

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0186-22_

SPONSOR: Wilson C. Stewart, Jr.

TITLE An Act Relating to Law and Order, Resources and Development, and Naabik'iyáti' Committees and Navajo Nation Council; Asserting Sovereignty and Taking Over Primary Regulatory Authority from the Federal Government, Office of Surface Mining and Reclamation Enforcement, Over All Coal Mining Lands Located on the Navajo Nation; Enacting a Waiver of Sovereign Immunity; and Establishing New Sections in Title 18 at 18 N.N.C. §§ 1701 et seq.

Date posted: October 4, 2022 at 6:30 PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0186-22

DATE: October 4, 2022

TITLE OF RESOLUTION: PROPOSED COUNCIL RESOLUTION; AN ACT RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; ASSERTING SOVEREIGNTY AND TAKING OVER PRIMARY REGULATORY AUTHORITY FROM THE FEDERAL GOVERNMENT, OFFICE OF SURFACE MINING AND RECLAMATION ENFORCEMENT, OVER ALL COAL MINING LANDS LOCATED ON THE NAVAJO NATION; ENACTING A WAIVER OF SOVEREIGN IMMUNITY; AND ESTABLISHING NEW SECTIONS IN TITLE 18 AT 18 N.N.C. §§ 1701 *ET SEQ.*

PURPOSE: The purpose of this resolution is to enact the Navajo Nation Surface Coal Mining Program Act, establishing new Navajo Nation Code sections 18 N.N.C. §§1701 *et seq.* This enactment will provide for the regulation, inspection and enforcement of surface coal mining and reclamation operations on Navajo Nation lands by the Navajo Minerals Department, specifically the Surface Coal Mining Program. If this legislation is passed, the Navajo Nation will be the first American Indian Nation to obtain primacy over surface coal mining and reclamation.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: _____
Posting End Date: 10-09-22
Eligible for Action: 10-10-22

Law & Order Committee
Thence
Resources & Development Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 24th NAVAJO NATION COUNCIL -- Fourth Year, 2022
3 INTRODUCED BY

4 
5
6 (Prime Sponsor)

7
8 TRACKING NO. 0186-22

9
10 AN ACT
11 RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT,
12 AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL;
13 ASSERTING SOVEREIGNTY AND TAKING OVER PRIMARY
14 REGULATORY AUTHORITY FROM THE FEDERAL GOVERNMENT,
15 OFFICE OF SURFACE MINING AND RECLAMATION ENFORCEMENT,
16 OVER ALL COAL MINING LANDS LOCATED ON THE NAVAJO NATION;
17 ENACTING A WAIVER OF SOVEREIGN IMMUNITY; AND ESTABLISHING
18 NEW SECTIONS IN TITLE 18 AT 18 N.N.C. §§ 1701 *ET SEQ.*

19
20 BE IT ENACTED:

21
22 **Section One. Authority**

- 23 A. The Law and Order Committee of the Navajo Nation Council, pursuant to 2 N.N.C.
24 § 601 (B) (14), reviews and makes recommendations to the Navajo Nation Council
25 proposed amendments to the Navajo Nation Code.
26 B. The Resources and Development Committee is a standing committee of the Navajo
27 Nation Council and exercises oversight over the land and environmental protection.
28 2 N.N.C. § 500 (C).
29
30

1 C. The Naabik'íyáti' Committee of the Navajo Nation Council, pursuant to 2 N.N.C. §
2 164 (A) (9), reviews proposed legislation which requires final action by the Navajo
3 Nation Council.

4 D. Enactments of positive law must be reviewed and approved by resolution by the
5 Navajo Nation Council. 2 N.N.C. § 164 (A).

6
7 **Section One. Findings**

8 A. Pursuant to the federal Surface Mining Control and Reclamation Act (SMCRA) §710
9 (j) (1) (A), "an Indian tribe may apply for, and obtain the approval of, a tribal program
10 under section 503 regulating in whole or in part surface coal mining and reclamation
11 operations on reservation land."

12 B. Currently, the Office of Surface Mining and Reclamation Enforcement (OSMRE)
13 regulates all aspects of surface coal mining and reclamation on Indian lands.

14 C. The passage of this legislation will increase the sovereignty of the Navajo Nation in
15 regards to being able to regulate, inspect, and enforce appropriate standards to
16 minimize damage to the environment and to restore the productivity of the soil and
17 to protect the health and safety of the public.

18 D. The Navajo Nation will receive 100% of the funding for the operation of the Navajo
19 Surface Coal Mining Program, in contrast to states, who only receive 50% federal
20 funding for their programs.

21 E. Pursuant to the Surface Mining Control and Reclamation Act (SMCRA), a tribe needs
22 to enact a waiver of sovereign immunity. When an Indian Nation seeks to obtain
23 primary regulatory authority pursuant to SMCRA, "an Indian tribe shall waive
24 sovereign immunity for purposes of section 520 and paragraph (4)." SMCRA, PL 95-
25 87 Section 710 (j) (3), or 30 USC 1300 (j) (3).

26 F. This waiver of sovereign immunity extends past exhaustion of all tribal remedies,
27 according to §710 (j) (4) (A). Should a party disagree with the decision of the Navajo
28 Supreme Court, the party may appeal the decision to a federal circuit court.

29 G. This legislation has been reviewed by the Executive Review document, attached as
30 **Exhibit A.**

- 1 H. The Navajo Nation Minerals Department, Division of Natural Resources has worked
2 for three decades to obtain Navajo Nation Primacy over surface coal mining and
3 reclamation. The Navajo Nation is on track to be the first and may be the only
4 American Indian Nation to obtain primary regulatory authority over surface coal
5 mining reclamation.
- 6 I. It is in the best interest of the Navajo Nation to obtain primary regulatory authority
7 over surface coal mining and reclamation.
- 8

9 **Section Two. Waiver of Navajo Nation Sovereign Immunity with regard to the**
10 **Navajo Nation Surface Coal Mining and Reclamation Act**

11

12 The Navajo Nation hereby grants a waiver of sovereign immunity only to the extent
13 contained within the Navajo Nation Surface Coal Mining and Reclamation Act.

14

15 **Section Three. Enacting the Navajo Nation Surface Coal Mining and Reclamation**
16 **Act, 18 N.N.C. § 1701 *Et Seq.***

17

18 The Navajo Nation hereby enacts the Navajo Nation Surface Coal Mining and
19 Reclamation Act, to provide for the regulation and enforcement of surface coal
20 mining and reclamation operations and coal exploration, Navajo Nation Code, Title
21 18, §§ 1701 *et seq.* as follows:

22

23 *****

24 NAVAJO NATION CODE ANNOTATED
25 TITLE 18. MINES AND MINERALS
26 CHAPTER 17. NAVAJO NATION SURFACE COAL MINING AND
27 RECLAMATION ACT

28

29 CHAPTER 17 – DEFINITIONS, FINDINGS, AND PURPOSES

30

1 SEC. 1701. Definitions

2 For the purposes of this Act —

3 A. Administrative Definitions:

4 1. “Act” means the Navajo Nation Surface Coal Mining and Reclamation Act;

5 2. “Attorney General” means the Attorney General of the Navajo Nation;

6 3. “BIA” means the Bureau of Indian Affairs of the U.S. Department of the Interior;

7 4. “BLM” means the Bureau of Land Management of the U.S. Department of the
8 Interior;

9 5. “Federal Lands” means any land, including mineral interests, owned by the United
10 States without regard to how the United States acquired ownership of the land and
11 without regard to the agency having responsibility for management thereof, except
12 Indian lands;

13 6. “Federal Program for Indian Lands” means the program at 30 CFR Part 750
14 established by the Secretary pursuant to SMCRA section 710(d) to regulate surface
15 coal mining and reclamation operations on Indian Lands in accordance with the
16 requirements of SMCRA;

17 7. “Indian Lands” means all lands, including mineral interests, within the exterior
18 boundaries of any federal Indian reservation, notwithstanding the issuance of any
19 patent, and including rights-of-way, and all lands including mineral interests held in
20 trust for or supervised by an Indian tribe;

21 8. “Indian tribe” or “Tribe” means any Indian tribe, band, group, or community
22 having a governing body recognized by the Secretary;

23 9. “Local government,” “local agency,” “local governmental agency,” and “local
24 governmental body” mean a Navajo Nation Chapter, a local governmental unit of a
25 state, or a non-Navajo tribal government or agency or local governmental unit
26 thereof, which may be affected by the Navajo regulatory program;

27 10. “Navajo Nation” means the federally recognized Navajo Tribe of Indians, an
28 Indian nation governed by the Navajo Nation government;

1 11. "Navajo Nation Chapter" means a unit of local government that is a political
2 subdivision of the Navajo Nation and identified as a Chapter under Navajo Nation
3 law;

4 12. "Navajo Nation law" means the entire body of law of the Navajo Tribe of Indians,
5 including the Navajo Nation Code, all lawfully promulgated rules and regulations of
6 agencies of the Navajo Tribe of Indians, and all lawfully enacted resolutions and
7 ordinances of the Navajo Nation Chapters. Provided, that this Act preempts any
8 authority of any political subdivision of the Navajo Nation over surface coal mining
9 and reclamation operations;

10 13. "Navajo regulatory program" means the program established by the Navajo
11 Nation and approved by the Secretary pursuant to sections 503, 504(e), and 710(j) of
12 SMCRA to regulate surface coal mining and reclamation operations on Navajo
13 regulatory program lands in accordance with the requirements of SMCRA and 30
14 CFR Chapter VII;

15 14. "Navajo regulatory program lands" means those lands upon which surface coal
16 mining and reclamation operations and coal exploration are regulated by the NSCMP
17 under the Navajo regulatory program, which consist of all lands within the formal
18 Navajo Indian Reservation as established by the Treaty of June 1, 1868 and
19 subsequent acts of Congress and executive orders;

20 15. "Navajo Surface Coal Mining Program" is the tribal regulatory authority for
21 administering this Act and SMCRA under the Navajo regulatory program approved
22 by the Secretary;

23 16. "NNOHA" means the Navajo Nation Office of Hearings and Appeals which is
24 the government unit responsible for conducting administrative hearings and deciding
25 appeals of decisions of the Navajo Surface Coal Mining Program that are required or
26 authorized by this Act;

27 17. "NSCMP" means the Navajo Surface Coal Mining Program;

28 18. "operator" means any person, partnership, or corporation engaged in coal mining
29 who removes or intends to remove coal from the earth by coal mining;

30

1 19. "OSMRE" means the Office of Surface Mining Reclamation and Enforcement of
2 the U.S. Department of the Interior;

3 20. "other minerals" means clay, stone, sand, gravel, metalliferous and
4 nonmetalliferous ores, and any other solid material or substances of commercial value
5 excavated in solid form from natural deposits on or in the earth, exclusive of coal and
6 those minerals which occur naturally in liquid or gaseous form;

7 21. "permit" means a permit to conduct surface coal mining and reclamation
8 operations issued by the NSCMP under the Navajo regulatory program or by OSMRE
9 under the Federal Program for Indian Lands;

10 22. "permit applicant" or "applicant" means a person applying for a permit;

11 23. "permit area" means the area of land indicated on the approved map submitted by
12 the operator with his or her application, which area of land shall be covered by the
13 operator's bond as required by section 2109 of this Act and shall be readily
14 identifiable by appropriate markers on the site;

15 24. "permittee" means a person holding a permit;

16 25. "person" means an individual, partnership, association, society, joint stock
17 company, firm, company, corporation, or other business organization, including
18 Navajo Nation business entities;

19 26. "Program Manager" means the Manager of the Navajo Surface Coal Mining
20 Program;

21 27. "reclamation plan" means the plan in a permit application submitted under the
22 Navajo regulatory program or the Federal Program for Indian Lands which sets forth
23 a plan for reclamation of the proposed surface coal mining operations pursuant to
24 section 2108 of this Act;

25 28. "regulatory authority" means the state or tribal regulatory authority where the
26 State or Tribe is administering SMCRA under an approved state or tribal program or
27 OSMRE where OSMRE is administering SMCRA under a federal program for a
28 State, the Federal Program for Indian Lands, or the Federal Lands Program, or the
29 Initial Program at 30 CFR Chapter VII, Subchapter B;

1 29. "Resources Committee" means the Resource and Development Committee of the
2 Navajo Nation Council or any successor Navajo governmental entity, including any
3 Navajo Executive Branch Division or Department to which authorities of the
4 Resources and Development Committee may be delegated;

5 30. "Secretary" means the Secretary of the U.S. Department of the Interior;

6 31. "SMCRA" means the Surface Mining Control and Reclamation Act of 1977 (P.L.
7 95-87), and all subsequent revisions and amendments to it;

8 32. "State" means a State of the United States;

9 33. "surface coal mining and reclamation operations" means surface coal mining
10 operations and all activities necessary and incident to the reclamation of such
11 operations after August 3, 1977;

12 34. "surface coal mining operations" means —

13 a. activities conducted on the surface of lands in connection with a surface coal mine
14 or subject to the requirements of Section 2116 of this Act, surface operations and
15 surface impacts incident to an underground coal mine, the products of which enter
16 commerce or the operations of which directly or indirectly affect interstate
17 commerce. Such activities include excavation for the purpose of obtaining coal
18 including such common methods as contour, strip, auger, mountaintop removal, box
19 cut, open pit, and area mining, the uses of explosives and blasting, and in-situ
20 distillation or retorting, leaching or other chemical or physical processing, and the
21 cleaning, concentrating, or other processing or preparation, loading of coal for
22 interstate commerce at or near the mine site: Provided, however, that such activities
23 do not include the extraction of coal incidental to the extraction of other minerals
24 where coal does not exceed 16 2/3 percent of the tonnage of minerals removed for
25 purposes of commercial use or sale or coal explorations subject to section 2112 of
26 this Act; and

27 b. the areas upon which such activities occur or where such activities disturb the
28 natural land surface. Such areas shall also include any adjacent land the use of which
29 is incidental to any such activities, all lands affected by the construction of new roads
30 or the improvement or use of existing roads to gain access to the site of such activities

1 and for haulage, and excavations, workings, impoundments, dams, ventilation shafts,
2 entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm
3 banks, tailings, holes or depressions, repair areas, storage areas, processing areas,
4 shipping areas and other areas upon which are sited structures, facilities, or other
5 property or materials on the surface, resulting from or incident to such activities; and
6 35. "Uniform Rules" means the Uniform Regulations for Permit Review,
7 Administrative Enforcement Orders, Hearings, and Rulemakings under Navajo
8 Nation Environmental Acts; Provided, that, as referred to in the Uniform Rules,
9 "Director" shall mean "Program Manager," "NNEPA" shall mean "NSCMP,"
10 "USEPA" shall mean "OSMRE," "tape recording" and "tape" shall include "other
11 types of electronic recording," "a brief description of the proposed regulation" also
12 shall include "a statement of the basis and purpose of the proposed regulation" in
13 section 402(d)(1)(B) of the Uniform Rules, also in section 407(b) of the Uniform
14 Rules, "adoption of the final regulation" shall include "approval of the final
15 regulations by the Resources Committee," and in section 407(c) of the Uniform
16 Rules, "approval by the Resources Committee" shall mean "approval of the final
17 regulations by the Resources Committee and by the Secretary or the OSMRE
18 Director." In the case of any conflict between a provision of this Act or regulations
19 implementing this Act and a provision of the Uniform Rules, the provision of this
20 Act or implementing regulations shall govern.

21 B. Technical Definitions:

22 1. "alluvial valley floors" means the unconsolidated stream-laid deposits holding
23 streams where water availability is sufficient for subirrigation or flood irrigation
24 agricultural activities but does not include upland areas which are generally overlain
25 by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion,
26 deposits by unconcentrated runoff or slope wash, together with talus, other mass
27 movement accumulation and windblown deposits;

28 2. "approximate original contour" means that surface configuration achieved by
29 backfilling and grading of the mined area so that the reclaimed area, including any
30 terracing or access roads, closely resembles the general surface configuration of the

1 land prior to mining and blends into and complements the drainage pattern of the
2 surrounding terrain, with all highwalls and spoil piles eliminated; water
3 impoundments may be permitted where the NSCMP determines that they are in
4 compliance with section 2115(B)(8) of this Act;

5 3. “authorized land user” means a landowner, a person with valid homesite lease
6 issued by the Navajo Land Department, a person with a valid grazing permit issued
7 by the BIA, or a person with a valid permit, lease, right-of-way, or other type of
8 authorization for surface or subsurface use of Navajo regulatory program lands or
9 structures;

10 4. “cemetery” means any area of land where human bodies are interred, including
11 family burial grounds and any site or area where a body is interred in the traditional
12 Navajo way;

13 5. “commerce” means trade, traffic, commerce, transportation, transmission, or
14 communication among the several States/Tribes or between a State/Tribe and any
15 other place outside thereof, or between points in the same State/Tribe which directly
16 or indirectly affect interstate commerce;

17 6. “head-of-hollow fill” means a fill structure consisting of any material, other than
18 organic material, placed in the uppermost reaches of a hollow where side slopes of
19 the existing hollow, measured at the steepest point, are greater than 20 degrees or the
20 average slope of the profile of the hollow from the toe of the fill to the top of the fill
21 is greater than 10 degrees. In head-of-hollow fills the top surface of the fill, when
22 completed, is at approximately the same elevation as the adjacent ridge line, and no
23 significant area of natural drainage occurs above the fill draining into the fill area;

24 7. “imminent danger to the health and safety of the public” means the existence of
25 any condition or practice, or any violation of a permit or other requirement of this
26 Act in a surface coal mining and reclamation operation, which condition, practice, or
27 violation could reasonably be expected to cause substantial physical harm to persons
28 outside the permit area before such condition, practice, or violation can be abated. A
29 reasonable expectation of death or serious injury before abatement exists if a rational
30

1 person, subjected to the same conditions or practices giving rise to the peril, would
2 not expose himself or herself to the danger during the time necessary for abatement;

3 8. "landowner" means both the legal owner of record and the equitable owner of
4 record of the land;

5 9. "prime farmland" means land that is defined as prime farmland by the Secretary of
6 the U.S. Department of Agriculture on the basis of such factors as moisture
7 availability, temperature regime, chemical balance, permeability, surface layer
8 composition, susceptibility to flooding, and erosion characteristics, and which
9 historically has been used for intensive agricultural purposes, and as published in the
10 Federal Register;

11 10. "steep slope" means any slope above twenty degrees;

12 11. "unwarranted failure to comply" means the failure of a permittee to prevent the
13 occurrence of any violation of his or her permit or any requirement of this Act due to
14 indifference, lack of diligence, or lack of reasonable care, or the failure to abate any
15 violation of such permit or this Act due to indifference, lack of diligence, or lack of
16 reasonable care;

17 12. "valley fill" means a fill structure consisting of any material, other than organic
18 material, that is placed in a valley where side slopes of the existing valley, measured
19 at the steepest point, are greater than 20 degrees, or where the average slope of the
20 profile of the valley from the toe of the fill to the top of the fill is greater than 10
21 degrees; and

22 13. "water user" means a person with an ownership interest in the water resource, a
23 person with a valid right to the surface water or groundwater, a person with a valid
24 water use permit issued by the Navajo Nation Department of Water Resources Water
25 Code Administration, or a person with a valid permit, lease, or other type of
26 authorization for use of the waters of the Navajo Nation.

27 SEC. 1702. Findings

28 The Navajo Nation Council finds and declares that —

29 A. the extraction of coal from the earth can be accomplished by various methods of
30 mining, including surface mining;

1 B. the Navajo Nation owns and leases substantial and valuable deposits of coal, which
2 may be recovered through both surface and underground mining methods.
3 Commercial exploitation of coal resources yields significant benefits to the Navajo
4 Nation and its members, including royalty and tax income and employment
5 opportunities. Moreover, the commercial exploitation of coal resources contributes
6 greatly to the well-being of surrounding States, and enhances the energy self-
7 sufficiency and national security of the United States;

8 C. many surface coal mining operations on the Navajo Nation have resulted and may
9 result in disturbances of surface areas that burden and adversely affect the public
10 welfare by destroying or diminishing the utility of land for commercial, industrial,
11 residential, recreational, agricultural, cultural, and forestry purposes, by causing
12 erosion and landslides, by contributing to floods, by polluting the water, by
13 destroying vegetation, fish, and wildlife habitats, by impairing natural beauty, by
14 damaging the property of the Navajo Nation and its residents, by creating hazards
15 dangerous to life and property, by degrading quality of life in local communities, and
16 by counteracting governmental programs and efforts to conserve soil, water, and
17 other natural resources;

18 D. the Navajo Nation recognizes the need to establish appropriate standards to
19 minimize damage to the environment and to restore the productivity of the soil and
20 to protect the health and safety of the public;

21 E. surface coal mining and reclamation technologies are now developed so that the
22 effective and reasonable regulation of surface coal mining operations on the Navajo
23 Nation in accordance with the requirements of this Act is an appropriate and
24 necessary means to minimize so far as practicable the adverse social, economic, and
25 environmental effects of such mining operations;

26 F. the Navajo Nation shall set surface coal mining and reclamation standards
27 consistent with, and no less stringent than, the standards set forth in SMCRA and
28 regulations promulgated thereunder, in order to ensure that competitive pressures
29 among coal suppliers will not undermine the ability of the Navajo Nation to improve
30

1 and maintain adequate environmental standards for coal mining operations within the
2 Navajo Nation:

3 G. surface coal mining and reclamation operations contribute to the economic well-
4 being and general welfare of the Navajo Nation and should be conducted in an
5 environmentally sound manner, with proper respect for the characteristics, culture,
6 and traditions of the Navajo Nation and its people;

7 H. the comprehensive and cooperative effort established by this Act is necessary to
8 prevent or mitigate adverse environmental effects of present and future surface coal
9 mining operations;

10 I. the health, welfare, cultural integrity, and economic viability of the Navajo Nation
11 depend on its natural and human resources. The lands of the Navajo Nation have
12 enormous economic and social significance for the Navajo People, as rangeland for
13 the grazing of livestock, as homeland for the many thousands of Navajos who prefer
14 to live in the traditional Navajo way on the land, as farmland for the raising of crops,
15 as forests for timber development, as habitat for diverse species of wildlife, as the
16 source of plants and herbs vital to numerous traditional religious rites and
17 ceremonies, and as an embodiment of much of the spirit of traditional Navajo beliefs.
18 The increase in the Navajo population has caused the Navajo Nation land base to
19 become crowded in many areas. Thus, care must be taken to ensure that the positive
20 values of a one-time, temporary land use such as surface coal mining do not damage
21 the long-term interests of the Navajo Nation and its people; and

22 J. the regulation of land use within the territorial jurisdiction of the Navajo Nation for
23 all its residents is an essential component of the sovereignty of the Navajo Nation.
24 The Navajo Nation seeks self-sufficiency and should undertake full responsibility for
25 effectuating this component of Navajo Nation sovereignty.

26
27 SEC. 1703. Purposes

28 It is the purpose of this Act to —

29 A. establish a program for the Navajo Nation to protect people and the environment
30 from the adverse effects of surface coal mining operations;

1 B. assure that the rights of surface landowners, residents, water users, and authorized
2 land users are fully protected from such operations;

3 C. assure that surface coal mining operations are not conducted where reclamation as
4 required by this Act is not feasible;

5 D. assure that surface coal mining operations are conducted so as to protect the
6 environment;

7 E. assure that adequate procedures are undertaken to reclaim surface areas as
8 contemporaneously as possible with the surface coal mining operations;

9 F. assure that the coal supply essential to the Navajo Nation's economic and social
10 well-being is provided and strike a proper balance, consistent with this Act and
11 SMCRA, between protection of the environment and agricultural productivity and
12 the Navajo Nation's need for coal as an essential source of revenue;

13 G. assure that appropriate procedures are provided for public participation in the
14 development, revision, and enforcement of regulations, standards, reclamation plans,
15 or programs established by the Navajo Nation under this Act;

16 H. wherever necessary, exercise the full reach of the sovereign and delegated powers
17 of the Navajo Nation to the extent allowed by applicable laws to ensure the protection
18 of the public interest through effective control of surface coal mining operations; and

19 I. carry out the provisions and purposes of SMCRA and implementing federal
20 regulations, as amended.

21
22 CHAPTER 18 – NAVAJO SURFACE COAL MINING PROGRAM

23
24 SEC. 1801. Establishment, Employees, and Duties of the Navajo Surface Coal
25 Mining Program

26 A. There is established in the Navajo Nation Division of Natural Resources, Minerals
27 Department, the Navajo Surface Coal Mining Program to regulate surface coal
28 mining and reclamation operations and coal exploration on Navajo regulatory
29 program lands pursuant to this Act.

1 B. The NSCMP shall have a Program Manager who shall be hired in accordance with
2 Navajo Nation personnel practices, and who shall report to the Director of the Navajo
3 Nation Minerals Department. The Program Manager shall have the responsibilities
4 provided under subsection (C) of this section. Employees of the NSCMP shall be
5 recruited consistent with Navajo Nation laws and personnel practices on the basis of
6 their professional competence and capacity to administer the provisions of this Act.
7 The NSCMP may use employees of federal agencies on a reimbursable basis when
8 appropriate and where authorized by applicable federal law; Provided that, such
9 federal employees shall be subject to SMCRA section 201(f) and the federal agencies
10 and employees shall comply with the requirements of 30 CFR Part 706. The NSCMP
11 may use, on a reimbursable basis when appropriate, employees of other Navajo
12 Nation agencies to administer the provisions of this Act, providing that no legal
13 authority, program, or function in any Navajo Nation agency which has in its purpose
14 promoting the development or use of coal or other mineral resources or regulating
15 the health and safety of miners under the provisions of the Federal Coal Mine Health
16 and Safety Act of 1969 (83 Stat. 742) shall be transferred to the NSCMP.

17 C. The Program Manager shall —

18 1. administer the NSCMP and the Navajo regulatory program for controlling surface
19 coal mining and reclamation operations and coal exploration; make those
20 investigations and inspections necessary to ensure compliance with this Act; conduct
21 hearings, administer oaths, issue subpoenas, and compel the attendance of witnesses
22 and production of written or printed material as provided for in this Act; issue cease-
23 and-desist orders; review and vacate or modify or approve orders and decisions;
24 review and approve, disapprove, or conditionally approve permit applications for
25 surface coal mining operations and coal exploration; issue or deny permits for surface
26 coal mining operations and coal exploration; and order the suspension, revocation, or
27 withholding of any permit for surface coal mining operations and coal exploration
28 for failure to comply with any of the provisions of this Act or any rules and
29 regulations adopted pursuant thereto;

30

1 2. publish and promulgate, pursuant to the rulemaking procedures of Subpart 4 of the
2 Uniform Rules, such rules and regulations as may be necessary to carry out the
3 purposes and provisions of this Act, including procedures and requirements for
4 administrative adjudicatory hearings to be conducted by the NNOHA under this Act;
5 3. consult with federal agencies, other Navajo Nation agencies, and, where
6 appropriate, state and non-Navajo tribal agencies having expertise in the control and
7 reclamation of surface coal mining operations, to provide for effective administration
8 of this Act and to minimize unnecessary duplication of effort;
9 4. conduct a continuing study of surface coal mining and reclamation operations
10 within the Navajo Nation by collecting data, conducting experiments, and conducting
11 appropriate research in order to improve reclamation technology;
12 5. develop objective criteria and appropriate procedures and institutions for
13 determining those areas of Navajo regulatory program lands to be designated
14 unsuitable for all or certain types of surface coal mining pursuant to section 2122 of
15 this Act;
16 6. cooperate with other Navajo Nation and federal agencies and state and tribal
17 regulatory authorities to minimize duplication of inspections, enforcement, and
18 administration of this Act and SMCRA;
19 7. administer cooperative agreements with OSMRE, other federal agencies, and,
20 where appropriate, state and tribal agencies;
21 8. develop and implement the Navajo regulatory program for regulation of surface
22 coal mining and reclamation operations that reflects environmental, cultural, and
23 agricultural conditions of the Navajo Nation as provided in this Act;
24 9. assure that the decisions, goals, regulations, and non-confidential information of
25 the NSCMP are made available to the public at reasonable times and interpreted when
26 requested, consistent with Navajo Nation law;
27 10. notify OSMRE of potential criminal actions associated with surface coal mining
28 and reclamation operations on Navajo regulatory program lands and recommend that
29 OSMRE pursue criminal penalties under SMCRA; and
30

1 11. perform such other duties as may be provided by law and relate to the purposes
2 of this Act.

3 D. The Program Manager shall not use, either permanently or temporarily, any person
4 charged with responsibility of inspecting coal mines under the Federal Coal Mine
5 Health and Safety Act of 1969, unless he or she finds and publishes such finding in a
6 daily or weekly newspaper of general circulation in the Navajo Nation that such
7 activities would not interfere with such inspections under the 1969 Act.

8 E. No employee of the NSCMP or any other Navajo Nation employee performing
9 any function or duty under this Act shall have a direct or indirect financial interest in
10 underground or surface coal mining operations. A person shall not be deemed to
11 have a direct or indirect financial interest in underground or surface coal mining
12 operations by virtue of such person's membership in the Navajo Nation. No
13 employee of the NSCMP or any other Navajo Nation employee performing any
14 function or duty under this Act shall be eligible for a per capita distribution of any
15 proceeds from coal mining operations conducted on Indian reservation lands under
16 SMCRA. Whoever knowingly violates the provisions of this subsection shall, upon
17 conviction, be punished by a fine of not more than \$2,500, or by imprisonment for
18 not more than one year, or both, to the extent authorized by applicable law. The
19 Program Manager shall publish and promulgate regulations, in accordance with the
20 Uniform Rules, Subpart 4, that meet the minimum policies and procedures of 30 CFR
21 Part 705 to monitor and enforce the provisions of this subsection, including
22 appropriate rules for the filing by such employees of statements concerning their
23 financial interests which may be affected by this subsection and the review of such
24 statements and supplements thereto.

25 F. Petitions for issuance, amendment, or repeal of rule; filing; hearing or
26 investigation; notice of denial

27 1. After the NSCMP has adopted regulations as required by section 2101 of this Act,
28 any person may petition the Program Manager to initiate a proceeding for the
29 issuance, amendment, or repeal of a rule under this Act.

1 2. Such petitions shall be filed in the principal office of the Program Manager and
2 shall set forth only the facts which it is claimed established that it is necessary to
3 issue, amend, or repeal a rule under this Act.

4 3. The Program Manager may hold a public hearing or may conduct such
5 investigation or proceeding as he or she deems appropriate in order to determine
6 whether or not such petition should be granted.

7 4. Within 90 days after filing of a petition described in paragraph (1) of this
8 subsection, the Program Manager shall either grant or deny the petition. If the
9 Program Manager grants such petition, the Program Manager shall promptly
10 commence an appropriate proceeding in accordance with the provisions of Subpart 4
11 of the Uniform Rules. If the Program Manager denies such petition, the Program
12 Manager shall so notify the petitioner in writing setting forth the reasons for such
13 denial. The Program Manager's decision denying in whole or in part such petition
14 shall be subject to appeal pursuant to section 2126 of this Act.

15 5. A person may petition the Navajo Nation District Court for the District of Window
16 Rock for judicial review of a final regulation and may request amendment or repeal
17 of the regulation pursuant to Subpart 4 of the Uniform Rules.

18 G. The NSCMP shall not participate in any way in negotiations for and leasing of
19 Navajo Nation coal or other mineral resources.

20 H. The NSCMP is authorized to submit grant applications and receive and administer
21 grants under 30 CFR Chapter VII, Subchapter C. Funds received by the NSCMP for
22 any purpose whatsoever shall be disbursed and accounted for in accordance with this
23 Act and applicable Navajo Nation and federal laws.

24 I. The Navajo Nation hereby waives sovereign immunity for the limited purposes of
25 citizen suits arising under section 2120 of this Act or under section 520 of SMCRA,
26 judicial review under section 2126 of this Act, and judicial review under SMCRA
27 section 710(j)(4). The NSCMP shall be and hereby is clothed with the sovereign
28 immunity from suit enjoyed by the Navajo Nation, to the extent not waived in this
29 Act. Permittees and operators of surface coal mining and reclamation operations in
30 which the Navajo Nation has an ownership or controlling interest in the permittee or

1 operator are not clothed in sovereign immunity for the purposes of this Act and are
2 fully subject to the provisions of this Act.

3 J. The Program Manager shall closely monitor all pertinent legislation, both Navajo
4 Nation and federal, concerning coal mining, Indian lands, regulatory powers,
5 reclamation, and related issues to protect the interests of the Navajo Nation. The
6 Program Manager may represent the Navajo Nation at hearings and provide
7 comments, both written and oral, with respect to mining reclamation and regulatory
8 issues in the name of the Navajo Nation: Provided, that participation in such hearings
9 and such comments are reviewed and approved in accordance with applicable Navajo
10 Nation law.

11
12 CHAPTER 19 – RESERVED

13
14 CHAPTER 20 – RESERVED

15
16 CHAPTER 21 – CONTROL OF THE ENVIRONMENTAL IMPACTS OF
17 SURFACE COAL MINING

18
19 SEC. 2101. Promulgation of Implementing Regulations

20 A. After the enactment of this Act, the Program Manager shall publish and
21 promulgate regulations covering the standards and procedures for surface coal
22 mining and reclamation operations based on and incorporating the provisions set out
23 in this Act. The Program Manager shall follow the rulemaking procedures in Subpart
24 4 of the Uniform Rules, including providing public notice of these proposed
25 regulations and affording interested persons and Navajo Nation, federal, state, and
26 local governments a period of not less than 30 days following publication to review
27 and comment on the proposed regulations. The Program Manager also shall provide
28 at least one public hearing, in Window Rock, on the proposed regulations.

29 B. The Program Manager shall consult with OSMRE, BIA, BLM, and the Navajo
30 Nation Environmental Protection Agency, and solicit their comments prior to the

1 promulgation of such rules. Comments submitted by all agencies and the public shall
2 be considered by the Program Manager.

3
4 SEC. 2102. Reserved

5
6 SEC. 2103. Reserved

7
8 SEC. 2104. Reserved

9
10 SEC. 2105. Reserved

11
12 SEC. 2106. Permits

13 A. Persons engaged in surface coal mining within Navajo Nation; time limit;
14 exception

15 1. On the effective date of approval of the Navajo regulatory program by the
16 Secretary, pursuant to SMCRA sections 503, 504(e) and 710(j), no person shall
17 engage in or carry out on Navajo regulatory program lands any surface coal mining
18 operations unless such person has first obtained a permit issued by the NSCMP
19 pursuant to the Navajo regulatory program or holds a valid permit from OSMRE
20 under the Federal Program for Indian Lands. A person conducting surface coal
21 mining operations under a permit issued by OSMRE under the Federal Program for
22 Indian Lands may continue to conduct such operations as authorized in the permit,
23 subject to the provisions of paragraph (A)(2) of this section. OSMRE shall work with
24 the Navajo Nation to complete any permitting action begun prior to the effective date
25 of approval of the Navajo regulatory program.

26 2. Upon the effective date of approval of the Navajo regulatory program by the
27 Secretary, the NSCMP shall become the regulatory authority administering the
28 federal permits issued by OSMRE under the Federal Program for Indian Lands for
29 those surface coal mining operations on Navajo regulatory program lands that are
30 authorized under the federal permit. The NSCMP shall review such permits to

1 determine that the permit meets the requirements of this Act and the regulations
2 promulgated thereunder. The federal permittee shall also have the right to apply for
3 a tribal permit to supersede his or her federal permit. Should the Navajo regulatory
4 program contain additional requirements not contained in the Federal Program for
5 Indian Lands, the permittee will be provided the opportunity for an administrative
6 hearing and up to 180 days after notification by the NSCMP of such additional
7 requirements or the conclusion of the administrative hearing, if requested, to conform
8 his or her ongoing surface coal mining and reclamation operations to such additional
9 requirements. Upon the effective date of approval of the Navajo regulatory program
10 by the Secretary, the NSCMP shall also be responsible for the regulation of surface
11 coal mining and reclamation operations on Navajo regulatory program lands under
12 the initial regulatory program at 30 CFR Chapter VII, Subchapter B.

13 B. All permits issued pursuant to this Act shall be issued for a term not to exceed five
14 years: Provided, that if the applicant demonstrates that a specified longer term is
15 reasonably needed to allow the applicant to obtain necessary financing for equipment
16 and the opening of the operation, and if the application is full and complete for such
17 specified longer term, the NSCMP may grant a permit for such longer term. A
18 successor-in-interest to a permittee who applies for a new permit within 30 days of
19 succeeding to such interest, and who is able to obtain the bond coverage of the
20 original permittee, may continue surface coal mining and reclamation operations
21 according to the approved mining and reclamation plan of the original permittee until
22 such successor's application is granted or denied.

23 C. A permit shall terminate if the permittee has not commenced the surface coal
24 mining operations covered by such permit within three years of the permit issuance:
25 Provided, that the NSCMP may grant reasonable extensions of time upon a showing
26 that such extensions are necessary by reason of litigation precluding such
27 commencement or threatening substantial economic loss to the permittee, or by
28 reason of conditions beyond the control and without the fault or negligence of the
29 permittee: Provided further, that in the case of a coal lease issued by the Navajo
30 Nation for coal owned in whole or in part in fee by the Navajo Nation or held by the

1 United States in trust for the Navajo Tribe of Indians, no extension of time may
2 extend beyond the period allowed for development in accordance with such lease or
3 other applicable law and in the case of a coal lease issued under the federal Mineral
4 Leasing Act, as amended, extensions of time may not extend beyond the period
5 allowed for diligent development in accordance with section 7 of that Act: Provided
6 further, That with respect to coal to be mined for use in a synthetic fuel facility or
7 specific major electric generating facility, the permittee shall be deemed to have
8 commenced surface coal mining operations at such time as the construction of the
9 synthetic fuel or generating facility is initiated.

10 D. Renewal

11 1. Any valid permit issued pursuant to this Act shall carry with it the right of
12 successive renewal upon expiration with respect to areas within the boundaries of the
13 existing permit. The holders of the permit may apply for renewal and such renewal
14 shall be issued (provided, that on application for renewal the burden shall be on the
15 opponents of renewal), subsequent to fulfillment of the public notice requirements of
16 sections 2113 and 2114 of this Act unless it is established that and written findings
17 by the NSCMP are made that:

18 (a) the terms and conditions of the existing permit are not being satisfactorily met;

19 (b) the present surface coal mining and reclamation operations are not in compliance
20 with the environmental protection standards of this Act and the Navajo regulatory
21 program;

22 (c) the renewal requested substantially jeopardizes the operator's continuing
23 responsibility on existing permit areas;

24 (d) the operator has not provided evidence that the performance bond in effect for
25 said operation will continue in full force and effect for any renewal requested in such
26 application as well as any additional bond the NSCMP might require pursuant to
27 section 2109 of this Act; or

28 (e) any additional revised or updated information required by the NSCMP has not
29 been provided.

1 2. Prior to the approval of any permit renewal, the NSCMP shall provide notice to
2 the appropriate Navajo Nation Chapters, departments, commissions, and divisions,
3 and other public authorities.

4 3. If an application for renewal of a valid permit includes a proposal to extend the
5 mining operation beyond the boundaries authorized in the existing permit, the portion
6 of the application for renewal of a valid permit which addresses any new land areas
7 shall be subject to the full standards applicable to new applications under this Act.

8 4. Any permit renewal shall be for a term not to exceed the period of the original
9 permit established by this Act. An application for permit renewal shall be made at
10 least 120 days prior to the expiration of the valid permit.

11
12 SEC. 2107. Application Requirements

13 A. Each application for a surface coal mining and reclamation permit pursuant to this
14 Act shall be accompanied by a fee as determined by the NSCMP. Such fee may be
15 less than but shall not exceed the actual or anticipated cost of reviewing,
16 administering, and enforcing such permit issued pursuant to the Navajo regulatory
17 program. The NSCMP may develop procedures so as to enable the cost of the fee to
18 be paid over the term of the permit.

19 B. The permit application shall be submitted in a manner satisfactory to the NSCMP
20 and shall contain, among other items —

21 1. the names and addresses of (A) the permit applicant; (B) every landowner of the
22 property (surface and mineral) to be mined; (C) the holders of record of any leasehold
23 interest in the property; (D) any purchaser of record of the property under a real estate
24 contract; (E) any authorized land user; (F) the operator if he or she is a person
25 different from the applicant; and (G) if any of the above is a business entity other than
26 a single proprietor, the names and addresses of its principals, officers, and registered
27 agent for service of process pursuant to the Navajo Nation Corporation Code;

28 2. the names and addresses of the landowners of all surface and subsurface areas
29 adjacent to any part of the permit area;

1 3. a statement of any current or previous surface coal mining permits in the United
2 States held by the applicant and the permit identification, and each pending
3 application;

4 4. if the applicant is a partnership, corporation, association, or other business entity,
5 the following where applicable: the names and addresses of every officer, partner,
6 director, or person performing for the applicant a function similar to a director,
7 together with the name and address of any person owning of record 10 percent or
8 more of any class of voting stock of the applicant, and a list of all names under which
9 the applicant, partner, or principal shareholder previously operated a surface mining
10 operation within the United States within the five-year period preceding the date of
11 submission of the application;

12 5. a statement of whether the applicant or any subsidiary, affiliate, or persons
13 controlled by or under common control with the applicant, has ever held a federal,
14 state, or tribal mining permit, that in the five-year period prior to the date of
15 submission of the application has been suspended or revoked or has had a mining
16 bond or similar security deposited in lieu of bond forfeited and, if so, a brief
17 explanation of the facts involved;

18 6. a copy of the applicant's advertisement to be published in a newspaper of general
19 circulation in the locality of the proposed site at least once a week for four successive
20 weeks, and which includes the ownership, a description of the exact location and
21 boundaries of the proposed site sufficient so that the proposed operation is readily
22 locatable by local residents, and the location of where the application is available for
23 public inspection;

24 7. a description of the type and method of coal mining operation that exists or is
25 proposed, the engineering techniques used or proposed to be used, and the equipment
26 used or proposed to be used;

27 8. the anticipated or actual starting and termination dates of each phase of the mining
28 operation and the number of acres of land to be affected;

29 9. an accurate map or plan, to an appropriate scale, that clearly shows the land to be
30 affected as of the date of the application, the area of land within the permit area upon

1 which the applicant has the legal right to enter and commence surface mining
2 operations, and a statement of those documents upon which the applicant bases his
3 or her legal right to enter and commence surface mining operations on the area
4 affected and whether that right is the subject of pending court litigation: Provided,
5 that nothing in this Act shall be construed as vesting in the NSCMP the jurisdiction
6 to adjudicate property title disputes:

7 10. the name of the watershed and location of the surface stream or tributary into
8 which surface and pit drainage will be discharged:

9 11. a determination of the probable hydrologic consequences of the mining and
10 reclamation operations, both on and off the mine site, with respect to the hydrologic
11 regime, quantity and quality of water in surface water and groundwater systems,
12 including the dissolved and suspended solids under seasonal flow conditions, and the
13 collection of sufficient data for the mine site and surrounding areas so that an
14 assessment can be made by the NSCMP of the probable cumulative impacts of all
15 anticipated mining in the area upon the hydrology of the area and particularly upon
16 water availability: Provided, however, that the determination shall not be required
17 until such time as hydrologic information on the general area prior to mining is made
18 available from an appropriate Navajo Nation, federal, state, or tribal agency, and
19 Provided further, that the permit shall not be approved until such information is
20 available by the applicant and is incorporated into the application:

21 12. when requested by the NSCMP, the climatological factors that are peculiar to the
22 locality of the land to be affected, including the average seasonal precipitation, the
23 average direction and velocity of prevailing winds, and the seasonal temperature
24 ranges:

25 13. accurate maps to an appropriate scale clearly showing (A) the land to be affected
26 as of the date of application and (B) all types of information set forth on the
27 topographical maps of the U.S. Geological Survey of a scale of 1:24,000 or 1:25,000
28 or larger, including all manmade features and significant known archaeological sites
29 (including all Indian historical, burial, and religious sites) existing on the date of
30 application, provided, however, that information which pertains to such sites shall be

1 kept confidential and not made a matter of public record. Such a map or plan shall,
2 among other requirements specified by the NSCMP, show all boundaries of the land
3 to be affected, the boundary lines and names of present landowners of all surface
4 areas abutting the permit area, and the location of all buildings within 1,000 feet of
5 the permit area;

6 14. cross-sections, maps or plans of the land to be affected including the actual area
7 to be mined, prepared by or under the direction of and certified by a qualified
8 registered professional engineer or professional geologist, with assistance from
9 experts in related fields such as land surveying and landscape architecture, showing
10 the pertinent elevation and location of test borings or core samplings and depicting
11 the following information: the nature and depth of the various strata of overburden;
12 the location of groundwater, if encountered, and its quality; the nature and thickness
13 of any coal or rider seam above the coal seam to be mined; the nature of the stratum
14 immediately beneath the coal seam to be mined; all mineral crop lines and the strike
15 and dip of the coal to be mined, within the area of land to be affected; existing or
16 previous surface mining limits; the location and extent of known workings of any
17 underground mines, including mine openings to the surface; the location of aquifers;
18 the estimated elevation of the water table; the location of spoil, waste, or refuse areas
19 and topsoil preservation areas; the location of all impoundments for waste or erosion
20 control; any settling or water treatment facility; constructed or natural drainways and
21 the location of any discharges to any surface body of water on the area of land to be
22 affected or adjacent thereto; and profiles at appropriate cross-sections of the
23 anticipated final surface configuration that will be achieved pursuant to the operator's
24 proposed reclamation plan;

25 15. a statement of the result of test borings or core samplings from the permit area,
26 including logs of the drill holes, the thickness of the coal seam found, and an analysis
27 of the chemical properties of such coal; the sulfur content of any coal seam; chemical
28 analysis of potentially acid- or toxic-forming sections of the overburden; and a
29 chemical analysis of the stratum lying immediately underneath the coal to be mined,
30 except that the provisions of this paragraph may be waived by the NSCMP with

1 respect to the specific application by a written determination that such requirements
2 are unnecessary;

3 16. for those lands in the permit application which a reconnaissance inspection
4 suggests may be prime farmlands, a soil survey which shall be made or obtained
5 according to standards established by the Natural Resources Conservation Service in
6 order to confirm the exact location of such prime farmlands, if any.

7 C. Information pertaining to coal seams, test borings, core samplings, or soil samples
8 as required by section (B) above shall be made available to any person with an interest
9 which is or may be adversely affected: Provided, that information which pertains
10 only to the analysis of the chemical and physical properties of the coal (excepting
11 information regarding such mineral or elemental content which is potentially toxic in
12 the environment) shall be kept confidential and not made a matter of public record.

13 D. Applications for surface coal mining and reclamation permits pursuant to this Act
14 shall be submitted to the NSCMP in a format approved by the NSCMP. The NSCMP
15 shall notify and make available to each applicant for a surface coal mining and
16 reclamation permit the format in which the application must be submitted.

17 E. If the NSCMP finds that the probable total annual production at all locations of a
18 surface coal mining operation will not exceed 300,000 tons, the cost of the following
19 activities, which shall be performed by a qualified public or private laboratory or such
20 other public or private qualified entity designated by the NSCMP, shall be assumed
21 by the NSCMP upon the written request of the operator in connection with his or her
22 permit application;

23 1. the determination of probable hydrologic consequences required by subsection
24 (B)(11) of this section, including the engineering analyses and designs necessary for
25 the determination;

26 2. the development of cross-sections, maps and plans required by subsection (B)(14)
27 of this section;

28 3. the geologic drilling and statement of results of test borings and core samplings
29 required by subsection (B)(15) of this section;

30

1 4. the collection of archaeological information required by subsection (B)(13) of this
2 section and any other archaeological and historical information required by the
3 NSCMP, and the preparation of plans necessitated thereby;

4 5. pre-blast surveys required by section 2115(B)(15)(e) of this Act; and

5 6. the collection of site-specific resource information and the production of protection
6 and enhancement plans for fish and wildlife habitats and other environmental values
7 required by the NSCMP under this Act.

8 F. Each applicant for a permit shall be required to submit to the NSCMP, as part of
9 the permit application, a reclamation plan which shall meet the requirements of this
10 Act.

11 G. Each applicant for a surface coal mining and reclamation permit shall file a copy
12 of the application for public inspection at the appropriate Navajo Nation Chapter(s)
13 or public office designated by the NSCMP near where the mining is proposed to
14 occur, except for that information pertaining to archaeological information that is
15 protected as the normal course of business at the Navajo Nation and the coal seam
16 itself—or and any other information required to be kept confidential pursuant to
17 Navajo Nation law.

18 H. Each applicant for a permit shall be required to submit to the NSCMP, as part of
19 the permit application, a certificate issued by an insurance company authorized to do
20 business in the United States which certifies that the applicant has a public liability
21 insurance policy in force for the surface coal mining and reclamation operations for
22 which such permit is sought. Such policy shall provide for personal injury and
23 property damage protection in an amount adequate to compensate any persons
24 damaged as a result of surface coal mining and reclamation operations, including the
25 use of explosives, and entitled to compensation under the applicable provisions of
26 Navajo Nation law and/or state law. Such policy shall be maintained in full force and
27 effect during the terms of the permit or any renewal, including the duration of all
28 reclamation operations.

29 I. Each applicant for a surface coal mining and reclamation permit shall submit to the
30 NSCMP, as part of the permit application, a blasting plan which outlines the

1 procedures and standards by which the operator will meet the provisions of section
2 2115(B)(15) of this Act.

3 J. An operator that has received assistance pursuant to subsection (E) of this section
4 shall reimburse the NSCMP for the cost of the services rendered if the Program
5 Manager finds that the operator's actual and attributed annual production of coal for
6 all locations exceeds 300,000 tons during the 12 months immediately following the
7 date on which the operator is issued the surface coal mining and reclamation permit.

8
9 SEC. 2108. Reclamation Plan Requirements

10 A. Each reclamation plan submitted as part of a permit application to the NSCMP
11 shall include, in the degree of detail necessary to demonstrate that reclamation as
12 required by the Navajo regulatory program can be accomplished, a statement of:

13 1. the identification of the lands subject to surface coal mining operations, over the
14 estimated life of those operations and the size, sequence, and timing of the sub-areas
15 for which it is anticipated that individual permits for mining will be sought;

16 2. the condition of the land to be covered by the permit prior to any mining, including:
17 a. the uses existing at the time of the application, and if the land has a history of
18 previous mining, the uses which preceded any mining;

19 b. the capability of the land prior to mining to support a variety of uses, giving
20 consideration to soil and foundation characteristics, topography, and vegetative
21 cover, and, if applicable, a soil survey prepared pursuant to section 2107(B)(16) of
22 this Act; and

23 c. the productivity of the land prior to mining, including appropriate classification as
24 prime farmlands, as well as the average yield of food, fiber, forage, or wood products
25 from such lands obtained under high levels of management;

26 3. the use which is proposed to be made of the land following reclamation, including
27 a discussion of the utility and capacity of the reclaimed land to support a variety of
28 alternative uses and the relationship of such use to existing land-use policies and
29 plans, the comments of any landowners of the surface, and the comments of the
30 Navajo Nation Land Department and other Navajo Nation agencies, the BIA, and

1 state and local governments or agencies thereof that would have to initiate,
2 implement, approve or authorize the proposed use of the land following reclamation:
3 4. a detailed description of how the use which is proposed to be made of the land
4 following reclamation is to be achieved and the necessary support activities which
5 may be needed to achieve the proposed land use;
6 5. the engineering techniques proposed to be used in mining and reclamation and a
7 description of the major equipment to be utilized; a plan for the control of surface
8 water drainage and of water accumulation; a plan, where appropriate, for backfill,
9 soil stabilization, compaction and grading, and appropriate revegetation; a plan for
10 soil reconstruction, replacement, and stabilization, pursuant to the performance
11 standards in sections 2115(B)(7)(a), (b), (c) and (d) of this Act, for those food, forage,
12 and forest lands identified in section 2115(B)(7) of this Act; an estimate of the cost
13 per acre of the reclamation, including a statement as to how the permittee plans to
14 comply with each of the requirements set out in section 2115 of this Act;
15 6. the consideration which has been given to maximize the utilization and
16 conservation of the solid fuel resource being recovered so that re-affecting the land in
17 the future can be eliminated or minimized;
18 7. a detailed estimated timetable for accomplishing each major step in the reclamation
19 plan;
20 8. the consideration which has been given to making the surface mining and
21 reclamation operations consistent with the plans of the surface landowners and
22 applicable Navajo Nation, BIA, state, and local land-use plans and programs;
23 9. the steps to be taken to comply with applicable air and water quality laws and
24 regulations and any applicable health and safety standards, including a detailed
25 description of how the applicant proposes to conduct dust abatement during surface
26 mining and reclamation operations;
27 10. the consideration which has been given to developing the reclamation plan in a
28 manner consistent with the local physical, environmental, and climatological
29 conditions;
30

1 11. all lands, interests in lands, or options on such interests held by the applicant or
2 pending bids by the applicant on interests in lands, which lands are contiguous to the
3 area to be covered by the permit;

4 12. the results of test borings which the applicant has made at the area to be covered
5 by the permit, or other equivalent information and data in a form satisfactory to the
6 NSCMP, including the location of groundwater, and an analysis of the chemical and
7 physical properties of the coal and overburden, including the acid-forming properties
8 of the mineral contents and overburden: Provided, that information which pertains
9 only to the analysis of the chemical and physical properties of the coal (excepting
10 information regarding such mineral or elemental contents which is potentially toxic
11 in the environment) shall be kept confidential and not made a matter of public record;

12 13. a detailed description of the measures to be taken during the mining and
13 reclamation process to ensure the protection of:

14 a. the quality of surface water and groundwater systems, both on- and offsite, from
15 the adverse effects of the mining and reclamation process;

16 b. the rights of present water users to surface water and groundwater systems, both
17 on- and offsite; and

18 c. the quantity of surface water and groundwater systems, both on- and offsite, from
19 adverse effects of the mining and reclamation process, or to provide alternative
20 sources of water where such protection of water quantity cannot be ensured; and

21 14. such other requirements as the NSCMP shall prescribe by regulations.

22 B. Any information required by this section which is not required to be held in
23 confidence shall be a matter of public record.

24
25 SEC. 2109. Performance Bonds

26 A. After a surface coal mining and reclamation permit application has been approved
27 but before such a permit is issued, the applicant shall file with the NSCMP, on a form
28 prescribed and furnished by the NSCMP, a bond for performance payable to the
29 Navajo Nation and conditional upon faithful performance of all the requirements of
30 this Act and the permit. The bond shall cover that area of land within the permit area

1 upon which the operator will initiate and conduct surface coal mining and reclamation
2 operations within the initial term of the permit. As succeeding increments of surface
3 coal mining and reclamation operations are to be initiated and conducted within the
4 permit area, the permittee shall file with the NSCMP an additional bond or bonds to
5 cover such increments in accordance with this section. The amount of the bond
6 required for each bonded area shall depend upon the reclamation requirements of the
7 approved permit; reflect the probable difficulty of reclamation considering such
8 factors as the site's topography, geology, hydrology, and revegetation potential; and
9 shall be determined by the NSCMP. The amount of the bond shall be sufficient to
10 ensure the completion of the reclamation plan if the work had to be performed by the
11 NSCMP in the event of forfeiture, and in no case shall the bond for the entire area
12 under one permit be less than \$10,000.

13 B. Liability under the bond shall be for the duration of the surface coal mining and
14 reclamation operation and for a period coincident with the operator's responsibility
15 under the revegetation requirements in section 2115 of this Act. The bond shall be
16 executed by the operator and a corporate surety licensed to do business in the state
17 where such operation is located, except that the operator may elect to deposit cash,
18 negotiable bonds of the United States Government or such state, or negotiable
19 certificates of deposit of any bank organized or transacting business in the United
20 States. The cash deposit or market value of such securities shall be equal to or greater
21 than the amount of the bond required for the bonded area: Provided, that the manner
22 of deposit and the institution where the deposit is to be made must be approved
23 specifically by the NSCMP and the Attorney General.

24 C. Cash or securities so deposited shall be deposited upon the same terms as the terms
25 upon which surety bonds may be deposited. Such securities shall be security for the
26 repayment of such negotiable certificates of deposit.

27 D. The amount of the bond or deposit required and the terms of each acceptance of
28 the applicant's bond shall be adjusted by the NSCMP from time to time as affected
29 land acreages are increased or decreased or where the anticipated cost of future
30 reclamation changes.

1
2 SEC. 2110. Permit Approval or Denial

3 A. Upon the basis of a complete mining application and reclamation plan or a revision
4 or renewal thereof, as required by this Act, and pursuant to the Navajo regulatory
5 program, including public notification and an opportunity for a public hearing as
6 required by section 2113 of this Act, the NSCMP shall grant, require modification of,
7 or deny the application for a permit in a reasonable time set by the NSCMP and notify
8 the applicant in writing. The applicant for a permit, or revision of a permit, shall have
9 the burden of establishing that his or her application is in compliance with all the
10 requirements of the Navajo regulatory program. Within ten days after the granting
11 of a permit, the NSCMP shall notify the President of the Navajo Nation, the Speaker
12 of the Navajo Nation Council, and officials of the local governments in which the
13 area of land to be affected is located that a permit has been issued and shall describe
14 the location of the land.

15 B. No permit or revision application shall be approved unless the application
16 affirmatively demonstrates and the NSCMP finds in writing, on the basis of the
17 information set forth in the application or from information otherwise available,
18 which will be documented in the approval and made available to the applicant, that

19 ==

20 1. the permit application is accurate and complete and that all the requirements of this
21 Act and the Navajo regulatory program have been complied with;

22 2. the applicant has demonstrated that reclamation as required by this Act and the
23 Navajo regulatory program can be accomplished under the reclamation plan
24 contained in the permit application;

25 3. the NSCMP has assessed the probable cumulative impact of all anticipated mining
26 in the area on the hydrologic balance specified in section 2107(B) of this Act, and the
27 proposed operation has been designed to prevent material damage to the hydrologic
28 balance outside the permit area;

29 4. the area proposed to be mined is not included within an area designated unsuitable
30 for surface coal mining pursuant to section 2122 of this Act or is not within an area

1 under study for such designation in an administrative proceeding commenced
2 pursuant to section 2122(A)(4)(c) or (B) of this Act (unless in such an area as to
3 which an administrative proceeding has commenced pursuant to section
4 2122(A)(4)(c) of this Act, the operator making the permit application demonstrates
5 that, prior to January 1, 1977, he or she has made substantial legal and financial
6 commitments in relation to the operation for which he or she is applying for a permit):

7 5. the proposed surface coal mining operation would —

8 a. not interrupt, discontinue, or preclude farming on alluvial valley floors that are
9 irrigated or naturally sub-irrigated, but excluding undeveloped range lands which are
10 not significant to farming on said alluvial valley floors and those lands as to which
11 the NSCMP finds that if the farming that will be interrupted, discontinued, or
12 precluded is of such small acreage as to be of negligible impact on the farm's
13 agricultural production, or

14 b. not materially damage the quantity or quality of water in surface water or
15 groundwater systems that supply such valley floors in paragraph (a) of subsection
16 (B)(5) of this section.

17 6. in cases where the private mineral estate has been severed from the private surface
18 estate, the applicant has submitted to the NSCMP —

19 a. the written consent of the surface landowner to the extraction of coal by surface
20 mining methods; or

21 b. a conveyance that expressly grants or reserves the right to extract the coal by
22 surface mining methods; or

23 c. if the conveyance does not expressly grant the right to extract coal by surface
24 mining methods, the surface-subsurface legal relationship shall be determined in
25 accordance with applicable law: Provided, That nothing in this Act shall be construed
26 to authorize the NSCMP to adjudicate property rights disputes.

27 C. The applicant shall file with his or her permit application a schedule listing any
28 and all notices of violations of this Act, SMCRA, and any other law, rule, or
29 regulation of the Navajo Nation or the United States, or of any department or agency
30 of the Navajo Nation or in the United States pertaining to air or water environmental

1 protection incurred by the applicant in connection with any surface coal mining
2 operation during the three-year period prior to the date of application. The schedule
3 shall also indicate the final resolution of any such notice of violation. Where the
4 schedule or other information available to the NSCMP indicates that any surface coal
5 mining operation owned or controlled by the applicant is currently in violation of this
6 Act or such other laws referred to [in] this subsection, the permit shall not be issued
7 until the applicant submits proof that such violation has been corrected or is in the
8 process of being corrected to the satisfaction of the NSCMP or other department or
9 agency which has jurisdiction over such violation. No permit shall be issued to an
10 applicant after a finding by the NSCMP, after opportunity for an administrative
11 hearing, that the applicant, or the operator specified in the application, controls or has
12 controlled mining operations with a demonstrated pattern of willful violations of this
13 Act of such nature and duration with such resulting irreparable damage to the
14 environment as to indicate an intent not to comply with the provisions of this Act.

15 D. In addition to finding the application in compliance with subsection (B) of this
16 section, if the area proposed to be mined contains prime farmland pursuant to section
17 2107(B)(16) of this Act, the NSCMP shall, after consultation with the Navajo Nation
18 Department of Agriculture and the U.S. Department of Agriculture, and pursuant to
19 regulations issued by the NSCMP, grant a permit to mine on prime farmland if the
20 NSCMP finds in writing that the operator has the technological capability to restore
21 such mined area, within a reasonable time, to equivalent or higher levels of yield as
22 non-mined prime farmland in the surrounding area under equivalent levels of
23 management, and can meet the soil reconstruction standards in section 2115(B)(7) of
24 this Act. Except for compliance with subsection (B) of this section, the requirements
25 of this paragraph shall apply to all permits issued after August 3, 1977.

26
27 SEC. 2111. Revision of Permits

28 A. During the term of the permit, the permittee may submit an application for a
29 revision of the permit, together with a revised reclamation plan, to the NSCMP.
30

1 1. An application for a revision of a permit shall not be approved unless the NSCMP
2 finds that reclamation as required by this Act, and the Navajo regulatory program can
3 be accomplished under the revised reclamation plan. The revision shall be approved
4 or disapproved within a period of time established by the Navajo regulatory program.
5 The NSCMP shall establish guidelines for a determination of the scale or extent of a
6 revision request for which all permit application information requirements and
7 procedures, including notice and hearings, shall apply: Provided, that any revisions
8 which propose significant alterations in the reclamation plan shall, at a minimum, be
9 subject to public notice, comment, and hearing requirements set forth in section 2113
10 of this Act.

11 2. Any extensions to the area covered by the permit, except incidental boundary
12 revisions, must be made by application for another permit.

13 B. No transfer, assignment, or sale of the rights granted under any permit issued
14 pursuant to this Act shall be made without the written approval of the NSCMP.

15 C. The NSCMP, within a time limit prescribed in the regulations promulgated by the
16 NSCMP, shall review outstanding permits and may require reasonable revision or
17 modification of the permit provisions during the term of such permit: Provided, that
18 such revision or modification shall be based upon written findings and subject to the
19 public notice, comment, and hearing requirements set forth in section 2113 of this
20 Act.

21
22 SEC. 2112. Coal Exploration Permits

23 A. Coal exploration operations which substantially disturb the natural land surface
24 shall be conducted in accordance with exploration regulations issued by the NSCMP.
25 Such regulations shall include, at a minimum: (1) the requirement that prior to
26 conducting any exploration under this section, any person must file with the NSCMP
27 an application for a permit to conduct coal exploration, which shall include a
28 description of the exploration area, a description of the methods and equipment to be
29 used to conduct the coal exploration, and the period of supposed exploration, and (2)
30 provisions for reclamation, in accordance with the performance standards in section

1 2115 of this Act, of all lands disturbed in exploration, including excavations, roads,
2 drill holes, and the removal of necessary facilities and equipment.

3 B. Information submitted to the NSCMP pursuant to this subsection as confidential,
4 concerning trade secrets or privileged commercial or financial information which
5 relates to the competitive rights of the person or entity intending to explore the
6 described area, shall not be available for public examination.

7 C. Any person who conducts any coal exploration activities which substantially
8 disturb the natural land surface in violation of this section or regulations issued
9 pursuant thereto shall be subject to the provisions of section 2118 of this Act.

10 D. No operator shall conduct coal exploration without the specific written approval
11 of, and a coal exploration permit issued by, the NSCMP.

12 E. Coal exploration on Federal lands shall be governed by section 4 of the Federal
13 Coal Leasing Amendments Act of 1976 (90 Stat. 1085).

14
15 SEC. 2113. Public Notice and Informal Conferences

16 A. At the time of submission of an application for a surface coal mining and
17 reclamation permit, or revision of an existing permit, pursuant to the provisions of
18 this Act, the applicant shall submit to the NSCMP a copy of his or her advertisement
19 of the ownership, precise location, and boundaries of the land to be affected. The
20 advertisement shall provide for a public comment period on the application of at least
21 30 days following the publication of the last advertisement, and shall include notice
22 of an informal conference if the NSCMP determines there is sufficient interest in the
23 application. As soon as the NSCMP approves the form and content of the
24 advertisement, the applicant shall place such advertisement in a local newspaper of
25 general circulation in the locality of the proposed surface mine at least once a week
26 for four consecutive weeks, as required by section 2107(B)(6) of this Act. The
27 NSCMP shall notify appropriate agencies of the Navajo Nation, various local
28 governmental bodies, planning agencies, sewage and water treatment authorities, and
29 water companies in the locality in which the proposed surface mining will take place,
30 notifying them of the operator's intention to surface mine a particularly described

1 tract of land and indicating the application's permit number and where a copy of the
2 proposed mining and reclamation plan may be inspected. These local bodies,
3 agencies, authorities, or companies may submit written comments on the mining
4 application, within the public comment period, with respect to the effects of the
5 proposed operation on the environment which are within their area of responsibility.
6 Such comments shall immediately be transmitted to the applicant by the NSCMP and
7 be made available to the public at the same location(s) as the mining application.

8 B. Any person having an interest which is or may be adversely affected or the officer
9 or head of any Navajo Nation, federal, or local governmental agency or authority
10 shall have the right to file written objections to the proposed initial or revised
11 application for a permit for surface coal mining and reclamation operation with the
12 NSCMP within 30 days after the last publication of the above notice and request an
13 informal conference on the application if one has not already been scheduled pursuant
14 to subsection (A) of this section. Such objections shall immediately be transmitted
15 to the applicant by the NSCMP and shall be made available to the public. If written
16 objections are filed and an informal conference is requested, the NSCMP shall hold
17 the conference in the locality of the proposed mining and reclamation operation if
18 requested within a reasonable time of the receipt of such objections or request. If not
19 already advertised under subsection (A) of this section, the date, time and location of
20 the conference shall be advertised by the NSCMP in a newspaper of general
21 circulation in the locality at least two weeks prior to the scheduled conference date.
22 The NSCMP may arrange with the applicant, upon request by any party to the
23 administrative proceedings, access to the proposed mining area for the purpose of
24 gathering information relevant to the conference. An electronic or stenographic
25 record shall be made of the informal conference. Such record shall be maintained
26 and be accessible to the parties until final release of the applicant's performance bond.
27 In the event all parties requesting the informal conference withdraw their request
28 prior to the informal conference, such informal conference need not be held.

29
30 SEC. 2114. Decisions of the Navajo Surface Coal Mining Program and Appeals

1 A. If an informal conference has been held pursuant to section 2113(B) of this Act,
2 the NSCMP shall issue and furnish the applicant for a permit and persons who are
3 parties to the administrative proceedings with the written finding of the NSCMP,
4 granting or denying the permit in whole or in part and stating the reasons therefor,
5 within the 60 days of said hearings.

6 B. If there has been no informal conference held pursuant to section 2113(B) of this
7 Act, the NSCMP shall notify the applicant for a permit within a reasonable time as
8 determined by the NSCMP and set forth in regulations, taking into account the time
9 needed for proper investigation of the site, the complexity of the permit application,
10 and whether or not written objection to the application has been filed, whether the
11 application has been approved or disapproved in whole or part.

12 C. If the application is approved, the permit shall be issued. If the application is
13 disapproved, specific reasons therefor must be set forth in the notification. Within
14 30 days after the applicant is notified of the final decision of the NSCMP on the
15 permit application, the applicant or any person with an interest which is or may be
16 adversely affected may request a hearing on the reasons for the final determination.
17 The NNOHA shall hold a hearing within 30 days of such request and provide
18 notification to all interested parties at the time that the applicant is so notified. Such
19 hearing shall be of record, adjudicatory in nature and no person who presided at a
20 conference under section 2113(B) of this Act shall either preside at the hearing or
21 participate in this decision thereon or in any administrative appeal therefrom. Within
22 30 days after the hearing the NNOHA shall issue and furnish the applicant, and all
23 persons who participated in the hearing, with the written decision of the NNOHA
24 granting or denying the permit in whole or in part and stating the reasons therefor.

25 D. Where a hearing is requested pursuant to subsection (C) of this section, the
26 NNOHA may, under such conditions as it may prescribe, grant such temporary relief
27 as it deems appropriate pending final determination of the proceedings if –

28 1. all parties to the proceedings have been notified and given an opportunity to be
29 heard on a request for temporary relief;
30

1 2. the person requesting such relief shows that there is a substantial likelihood that he
2 or she will prevail on the merits of the final determination of the proceeding; and
3 3. such relief will not adversely affect the public health or safety or cause significant
4 imminent environmental harm to land, air, or water resources.

5 E. For the purpose of such hearing, the NNOHA may administer oaths, subpoena
6 witnesses, or written or printed materials, compel attendance of witnesses, or
7 production of the materials, and take evidence including but not limited to site
8 inspections of the land to be affected and other surface coal mining operations carried
9 on by the applicant in the general vicinity of the proposed operation. A verbatim
10 record of each public hearing required by this Act shall be made, and a transcript
11 made available on the motion of any party or by order of the NNOHA.

12 F. Any applicant or any person with an interest which is or may be adversely affected,
13 who has participated in the administrative proceedings as an objector, and who is
14 aggrieved by the final permit decision of the NNOHA, or if the NSCMP or the
15 NNOHA fails to act within the time limits specified in this Act, shall have the right
16 to appeal the final permit decision in accordance with section 2126 of this Act.

17
18 SEC. 2115. Performance Standards

19 A. Any permit issued under the Navajo regulatory program to conduct surface coal
20 mining operations shall require that such surface coal mining operations will meet all
21 applicable performance standards of this Act, and such other requirements as the
22 NSCMP shall promulgate in the Navajo regulatory program.

23 B. General performance standards shall be applicable to all surface coal mining and
24 reclamation operations and shall require an operation as a minimum to —

25 1. conduct surface coal mining operations so as to maximize the utilization and
26 conservation of the solid fuel resource being recovered so that reffecting the land in
27 the future through surface coal mining can be minimized or eliminated;

28 2. restore the land affected to a condition capable of supporting the uses which it was
29 capable of supporting prior to any mining, or higher or better uses of which there is
30 reasonable likelihood, so long as such use or uses do not present any actual or

1 probable hazard to public health or safety or pose any actual or probable threat of
2 water diminution or pollution, and the permit applicant's declared proposed land use
3 following reclamation is not deemed to be impractical or unreasonable, inconsistent
4 with applicable land-use policies and plans, involves unreasonable delay in
5 implementation, or violates federal or Navajo Nation law or applicable laws of states
6 or local governments;

7 3. with respect to all surface coal mining operations, backfill, compact (where
8 advisable to ensure stability or to prevent leaching of toxic materials), and grade in
9 order to restore the approximate original contour of the land with all highwalls, spoil
10 piles, and depressions eliminated (unless small depressions are needed in order to
11 retain moisture to assist revegetation or as otherwise authorized pursuant to this Act):
12 Provided, however, that in surface coal mining which is carried out at the same
13 location over a substantial period of time where the operation transects the coal
14 deposit, and the thickness of the coal deposits relative to the volume of the
15 overburden is large and where the operator demonstrates that the overburden and
16 other spoil and waste materials at a particular point in the permit area or otherwise
17 available from the entire permit area is insufficient, giving due consideration to
18 volumetric expansion, to restore the approximate original contour, the operator, at a
19 minimum, shall backfill, grade, and compact (where advisable) using all available
20 overburden and other spoil and waste materials to attain the lowest practicable grade
21 but not more than the angle of repose, to provide adequate drainage and to cover all
22 acid-forming and other toxic materials, in order to achieve an ecologically sound land
23 use compatible with the surrounding region: And provided further, that in surface
24 coal mining where the volume of overburden is large relative to the thickness of the
25 coal deposit and where the operator demonstrates that due to volumetric expansion
26 the amount of overburden and other spoil and waste materials removed in the course
27 of the mining operation is more than sufficient to restore the approximate original
28 contour, the operator shall after restoring the approximate contour, backfill, grade
29 and compact (where advisable) the excess overburden and other spoil and waste
30 materials to attain the lowest grade but not more than the angle of repose, and to cover

1 all acid-forming and other toxic materials, in order to achieve an ecologically sound
2 land use compatible with the surrounding region and that such overburden or spoil
3 shall be shaped and graded in such a way as to prevent slides, erosion, and water
4 pollution and shall be revegetated in accordance with the requirements of this Act;

5 4. stabilize and protect all surface areas, including spoil piles affected by the surface
6 coal mining and reclamation operation, to effectively control erosion and attendant
7 air and water pollution;

8 5. remove the topsoil from the land in a separate layer, replace it on the backfill area,
9 or if not utilized immediately, segregate it in a separate pile from other spoil and
10 when the topsoil is not replaced on a backfill area within a time short enough to avoid
11 deterioration of the topsoil, maintain a successful cover thereafter by quick-growing
12 plants or other means so that the topsoil is preserved from wind and water erosion,
13 remains free of any contamination by other acid or toxic materials, and is in a usable
14 condition for sustaining vegetation when restored during reclamation, except if the
15 topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if
16 other strata can be shown to be more suitable for vegetation requirements, then the
17 operator shall remove, segregate, and preserve in a like manner such other strata
18 which are best able to support vegetation;

19 6. restore the topsoil or the best available subsoil which is best able to support
20 vegetation;

21 7. for all prime farmlands, as identified in section 2107(B)(16) of this Act, to be
22 mined and reclaimed, soil removal, storage, replacement, and reconstruction shall be
23 conducted according to specifications established by the Natural Resources
24 Conservation Service, and the operator shall, as a minimum, be required to —

25 a. segregate the A horizon of the natural soil, except where it can be shown that other
26 available soil materials will create a final soil having a greater productive capacity;
27 and if not utilized immediately, stockpile this material separately from other spoil,
28 and provide needed protection from wind and water erosion or contamination by
29 other acid or toxic material;

30

1 b. segregate the B horizon of the natural soil, or underlying C horizons or other strata,
2 or a combination of such horizons or other strata that are shown to be both texturally
3 and chemically suitable for plant growth and that can be shown to be equally or more
4 favorable for plant growth than the B horizon, in sufficient quantities to create in the
5 regraded final soil a root zone of comparable depth and quality to that which existed
6 in the natural soil; and if not utilized immediately, stockpile this material separately
7 from other spoil, and provide needed protection from wind and water erosion or
8 contamination by other acid or toxic material;

9 c. replace and regrade the root zone material described in subparagraph (b) of this
10 subsection with proper compaction and uniform depth over the regraded spoil
11 material; and

12 d. redistribute and grade in a uniform manner the surface soil horizon described in
13 subparagraph (a) of this subsection;

14 8. create, if authorized in the approved surface coal mining and reclamation plan and
15 permit, permanent impoundments of water on mining sites as part of reclamation
16 activities only when it is adequately demonstrated that:

17 a. the size of the impoundment is adequate for its intended purposes;

18 b. the impoundment dam construction will be so designed as to achieve the necessary
19 stability with an adequate margin of safety compatible with that of structures
20 constructed under Public Law 83-566 (16 U.S.C. 1006);

21 c. the quality of impounded water will be suitable on a permanent basis for its
22 intended use and that discharges from the impoundment will not degrade the water
23 quality in the receiving stream below water quality standards established pursuant to
24 applicable federal, Navajo Nation, state, and non-Navajo tribal laws;

25 d. the level of water will be reasonably stable;

26 e. final grading will provide adequate safety and access for proposed water users; and

27 f. such water impoundments will not result in the diminution of the quality or quantity
28 of water utilized by adjacent or surrounding landowners, water users, and authorized
29 land users for agricultural, industrial, recreational, or domestic uses;

1 9. conduct any augering or highwall mining operation associated with surface mining
2 in a manner to maximize the recoverability of mineral reserves remaining after the
3 operation and reclamation are complete and seal all auger or highwall mining holes
4 with an impervious and noncombustible material in order to prevent drainage except
5 where the NSCMP determines that the resulting impoundment of water in such auger
6 or highwall mining holes may create a hazard to the environment or to public health
7 or safety: Provided, that the NSCMP may prohibit augering or highwall mining if
8 necessary to maximize the utilization, recoverability, or conservation of the solid fuel
9 resources or to protect against adverse water quality impacts;

10 10. minimize the disturbances to the prevailing hydrologic balance at the mine site
11 and in associated offsite areas and to the quality and quantity of water in surface water
12 and groundwater systems both during and after surface coal mining operations and
13 during reclamation by —

14 a. avoiding acid or other toxic mine drainage by such measures as, but not limited to
15 —

16 i. preventing or removing water from contact with toxic-producing deposits;

17 ii. treating drainage to reduce toxic content which adversely affects downstream
18 water upon being released to watercourses;

19 iii. casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping
20 acid or other toxic drainage from entering surface water and groundwater;

21 b. Operations and Structures

22 i. conducting surface coal mining operations so as to prevent, to the extent possible
23 using the best technology currently available, additional contributions of suspended
24 solids to streamflow, or runoff outside the permit area, but in no event shall
25 contributions be in excess of requirements set by applicable federal, Navajo Nation,
26 state, and non-Navajo tribal law;

27 ii. constructing any siltation structures pursuant to subparagraph (b)(i) of this
28 subsection prior to commencement of surface coal mining operations, such structures
29 to be certified by a qualified registered engineer or a qualified professional land
30 surveyor registered by any State that authorizes land surveyors to prepare and certify

1 such maps or plans that they are constructed as designed and as approved in the
2 reclamation plan;

3 c. cleaning out and removing temporary or large settling ponds or other siltation
4 structures from drainways after disturbed areas are revegetated and stabilized, and
5 depositing the silt and debris at a site and in a manner approved by the NSCMP;

6 d. restoring recharge capacity of the mined area to approximate premining conditions;

7 e. avoiding channel deepening or enlargement in operations requiring the discharge
8 of water from mines;

9 f. preserving, throughout the mining and reclamation process, the essential
10 hydrologic functions of alluvial valley floors; and

11 g. such other actions as the NSCMP may prescribe;

12 11. with respect to the surface disposal of mine wastes, tailings, coal processing
13 wastes, and other wastes in areas other than the mine workings or excavations,
14 stabilize all waste piles in designated areas through construction in compacted layers,
15 including the use of incombustible and impervious materials if necessary, and ensure
16 that the final contour of the waste pile will be compatible with natural surroundings
17 and that the site can and will be stabilized and revegetated according to the provisions
18 of this Act;

19 12. refrain from surface coal mining within 500 feet of active and abandoned
20 underground mines in order to prevent breakthroughs and to protect the health or
21 safety of miners: Provided, that the NSCMP shall permit an operator to mine near,
22 through, or partially through an abandoned underground mine or closer to an active
23 underground mine if (A) the nature, timing, and sequencing of the approximate
24 coincidence of specific surface mine activities with specific underground mine
25 activities are jointly approved by the NSCMP and the appropriate regulatory
26 authority concerned with the health and safety of underground miners, and (B) such
27 operations will result in improved resource recovery, the abatement of water
28 pollution, or the elimination of hazards to public health and safety;

29 13. design, locate, construct, operate, maintain, enlarge, modify, and remove or
30 abandon, in accordance with the standards and criteria of 30 CFR 816.81 through

1 816.87, all existing and new coal mine waste piles consisting of mine wastes, tailings,
2 coal processing wastes, or other liquid and solid wastes, and used either temporarily
3 or permanently as dams or embankments;

4 14. ensure that all debris, acid-forming materials, toxic materials, or materials
5 constituting a fire hazard are treated or buried and compacted or otherwise disposed
6 of in a manner designed to prevent the contamination of surface water or groundwater
7 and that contingency plans are developed to prevent sustained combustion;

8 15. ensure that explosives are used only in accordance with existing Navajo Nation
9 and federal law and the regulations promulgated by the NSCMP, which shall include
10 provisions to —

11 a. provide adequate advance written notice to local governments, residents, and
12 authorized land users who might be affected by the use of such explosives by
13 publication of the planned blasting schedule in a newspaper of general circulation in
14 the locality, and by mailing a copy of the proposed blasting schedule to every resident
15 living within ½ mile of the proposed blasting site, and by providing daily notice to
16 resident/occupiers in such areas prior to any blasting;

17 b. maintain for a period of at least three years, and make available for public
18 inspection upon request, a log detailing the location of the blasts, the pattern and
19 depth of the drill holes, the amount of explosive used per hole, and the order and
20 length of delay in the blasts;

21 c. limit the type of explosives and detonating equipment and the size, the timing and
22 the frequency of blasts based upon the physical conditions of the site so as to prevent
23 (i) injury to persons, (ii) damage to public and private property outside the permit
24 area, (iii) adverse impacts on any underground mine, and (iv) change in the course,
25 channel, or availability of ground or surface water outside the permit area;

26 d. require that all blasting operations be conducted by trained and competent persons
27 as certified by the NSCMP;

28 e. provide that upon the request of a resident or owner of a manmade dwelling or
29 structure within ½ mile of any portion of the permitted area the applicant or permittee
30 shall conduct a pre-blasting survey of such structures and submit the survey to the

1 NSCMP and a copy to the resident or owner making the request. The area of the
2 survey shall be decided by the NSCMP and shall include such provisions as the
3 NSCMP shall promulgate:

4 16. ensure that all reclamation efforts proceed in an environmentally sound manner
5 and as contemporaneously as practicable with the surface coal mining operations:
6 Provided, however, that where the applicant proposes to combine surface mining
7 operations with underground mining operations to ensure maximum practical
8 recovery of the mineral resources, the NSCMP may grant a variance for specific areas
9 within the reclamation plan from the requirement that reclamation efforts proceed as
10 contemporaneously as practicable to permit underground mining operations prior to
11 reclamation:

12 a. if the NSCMP finds in writing that —

13 i. the applicant has presented, as part of the permit application, specific, feasible plans
14 for the proposed underground mining operations;

15 ii. the proposed underground mining operations are necessary or desirable to ensure
16 maximum practical recovery of the mineral resource and will avoid multiple
17 disturbances of the surface;

18 iii. the applicant has satisfactorily demonstrated that the plan for the underground
19 mining operations conforms to requirements for underground mining in the
20 jurisdiction and that permits necessary for the underground mining operations have
21 been issued by the appropriate authority;

22 iv. the areas proposed for the variance have been shown by the applicant to be
23 necessary for implementing the proposed underground mining operations;

24 v. no substantial adverse environmental damage, either on- or offsite, will result from
25 the delay in completion of reclamation as required by this Act;

26 vi. provisions for the offsite storage of spoil will comply with section 2115(B)(22) of
27 this Act;

28 b. if the NSCMP has promulgated specific regulations to govern the granting of such
29 variances in accordance with the provisions of this subsection and section 2101 of
30 this Act, and has imposed such additional requirements as it deems necessary;

1 c. if variances granted under the provisions of this subsection are to be reviewed by
2 the NSCMP not more than three years from the date of issuance of the permit; and
3 d. if liability under the performance bond filed by the applicant with the NSCMP
4 pursuant to section 2109(B) of this Act shall last for the duration of the underground
5 mining operations and until the requirements of sections 2115(B) and 2119 of this
6 Act have been fully complied with;

7 17. ensure that the construction, maintenance, and postmining conditions of access
8 roads into and across the site of operations will control or prevent erosion and
9 siltation, pollution of water, damage to fish or wildlife or their habitat, or public or
10 private property;

11 18. refrain from constructing roads or other access up a stream bed or drainage
12 channel or in such proximity to such channel so as to seriously alter the normal
13 streamflow;

14 19. establish on the regraded areas, and all other lands affected, a diverse, effective,
15 and permanent vegetative cover of the same seasonal variety native to the area of land
16 affected and capable of self-regeneration and plant succession at least equal in extent
17 of cover to the natural vegetation of the area; except that introduced species may be
18 used in the revegetation process where desirable and necessary to achieve the
19 approved postmining land-use plan;

20 20. assume the responsibility for successful vegetation, as required by paragraph (19)
21 of this subsection, for a period of at least 10 full years after the last year of augmented
22 seeding, fertilizing, irrigation, or other work: Provided, that when the NSCMP
23 approves a long-term intensive agricultural postmining land use, the period of
24 responsibility for revegetation shall commence at the date of initial planting for such
25 long-term intensive agricultural postmining land use: Provided further, that when the
26 NSCMP issues a written finding approving a long-term intensive agricultural
27 postmining land use as part of the mining and reclamation plan, the NSCMP may
28 grant exception to the provisions of paragraph (19) of this subsection;
29
30

1 21. protect offsite areas from slides or damage occurring during the surface coal
2 mining and reclamation operations, and not deposit spoil material or locate any part
3 of the operations or waste accumulations outside the permit area;

4 22. place all excess spoil material resulting from coal surface mining and reclamation
5 activities in such a manner that:

6 a. spoil is transported and placed in a controlled manner in position for concurrent
7 compaction and in such a way to ensure mass stability and to prevent mass
8 movement, provided that excess spoil shall not be disposed in head-of-hollow fills or
9 valley fills;

10 b. the areas of disposal are within the bonded permit areas and all organic matter shall
11 be removed immediately prior to spoil placement;

12 c. appropriate surface and internal drainage systems and diversion ditches are used
13 so as to prevent spoil erosion and movement;

14 d. the disposal area does not contain springs, natural watercourses or wet weather
15 seeps unless lateral drains are constructed from the wet areas to the main underdrains
16 in such a manner that filtration of the water into the spoil pile will be prevented;

17 e. if placed on a slope, the spoil is placed upon the most moderate slope among those
18 upon which, in the judgment of the NSCMP, the spoil could be placed in compliance
19 with all the requirements of this Act, and shall be placed, where possible, upon, or
20 above, a natural terrace, bench, or berm, if such placement provides additional
21 stability and prevents mass movement;

22 f. where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient
23 size to prevent mass movement, is constructed;

24 g. the final configuration is compatible with the natural drainage pattern and
25 surroundings and is suitable for intended uses;

26 h. design of the spoil disposal area is certified by a qualified registered professional
27 engineer in conformance with professional standards; and

28 i. all other provisions of this Act are met;
29
30

1 23. meet such other criteria as are necessary to achieve reclamation in accordance
2 with the purposes of this Act, taking into consideration the physical, climatological,
3 and other characteristics of the site;

4 24. to the extent possible, using the best technology currently available, minimize
5 disturbances and adverse impacts of the operation on fish, wildlife, and related
6 environmental values, and enhance such resources where practicable; and

7 25. provide for an undisturbed natural barrier beginning at the elevation of the lowest
8 coal seam to be mined and extending from the outslope for such distance as the
9 NSCMP shall determine shall be retained in place as a barrier to slides and erosion.

10 C. The following performance standards shall be applicable to steep-slope surface
11 coal mining and shall be in addition to those general performance standards required
12 by this section: Provided, however, That the provisions of this subsection (C) shall
13 not apply to those situations in which an operator is mining on flat or gently rolling
14 terrain, on which an occasional steep slope is encountered through which the mining
15 operation is to proceed, leaving a plain or predominantly flat area:

16 1. Ensure that when performing surface coal mining on steep slopes, no debris,
17 abandoned or disabled equipment, spoil material, or waste mineral matter be placed
18 on the downslope below the bench or mining cut: Provided, That spoil material in
19 excess of that required for the reconstruction of the approximate original contour
20 under the provisions of paragraph 2115(B)(3) or 2115(C)(2) of this Act shall be
21 permanently stored pursuant to section 2115(B)(22) of this Act.

22 2. Complete backfilling with spoil material shall be required to cover completely the
23 highwall and return the site to the appropriate original contour, which material will
24 maintain stability following mining and reclamation.

25 3. The operator may not disturb land above the top of the highwall unless the NSCMP
26 finds that such disturbance will facilitate compliance with the environmental
27 protection standards of this section: Provided, however, That the land disturbed above
28 the highwall shall be limited to that amount necessary to facilitate said compliance.

29
30 SEC. 2116. Surface Effects of Underground Coal Mining Operations

1 A. The NSCMP shall promulgate rules and regulations directed toward the surface
2 effects of underground mining operations, embodying the following requirements
3 and in accordance with the procedures established under section 2101 of this Act:
4 Provided, however, that in adopting any rules and regulations, the NSCMP shall
5 consider the distinct difference between surface coal mining and underground coal
6 mining. Such rules and regulations shall not conflict with nor supersede any
7 provision of the Federal Coal Mine Health and Safety Act of 1969 nor any regulation
8 issued pursuant thereto, and shall be consistent with the applicable requirements of
9 30 CFR Chapter VII.

10 B. Each permit issued under the Navajo regulatory program pursuant to this Act and
11 relating to underground coal mining shall require the operator to -

12 1. adopt measures consistent with known technology in order to prevent subsidence
13 causing material damage to the extent technologically and economically feasible,
14 maximize mine stability, and maintain the value and reasonably foreseeable use of
15 such surface lands, except in those instances where the mining technology used
16 requires planned subsidence in a predictable and controlled manner: Provided, That
17 nothing in this subsection shall be construed to prohibit the standard method of room
18 and pillar mining;

19 2. seal all portals, entryways, drifts, shafts, or other openings between the surface and
20 underground mine working when no longer needed for the conduct of the mining
21 operations;

22 3. fill or seal exploratory holes no longer necessary for mining, maximizing to the
23 extent technologically and economically feasible return of mine and processing
24 waste, tailings, and any other waste incident to the mining operation, to the mine
25 workings or excavations;

26 4. with respect to surface disposal of mine wastes, tailings, coal processing wastes,
27 and other wastes in areas other than the mine workings or excavations, stabilize all
28 waste piles created by the permittee from current operations through construction in
29 compacted layers including the use of incombustible and impervious materials if
30 necessary and ensure that the leachate will not degrade below water quality standards

1 established pursuant to applicable federal, Navajo Nation, state, and non-Navajo
2 tribal law surface waters or groundwaters, that the final contour of the waste
3 accumulation will be compatible with natural surroundings, and that the site is
4 stabilized and revegetated according to the provisions of this section:

5 5. design, locate, construct, operate, maintain, enlarge, modify, and remove, or
6 abandon, in accordance with the standards and criteria of 30 CFR 817.81 through
7 817.87, all existing and new coal mine waste piles consisting of mine wastes, tailings,
8 coal processing wastes, or other liquid and solid wastes and used either temporarily
9 or permanently as dams or embankments;

10 6. establish on regraded areas and all other lands affected, a diverse and permanent
11 vegetative cover capable of self-regeneration and plant succession and at least equal
12 in extent of cover to the natural vegetation of the area;

13 7. protect offsite areas from damages which may result from such mining operations;

14 8. eliminate fire hazards and otherwise eliminate conditions which constitute a hazard
15 to health and safety of the public;

16 9. minimize the disturbances of the prevailing hydrologic balance at the minesite and
17 in associated offsite areas and to the quantity of water in surface water and
18 groundwater systems both during and after coal mining operations and during
19 reclamation by-

20 a. avoiding acid or other toxic mine drainage by such measures as, but not limited to

21 =

22 i. preventing or removing water from contact with toxic producing deposits;

23 ii. treating drainage to reduce toxic content which adversely affects downstream
24 water upon being released to water courses;

25 iii. casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid
26 or other toxic drainage from entering ground and surface waters; and

27 b. conducting surface coal mining operations so as to prevent, to the extent possible
28 using the best technology currently available, additional contributions of suspended
29 solids to streamflow or runoff outside the permit area (but in no event shall such
30 contributions be in excess of requirements set by applicable federal, Navajo Nation,

1 state, or non-Navajo tribal law), and avoiding channel deepening or enlargement in
2 operations requiring the discharge of water from mines:

3 10. with respect to other surface impacts not specified in this subsection including
4 the construction of new roads or the improvement or use of existing roads to gain
5 access to the site of such activities and for haulage, repair areas, storage areas,
6 processing areas, shipping areas, and other areas upon which are sited structures,
7 facilities, or other property or materials on the surface, resulting from or incident to
8 such activities, operate in accordance with the standards established under section
9 2115 of this Act for such effects which result from surface coal mining operations:
10 Provided, That the Program Manager shall make such modifications in the
11 requirements imposed by this subparagraph as are necessary to accommodate the
12 distinct difference between surface and underground coal mining:

13 11. to the extent possible using the best technology currently available, minimize
14 disturbances and adverse impacts of the operation on fish, wildlife, and related
15 environmental values, and achieve enhancement of such resources where practicable;

16 12. locate openings for all new drift mines working acid-producing or iron-producing
17 coal seams in such a manner as to prevent a gravity discharge of water from the mine.

18 C. In order to protect the stability of the land, the NSCMP shall suspend underground
19 coal mining under urbanized areas, cities, towns, and communities and adjacent to
20 industrial or commercial buildings, major impoundments, or permanent streams if he
21 or she finds imminent danger to inhabitants of the urbanized areas, cities, towns, and
22 communities.

23 D. The provisions of this Act relating to permits, bonds, inspections and enforcement,
24 public review, and administrative and judicial review shall be applicable to surface
25 operations and surface impacts incident to an underground coal mine with such
26 modifications to the permit application requirements, permit approval or denial
27 procedures, and bond requirements as are necessary to accommodate the distinct
28 difference between surface and underground coal mining. The Program Manager
29 shall promulgate such modifications in accordance with the rulemaking procedure
30

1 established in section 2101 of this Act and shall ensure that such modifications are
2 consistent with the applicable provisions of 30 CFR Chapter VII.

3
4 SEC. 2117. Inspections and Monitoring

5 A. For the purpose of developing, enforcing, and administering the Navajo regulatory
6 program under this Act, or in the administration and enforcement of any permit under
7 this Act, or of determining whether any person is in violation of any requirement of
8 the Navajo regulatory program or any other requirements of this Act—

9 1. the NSCMP shall require any permittee to (A) establish and maintain appropriate
10 records, (B) make monthly reports to the NSCMP, (C) install, use, and maintain any
11 necessary monitoring equipment or methods, (D) evaluate results in accordance with
12 such methods, at such locations and intervals, and in such manner as the NSCMP
13 shall prescribe, and (E) provide such other information relative to surface coal mining
14 and reclamation operations as the NSCMP deems reasonable and necessary;

15 2. for those surface coal mining and reclamation operations which remove or disturb
16 strata that serve as aquifers which significantly ensure the hydrologic balance of
17 water use either on or off the mining site, the NSCMP shall specify those—

18 a. monitoring sites to record the quantity and quality of surface drainage above and
19 below the mine site as well as in the potential zone of influence;

20 b. monitoring sites to record level, amount, and samples of groundwater and aquifers
21 potentially affected by the mining and also directly below the lowermost (deepest)
22 coal seam to be mined;

23 c. records of well logs and borehole data to be maintained; and

24 d. monitoring sites to record precipitation. The monitoring data collection and
25 analysis required by this section shall be conducted according to standards and
26 procedures set forth by the NSCMP in order to ensure their reliability and validity;
27 and

28 3. the authorized representatives of the Program Manager, without advance notice
29 and upon presentation of appropriate credentials: (A) shall have the right of entry to,
30 upon, or through any surface coal mining and reclamation operations or any premises

1 in which any records required to be maintained under paragraph (1) of this subsection
2 are located; and (B) may at reasonable times, and without delay, have access to and
3 copy any record or inspect any monitoring equipment or method of operation required
4 under this Act.

5 B. The inspections by the NSCMP shall (1) occur on an irregular basis averaging not
6 less than one partial inspection per month and one complete inspection per calendar
7 quarter for the surface coal mining and reclamation operation covered by each permit;
8 (2) occur without prior notice to the permittee or his or her agents or employees
9 except for necessary onsite meetings with the permittee; and (3) include the filing of
10 inspection reports adequate to enforce the requirements of and to carry out the terms
11 and purposes of this Act.

12 C. Each permittee shall conspicuously maintain at the entrances to the surface coal
13 mining and reclamation operations a clearly visible sign which sets forth the name,
14 business address, and phone number of the permittee and the permit number of the
15 surface coal mining and reclamation operations. Such sign shall include the
16 following — “Mining and Reclamation Operations are regulated by the NAVAJO
17 SURFACE COAL MINING PROGRAM.”

18 D. Each inspector, upon detection of each violation of any requirement of the Navajo
19 regulatory program or this Act, shall forthwith notify the operator in writing, and
20 shall report in writing any such violation to the NSCMP.

21 E. Copies of any records, reports, inspection materials, or information obtained under
22 this Act by the NSCMP shall be made immediately available to the public at central
23 and sufficient locations in the Navajo Nation and in the Chapter offices of the Navajo
24 Nation Chapters within which the surface coal mining operation is located so that
25 they are conveniently available to residents in the areas of mining.

26 F. Review; procedures for inspection

27 1. Any person who is or may be adversely affected by a surface mining operation
28 may notify the Program Manager or his or her authorized representative, in writing,
29 of any violation of this Act which he or she has reason to believe exists at the surface
30 mining site. The Program Manager shall, by regulation, establish procedures for the

1 informal review of any refusal by a representative of the Program Manager to issue a
2 citation with respect to any such alleged violation. The Program Manager shall
3 furnish such persons requesting the review a written statement of the reasons for the
4 Program Manager's final disposition of the case.

5 2. The Program Manager shall also, by regulation, establish procedures to ensure that
6 adequate and complete inspections are made. Any person may notify the Program
7 Manager of any failure to make such inspections, after which the Program Manager
8 shall determine whether adequate and complete inspections have been made. The
9 Program Manager shall furnish such persons a written statement of the reasons for
10 the Program Manager's determination that adequate and complete inspections have
11 or have not been conducted.

12
13 SEC. 2118. Penalties

14 A. In the enforcement of the Navajo regulatory program and this Act, any permittee
15 who violates any permit condition, or who violates any other provision of this Act,
16 may be assessed a civil penalty by the NSCMP, provided that if such violation leads
17 to the issuance of a cessation order under section 2121 of this Act, the civil penalty
18 shall be assessed. Such penalty shall not exceed \$12,000 for each violation. Each
19 day of continuing violation may be deemed a separate violation for purposes of
20 penalty assessments. In determining the amount of the penalty, consideration shall be
21 given to the permittee's history of previous violations at the particular surface coal
22 mining operation; the seriousness of the violation, including any irreparable harm to
23 the environment and any hazard to public health or safety; whether the permittee was
24 negligent; and the demonstrated good faith of the permittee so charged in attempting
25 to achieve rapid compliance after notification of the violation.

26 B. A civil penalty shall be assessed by the NSCMP only after the person charged with
27 a violation described under subsection (A) of this section has been given an
28 opportunity for an administrative hearing. Where such an administrative hearing has
29 been held, the NNOHA shall make findings of fact, and it shall issue a written
30 decision as to the occurrence of the violation and the amount of the penalty which is

1 warranted, incorporating, when appropriate, an order therein requiring that the
2 penalty be paid. When appropriate, the NNOHA shall consolidate such hearings with
3 other proceedings under section 2121 of this Act. Any administrative hearing under
4 this section shall be on the record and conducted in accordance with the regulations
5 for administrative hearings promulgated pursuant to section 1801(C)(2) of this Act.
6 Where the person charged with such a violation fails to avail himself of the
7 opportunity for an administrative hearing, a civil penalty shall be assessed by the
8 NSCMP after the NSCMP has determined that a violation did occur and the amount
9 of the penalty which is warranted and has issued an order requiring that the penalty
10 be paid.

11 C. Upon the issuance of a notice or order charging that a violation of this Act has
12 occurred, the NSCMP shall inform the operator within 30 days of the proposed
13 amount of said penalty. The person charged with the penalty shall then have 30 days
14 to pay the proposed penalty in full or, if the person wishes to contest either the amount
15 of the penalty or the fact of the violation, forward the proposed amount to the NSCMP
16 for placement in an escrow account. Failure to forward the money to the NSCMP
17 within 30 days shall result in a waiver of all legal rights to contest the violation or the
18 amount of the penalty. If through administrative or judicial review of the proposed
19 penalty, it is determined that no violation occurred, or that the amount of the penalty
20 should be reduced, the NSCMP shall within 30 days remit the appropriate amount to
21 the person, with interest at the rate of six percent, or at the prevailing U.S. Department
22 of the Treasury rate, whichever is greater.

23 D. Civil penalties owed under this Act may be recovered in a civil action brought by
24 the Attorney General, at the request of the Program Manager, in the Navajo Nation
25 District Court for the District of Window Rock.

26 E. Any person who willfully and knowingly violates a condition of a permit issued
27 pursuant to the Navajo regulatory program or fails or refuses to comply with any
28 order issued under section 2121 or section 2126 of this Act, or any order incorporated
29 in a final decision issued by the Program Manager or NNOHA under this Act, except
30 an order incorporated in a decision issued under subsection (B) of this section, shall,

1 upon conviction, be subject to the sanctions and penalties of SMCRA section 518(e).
2 Any criminal actions associated with surface coal mining and reclamation operations
3 on Navajo regulatory program lands are enforced by OSMRE under SMCRA section
4 518. The NSCMP will notify OSMRE of such potential criminal actions and
5 recommend that OSMRE pursue criminal penalties under SMCRA.

6 F. Whenever a corporate permittee violates a condition of a permit issued pursuant to
7 the Navajo regulatory program or fails or refuses to comply with any order issued
8 under section 2121 of this Act, or any order incorporated in a final decision issued by
9 the Program Manager or NNOHA under this Act except an order incorporated in a
10 decision issued under subsection (B) of this section, any director, officer, or agent of
11 such corporation who willfully and knowingly authorized, ordered, or carried out
12 such violation, failure, or refusal shall be subject to the same civil penalties, fines,
13 and imprisonment that may be imposed upon a person under subsections (A) and (E)
14 of this section.

15 G. Whoever knowingly makes any false statement, representation, or certification, or
16 knowingly fails to make any statement, representation, or certification in any
17 application, record, report, plan, or other document filed or required to be maintained
18 pursuant to the Navajo regulatory program or any order of decision issued by the
19 Program Manager or NNOHA under this Act, shall, upon conviction, be subject to
20 the sanctions and penalties of SMCRA section 518(g). Any criminal actions
21 associated with surface coal mining and reclamation operations on Navajo regulatory
22 program lands are enforced by OSMRE under SMCRA section 518. The NSCMP
23 will notify OSMRE of such potential criminal actions and recommend that OSMRE
24 pursue criminal penalties under SMCRA.

25 H. Any operator who fails to correct a violation for which a citation has been issued
26 under section 2121(A) of this Act within the period permitted for its correction shall
27 be assessed a civil penalty of not less than \$925 for each day during which such
28 failure or violation continues. The period permitted for such corrections shall not end
29 until (1) the entry of a final order by the NNOHA, in the case of any review
30 proceedings under section 2125 of this Act initiated by the operator wherein the

1 NNOHA orders, after an expedited hearing, the suspension of the abatement
2 requirements of the citation after determining that the operator will suffer irreparable
3 loss or damage from the application of those requirements, or (2) the entry of an order
4 of the court, in the case of any review proceedings under section 2126 of this Act
5 initiated by the operator wherein the court orders the suspension of the abatement
6 requirements of the citation.

7 I. Nothing herein shall be construed to eliminate any additional enforcement rights or
8 procedures which are or may become available to the NSCMP under Navajo Nation
9 law or applicable federal law, but which are not specifically enumerated herein.

10
11 SEC. 2119. Release of Performance Bonds or Deposits

12 A. The permittee may file a request with the NSCMP for the release of all or part of
13 a performance bond or deposit. Within 30 days after any application for bond or
14 deposit release has been filed with the NSCMP, the operator shall submit a copy of
15 an advertisement placed at least once a week for four successive weeks in a
16 newspaper of general circulation in the locality of the surface coal mining operation.
17 Such advertisement shall be considered part of any bond release application and shall
18 contain a notification of the precise location of the land affected, the number of acres,
19 the permit and the date approved, the amount of the bond filed and the portion sought
20 to be released, the type and dates of reclamation work performed, and a description
21 of the results achieved as they relate to the operator's approved reclamation plan. In
22 addition, as part of any bond release application, the applicant shall submit copies of
23 letters which he or she has sent to adjoining landowners; planning agencies and other
24 appropriate agencies of the Navajo Nation, federal, state, and local governments; and
25 sewage and water treatment authorities or water companies in the locality in which
26 the surface coal mining and reclamation activities took place, notifying them of his
27 or her intention to seek release from the bond or deposit.

28 B. Upon receipt of the notification and request, the NSCMP shall within 30 days
29 conduct an inspection and evaluation of the reclamation work involved. Such
30 evaluation shall consider, among other things, the degree of difficulty to complete

1 any remaining reclamation, whether pollution of surface water and groundwater is
2 occurring, the probability of such pollution continuing, and the estimated cost of
3 abatement. The NSCMP shall notify the permittee in writing of its decision to release
4 or not to release all or part of the performance bond or deposit within 30 days from
5 the inspection and evaluation if no public hearing is held pursuant to section 2119(F)
6 of this Act, and if a public hearing is held pursuant to section 2119(F), such
7 notification shall occur within 30 days thereafter. Any person having an interest
8 which is or may be adversely affected by such decision shall have to right to file an
9 appeal with the NNOHA in accordance with section 2125 of this Act.

10 C. The NSCMP may release in whole or in part said bond or deposit if the NSCMP
11 is satisfied the reclamation covered by the bond or deposit or portion thereof has been
12 accomplished as required by this Act according to the following schedule:

13 1. When the operator completes the backfilling, regrading, and drainage control of a
14 bonded area in accordance with his or her approved reclamation plan, the release of
15 up to 60 percent of the bond or collateral for the applicable permit area.

16 2. After revegetation has been established on the regraded mined lands in accordance
17 with the approved reclamation plan, the release of an amount of bond to be
18 determined by the NSCMP. When determining the amount of bond to be released
19 after successful revegetation has been established, the NSCMP shall retain that
20 amount of bond for the revegetated area which would be sufficient for a third party
21 to cover the cost of reestablishing revegetation and for the period specified for
22 operator responsibility in section 2115(B)(20) of this Act. No part of the bond or
23 deposit shall be released under this paragraph so long as the lands to which the release
24 would be applicable are contributing suspended solids to streamflow or runoff outside
25 the permit area in excess of the requirements set by section 2115(B)(10) of this Act
26 or until soil productivity for prime farmlands has returned to equivalent levels of yield
27 as nonmined land of the same soil type in the surrounding area under equivalent
28 management practices as determined from the soil survey performed pursuant to
29 section 2107(B)(16) of this Act. Where a silt dam is to be retained as a permanent
30 impoundment pursuant to section 2115(B)(8) of this Act, a portion of the bond may

1 be released under this paragraph so long as adequate and enforceable written
2 provisions for sound future maintenance by the operator or the landowner have been
3 made with the NSCMP.

4 3. When the operator has completed successfully all surface coal mining and
5 reclamation activities, but not before the expiration of the period specified for
6 operator responsibility in section 2115(B)(20) of this Act, the release of the remaining
7 portion of the bond: Provided, however, that no bond shall be fully released until all
8 reclamation requirements of this Act are fully met.

9 D. If the NSCMP disapproves the application for release of the bond or deposit, or
10 portion thereof, the NSCMP shall notify the permittee, in writing, stating the reasons
11 for disapproval and recommending corrective actions necessary to secure said release
12 and allowing opportunity for a public hearing.

13 E. When any application for total or partial release of a bond or deposit is filed with
14 the NSCMP, the NSCMP shall notify the Navajo Nation Chapters in which a surface
15 coal mining operation is located and all appropriate Navajo Nation, federal, state, and
16 local agencies, as determined by the NSCMP. Notification shall occur by certified
17 mail at least 30 days prior to the release of all or a portion of the bond or deposit.

18 F. Any person with a valid legal interest that might be adversely affected by release
19 of the bond or deposit, or the responsible officer or head of any federal, Navajo
20 Nation, state, or local agency that has jurisdiction or special expertise with respect to
21 any environmental, social, or economic impact involved in the operations, or is
22 authorized to develop and enforce environmental standards with respect to such
23 operations, shall have the right to file written objections to the proposed release from
24 bond or deposit to the NSCMP within 30 days after the last publication of the above
25 notice. If written objections are filed, and a hearing requested, the NSCMP shall
26 inform all the interested parties of the time and place of the hearing, and hold a public
27 hearing in the locality of the surface coal mining operation proposed for release of
28 the bond or deposit within 30 days of the request for such hearing. The date, time,
29 and location of such public hearings shall be advertised by the NSCMP in a
30 newspaper of general circulation in the locality for two consecutive weeks. At the

1 option of the objector(s), the NSCMP shall hold a public hearing in the locality of the
2 surface coal mining operation proposed for release of the bond or deposit or at the
3 NSCMP's offices within 30 days of the request for such hearing.

4 G. Without prejudice to the rights of the objector(s), the applicant, or the
5 responsibilities of the NSCMP pursuant to this section, the NSCMP may establish an
6 informal conference as provided in section 2113 of this Act to resolve such written
7 objections.

8 H. For the purpose of conducting a hearing under subsection (F) of this section, the
9 NSCMP is hereby authorized and empowered to administer oaths, subpoena
10 witnesses or written or printed materials, compel the attendance of witnesses or
11 production of the materials, and take evidence, including but not limited to
12 inspections of the land affected and other surface coal mining operations carried on
13 by the applicant in the general vicinity. A verbatim record of each public hearing
14 required by this Act shall be made, and a transcript made available on the motion of
15 any party or by order of the NSCMP.

16
17 SEC. 2120. Citizen Suits

18 A. Any person having an interest which is or may be adversely affected may
19 commence a civil action in Navajo Nation District Court for the District of Window
20 Rock on his or her own behalf to compel compliance with this Act —

21 1. against the Navajo Nation or any other governmental instrumentality or agency of
22 the Navajo Nation to the extent permitted by section 1801(I) of this Act and in
23 accordance with the procedural requirements of paragraph (B)(1) of this section,
24 which is alleged to be in violation of the provisions of SMCRA or this Act or of any
25 rule, regulation, order or permit issued pursuant thereto, or against any person who is
26 alleged to be in violation of any rule, regulation, order, or permit issued pursuant to
27 SMCRA or this Act; or

28 2. against the NSCMP to the extent permitted by section 1801(I) of this Act and in
29 accordance the procedural requirements of paragraph (B)(2) of this section where
30

1 there is alleged a failure of the NSCMP to perform any act or duty under SMCRA or
2 this Act which is not discretionary with the NSCMP.

3 B. No action may be commenced —

4 1. under paragraph (A)(1) of this section —

5 a. until the plaintiff fulfills the jurisdictional condition precedent procedures of the
6 Navajo Sovereign Immunity Act codified at 1 N.N.C. § 555 and any successors
7 thereto and has given notice in writing of the violation to any alleged violator; or

8 b. if the Navajo Nation has commenced and is diligently prosecuting a civil action in
9 the Navajo Nation District Court for the District of Window Rock to require
10 compliance with the provisions of this Act, or any rule, regulation, order, or permit
11 issued pursuant to this Act, but in any such action, such person may intervene as a
12 matter of right; or

13 2. under paragraph (A)(2) of this section until the plaintiff fulfills the jurisdictional
14 condition precedent procedures of the Navajo Sovereign Immunity Act codified at 1
15 N.N.C. § 555 and any successors thereto, except that such action may be brought
16 immediately after the notice is served upon the appropriate Navajo Nation officials
17 as required at 1 N.N.C. § 555 (a)(1) and (2) and any amendments or successors thereto
18 in the case where the violation or order complained of constitutes an imminent threat
19 to plaintiff's health or safety or would immediately affect a legal interest of the
20 plaintiff.

21 C. In any action under this section, the NSCMP, if not a party, may intervene as a
22 matter of right.

23 D. The Navajo Nation District Court, in issuing any final order in any action brought
24 pursuant to subsection (A) of this section, may award costs of litigation (including
25 attorney and expert witness fees) to any party, whenever the court determines such
26 award is appropriate. The Navajo Nation District Court may, if a temporary
27 restraining order or preliminary injunction is sought, require the filing of a bond or
28 equivalent security in accordance with the Navajo Rules of Civil Procedure.

29 E. Nothing in this section shall restrict any right which any person (or class of
30 persons) may have under other applicable law to seek enforcement of any of the

1 provisions of this Act and the regulations thereunder or to seek any other relief
2 (including relief against the NSCMP).

3 F. Any person who is injured in his or her person or property through the violation
4 by any operator of any rule, regulation, order, or permit issued pursuant to this Act
5 may bring an action for damages (including reasonable attorney and expert witness
6 fees) in the Navajo Nation District Court for the District of Window Rock. Nothing
7 in this subsection shall affect rights established by or limits imposed under any
8 applicable workers' compensation laws.

9 G. After exhausting all Navajo Nation remedies with respect to a civil action arising
10 under the Navajo regulatory program, an interested party may, pursuant to section
11 710(j)(4)(A) of SMCRA, file a petition for judicial review of the civil action in the
12 United States Court of Appeals for the circuit in which the surface coal mining
13 operation named in the petition is located, or, for civil actions in which no surface
14 coal mining operation is named in the petition, in the United States Court of Appeals
15 for the Ninth Circuit.

16
17 SEC. 2121. Enforcement

18 A. Whenever, on the basis of any information available to him or her, including
19 receipt of information from any person, the Program Manager has reason to believe
20 that any person is in violation of any requirement of this Act or any permit condition
21 required by this Act, the Program Manager shall immediately order inspection of the
22 surface coal mining operation at which the alleged violation is occurring unless the
23 information available to the Program Manager was found in a previous inspection of
24 such surface coal mining operation, and the alleged violation was already addressed
25 by the NSCMP.

26 1. When the inspection results from information provided to the Program Manager
27 by any person, the Program Manager shall notify such person when the inspection is
28 proposed to be carried out and such person shall be allowed to accompany the
29 inspector during the inspection. If the person informing the Program Manager of an
30 alleged violation has provided adequate proof that an imminent danger of significant

1 environmental harm exists, the Program Manager or his or her authorized
2 representative shall immediately inspect the operation. If no inspection is to be
3 conducted, such person shall be notified of the reason(s) for not inspecting.

4 2. When, on the basis of any inspection, the Program Manager or his or her authorized
5 representative determines that any condition or practices exist, or that any permittee
6 is in violation of any requirement of this Act or any permit condition required by this
7 Act, which condition, practice, or violation also creates an imminent danger to public
8 health or safety, or is causing, or can reasonably be expected to cause significant,
9 imminent environmental harm to land, air, or water resources, the Program Manager
10 or his or her authorized representative shall immediately order a cessation of surface
11 coal mining and reclamation operations or the portion thereof relevant to the
12 condition, practice, or violation. Such cessation order shall remain in effect until the
13 Program Manager or his or her authorized representative determines that the
14 condition, practice, or violation has been abated, or until the order is modified,
15 vacated, or terminated by the Program Manager or his or her authorized
16 representative pursuant to paragraph (A)(5) of this section. Where the Program
17 Manager finds that the cessation of surface coal mining and reclamation operations,
18 or any portion thereof, will not completely abate the imminent danger to public health
19 or safety or the significant imminent environmental harm to land, air, or water
20 resources, the Program Manager shall, in addition to the cessation order, impose
21 affirmative obligations on the operator requiring him or her to take whatever steps
22 the Program Manager deems necessary to abate the imminent danger or the
23 significant environmental harm.

24 3. When, on the basis of any inspection, the Program Manager or his or her authorized
25 representative determines that any permittee is in violation of any requirement of this
26 Act or any permit condition required by this Act, but such violation does not create
27 an imminent danger to public health or safety, or cannot be reasonably expected to
28 cause significant, imminent environmental harm to land, air, or water resources, the
29 Program Manager or his or her authorized representative shall issue a notice to the
30 permittee or his or her agent fixing a reasonable time but not more than 90 days for

1 abating the violation. Such notice shall also provide opportunity for an administrative
2 hearing. If, upon expiration of the period of time as originally fixed or subsequently
3 extended, for good cause shown and upon the written finding of the Program Manager
4 or his or her authorized representative, the Program Manager or his or her authorized
5 representative finds that the violation has not been abated, he or she shall immediately
6 order a cessation of surface coal mining and reclamation operations or the portion
7 thereof relevant to the violation. Such cessation order shall remain in effect until the
8 Program Manager or his or her authorized representative determines that the violation
9 has been abated, or until the order is modified, vacated, or terminated by the Program
10 Manager or his or her authorized representative pursuant to paragraph (A)(5) of this
11 section. In the order of cessation issued by the Program Manager or his or her
12 authorized representative under this subsection, the Program Manager or his or her
13 authorized representative shall determine the steps necessary to abate the violation in
14 the most expeditious manner possible, and shall include the necessary measures in
15 the order.

16 4. When, on the basis of any inspection, the Program Manager or his or her authorized
17 representative determines that a pattern of violations of any requirements of this Act
18 or any permit conditions required by this Act exists or has existed, and if the Program
19 Manager or his or her authorized representative also finds that such violations are
20 caused by the unwarranted failure of the permittee to comply with any requirements
21 of this Act or any permit conditions, or that such violations are willfully caused by
22 the permittee, the Program Manager or his or her authorized representative shall
23 forthwith issue an order to the permittee to show cause as to why the permit should
24 not be suspended or revoked, and shall provide the opportunity for an administrative
25 hearing. If a hearing is requested, the NNOHA shall inform all interested parties of
26 the time and place of the hearing. Upon the permittee's failure to show cause as to
27 why the permit should not be suspended or revoked, the NNOHA shall forthwith
28 suspend or revoke the permit.

29 5. Notices and orders issued pursuant to this section shall set forth with reasonable
30 specificity the nature of the violation and the remedial action required, the period of

1 time established for abatement, and a reasonable description of the portion of the
2 surface coal mining and reclamation operation to which the notice or order applies.
3 Each notice or order issued under this section shall be given promptly to the permittee
4 or his or her agent by the Program Manager or his or her authorized representative
5 who issues such notice or order, and all such notices and orders shall be in writing
6 and shall be signed by such authorized representatives or the Program Manager. Any
7 notice or order issued pursuant to this section may be modified, vacated, or
8 terminated by the Program Manager or his or her authorized representative:
9 Provided, that any notice or order issued pursuant to this section which requires
10 cessation of mining by the operator shall expire within 30 days of actual notice to the
11 operator unless an administrative hearing is held at the site or within such reasonable
12 proximity to the site that any viewings of the site can be conducted during the course
13 of the administrative hearing.

14 B. The Program Manager may request the Attorney General to institute a civil action
15 for relief, including a permanent or temporary injunction, restraining order, or any
16 other appropriate order in the Navajo Nation District Court for the District of Window
17 Rock, whenever such permittee or his or her agent —

- 18 1. violates or fails or refuses to comply with any order or decision issued by the
19 Program Manager or his or her authorized representative under this Act;
- 20 2. interferes with, hinders, or delays the Program Manager or his or her authorized
21 representatives in carrying out the provisions of this Act;
- 22 3. refuses to admit such authorized representative to the operation;
- 23 4. refuses to permit inspection of the operation by such authorized representative;
- 24 5. refuses to furnish any information or report requested by the Program Manager or
25 his or her authorized representative in furtherance of the provisions of this Act; or
- 26 6. refuses to permit access to, and copying of, such records as the Program Manager
27 or his or her authorized representative determines necessary in carrying out the
28 provisions of this Act. The Navajo Nation District Court shall have jurisdiction to
29 provide such relief as may be appropriate. Temporary restraining orders shall be
30 issued in accordance with Rule 65 and Rule 65.1 of the Navajo Rules of Civil

1 Procedure. Any relief granted by the Navajo Nation District Court to enforce an order
2 under clause (B)(1) shall continue in effect until the completion or final termination
3 of all proceedings for review of such order under this Act, unless, prior thereto, the
4 Navajo Nation District Court granting such relief sets it aside or modifies it. After
5 exhausting all Navajo Nation remedies with respect to a civil action arising under the
6 Navajo regulatory program, an interested party may, pursuant to section 710(j)(4)(A)
7 of SMCRA, file a petition for judicial review of the civil action in the United States
8 Court of Appeals for the circuit in which the surface coal mining operation named in
9 the petition is located.

10 C. Nothing within this Act shall be construed so as to eliminate any additional
11 enforcement rights or procedures which are available to the NSCMP under Navajo
12 Nation law, but which are not specifically enumerated herein.

13
14 SEC. 2122. Land Unsuitable for Surface Coal Mining

15 A. The NSCMP shall establish a planning process.

16 1. This process shall enable objective decisions based upon competent and
17 scientifically sound data and information as to which, if any, areas of Navajo
18 regulatory program lands are unsuitable for all or certain types of surface coal mining
19 operations pursuant to the standards set forth in paragraphs (2) and (3) of this
20 subsection, but such designation shall not prevent the mineral exploration pursuant
21 to this Act of any area so designated.

22 2. Upon petition pursuant to subsection (B) of this section, the NSCMP shall
23 designate an area as unsuitable for all or certain types of surface coal mining
24 operations if the NSCMP determines that reclamation, pursuant to the requirements
25 of this Act, is not technologically and economically feasible.

26 3. Upon petition pursuant to subsection (B) of this section, a surface area may be
27 designated unsuitable for certain types of surface coal mining operations if such
28 operations will —

29 a. be incompatible with existing Navajo Nation, BIA, or local land-use plans or
30 programs; or

1 b. affect fragile or historic lands upon which such operations could result in
2 significant damage to important historic, cultural, scientific, and aesthetic values, and
3 natural systems; or

4 c. affect renewable resource lands upon which such operations could result in a
5 substantial loss or reduction of the long-range productivity of the water supply or of
6 food or fiber products, and such lands to include aquifers and aquifer recharge areas;
7 or

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

11 4. The NSCMP is responsible for surface coal mining lands review. The NSCMP
12 shall develop a process which includes —

13 a. a database and an inventory system which will facilitate the proper evaluation of
14 the capacity of different areas of the Navajo Nation to support and permit reclamation
15 of surface coal mining operations;

16 b. a method or methods for implementing land-use planning decisions concerning
17 surface coal mining operations; and

18 c. proper notice and opportunities for public participation, including a public hearing
19 prior to making any designation or redesignation, pursuant to this section;

20 5. Determinations of the unsuitability of land for surface coal mining, as provided for
21 in this section, shall be integrated as closely as possible with present and future land-
22 use planning and regulation processes of federal, Navajo Nation, and local agencies.

23 6. The requirements of this section shall not apply to lands on which surface coal
24 mining operations are being conducted under a permit issued by the NSCMP pursuant
25 to this Act or by OSMRE under the Federal Program for Indian Lands, or where
26 substantial legal and financial commitments in such operation were in existence prior
27 to January 4, 1977.

28 B. Any person having an interest which is or may be adversely affected shall have
29 the right to petition the NSCMP to have an area designated as unsuitable for surface
30 coal mining operations, or to have such a designation terminated. Such petition shall

1 contain allegations of facts with supporting evidence which would tend to establish
2 the allegations. Within ten months after receipt of a petition, the NSCMP shall hold
3 a public hearing in the locality of the affected area, after appropriate notice and
4 publication of the date, time, and location of such hearing. After a person having an
5 interest which is or may be adversely affected has filed a petition and before the
6 hearing, as required by this subsection, any person may intervene by filing allegations
7 of facts with supporting evidence which would tend to establish the allegations.
8 Within 60 days after such hearing, the NSCMP shall issue and furnish to the
9 petitioner and any other party to the hearing, a written decision regarding the petition,
10 and the reasons therefor. Any party having an interest which is or may be adversely
11 affected by such decision shall have the right to file an appeal with the Navajo Nation
12 Supreme Court in accordance with section 2126(A)(2) of this Act. In the event that
13 all the petitioners stipulate agreement prior to the requested hearing, and withdraw
14 their requests, such hearing need not be held.

15 C. Prior to designating any land areas as unsuitable for surface coal mining
16 operations, the NSCMP shall prepare a detailed statement on (i) the potential coal
17 resources of the area, (ii) the demand for coal resources, and (iii) the impact of such
18 designation on the environment, the economy, and the supply of coal.

19 D. Subject to valid existing rights, no surface coal mining operations except those
20 which existed on August 3, 1977 shall be permitted —

21 1. on any lands within the boundaries of units of the National Park System, the
22 National Wildlife Refuge System, the National System of Trails, the National
23 Wilderness Preservation System, the Wild and Scenic Rivers System, including study
24 rivers designated under section 5(a) of the Wild and Scenic Rivers Act, and National
25 Recreation Areas designated by Act of Congress;

26 2. on any federal lands within the boundaries of any national forest: Provided,
27 however, that surface coal mining operations may be permitted on such lands if the
28 Secretary finds that there are no significant recreational, timber, economic, or other
29 values which may be incompatible with such surface mining operations and —

30 a. surface operations and impacts are incident to an underground coal mine; or

1 b. where the Secretary of Agriculture determines, with respect to lands which do not
2 have significant forest cover, that surface mining is in compliance with the Multiple-
3 Use Sustained-Yield Act of 1960, the Federal Coal Leasing Amendments Act of
4 1976, the National Forest Management Act of 1976, and the provisions of SMCRA;
5 3. which will adversely affect any publicly owned park or place included in, or
6 eligible for inclusion in, the National Register of Historic Places, unless approved
7 jointly by the NSCMP, the Navajo Nation Chapter(s) within which the park or place
8 is located, and the federal, Navajo Nation, state, or local agency with jurisdiction over
9 the park or the historic place;
10 4. within 100 feet of the outside right-of-way line of any public road, except where
11 mine access roads or haulage roads join such right-of-way line and except that the
12 NSCMP may permit such roads to be relocated or the area affected to lie within 100
13 feet of such road, if after public notice and opportunity for public hearing in the
14 locality a written finding is made that the interests of the public, the landowners, and
15 authorized land users who may be affected thereby will be protected;
16 5. within 300 feet from any occupied dwelling, unless knowingly and voluntarily
17 waived in writing by the owner thereof, nor within 300 feet of any public building,
18 school, church, community, or institutional building, public park, or within 100 feet
19 of a cemetery; or
20 6. on any lands designated by the Navajo Nation Council as sacred, historical,
21 cultural, park, wilderness, or wildlife refuge.

22
23 SEC. 2123. Reserved

24
25 SEC. 2124. Public agencies, Public Utilities, and Public Corporations

26 Any agency, unit, or instrumentality of federal, Navajo Nation, state, or local
27 government, including any publicly-owned utility or publicly-owned corporation of
28 federal, Navajo Nation, state, or local government, which proposes to engage in
29 surface coal mining operations on Navajo regulatory program lands shall comply
30 with the provisions of this Act.

1
2 SEC. 2125. Administrative Review

3 A. A permittee issued a notice or order by the Program Manager or his or her
4 authorized representative pursuant to the provisions of paragraph (A)(2) or (3) of
5 section 2121 of this Act or any person having an interest which is or may be adversely
6 affected by such notice or order or by any modification, vacation, or termination of
7 such notice or order, may apply to the NSCMP for review of the notice or order within
8 30 days of receipt thereof, or within 30 days of its modification, vacation, or
9 termination.

10 1. Upon receipt of such application, the NSCMP shall cause such investigation to be
11 made as he or she deems appropriate. Such investigation shall provide an opportunity
12 for an administrative hearing by the NNOHA, at the request of the applicant or the
13 person having an interest which is or may be adversely affected, to enable the
14 applicant or such person to present information relating to the issuance and
15 continuance of such notice or order or the modification, vacation, or termination
16 thereof. The filing of an application for review under this subsection shall not operate
17 as a stay of any order or notice.

18 2. The permittee and other interested persons shall be given written notice of the time
19 and place of the hearing at least five days prior thereto. Any such hearing shall be of
20 record and conducted in conformity with the regulations for administrative hearings
21 promulgated pursuant to section 1801(C)(2) of this Act.

22 B. Upon receiving the report of such investigation, the NNOHA shall make findings
23 of fact, and shall issue a written decision, incorporating therein an order vacating,
24 affirming, modifying, or terminating the notice or order, or the modification,
25 vacation, or termination of such notice or order complained of, and shall incorporate
26 his or her findings therein. Where the application for review concerns an order for
27 cessation of surface coal mining and reclamation operations issued pursuant to the
28 provisions of paragraph (A)(2) or (A)(3) of section 2121 of this Act, the NNOHA
29 shall issue the written decision within 30 days of the receipt of the application for
30 review unless temporary relief has been granted by the NNOHA pursuant to

1 subsection (C) of this section or by the court pursuant to subsection (C) of section
2 2126 of this Act.

3 C. Pending completion of the investigation and hearing required by this section, the
4 applicant may file with the NNOHA a written request that the NNOHA grant
5 temporary relief from any notice or order issued under section 2121 of this Act,
6 together with a detailed statement giving reasons for granting such relief. The
7 NNOHA shall issue an order or decision granting or denying such relief
8 expeditiously: Provided, that where the applicant requests relief from an order for
9 cessation of coal mining and reclamation operations issued pursuant to paragraph
10 (A)(2) or (A)(3) of section 2121 of this Act, the order or decision on such a request
11 shall be issued within five days of its receipt. The NNOHA may grant such relief,
12 under such conditions as he or she may prescribe, if—

13 1. a hearing on the request for temporary relief, in which all parties were given an
14 opportunity to be heard, has been held in the locality of the permit area;

15 2. the applicant shows that there is substantial likelihood that the findings of the
16 NNOHA will be favorable to him or her; and

17 3. such relief will not adversely affect public health or safety or cause significant,
18 imminent environmental harm to land, air, or water resources.

19 D. Following the issuance of an order to show cause as to why a permit should not
20 be suspended or revoked pursuant to section 2121 of this Act, the NNOHA shall hold
21 an administrative hearing after giving written notice of the time, place, and date
22 thereof. Any such hearing shall be of record and conducted in conformity with the
23 regulations for administrative hearings promulgated pursuant to section 1801(C)(2)
24 of this Act. Within 60 days following the administrative hearing, the NNOHA shall
25 issue and furnish to the permittee and all other parties to the hearing a written
26 decision, and the reasons therefor, concerning suspension or revocation of the permit.
27 If the NNOHA revokes the permit, the permittee shall immediately cease surface coal
28 mining operations on the permit area and shall complete reclamation within a period
29 specified by the NNOHA, or the NSCMP shall declare as forfeited the performance
30 bond(s) for the operation.

1 E. Whenever an order is issued under this section, or as a result of any administrative
2 proceeding under this Act, at the request of any person, a sum equal to the aggregate
3 amount of all costs and expenses (including attorney fees) as determined by the
4 NNOHA to have been reasonably incurred by such person for or in connection with
5 his or her participation in such proceedings, including any judicial review of agency
6 actions, may be assessed against either party as the court, resulting from judicial
7 review, or the NNOHA, resulting from administrative proceedings, deems proper.

8
9 SEC. 2126. Judicial Review

10 A. After exhausting available administrative remedies, any action constituting
11 rulemaking under this Act shall be subject to judicial review by the Navajo Nation
12 District Court for the District of Window Rock, with a right of appeal to the Navajo
13 Nation Supreme Court.

14 1. Any action subject to judicial review under this subsection shall be affirmed unless
15 the court concludes that such action is arbitrary, capricious, or otherwise inconsistent
16 with law. A petition for review of any action subject to judicial review under this
17 subsection shall be filed in the Navajo Nation District Court for the District of
18 Window Rock within 60 days from the date of such action, or after such date if the
19 petition is based solely on grounds arising after the sixtieth day. Any such petition
20 may be made by any person who participated in the administrative proceedings and
21 who is aggrieved by the action of the Program Manager or the NSCMP.

22 2. Any order or decision issued by the NNOHA in a civil penalty proceeding or any
23 other adjudicatory administrative proceeding conducted by the NNOHA or the
24 NSCMP pursuant to this Act shall be subject to judicial review on or before 30 days
25 from the date of such order or decision in accordance with paragraph (B) of this
26 section in the Navajo Nation Supreme Court. In the case of a proceeding to review
27 an order or decision issued by the NNOHA under the penalty section of this Act, the
28 Court shall have jurisdiction to enter an order requiring payment of any civil penalty
29 assessment enforced by its judgment.

1 B. The Court shall hear such petition or complaint solely on the record made before
2 the Program Manager, the NSCMP, or the NNOHA. Except as provided in
3 subsection (A)(1), the findings of the Program Manager, the NSCMP, or the
4 NNOHA, if supported by substantial evidence on the record considered as a whole,
5 shall be conclusive. The Court may affirm, vacate, or modify any order or decision
6 or may remand the proceedings to the Program Manager, the NSCMP, or the
7 NNOHA for such further action as it may direct. Pursuant to SMCRA section
8 710(j)(4)(i), after exhausting all remedies with respect to a civil action arising under
9 the Navajo regulatory program, an interested party may file a petition for judicial
10 review of the civil action in the United States Court of Appeals for the circuit in which
11 the surface coal mining operation named in the petition is located, or, for civil actions
12 in which no surface coal mining operation is named in the petition, in the United
13 States Court of Appeals for the Ninth Circuit.

14 C. In the case of a proceeding to review any rulemaking or any order or decision
15 issued by the NSCMP or NNOHA under this Act, including an order or decision
16 issued pursuant to subsection (C) or (D) of section 2125 of this Act pertaining to any
17 order issued under paragraph (A)(2), (A)(3), or (A)(4) of section 2121 of this Act for
18 cessation of coal mining and reclamation operations, the Court may, under such
19 conditions as it may prescribe, grant such temporary relief as it deems appropriate
20 pending final determination of the proceedings if —

21 i. all parties to the proceedings have been notified and given an opportunity to be
22 heard on a request for temporary relief;

23 ii. the person requesting such relief shows that there is a substantial likelihood that
24 he or she will prevail on the merits of the final determination of the proceeding; and

25 iii. such relief will not adversely affect the public health or safety or cause significant,
26 imminent environmental harm to land, air, or water resources.

27 D. The commencement of a proceeding under this section shall not, unless
28 specifically ordered by the Court, operate as a stay of rulemaking or of the action,
29 order, or decision of the NSCMP or the NNOHA.

30

1 E. The availability of judicial review under this section shall not be construed to limit
2 the operation of the rights established in section 2120 of this Act except as provided
3 therein.

4
5 SEC. 2127. Reserved

6
7 SEC. 2128. Surface Mining Operations Not Subject To This Act
8 The provisions of this Act shall not apply to the extraction of coal as an incidental
9 part of federal, Navajo Nation, state, or local government-financed highway or other
10 construction under regulations established by the NSCMP.

11
12 SEC. 2129. Reserved

13
14 CHAPTER 22 - RESERVED

15
16 CHAPTER 23- ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

17
18 SEC. 2301. Reserved

19
20 SEC. 2302. Cooperation of Other Navajo Nation Agencies
21 To the greatest extent practicable, each Navajo Nation agency, office, division and
22 department shall cooperate with the NSCMP in carrying out the provisions of this
23 Act.

24
25 SEC. 2303. Reserved

26
27 SEC. 2304. Reserved

28
29 SEC. 2305. Reserved

1 SEC. 2306. Reserved

2
3 SEC. 2307. Severability

4 If any provision of this Act or the applicability thereof to any person or circumstance
5 is held invalid, the remainder of this Act and the application of such provision to other
6 persons or circumstances shall not be affected thereby.

7
8 SEC. 2308. Reserved

9
10 SEC. 2309. Reserved

11
12 SEC. 2310. Reserved

13
14 SEC. 2311. Experimental Practices

15 In order to encourage advances in coal mining and reclamation practices or to allow
16 postmining land use for industrial, commercial, residential, or public use (including
17 recreational facilities), the NSCMP, with approval by the OSMRE Director, may
18 authorize departures in individual cases, on an experimental basis, from the
19 environmental protection performance standards promulgated under sections 2115
20 and 2116 of this Act. Such departures may be authorized if (i) the experimental
21 practices are potentially more or at least as environmentally protective, during and
22 after coal mining operations, as those required by promulgated standards; (ii) the coal
23 mining operations approved for particular land use or other purposes are not larger or
24 more numerous than necessary to determine the effectiveness and economic
25 feasibility of the experimental practices; and (iii) the experimental practices do not
26 reduce the protection afforded public health and safety below that provided by
27 promulgated standards.

28
29 SEC. 2312. Reserved

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1 SEC. 2313. Reserved

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3 SEC. 2314. Reserved

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5 SEC. 2315. Reserved

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7 SEC. 2316. Reserved

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9 SEC. 2317. Water Rights and Replacement

10 (a) Nothing in this Act shall be construed as affecting in any way the right of any
11 person, or the Navajo Nation, to enforce or protect, under applicable law, their
12 interest in water resources affected by a surface coal mining operation regulated
13 under this Act.

14 (b) The operator of a surface coal mine shall replace immediately with water of at
15 least equal quality and quantity the water supply of a landowner or a water user who
16 obtains all or part of his or her supply of water for domestic, agricultural, industrial,
17 or other legitimate use from an underground or surface source where such supply has
18 been affected by contamination, diminution, or interruption proximately resulting
19 from such surface coal mine operation.

20
21 SEC. 2318. Reserved

22
23 SEC. 2319. Certification of Blasters

24 In accordance with this Act, the NSCMP shall promulgate regulations requiring the
25 examination, training, and certification of persons engaging in or directly responsible
26 for blasting or the use of explosives in surface coal mining operations.

27
28 SEC. 2320. Subsidence

29 Underground coal mining operations shall comply with each of the following
30 requirements:

1 A. Promptly repair, or compensate for, material damage resulting from subsidence
2 caused to any occupied residential dwelling and structures related thereto, or to any
3 non-commercial building, due to underground coal mining operations. Repair of
4 damage shall include rehabilitation, restoration, or replacement of the damaged
5 occupied residential dwelling and structures related thereto, or non-commercial
6 building. Compensation shall be provided to the owner of the damaged occupied
7 residential dwelling and structures related thereto, or non-commercial building, and
8 shall be in the full amount of the diminution in value resulting from the subsidence.
9 Compensation may be accomplished by the purchase, prior to mining, of a non-
10 cancelable premium prepaid insurance policy.

11 B. Promptly replace any drinking, domestic, or residential water supply from a well
12 or spring in existence prior to the application for a surface or underground coal
13 mining and reclamation permit, which has been affected by contamination,
14 diminution, or interruption resulting from underground coal mining operations.
15 Nothing in this section shall be construed to prohibit or interrupt underground coal
16 mining operations.

17
18 SEC. 2321. Annual Reclamation Reports

19 A. The NSCMP shall promulgate rules and regulations to require permittees under
20 this Act to file with the NSCMP an annual reclamation report.

21 B. Annual reclamation reports shall be submitted to the NSCMP on or before April
22 1 of each year. Annual reclamation reports shall be prepared and submitted in the
23 format required by the NSCMP and shall describe the reclamation completed during
24 previous calendar year and proposed reclamation activities for the current calendar
25 year and subsequent calendar year.

26 C. Annual reclamation reports shall identify and describe:

27 1. areas for which Phase I, II, or III bond release was approved during the previous
28 calendar year and within Phase III release areas, the areas of each postmining land
29 use;

30 2. areas newly bonded for disturbance during the previous calendar year;

1 3. areas that were reclaimed and the extent to which they were reclaimed during the
2 previous calendar year and any problems or exceptional successes encountered;

3 4. areas to be reclaimed during the current calendar year and subsequent calendar
4 year and the specific types of reclamation to be conducted;

5 5. seeding mixtures used during the previous calendar year and intended to be used
6 during the current calendar year and subsequent calendar year and the reasons for the
7 choice of specific mixtures;

8 6. anticipated problem areas and mitigation measures intended to be used; and

9 7. all other information that the NSCMP may require.

10 D. All reclamation activities proposed to be conducted during the current calendar
11 year and subsequent calendar year must conform to the schedule and specifications
12 of the reclamation plan in the permit application approved by the NSCMP pursuant
13 to section 2110 of this Act.

14
15 CHAPTER 24 – RESERVED

16
17 **Section Four. Effective Date**

18 The Act enacted herein shall be effective upon its approval pursuant to 2 N.N.C.
19 §221.

20
21 **Section Five. Codification**

22 The provisions of the Act which amend or adopt new sections of the Navajo Nation
23 Code shall be codified by the Office of Legislative Counsel. The Office of
24 Legislative Counsel shall renumber sections of this legislation such that the
25 legislation conforms to the standard form of the Navajo Nation Code. The Office of
26 Legislative Counsel shall incorporate such amended provisions in the next
27 codification of the Navajo Nation Code.

28
29 **Section Six. Savings Clause**

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Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court, or the District Court of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, or any other court of competent jurisdiction, those portions of this Act which are not determined invalid shall remain the law of the Navajo Nation.