file an application for review with the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6787. Time for Filing

A. Any person filing an application for review under §6783 shall file that application within 30 days of the receipt of a notice or order or within 30 days of receipt of notice of modification, vacation or termination of such a notice or order. Any person not served with a copy of the document shall file the application for review within 40 days of the date of issuance of the document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6789. Effect of Failure to File

A. Failure to file an application for review of a notice of violation or order or cessation shall not preclude challenging the fact of violation during a civil penalty proceeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6791. Contents of Application

A. Any person filing an application for review shall incorporate in that application regarding each claim for relief:

1. a statement of facts entitling that person to administrative relief;
2. a request for specific relief;
3. a copy of any notice or order sought to be reviewed;
4. a statement as to whether the person requests or waives the opportunity for an evidentiary hearing; and

5. any other relevant information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6793. Answer

A. Where an application for review is filed by a permittee, the office as well as any other person granted leave to intervene pursuant to §6711 shall file an answer within 20 days of service of a copy of such application.

B. Where an application for review is filed by a person other than a permittee, the following shall file an answer within 20 days of service of a copy of such application:

1. the office;
2. the permittee; or
3. any other person granted leave to intervene pursuant to §6711.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6795. Notice of Hearing

A. Pursuant to §925.A(2) of the Act, the applicant and other interested persons shall be given written notice of the time and place of the hearing at least five working days prior thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6797. Amendments to Pleadings

A. An application for review may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the commissioner or his authorized representative upon proper motion.

B. Upon receipt of an initial or amended application for review or subsequent to granting leave to amend, the commissioner or his authorized representative shall issue an order setting a time for filing an amended answer if the commissioner or his authorized representative determines that such an answer is appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6799. Failure to State a Claim

A. Upon proper motion or after the issuance of an order to show cause, the commissioner or his authorized representative may dismiss at any time an application for

review which fails to state a claim upon which administrative relief may be granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6801. Related Notices or Orders

A. An applicant for review shall file a copy of any subsequent notice or order which modifies, vacates or terminates the notice or order sought to be reviewed within 10 days of receipt.

B. An applicant for review of a notice shall file a copy of an order of cessation for failure timely to abate the violation which is the subject of the notice under review within 10 days of receipt of such order.

C. If an applicant for review desires to challenge any subsequent notice or order, the applicant must file a separate application for review.

D. Applications for review of related notices or orders are subject to consolidation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6803. Burden of Proof in Review of §921 Notices or Orders

A. In review of §921 of the Act, notices of violation or orders of cessation or the modification, vacation or termination thereof, including expedited review, the office shall have the burden of going forward to establish a prima facie case as to the validity of the notice, order, or modification, vacation or termination thereof.

B. The ultimate burden of persuasion shall rest with the applicant for review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Subchapter F. Expedited Review of §§921(A)(2) or 921(A)(3) Orders of Cessation

§6805. Who May File

A. An application for review of an order of cessation may be filed under this Section, whenever temporary relief has not been granted under §§925.C or 926.C of the Act, by:

1. a permittee who has been issued an order of cessation under §§921.A(2) or 921.A(3) of the Act; or

2. any person having an interest which is or may be adversely affected by the issuance of an order of cessation under §§921.A(2) or 921.A(3) of the Act.

B. A permittee or any person having an interest which is or may be adversely affected by a §§921.A(2) or 921.A(3) order of cessation waives his right to expedited review upon being granted temporary relief pursuant to §§925.C or 926.C of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6807. Where to File

A. The application shall be filed with the commissioner.

1. Any person intending to file an application for expedited review under §925.B of the Act shall notify the office within 15 days of receipt of the order. Any person not served with a copy of the order shall file notice of intention to file an application for review within 20 days of the date of issuance of the order.

2. Any person filing an application for review under §6809 shall file the application within 30 days of receipt of the order. Any person not served with a copy of the order shall file an application for review within 40 days of the date of issuance of the order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6809. Contents of Application

A. Any person filing an application for expedited review under §925.B of the Act shall incorporate in that application regarding each claim for relief:

1. a statement of facts entitling that person to administrative relief;

2. a request for specific relief;

3. a specific statement which delineates each issue to be addressed by the applicant during the expedited proceeding;

4. a copy of the order sought to be reviewed;

5. a list identifying each of applicant's witnesses by name, address and place of employment, including expert witnesses and the area of expertise to which they will address themselves at the hearing, and a detailed summary of their testimony;

6. copies of all exhibits and other documentary evidence that the applicant intends to introduce as evidence at the hearing and descriptions of all physical exhibits and evidence which is not capable of being copied or attached; and

7. any other relevant information.

B. If any applicant fails to comply with all the requirements of §6809.A, the commissioner or his authorized representative may find that the applicant has waived the 30-day decision requirement or the commissioner or his authorized representative shall order that the application be perfected and the application shall not be considered filed for purposes of the 30-day decision until perfected. Failure to timely comply with the commissioner's or his authorized representative's order shall constitute a waiver of the 30-day decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6811. Computation of Time for Decision

A. In computing the 30-day time period for administrative decision, intermediate Saturdays, Sundays, state legal holidays, and other nonbusiness days shall be excluded in the computation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6813. Waiver of the 30-Day Decision Requirement

A. Any person qualified to receive a 30-day decision may waive that right:

1. by filing an application pursuant to §§6783-6801;
2. by failing to comply with all the requirements of §6809.A; or
3. in accordance with §6815.

B. Any person qualified to receive a 30-day decision shall waive that right:

1. by obtaining temporary relief pursuant to §§925.C or 926.C of the Act;
2. by failing to perfect an application pursuant to §6809; or
3. in accordance with §6815.A.9.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6815. Procedure if 30-Day Decision Requirement Is Not Waived

A. If the applicant does not waive the 30-day decision requirement of §925.B of the Act, the following special rules shall apply.

1. The applicant shall serve all known parties with a copy of the application simultaneously with the filing of the application with the commissioner. If service is accomplished by mail, the applicant shall inform all known

parties by telephone at the time of mailing that an application is being filed and shall inform the commissioner or his authorized representative by telephone that such notice has been given. However, no ex parte communication as to the merits of the proceeding may be conducted with the commissioner or his authorized representative.

2. Any party desiring to file a response to the application for review shall file a written response within five working days of service of the application.

3. If the applicant has requested a hearing, the commissioner or his authorized representative shall immediately upon receipt of the application notify the parties of the time and place of the hearing at least five days prior to the hearing date.

4. The commissioner or his authorized representative may require the parties to submit proposed findings of fact and conclusions of law at the hearing which may be orally supplemented on the record at the hearing.

5. The commissioner or his authorized representative shall make an initial decision. He shall either rule from the bench or the application, orally stating the reasons for his decision or he shall issue a written decision. If the commissioner or his authorized representative makes an oral ruling, his approval of the record of the hearing shall constitute his written decision. The decision of the commissioner or his authorized representative must be issued within 15 days of the filing of the perfected application under §6809.

6. If any party desires to appeal to the commissioner, such party shall:

a. if the commissioner or his authorized representative makes an oral ruling, make an oral statement, within a time period as directed by the commissioner or his authorized representative, that decision is being appealed and request that the commissioner or his authorized representative certify the record; or

b. if the commissioner or his authorized representative issues a written decision after the close of the hearing, file a notice of appeal with the commissioner or his authorized representative within two working days of receipt of the commissioner's or his authorized representative's decision.

7. If the decision of the commissioner or his authorized representative is appealed, the commissioner or his authorized representative shall act immediately to issue an expedited briefing schedule, and the commissioner or his authorized representative shall act expeditiously to review the record and issue its decision. The decision of the commissioner or his authorized representative must be issued within 30 days of the date the perfected application is filed.

8. If all parties waive the opportunity for a hearing and the commissioner or his authorized representative determines that a hearing is not necessary, but the applicant does not waive the 30-day decision requirement, the

commissioner or his authorized representative shall issue an initial decision on the application within 15 days of receipt of the application. The decision shall contain findings of fact and an order disposing of the application. The decision shall be served upon all the parties and the parties shall have two working days from receipt of such decision within which to appeal to the commissioner. The commissioner shall issue his decision within 30 days of the date the perfected application is filed.

9. If at any time after the initiation of this expedited procedure, the applicant requests a delay or acts in a manner so as to frustrate the expeditious nature of this proceeding or fails to comply with any requirement of §6815, such action shall constitute a waiver of the 30-day requirement of §925.B of the Act.

10. If the applicant seeks to offer witnesses, exhibits or testimony at the hearing in addition to those identified, submitted, described or summarized in the application for expedited review perfected in accordance with the requirements of §6809, upon objection by an opposing party to such offer, the commissioner or his authorized representative may allow such objecting party additional time in order to prepare for cross-examination of unidentified witnesses or to identify and prepare rebuttal evidence or otherwise uncover any additional prejudice which may result to such party. The commissioner or his authorized representative may rule that the running of the 30-day time for decision is stayed for the period of any additional time allowed pursuant to this Subsection or may determine that the applicant has waived his right to the 30-day decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Subchapter G. Proceedings for Suspension or Revocation of Permits under §921.A(4) of the Act

§6817. Initiation of Proceedings

A. A proceeding on a show cause order issued by the office pursuant to §921.A(4) of the Act shall be initiated by the commissioner or his authorized representative filing a copy of such an order with the commissioner at the same time the order is issued to the permittee.

B. A show cause order filed with the commissioner or his authorized representative shall set forth:

1. a list of the unwarranted or willful violations which contribute to a pattern of violations;
2. a copy of each order or notice which contains one or more of the violations listed as contributing to a pattern of violations;
3. the basis for determining the existence of a pattern of violations; and

4. recommendations whether the permit should be suspended or revoked, including the length and terms of a suspension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6819. Answer

A. The permittee shall have 30 days from receipt of the order within which to file an answer with the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6821. Contents of Answer

A. The permittee's answer to a show cause order shall contain a statement setting forth:

1. the reasons in detail why a pattern of violations, as described in §6505.A.3 does not exist or has not existed, including all reasons for contesting:

- a. the fact of any of the violations alleged by the office as constituting a pattern of violations;
- b. the willfulness of such violations; or
- c. whether such violations were caused by the unwarranted failure of the permittee;

2. all mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

3. any other alleged relevant facts; and

4. whether a hearing on the show cause order is desired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6823. Burden of Proof in Suspension or Revocation Proceedings

A. In proceedings to suspend or revoke a permit, the office shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6825. Determination by the Commissioner or His Authorized Representative

A. Upon a determination by the commissioner or his authorized representative that a pattern of violations exists or has existed, pursuant to §6505.A.3, the commissioner or his authorized representative shall order the permit either suspended or revoked. In making such a determination, the commissioner or his authorized representative need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

B. If the permit is suspended, the minimum suspension period shall be three working days unless the commissioner or his authorized representative finds that imposition of the minimum suspension period would not further the purposes of the Act. Also, the commissioner or his authorized representative may impose preconditions to be satisfied prior to the suspension being lifted.

C. The decision of the commissioner or his authorized representative shall be issued within 20 days following the date the hearing record is closed by the commissioner or his authorized representative or within 20 days of receipt of the answer, if no hearing is requested by any party and the commissioner or his authorized representative determines that no hearing is necessary.

D. At any stage of a suspension or revocation proceeding being conducted by the commissioner or his authorized representative, the parties may enter into a settlement, subject to the approval of the commissioner or his authorized representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6827. Summary Disposition

A. In a proceeding under this Section where the permittee fails to appear at a hearing, the permittee shall be deemed to have waived his right to a hearing and the commissioner or his authorized representative may assume for purposes of the proceeding that:

1. each violation listed in the order occurred;
2. such violations were caused by the permittee's unwarranted failure or were willfully caused; and
3. a pattern of violations exists.

B. In order to issue an initial decision concerning suspension or revocation of the permit when the permittee fails to appear at the hearing, the commissioner or his authorized representative shall either conduct an ex parte hearing or require the office to furnish proposed findings of fact and conclusions of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6829. Appeals

A. Any party desiring to appeal the decision of the commissioner or his authorized representative shall have five days from receipt of the commissioner's or his authorized representative's decision within which to file a notice of appeal with the commissioner. The commissioner shall act immediately to issue an expedited briefing schedule. The decision of the commissioner shall be issued within 60 days of the date the hearing record is closed by the commissioner or his authorized representative or, if no hearing is held, within 60 days of the date the answer is filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Subchapter H. Appeals to the Commissioner

§6831. Petition for Discretionary Review of a Proposed Civil Penalty

A. Any party may petition the commissioner to review an order or decision disposing of a civil penalty proceeding under §6765.

B. A petition under this Section shall be filed on or before 30 days from the date of receipt of the order or decision sought to be reviewed and the time for filing may not be extended.

C. A petitioner under this Section shall list the alleged errors of the commissioner or his authorized representative and shall attach a copy of the order or decision sought to be reviewed.

D. Any party may file with the commissioner a response to the petition for review within 10 days of receipt of a copy of such petition.

E. Not later than 30 days from the filing of a petition under this Section, the commissioner shall grant or deny the petition in whole or in part.

F. If the petition is granted, the rules in §§6837 and 6839 are applicable and the commissioner shall use the point system and conversion table contained in Chapter 69 in recalculating assessments; however, the commissioner shall have authority to waive the civil penalty formula granted in §6779.B.1. If the petition is denied, the decision shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6833. Notice of Appeal

A. Any aggrieved party may file a notice of appeal from an order or decision disposing of a proceeding under this Chapter, except a civil penalty proceeding under §6765.

B. Except in an expedited review proceeding under §6805, or in a suspension or revocation proceeding under §6817, a notice of appeal shall be filed with the commissioner on or before 30 days from the date of receipt of the order or decision sought to be reviewed, and the time for filing may not be extended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 6:296 (June 1980), LR 14:441 (July 1988), LR 20:447 (April 1994).

§6835. Briefs

A. Unless the commissioner orders otherwise, an appellant's brief is due on or before 30 days from the date of receipt of notice by the appellant that the commissioner has agreed to exercise discretionary review authority pursuant to §6831 or a notice of appeal is filed.

B. If any appellate fails to file a timely brief, an appeal under this Chapter may be subject to summary dismissal.

C. An appellate shall state specifically the rulings to which there is an objection, the reasons for such objections, and the relief requested. The failure to specify a ruling as objectionable may be deemed by the commissioner as a waiver of objection.

D. Unless the commissioner orders otherwise, within 20 days after service of appellant's brief, any other party to the proceedings may file a brief.

E. If any argument is based upon the evidence of record and there is a failure to include specific record citations, when available, the commissioner need not consider the arguments.

F. Further briefing may take place by permission of the commissioner.

G. Unless the commissioner provides otherwise, appellant's brief shall not exceed 50 typed pages and an appellee's brief shall not exceed 25 typed pages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6837. Remand

A. The commissioner may remand cases if further proceedings are required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6839. Final Decisions

A. The commissioner may adopt, affirm, modify, set aside or reverse any finding of fact, conclusion of law or order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 69. Civil Penalties**§6901. How Assessments Are Made**

A. The office shall review each notice of violation and cessation order in accordance with the assessment procedures described in §§6903, 6905, 6907, 6909 and 6911 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6903. When Penalty Will Be Assessed

A. The office shall assess a penalty for each cessation order.

B. The office shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in §6905.

C. The office may assess a penalty for each notice of violation assigned 30 points or less under the point system described in §6905. In determining whether to assess a penalty, the office shall consider the factors listed in §6905.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6905. Point System for Penalties

A. The office shall use the point system described in this Section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in §6903.B.

B. Points shall be assigned as follows.

1. History of Previous Violations. The office shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a

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particular coal exploration, development or surface coal mining operation. Points shall be assigned as follows.

a. A violation shall not be counted if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year.

b. No violation for which the notice or order has been vacated shall be counted.

c. Each violation shall be counted without regard to whether it led to a civil penalty assessment.

2. Seriousness. The office shall assign up to 30 points based on the seriousness of the violation, as follows.

a. Probability of Occurrence. The office shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule.

Probability of Occurrence	Points
None	0
Insignificant	1-4
Unlikely	5-9
Likely	10-14
Occurred	15

b. Extent of Potential or Actual Damage. The office shall assign up to 15 points based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows.

i. If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration, development or permit area, the office shall assign zero to seven points, depending on the duration and extent of the damage or impact.

ii. If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration, development or permit area, the office shall assign eight to 15 points, depending on the duration and extent of the damage or impact.

c. Alternative. In the case of violation of an administrative requirement, such as a requirement to keep records, the office shall, in lieu of §6905.B.2.a and b, assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

3. Negligence

a. The office shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition or practice which led to the notice or order either through act or omission. Points shall be assessed as follows.

i. A violation which occurs through no negligence shall be assigned no penalty points for negligence.

ii. A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence.

iii. A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

b. In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply.

i. *No Negligence*—an inadvertent violation which was unavoidable by the exercise of reasonable care.

ii. *Negligence*—the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or these regulations due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence or lack of reasonable care.

iii. *A Greater Degree of Fault than Negligence*—reckless, knowing or intentional conduct.

c. In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration, development or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

4. Good Faith in Attempting to Achieve Compliance

a. The office shall add points on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows.

Degree of Good Faith	Points
Rapid Compliance	-1 to -10
Normal Compliance	0

b. The following definitions shall apply under §6905.B.4.a.

i. *Rapid Compliance*—the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

ii. *Normal Compliance*—the person to whom the notice or order was issued abated the violation within the time given for abatement.

c. If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6907. Determination of Amount of Penalty

A. The office shall determine the amount of any civil penalty by converting the total number of points assigned

under §6905 to a dollar amount, according to the following schedule.

Points	\$	Points	\$	Points	\$	Points	\$
1	20	19	380	37	1,700	55	3,500
2	40	20	400	38	1,800	56	3,600
3	60	21	420	39	1,900	57	3,700
4	80	22	440	40	2,000	58	3,800
5	100	23	460	41	2,100	59	3,900
6	120	24	480	42	2,200	60	4,000
7	140	25	500	43	2,300	61	4,100
8	160	26	600	44	2,400	62	4,200
9	180	27	700	45	2,500	63	4,300
10	200	28	800	46	2,600	64	4,400
11	220	29	900	47	2,700	65	4,500
12	240	30	1,000	48	2,800	66	4,600
13	260	31	1,100	49	2,900	67	4,700
14	280	32	1,200	50	3,000	68	4,800
15	300	33	1,300	51	3,100	69	4,900
16	320	34	1,400	52	3,200	70+	5,000
17	340	35	1,500	53	3,300		
18	360	36	1,600	54	3,400		

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6909. Assessment of Separate Violations for Each Day

A. The office may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the office shall consider the factors listed in §6905 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefits as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points under §6905.B, the office shall assess a civil penalty for a minimum of two separate days.

B. Whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, a civil penalty of not less than \$750 shall be assessed for each day during which such failure continues, except that, if the person to whom the notice or order was issued initiates review proceedings with respect to the violation, the abatement period shall be extended as follows.

1. If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under §925.C of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the commissioner issues a final order with respect to the violation in question.

2. If the person to whom the notice or order was issued initiates review proceedings under §926 of the Act with respect to the violation, in which the obligations to

abate are suspended by the court pursuant to §926.C of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.

3. Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30-day period, the office shall take appropriate action within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6911. Waiver of Use of Formula to Determine Civil Penalty

A. The commissioner, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in §6905 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the commissioner shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, these regulations, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

B. If the commissioner waives the use of the formula, he or she shall use the criteria set forth in §6905.B to determine the appropriate penalty. When the commissioner has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§6913. Procedures for Assessment of Civil Penalties

A. Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the office and to the inspector who issued the notice of violation or cessation order. The office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

B. The office shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons or complaint under the Louisiana Rules of Civil Procedure, within 30 days of the issuance of the notice or order. If the mail is tendered at the address of that person set forth in the sign required under §5301, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of §6913.B shall be deemed to have been complied with upon such tender.

C. Failure by the office to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed:

1. proves actual prejudice as a result of the delay; and
2. makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

D. Unless a conference has been requested, the office shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The office shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in §6913.B, within 30 days after the date the violation is abated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2287 (December 1998).

§6915. Procedures for Assessment Conference

A. The office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 15 days from the date the proposed assessment or reassessment is mailed.

B.1. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the Louisiana Administrative Procedure Act regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later; provided, that a failure by the office to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

2. The office shall post notice of the time and place of the conference at the conservation office closest to the mine at least five days before the conference. Any person shall have a right to attend and participate in the conference.

3. The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

- a. settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the office and by the person assessed; or
- b. affirm, raise, lower or vacate the penalty.

4. An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than \$500 shall not be final and binding on the commissioner until approved by the conference officer's superior.

C. The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in §6913.B and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

D.1. If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

2. If full payment of the amount specified in the settlement agreement is not received by the office within 30 days after the date of signing, the office may enforce the agreement or rescind it and proceed according to §6915.B.3.b within 30 days from the date of the rescission.

E. The conference officer may terminate the conference when he determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

F. At formal review proceedings under §§918, 921.A(4), and 925 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2287 (December 1998).

§6917. Request for Hearing

A. The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty, to the commissioner (to be held in escrow as provided in §6917.B) within 30 days from receipt of the proposed assessment or 30 days from the date of service of the conference office's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under §6511.

B. The commissioner shall transfer all funds submitted under §6917.A to the office, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in §6919.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:411 (August 1980), LR 6:734 (December 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2287 (December 1998).

§6919. Final Assessment and Payment of Penalty

A. If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in §6917, the proposed assessment shall become a final order of the commissioner and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

B. If any party requests judicial review of a final order of the commissioner, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to §6919.C, the escrow funds shall be transferred to the office in payment of the penalty, and the escrow shall end.

C. If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this Chapter, the office shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent per annum.

D. If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the office within 15 days after the order is mailed to the person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Chapter 71. Individual Civil Penalties

§7101. When an Individual Civil Penalty May Be Assessed

A. Except as provided in §7101.B, the office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

B. The office shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the office to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

§7103. Amount of Individual Civil Penalty

A. In determining the amount of an individual civil penalty assessed under §7101, the office shall consider the criteria specified in §918.A of the Act, including:

1. the individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;
2. the seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and
3. the demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

B. The penalty shall not exceed \$5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the office may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the commissioner, until abatement or compliance is achieved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

§7105. Procedure for Assessment of Individual Civil Penalty

A. Notice. The office shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative

explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

B. Final Order and Opportunity for Review. The notice of proposed individual civil penalty assessment shall become a final order of the commissioner 30 days after service upon the individual unless:

1. the individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Office of Conservation, Surface Mining Section, 625 North Fourth Street, Baton Rouge, Louisiana; or

2. the office and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

C. Service. For purposes of §7105, service is sufficient if it would satisfy the Louisiana Rules of Civil Procedure for service of a summons and complaint. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994), amended LR 24:2287 (December 1998).

§7107. Payment of Penalty

A. No Abatement or Appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

B. Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

C. Abatement Agreement. Where the office and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the office stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994).

Chapter 73. Petitions for Award of Costs and Expenses under §925.E of the Act

§7301. Who May File

A. Any person may file a petition for award of costs and expenses including attorney's fees reasonably incurred as a result of that person's participation in any administrative proceeding under the Act which results in a final order being issued by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§7303. Where to File; Time for Filing

A. The petition for an award of costs and expenses including attorneys' fees must be filed with the commissioner within 45 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§7305. Contents of Petition

A. A petition filed under this Section shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition:

1. an affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

2. receipts or other evidence of such costs and expenses; and

3. where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§7307. Answer

A. Any person served with a copy of the petition shall have 30 days from service of the petition within which to file an answer to such petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§7309. Who May Receive an Award

A. Appropriate costs and expenses including attorneys' fees may be awarded:

1. to any person from the permittee, if the person initiates any administrative proceedings reviewing enforcement actions, upon a finding that a violation of the Act, regulations or permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the commissioner determines that the person made a substantial contribution to the full and fair determination of the issues;

2. to any person other than a permittee or his representative from the office, if the person initiates or participates in any proceeding under the Act upon a finding that the person made a substantial contribution to a full and fair determination of the issues;

3. to a permittee from the office when the permittee demonstrates that the office issued an order of cessation, a notice of violation, or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee; or

4. to a permittee from any person where the permittee demonstrates that the person initiated a proceeding under §925 of the Act or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee;

5. to the office where it demonstrates that any person applied for review pursuant to §925 of the Act or that any

party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the government.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§7311. Awards

A. An award under these sections may include:

1. all costs and expenses including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the Act; and

2. all costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

§7313. Appeal

A. Any person aggrieved by a decision concerning the award of costs and expenses in an administrative proceeding under this Act may appeal such award to a court of competent jurisdiction in the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994).

Title 43
NATURAL RESOURCES
Part XV. Office of Conservation—Surface Mining
Subpart 6. Abandoned Mine Lands

Chapter 81. Abandoned Mine Reclamation

§8101. Purpose

A. To set forth requirements for Louisiana's Abandoned Mine Reclamation Program pursuant to R.S. 30:901, et seq. of the Louisiana Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8103. Authority

A. The commissioner is authorized to administer the requirements of the Act and regulations promulgated thereunder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8105. Responsibility

A. The commissioner is responsible for exercising the authority delegated to him under the Act including the following:

1. participation in the Federal Abandoned Mine Reclamation Program through the establishment of Louisiana Abandoned Mine Reclamation Program;

2. establishment of the Louisiana Abandoned Mine Reclamation Fund for use in conducting the Louisiana Abandoned Mine Reclamation Program;

3. requesting, receiving and administering grant monies and other monies for use in this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8107. Abandoned Mine Reclamation Regulations
Definitions

A. Definitions as used in Chapters 81-97

Abandoned Mine—a mining operation where coal is no longer being produced and where the operator has no intention of continuing production from the mine.

Act—Title 30, Chapter 9, Louisiana Revised Statutes of 1950, Sections 905.1-905.5, known as Regulation of Coal Mining and Reclamation Operations.

Director—the director of the Office of Surface Mining Reclamation and Enforcement.

Division—the Injection and Mining Division of the Office of Conservation.

Eligible Lands and Water—lands and water eligible for reclamation or drainage abatement expenditures and are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an adequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or other federal laws.

Emergency—a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety or general welfare of people before the danger can be abated under normal program operation procedures.

Expended—monies have been obligated, encumbered or committed by contract by the division for work to be accomplished or services to be rendered.

Extreme Danger—a condition that could reasonably be expected to cause substantial physical harm to persons, property or the environment and to which persons or improvements on real property are currently exposed.

Left or Abandoned in Either an Unreclaimed or Inadequately Reclaimed Condition—lands and water:

a. which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977, and all mining has ceased;

b. which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

c. for which there is no continuing reclamation responsibility under state or federal laws.

Non-Coal Reclamation—the process of restoring an abandoned mine, that was not mined for coal, back to its original contour or some other useful contour.

Office of Conservation, or Office—the Office of Conservation of the Louisiana Department of Natural Resources.

OSM—the Office of Surface Mining of the United States Department of the Interior.

Owner—the owner of real property who is shown to be the owner of record on the plats located in the parish courthouse of the parish in which the real property is located.

Permanent Facility—any structure that is built, installed or established to serve a particular purpose or any manipulation or modification of the surface that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

Plan or State Abandoned Mine Reclamation Plan—a plan submitted by the state to OSM for the reclamation of land and water adversely affected by past coal or non-coal mining activities.

Program or State Abandoned Mine Reclamation Program—a program established by the state for the reclamation of land and water adversely affected by past coal or non-coal mining, operated under the provisions of the State Abandoned Mine Reclamation Plan including annual application for grants under the state plan.

Project—a delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a state or within a logical, geographically defined area, such as a watershed or conservation district.

Reclamation Activity—the restoration, reclamation, abatement, control, or prevention of adverse effects of past mining.

Reclamation Fund—a special fund established by the Surface Mining Control and Reclamation Act (Public Law 95-87) to reclaim land mined for coal before August 3, 1977.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

Chapter 83. Abandoned Mine Reclamation Fund

§8301. Scope

A. This Chapter sets forth general responsibilities for administration of Abandoned Mine Land Reclamation Program and procedures for the Abandoned Mine Reclamation Fund to finance such programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8303. Abandoned Mine Reclamation Fund

A. A fund to be known as the Abandoned Mine Reclamation Fund shall be established in the general fund

for the purpose of providing monies to administer the Abandoned Mine Reclamation Program. This fund will be managed in accordance with the Federal Office of Management and Budget Circular No. A-102 and applicable state guidelines.

B. Revenue shall include:

1. amounts granted by OSM for purposes of conducting the approved state reclamation plan;
2. monies collected from charges for uses of land acquired or reclaimed with monies from the fund;
3. monies recovered through the satisfaction of liens filed against privately-owned lands;
4. monies recovered from the sale of lands; and
5. such other monies as the state legislature decides should be deposited in the fund for use in carrying out the approved reclamation program including monies collected as fines from violations of the Act or any rule, regulation or order pursuant to the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

Chapter 85. General Reclamation Requirements

§8501. Scope

A. This Chapter establishes land and water eligibility requirements, reclamation project objectives and standards, and project selection factors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8503. Applicability

A. The provisions of this Chapter apply to all reclamation projects to be carried out with money from the fund and administered by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8505. Eligible Lands and Water

A. Lands and water are eligible for reclamation activities if:

1. they were mined or affected by mining processes;
2. they were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

3. there is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the state or federal government, or the state as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the fund may be sought.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8507. Reclamation Objectives and Priorities

A. Reclamation projects shall reflect the priorities set out in §905 of the Act. Reclamation projects should be accomplished in accordance with the office's *Final Guidelines for Reclamation Programs and Projects* (45 FR 14810-14819, March 6, 1980).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8509. Contractor Eligibility

A. To receive moneys from the Fund or Treasury funds provided to uncertified States and Indian tribes under 30 CFR §872.29 or to certified states or Indian tribes for coal AML reclamation as required to maintain certification under §411(a) of the federal Act, every successful bidder for an AML contract must be eligible under §§3113.G, 3113.H and 3114 at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2735 (September 2011).

Chapter 87. Non-Coal Reclamation

§8701. Scope

A. This Chapter establishes land and water eligibility requirements for non-coal reclamation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8703. Eligible Lands and Water

A. Non-coal lands and water are eligible for reclamation if:

1. they were mined or affected by mining processes;

2. they were mined prior to August, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;

3. all coal related reclamation has been accomplished;

4. there is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the state or federal government or the state as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the fund may be sought;

5. the reclamation has been requested by the governor;

6. the reclamation is necessary for the protection of the public health and safety;

7. monies are allocated to the state for that specific purpose; and

8. the reclamation is necessary to restore land and water resources and the environment degraded by past mining.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8705. Requirements for Non-Coal Reclamation

A. Reclamation of eligible non-coal mined lands and waters shall comply with the provisions of §905.4 of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

Chapter 89. Rights of Entry

§8901. Scope

A. This Chapter establishes procedures for entry upon lands or property by the office for reclamation purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8903. Written Consent for Entry

A. Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry will be undertaken only after due care and deliberation have exhausted all reasonable possibilities of obtaining written consent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8905. Entry and Consent to Reclaim

A. The office or its agents, employees, or contractors, may enter upon land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past mining if consent from the owner is obtained.

B. If consent is not obtained, then, prior to entry under this Section, the board shall find in writing with supporting reasons that:

1. land or water resources have been or may be adversely affected by past coal mining practices;
2. the adverse effects are at a state where, in the interest of the public health, safety or the general welfare, action to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices is not known or readily available, or the owner will not give permission for the office, its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past mining practices.

C. The office shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this Section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this Section may be inspected or obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§8907. Entry for Emergency Reclamation

A. The office, its agents, employees or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control or prevent the adverse effects of coal mining practices and to do all things necessary to protect the public health, safety or general welfare.

B. Prior to entry under this Section, the office shall after notice and hearing make a finding of fact in accordance with §30:905.4 of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

Chapter 91. Acquisition, Management and Disposition of Lands and Water

§9101. Scope

A. This Chapter establishes procedures for acquisition of eligible land and water resources for emergency and reclamation purposes by the office under an approved reclamation program. It also provides for the management and disposition of lands acquired by the state and establishes requirements for the redeposit of proceeds from the use of land.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9103. Land Eligible for Acquisition

A. Land adversely affected by past coal mining practices may be acquired with monies from the fund by the office if, after notice and hearing, the office finds that acquisition is necessary for successful reclamation and that:

1. the acquired land will serve recreation, historic, conservation and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices; and
2. permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices.

B. Coal refuse disposal sites and all coal refuse thereon may be acquired with monies from the fund if, after notice and hearing, the office finds that the acquisition of such land is necessary for successful reclamation and will serve the purposes of the Abandoned Mine Reclamation Program or that public ownership is desirable to meet an emergency situation and prevent recurrence of adverse effects of past coal mining practices.

C. Land or interests in land needed to fill voids, seal abandoned tunnels, shafts and entry ways or reclaim surface impacts of underground or surface mines may be acquired by the office if the office finds that acquisition is necessary under §§8505.A.2 or 8703.A.2.

D. The office shall acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interests in improvements on the lands, mineral rights or associated water rights may be acquired if:

1. the customary practices and laws of the state will not allow severance of such interests from the surface estate; or

2. such interests are necessary for the reclamation work planned or for the post-reclamation use of the land; and

3. adequate written assurance cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

E. Title to all lands or interests in and acquired under this Section shall be in the name of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9105. Procedures for Acquisition

A. An appraisal of all land or interest in land to be acquired shall be obtained by the office. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on *Uniform Appraisal Standards for Federal Land Acquisition* (Interagency Land Acquisition Conference, 1973).

B. When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

C. When necessary, land or interest in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

D. The office shall comply, at a minimum, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, U.S.C. 4601, et seq., and 41 CFR Parts 114-50.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9107. Acceptance of Gifts of Land

A. The office, under an approved reclamation plan, may accept donations of title land or interests in land.

B. Offers to make a gift of land or interest in land shall be in writing and comply with state regulations for donations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9109. Management of Acquired Land

A. Land acquired under this Chapter may be used for any lawful purpose that is consistent with the necessary reclamation activities. Procedures for collection of user

charges or the waiver of such charges by the office in conjunction with the Office of State Lands shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area or the costs to the state for providing the benefit, whichever is appropriate. The fee may be waived if found in writing that such a waiver is in the public interest.

B. All use fees collected shall be deposited in the Abandoned Mine Reclamation Fund in accordance with Chapter 83.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9111. Disposition of Reclaimed Land

A. Prior to the disposition of any land acquired under this Chapter, the office shall publish a notice of proposed land disposition, and hold public hearings as contained in §905.4 of the Act.

B. The office may transfer administrative responsibility for land acquired by the state to any state department or agency, with or without cost to the department or agency. The office may transfer title for land acquired by the state, to any agency or political subdivision of the state, with or without cost to that entity. The agreement under which a transfer is made shall specify:

1. the purposes for which the land may be used, which shall be consistent with the authorization under which the land was acquired; and

2. that the title or administrative responsibility for the land shall revert to the office if, at any time in the future, the office finds that the land is not used for the purposes specified.

C. The office and the Office of State Lands may accept title for abandoned and unreclaimed land to be reclaimed and administered by the state. If the state transfers land to the United States under this Section, the state shall have a preference right to purchase such land after reclamation is completed. The price to be paid by the state shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the state.

D. The office in conjunction with the Division of State Lands may sell land acquired and reclaimed under this Chapter to the local government within whose boundaries the land is located. The conditions of sale shall be in accordance with the authorities contained in §905.4 of the Act.

E.1. The office may sell land acquired under this Chapter by public sale if:

a. such land is suitable for industrial, commercial, residential or recreational development;

b. such development is consistent with local, state or federal land use plans for the area in which the land is located; and

c. if it is found that retention by the state or disposal under other paragraphs of this Section, is not in the public interest.

2. Disposal procedures will be in accordance with §905.4 of the Act.

3. The office may transfer title or administrative responsibility for land to cities, municipalities or quasi-governmental bodies, provided that the office provides for the reverter of the title or administrative responsibility if the land is no longer used for the purposes originally proposed.

F. All monies received from disposal of land under this Chapter shall be deposited in the Abandoned Mine Reclamation Fund in accordance with Chapter 83.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

Chapter 93. Reclamation on Private Land

§9301. Scope

A. This Chapter authorized reclamation on private land and establishes procedures for recovery of the cost of reclamation activities conducted on privately-owned land by the office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9303. Appraisals

A. A notarized appraisal of the fair market value of private land to be reclaimed which may be subject to a lien under §9305 shall be obtained from an independent appraiser.

B. A notarized appraisal of all land reclaimed which was appraised under §9303.A shall also be obtained from an independent appraiser. The appraisal shall state the market value of the land as the appraisal shall not be started until actual completion of reclamation activities.

C. The landowner upon whose property a lien is filed is to be provided with a statement of the increase in market value, an itemized statement of reclamation expenses, and a notice that a lien is being or has been filed in accordance with §9305.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9305. Liens

A. The office has the discretionary authority to place or waive a lien against land reclaimed if the reclamation results in a significant increase in the fair market value based on the appraisals obtained under §9303; however:

1. a lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to participate in or exercise control over the mining operation which necessitated the reclamation work;

2. the basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by the office;

3. the lien may be waived by the office if the reclamation work performed on private land primarily benefits health, safety or environmental values of the greater community or area in which the land is located, or if the reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

B. If a lien is to be filed, the office shall, within six months after the completion of the reclamation work, file a statement in the office of the clerk of court in the parish in which the land is located. Such statement shall consist of an account of monies expended for the reclamation work, together with notarized copies of the appraisals obtained under §9303. The amount reported to be the increase in value of the property shall constitute the lien to be recorded and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

C. Within 60 days after the lien is filed the landowner may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by local law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9307. Satisfaction of Liens

A. A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.

B. The office shall maintain or renew the lien from time to time as may be required under state or local law.

C. Monies derived from the satisfaction of liens established under this Chapter shall be deposited in the Abandoned Mine Reclamation Fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

Chapter 95. State Reclamation Plans

§9501. Scope

A. This Chapter establishes the procedures and requirements for the preparation, submission and approval of the reclamation plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9503. Content of Proposed State Reclamation Plan

A. The proposed reclamation plan shall be submitted to the director in writing and shall include the following information:

1. a designation by the governor for the office to administer the reclamation program and to receive and administer grants under 30 CFR Part 886;

2. a legal opinion from the state attorney general that the office has the authority under state law to conduct the program;

3. a description of the policies and procedures to be followed by the office in conducting the reclamation program, including:

- a. the purposes of the reclamation program;
- b. the specific criteria for ranking and identifying projects to be funded;
- c. the coordination of reclamation work among the Abandoned Mine Reclamation Program and the Rural Land Reclamation Program administered by the Soil Conservation Service and OSM's reclamation programs;
- d. policies and procedures regarding land acquisition, management and disposal under Chapter 91;
- e. policies and procedures regarding reclamation on private land under Chapter 93;
- f. policies and procedures regarding rights of entry under Chapter 89; and
- g. public participation and involvement in the preparation of the reclamation plan and in the reclamation program;

4. a description of the administrative and management structure to be used in conducting the reclamation program, including:

- a. the organization of the office and its relationship to other state organizations or officials that will participate in or augment the office's reclamation capacity;
- b. the personnel staffing policies which will govern the assignment of personnel to the reclamation program;

c. the purchasing and procurement systems to be used by the division. Such systems shall meet the requirements of Office of Management and Budget Circular No. A-102, Attachment O; and

d. the accounting system to be used by the office including specific procedures for the operation of the Abandoned Mine Reclamation Fund;

5. a general description, derived from available data, of the reclamation activities to be conducted under the Reclamation Plan, including the known or suspected eligible lands and waters within the state which require reclamation, including:

- a. a map showing the general location of known or suspected eligible lands and waters;
- b. a description of the problems occurring on these lands and waters;
- c. how the plan proposes to address each of the problems occurring on these lands and waters;
- d. how the land to be reclaimed relates to existing and planned uses of lands in surrounding areas;

6. a general description, derived from available data, of the conditions prevailing in the different geographic areas of the state where reclamation is planned, including:

- a. the economic base;
- b. significant aesthetic, historic or cultural and recreational values; and
- c. endangered and threatened plant, fish and wildlife and their habitats.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9505. State Reclamation Plan Amendment

A. The office may, at any time, submit to the director of the Office of Surface Mining a proposed amendment or revision to its approved reclamation plan. If the amendment or revision changes the objectives, scope or major policies followed by the office in the conduct of its reclamation program, the office shall include a description of the extent of public involvement in the preparation of the amendment or revision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9507. Impact Assistance

A. The reclamation plan may provide for construction of specific public facilities in communities impacted by coal development. This form of assistance is available when the governor has certified, and the director has concurred that:

1. all reclamation with respect to past coal mining and with respect to the mining of other minerals and materials has been accomplished;

2. the specific public facilities are required as a result of coal development; and

3. impact funds which may be available under the Federal Mineral Leasing Act of 1920, as amended, or the Act of October 20, 1978, Pub. L. 94-565 (9 Stat. 2662) are inadequate for such construction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

Chapter 97. State Reclamation Grants

§9701. Scope

A. This Chapter sets forth procedures for grants to the office for the reclamation of eligible lands and water and other activities necessary to carry out the plan as approved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9703. Eligibility for Grants

A. The office is eligible for grants under this Chapter if it has a reclamation plan approved under 30 CFR Part 284.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9705. Coverage and Amount of Grants

A. The office may use monies granted under this Chapter to administer the approved reclamation program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The monies may be used to cover direct costs to the office for services and materials obtained from other state agencies or local jurisdictions.

B. Grants shall be approved for reclamation of eligible lands and water, construction of public facilities, program administration, the incremental cost of filling voids and sealing tunnels with waste from mine waste piles reworked for conservation purposes, and community impact assistance. To the extent technologically and economically feasible, public facilities that are planned, constructed or modified in whole or in part with abandoned mine land grant funds should utilize fuel other than petroleum or natural gas.

C. Acquisition of land or interests in land and any mineral or water rights associated with the land shall be approved for up to 90 percent of the costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9707. Grant Period

A. Except as provided in §9705.B, the grant funding period for projects shall not exceed three years. The grant period for administrative costs of the office shall be for one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9709. Annual Submission of Projects

A. The office shall cooperate with OSM in the development of the annual submission of projects by providing the information required for use by the director in the preparation of his requests for appropriation of monies for the state reclamation grants. The schedule for such estimates shall be determined by OSM on an annual basis. Funds required to prepare the annual submission of projects may be included in administrative grants under 30 CFR 886.12.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9711. Grant Application Procedures

A. OSM shall act upon a grant application within 90 days of submittal. If OSM approves the office's grant application, a grant agreement shall be prepared and signed by the office and the director.

B. If the application is not approved, OSM shall set forth in writing the reasons for disapproval and may propose modifications if appropriate. The office may resubmit the application or appropriate revised portions of the application. OSM shall approve or disapprove the resubmitted grant application within 30 days of the resubmittal.

C. The office shall use the application forms and procedures applicable to construction and/or nonconstruction programs specified by OSM in accordance with Office of Management and Budget Circular A-102, Attachment M. A preapplication is not required if the total of the grant requested is within the amounts allocated to the office.

D. The office shall agree to perform the grant in accordance with the Act, OSM implementing regulations, and applicable OMB and Treasury circulars.

E. Complete copies of plans and specifications for projects shall not be required before the grant is approved nor at the start of the project. The director may review such plans and specifications after the start of the project in the Conservation Office or on the project site.

F. A description of the actual or planned public involvement in the decision to undertake the work, in the planning of the reclamation activities, and in the decision on how the land will be used after the reclamation, shall be included in the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9713. Grant Agreements

A. If the director approves the office's grant application, OSM shall prepare a grant agreement, which includes:

1. a statement of the work to be covered by the grant;
2. a statement of the approvals of specific actions as required under this Subchapter or of the conditions to be met before such approvals can be given if monies are included in the grant for such actions;
3. the amounts approved for each individual project included in the grant application; and
4. allowable transfers of funds to other state or local agencies.

B. The director may allow the office to assign functions and funds to other state or local agencies. The director shall require the office to retain responsibility for overall administration of the grant, including use of funds or reporting.

C. The director shall transmit four copies of the grant agreement by mail, return receipt requested, or by hand to the office for signature. The office shall execute the grant agreement and return all copies within three weeks after receipt, or within an extension of time granted by the director.

D. The director shall sign the agreement upon its return from the office or when funds are available for the grants, whichever is later, and return one copy to the office. The grant is effective and constitutes an obligation of federal funds at the time the director signs the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9715. Grant and Budget Revisions

A. Grant Revisions

1. A grant revision is a written alteration of the terms or conditions of the grant agreement, whether accomplished on the initiative of OSM or the office. All procedures for the grant revisions shall conform to OMB Circular A-102.

2. The office shall promptly notify the director, or the director will promptly notify the office, in writing of events or proposed changes, which may require a grant revision. The office shall notify the director in advance of:

a. planned changes in the scope or objective of any individual project even if the change will not result in a change in the total cost of the project; and

b. planned changes which will result in an extension of the grant period.

3. The director will notify the office of the approval or disapproval of each proposed grant revision within 30 days of receipt thereof.

B. Budget Revisions

1. The office shall obtain the written approval of OSM for budget revisions which will result in an increase or decrease in the total cost of any project of more than \$5,000 or 5 percent of the budgeted amount whichever is greater.

2. OSM will either approve or disapprove the budget revision within 15 days of its receipt.

3. Changes of less than \$5,000 or 5 percent of the budgeted amount of a project may be made by the office without advance notification or approval of OSM if the change:

a. can be made without exceeding the total amount of the project grant;

b. does not involve a change in the scope or objective of the project involved; and

c. is consistent with the procedures set forth in Office of Management and Budget Circular A-102, Attachment K.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9717. Audit

A. The office shall arrange for an independent audit at least once every two years, pursuant to the requirements of Office of Management and Budget Circular No. A-102. The audit will be performed in accordance with the *Standards for Audit of Governmental Organizations, Programs, Activities, Functions* published by the comptroller general of the United States and audit guides provided by the Department of the Interior.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9719. Administrative Procedures

A. The office shall follow administrative procedures governing accounting, payment, property and related requirements contained in Office of Management and Budget Circular No. A-102.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9721. Allowable Costs

A. Reclamation project costs which shall be allowed include actual costs of construction, operation and maintenance, planning and engineering, construction, inspection, other necessary administration costs and up to 90 percent of the costs of the acquisition of land.

B. Costs must conform with any limitation, conditions or exclusions set forth in the grant agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9723. Financial Management

A. The office shall account for grant funds in accordance with the requirements of Office of Management and Budget Circular No. A-102. The office shall use generally accepted accounting principles and practices consistently applied. Accounting for grant funds must be accurate and current.

B. The office shall adequately safeguard all accounts, funds, property and other assets and shall assure that they are used solely for authorized purposes.

C. The office shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

D. When advances are made by a letter-of-credit method, the office shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

E. The office shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9725. Reports

A. The office shall for each grant/cooperative agreement submit semiannually to OSM the following reports prepared according to Office of Management and Budget Circular No. A-102, Attachments H and I:

1. Financial Status Report, Form SF-269 for the agency's administrative grant/cooperative agreement and the Performance Report, Form OSM-51 covering the performance aspects of the grant/cooperative agreement; and

2. Outlay Report and Request for Reimbursement for Construction Programs, Form SF-271 and the Performance

Report, Form OSM-51 for each activity or project including projects previously funded or completed during the period.

B. The office shall for each grant/cooperative agreement submit annually to OSM the following reports prepared according to Office of Management and Budget Circular No. A-102, Attachments H and I:

1. a final Financial Status Report, Form SF-269 for the agency's administrative grant/cooperative agreement and a final Performance Report, Form OSM-51 covering the performance aspects of the grant/cooperative agreements; and

2. a cumulative fourth quarter Outlay Report and Request for Reimbursement Performance Report, Form OSM-51 which includes:

a. for each project or activity, a brief description and the type of reclamation performed, the project location, the landowner's name, the amounts of land or water reclaimed or being reclaimed and a summary of achieved or expected benefits;

b. for any land previously acquired but not disposed of, a statement of current or planned uses, location and size in acres and any revenues derived from use of the land; and

c. for any permanent facilities acquired or constructed but not disposed of, a description of the facility and a statement of current or planned uses, location and any revenues derived from the use of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).

§9727. Records

A. The office shall maintain complete records in accordance with Office of Management and Budget Circular No. A-102, Attachment C. This includes, but is not limited to, books, documents, maps and other evidence and accounting procedures and practices sufficient to reflect properly:

1. the amount and disposition by the office of all assistance received for the program; and

2. the total direct and indirect costs of the program for which the grant was awarded.

B. Subgrantees and contractors, including contractors for professional services, shall maintain books, documents, papers, maps and records which are pertinent to a specific grant award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:905.1-905.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 12:26 (January 1986).