

# OFFICE OF ENERGY AND ENVIRONMENTAL LAW

Monograph 2

ALABAMA  
ENERGY AND ENVIRONMENTAL  
LAW CENTER



*Alabama Energy and Environmental Agencies*

The University of Alabama  
Law Center

# **OFFICE OF ENERGY AND ENVIRONMENTAL LAW**

**Monograph 2**



## FOREWORD

The Office of Energy and Environmental Law is primarily a resource center for the encouragement of policy formulation and public service. In addition to giving attention to the fields of energy and environmental law as a whole, the Office particularly studies the manner in which our society's demand for energy is being balanced against its environmental concern. Before beginning any studies, however, it was necessary to develop basic resource material. This pamphlet is an example of such development.

The Office compiled this pamphlet to assist with the work being conducted in the energy and environmental area. Since it has proven useful for our purposes, we are making it available for others who work in this area.

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I. STATUTORY AUTHORITY: §§ 41-9-200 to -204 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The ADO is the principal executive planning agency for Alabama's human, economic, and physical resources. It combines the State Planning and Industrial Development Board and the Alabama Program Development Office into one agency. § 41-9-202 Ala. Code (1975). The ADO is subdivided into various divisions and offices including the industrial division, information and public relations division, the office of economic opportunity, the state-federal programs division, the state housing division and finally the state planning division (which among other things does resource planning with natural resources). A Catalog of Alabama's Environmental Resources 1 (1975).

The ADO is an agency of the Office of the Governor. Alabama Government Manual 25-8 (1977). "The agency shall act as an advisory, consulting and coordinating agency to harmonize activities at all levels of government, render planning assistance to governmental units and stimulate public interest and participation in the human resource, economic and physical development of the state." § 41-9-200 (b) Ala. Code (1975).

Note: Executive Orders Nos. 3 and 4 issued February 22, 1979, altered the existing statutory scheme reflected in sections 41-9-200 to -204 of the Alabama Code by dividing once again the ADO's two major functions. According to Executive Order No. 3, the newly created Office of State Planning and Federal Programs has assumed sole responsibility for planning, coordination and control of all federal programs available to and operated by the various state agencies and departments. Pursuant to Executive Order No. 4, the ADO continues to be the primary agency responsible for industrial development and

promotion in the state. Accordingly, the rights, powers and duties set out below in Parts III, IV, and V are given by current statute to the ADO, but should now be ascribed either to the Office of State Planning and Federal Programs or to the ADO according to their present respective functions.

B. Specific Statutory Mandates:

- |                |   |
|----------------|---|
| Coordination   | 1. The ADO has assumed all the power and authority of two former separate state entities, the State Planning and Industrial Development Board and the Alabama Program Development Office. This section apparently terminates the useful life of the industrial development board because it transfers "all books, records, supplies, funds, equipment and personnel of the state planning and industrial development board" to the ADO. § 41-9-202 (a) <u>Ala. Code</u> (1975). The same transfer is mandated for the Alabama Development Office. § 41-9-202 (b) <u>Ala. Code</u> (1975). |
| Planning       | 2. The ADO's major function seems to be the formulation of "long-range plans and policies for the orderly and coordinated growth of the state. . . ." § 41-9-202 (c) (2) <u>Ala. Code</u> (1975).   |
| Federal Grants | 3. The ADO also is empowered to apply for and accept any federal grants for the purpose of supporting state planning activities. § 41-9-202 (c) (9) <u>Ala. Code</u> (1975).  |
| New Industry   | 4. The industrial development division of the ADO "has the responsibility of assisting new industry in locating in Alabama and assisting  |

- established industry in the State to expand." Alabama Government Manual 26 (1977).
- Sewage Water 5. The ADO administers public facilities programs including water and sewer systems. Id. at 27.
- Coastal Zone Energy Impact 6. The ADO administers the Coastal Energy Impact Program established pursuant to 16 U.S.C. § 1456 (a).
- Regulations 7. The ADO is authorized to promulgate such reasonable rules and regulations as are necessary to discharge its duties. § 41-9-202 (c) (11) Ala. Code (1975).

### III. FULFILLMENT OF RESPONSIBILITIES

See above.

### IV. COORDINATION

The Alabama Development Office is the result of a merger between the Alabama Program Development Office and the State Planning and Industrial Development Board. It is an agency of the Office of the Governor.

The ADO coordinates with the state budget agency to study and review federal aid plans and applications filed with federal government. § 41-9-202 (c) (7) Ala. Code (1975). The ADO also "furnishes staff to the Alabama Coastal Area Board for the development of the coastal zone management plan and program." Alabama Government Manual 27 (1977). The office works with the State Industrial Development Authority (§ 41-10-20 et seq. Ala. Code (1975)), and advises and consults with regional, county and local planning and development agencies (§ 41-9-202 (c) (6) Ala. Code (1975)).

The ADO potentially may function as a federal agency in the area of industrial planning and development, § 41-9-202 (c) (9) Ala. Code (1975), and performs this function in connection with the Coastal Energy Impact Program, established pursuant to 16 U.S.C. § 1456 (a).

V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

A. Federal:

1. 16 U.S.C. § 1456 (a)

B. State:

1. Statutory Authority: §§ 41-9-200 to -204 Ala. Code (1975).
2. Executive Orders Nos. 3 and 4, issued February 22, 1979.

C. Secondary Material:

1. Alabama Government Manual 25-28 (1977).

VI. INDEX

A. Coordinate Agencies:

1. Office of the Governor
2. Alabama Coastal Area Board
3. State Budget Agency
4. Regional Planning and Development Commissions
5. Water Improvement Commission
6. Department of Commerce
7. Alabama Industrial Development Authority

B. Topics:

1. Planning
2. Grants
3. New Industry
4. Sewage & Water
5. Coastal Energy Impact Program



§ 2 (AL) ALABAMA AIR POLLUTION CONTROL COMMISSION

I. STATUTORY AUTHORITY: Alabama Air Pollution Control Act of 1971, §§ 22-28-1 to -23 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

Responsible for achieving and maintaining air quality sufficient to protect human health and welfare, and to prevent injury to plant and animal life and property. Provides for air pollution control, abatement and prevention, and emergency procedures if human health or safety is threatened. Maintains a Statewide Air Monitoring Network which conducts air quality surveillance systems to determine existing levels and sources of pollution. Ninety-three sites throughout Alabama are monitored. A Catalog of Alabama's Environmental Resources, 4 (1975). The Commission is part of the State Department of Health. The State Health Officer is the presiding member of the Commission. The remaining six members are appointed by the governor with the advice and consent of the senate. § 22-28-7 Ala. Code (1975).

B. Specific Statutory Mandates

- |                        |  |
|------------------------|--|
| Grants                 | 1. Administration and receipt of grants and funds. § 22-28-10 (13) <u>Ala. Code</u> (1975).                                  |
| Hearings               | 2. Conduct Administrative Hearings. § 22-28-10 (1) <u>Ala. Code</u> (1975).  |
| Enforcement            | 3. Enforcement of the Air Pollution Control Act. § 22-28-10 (2) <u>Ala. Code</u> (1975).                                     |
| Prevention & Abatement | 4. Develop comprehensive plan for prevention abatement and control of air pollution. § 22-28-10 (5) <u>Ala. Code</u> (1975). |
|                        | 5. Determine the degree of air pollution in the state. § 22-28-10 (8) <u>Ala. Code</u> (1975).                               |

Coordination Function	6. Advise, consult, contract and cooperate with other state and local agencies, other states, industry and the federal government. § 22-28-10 (11) <u>Ala. Code</u> (1975).
Consultation New Construction	7. Provide consultation on request with any person proposing to construct contaminant source. § 22-28-10 (12) <u>Ala. Code</u> (1975).
Emission Control	8. Establish emission control requirements. § 22-28-11 <u>Ala. Code</u> (1975).
Motor Vehicle Inspection	9. Establish standards for motor vehicle emissions, requiring periodic inspections including a certificate of inspection. § 22-28-12 <u>Ala. Code</u> (1975).
Variances Commission Opinions	10. Individual variances from Commission granted to avoid undue hardship. § 22-28-13 <u>Ala. Code</u> (1975).
Regulations	11. Promulgate regulations. § 22-28-14 <u>Ala. Code</u> (1975).
Public Hearings	12. Public hearings for adoption, amendment or repeal of regulations. § 22-28-15 <u>Ala. Code</u> (1975).
Permits	13. Require permits for construction, installation, modification or use of equipment determined to cause air pollution. § 22-28-16 <u>Ala. Code</u> (1975).
Inspection	14. Conduct inspections and tests on any property on which an air contaminant source is being constructed. § 22-28-19 <u>Ala. Code</u> (1975).
Emergencies	15. May declare Air Pollution Emergencies. § 22-28-21 <u>Ala. Code</u> (1975).
Violations	16. Initiate violation proceedings. § 22-28-22 <u>Ala. Code</u> (1975).

Coordinate  
Local Programs

17. Provides for establishment of local pollution-control authorities with overall supervisory control in the Commission. § 22-28-23 Ala. Code (1975).

### III. FULFILLMENT OF RESPONSIBILITIES

Hearings

A. Administrative Hearings: § 22-28-10 (1) and § 22-28-15 Ala. Code (1975). Commission may hold general hearings as required and specifically for adoption, amendment or repeal of its regulations.

Enforcement

B. Enforcement: The Commission is empowered to enforce all provisions of the act by:

1. Issuance of orders. § 22-28-10 (2) Ala. Code (1975).

2. Utilize administrative and judicial proceedings. § 22-28-10 (2) Ala. Code (1975).

3. Initiate legal proceedings through the Attorney General or local District Attorney or in its own name. § 22-28-22 Ala. Code (1975).

a. Civil Penalty - Injunction and damages not to exceed \$10,000 for each violation and additional \$10,000 for each day violation continues. § 22-28-22 (a) Ala. Code (1975).

b. Criminal Penalty - Misdemeanor; sentence not to exceed one year at hard labor. § 22-28-22 (d) Ala. Code (1975).

c. Issue cease and desist citations. § 22-28-22 (e) Ala. Code (1975).

C. Contamination Control

1. Motor Vehicle inspection and certificates. § 22-28-12 Ala. Code (1975).

2. Permit program for construction. § 22-28-16 Ala. Code (1975).

#### IV. COORDINATION

The Air Pollution Control Commission is essentially an enforcement arm of the Environmental Protection Agency. The Commission, which is part of the State Health Department ( § 22-28-4 Ala. Code (1975)), is designated the "State Air Pollution Control Agency" for purposes of the Clean Air Act (42 U.S.C. § 1857 et seq. (1971)). § 22-28-10 (13) Ala. Code (1975). The Commission may function through local air pollution control organizations; however, these groups remain under overall supervision of the Commission. § 22-28-23 Ala. Code (1975). The Commission must send quarterly and semi-annual reports to EPA regional office in accordance with the Storage and Retrieval of Aeronomic Data (SAROAD) Users Manual, USEPA, OAP, APTD-0663. 40 C.F.R. § 51.7 (a), (b).

Administrator of EPA may issue his own compliance order or bring a civil action against individual violators if state program fails to enforce its own implementation plan. 42 U.S.C. § 1857C-8 (a) (1) (1971). Getty Oil Co. vs. Rucklehaus, 467 F. 2d 349 (3rd Cir. 1972). In addition, the EPA may enforce state implementation plans as necessary 42 U.S.C. § 1857C-8 (a) (2) (1971).

#### V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

##### A. Federal:

1. Clean Air Act, as amended, 42 U.S.C. § 1857 et seq.
2. 40 C.F.R. § 50.1.

##### B. State:

1. Statutory Authority: Alabama Air Pollution Control Act; § 22-28-1 to -23 Ala. Code (1975).
2. Alabama Air Pollution Control Commission Rules and Regulations (Rev. Sept. 1976) available in OEEL File #2 (AL).

C. Secondary Material:

1. A Catalog of Alabama's Environmental Resources (1975).
2. 1 Grad. Treatise on Environmental Law § 3.01, .03 (1977).

VI. INDEX

A. Coordinate Agencies

1. E. P. A.
2. Alabama Board of Health
3. Alabama Local Air Pollution Control Organizations

B. Topics:

1. Planning
2. Grants
3. Public Hearings
4. Enforcement
5. Prevention and Abatement
6. Coordination
7. Consultation: New Construction
8. Emmission Control
9. Inspections
10. Permits

§ 3 (AL) AMERAPORT OFFSHORE HARBOR AND TERMINAL COMMISSION

I. STATUTORY AUTHORITY: §§ 33-10-1 to -26 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The six-member Commission is responsible for planning, constructing and operating a deep draft harbor and terminal and is charged with asserting and protecting Alabama's economic, social and environmental interests in any deep draft harbor and terminal program in proximity to the Alabama coast. § 33-10-2 Ala. Code (1975). If the deep draft harbor is beyond the territorial sea of the United States (3 miles), it must be licensed by the United States Secretary of Transportation.

Deepwater Port Act of 1974, 33 U.S.C. § 1503.

B. Specific Statutory Mandates:

- |                       |   |
|-----------------------|---|
| Planning<br>Pipelines | 1. Plan, construct, operate a deep draft harbor and terminal to provide necessary docking facilities for vessels carrying petroleum products; provide for the laying of pipelines or other forms of transmission of energy cargos of all kinds. |
| Water<br>Quality      | 2. Protect Alabama's coastal environment from any harm which might occur from the Commission's development program.   |
| Grants                | 3. Apply for, request, contract for and accept money and assistance from any source to carry out its duties. § 33-10-12 <u>Ala. Code</u> (1975).  |
| Eminent<br>Domain     | 4. Expropriate any real property in fee. § 33-10-15 <u>Ala. Code</u> (1975).<br>5. Collect tolls and fees. <u>Id.</u><br>6. Mortgage properties constructed or acquired by the Commission. <u>Id.</u>   |

Bonds

7. Incur debt and issue bonds. § 33-10-24  
Ala. Code (1975).

### III. FULFILLMENT OF RESPONSIBILITIES

See above.

### IV. COORDINATION

The Commission may negotiate and enter into contracts with agencies or other divisions of the federal government or of other states. § 33-10-16 Ala. Code (1975). The Commission may also enter into intergovernmental contracts with existing port authorities or any municipality or subdivision of Alabama. § 33-10-23 Ala. Code (1975).

### V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

#### A. Federal:

1. Deepwater Port Act of 1974, 33 U.S.C. § 1503.

#### B. State:

1. § 33-10-1 through § 33-10-26 Ala. Code (1975).

#### C. Secondary Authority:

1. Alabama Government Manual 108-110 (1977).

### VI. INDEX

#### A. Coordinate Agencies:

1. Secretary of Transportation
2. Environmental Protection Agency
3. Coastal Area Board
4. Oil and Gas Board
5. Department of Conservation
6. Alabama Water Improvement Commission

#### B. Topics:

1. Eminent Domain
2. Water Quality
3. Pipelines
4. Planning
5. Bonds

I. STATUTORY AUTHORITY: §§ 40-2-1 to -66 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Department of Revenue has the power and authority to exercise complete supervision and control of the valuation, equalization and assessment of property, privilege or franchise and of the collection of all property, privilege, license, excise, intangible franchise or other taxes for the state and counties and of the enforcement of tax laws in the state. § 40-2-11 Ala. Code (1975).

The Commissioner is the chief executive officer of the Department and is appointed by the Governor. "The Commissioner supervises, directs and controls the Department of Revenue; appoints legal counsel and other personnel; provides for keeping full and complete records of all State revenue and assesses the property of all public utilities". Alabama Government Manual 18 (1977).

B. Specific Statutory Mandates:

With regard to natural resources in Alabama:

Coal  
Severance Tax

1. An excise and privilege tax of \$0.135/ton severed shall be paid to the Commissioner by every person severing coal in Alabama. § 40-13-2 Ala. Code (1975).

Coal & Lignite  
Severance Tax

2. An excise and privilege tax of \$0.20/ton severed shall be paid to the Commissioner by every person severing coal or lignite in Alabama. § 40-13-31 Ala. Code (Supp. 1978).



Oil or Gas  
Privilege Tax

3. An annual privilege tax shall be paid to the Commissioner by every person engaged in the business of producing or severing oil or gas in Alabama. §§ 40-20-1 to -13 Ala. Code (1975).

Iron Ore  
Privilege Tax

4. A monthly privilege tax shall be paid to the Commissioner by every person engaged in the business of mining iron ore or operating an iron ore mine in Alabama. § 40-12-128 Ala. Code (1975).

### III. FULFILLMENT OF RESPONSIBILITIES

The Department of Revenue may require any public official or private individual, corporation, partnership or other entity to furnish any information which the Department may need to perform its functions. § 40-2-11 (b), (7) Ala. Code (1975). The Department is empowered to enforce all tax laws of the State through administrative proceedings (§§ 40-2-19 to -21 Ala. Code (1975)); legal proceedings may be made on appeal by either a taxpayer or the State from any final assessment made by the Department (§ 40-2-22 Ala. Code (1975)). Civil and in some instances, criminal penalties may be imposed for violations of tax laws of the State.

### IV. COORDINATION

The Department of Revenue supervises and controls the valuation, assessment and collection of all taxes, assigned to it for collection. The Department confers with, advises and directs county tax assessors and collectors, probate judges, county commissions and every state and county official charged with the assessment and collection of taxes as to their duties under state law. § 40-2-11 (3) Ala. Code (1975). The Department also directs actions to be instituted by the attorney general or district attorneys (with the approval of the attorney general) for the collection of taxes or penalties due or to compel any officer or taxpayer to comply with provisions of the tax laws. § 40-2-11 (4) Ala. Code (1975).

The Department also issues execution and writs of garnishment to any sheriff of Alabama on any final assessment or judgement made or rendered by it. § 40-2-11 (17) Ala. Code (1975).

The Department consults and confers with the governor's office upon the subject of taxation and administration of the laws and progress of the work of the Department.

## V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

### A. Federal: none

### B. State:

1. Statutory Authority: §§ 40-2-1 to -66 Ala. Code (1975).  
§§ 40-12-128 to -130 Ala. Code (1975) (iron ore tax)  
§§ 40-13-1 to -10 Ala. Code (1975) (coal severance tax)  
§§ 40-13-30 to -36 Ala. Code (1975) (coal and lignite severance tax)  
§§ 40-20-1 to -13 Ala. Code (1975) (oil and gas privilege tax)

### C. Secondary Material:

1. Alabama Government Manual 17-21 (1977).

## VI. INDEX

### A. Coordinate Agencies:

1. Governor's Office
2. Department of Industrial Relations
3. Attorney General's Office
4. State Treasurer's Office
5. Sheriff's Offices
6. County Tax Assessors and Collectors, Probate Offices & Commissi

### B. Topics:

1. Taxation
2. Coal
3. Oil and Gas
4. Mineral Resources

§ 5 (AL) DEPARTMENT OF CONSERVATION & NATURAL RESOURCES

I. STATUTORY AUTHORITY: §§ 9-2-1 to -130 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Department was created as an executive department in order to enable the governor to exercise a direct and effective control over the natural resources, state parks and historical sites of the state.

§ 9-2-1 Ala. Code (1975).

B. Specific Statutory Mandates:

- |                         |  |
|-------------------------|--|
| Wildlife                | 1. Protect, conserve and increase the state's wildlife and administer all laws pertaining thereto. § 9-2-2 (1) <u>Ala. Code</u> (1975).                                  |
| Survey<br>Studies       | 2. Make explorations, surveys and studies concerning wildlife and state parks. § 9-2-2 (2) <u>Ala. Code</u> (1975).  |
| State Parks             | 3. Maintain and operate all state parks. § 9-2-2 (3) <u>Ala. Code</u> (1975).  |
| State Lands             | 4. Maintain, supervise, operate and control all state lands not committed to the control of some other agency of the state. § 9-2-2 (4) <u>Ala. Code</u> (1975).         |
| Educational<br>Programs | 5. Carry on a public education program about wildlife and other natural resources of the state. § 9-2-2 (6) <u>Ala. Code</u> (1975).                                     |
| Regulations             | 6. Promulgate, publish and enforce rules and regulations regarding wildlife, fish and seafoods existing in the state or its waters. § 9-2-4, -8 <u>Ala. Code</u> (1975). |

### III. FULFILLMENT OF RESPONSIBILITIES

A. The Department of Conservation and Natural Resources is authorized to enter into cooperative agreements with the federal government pertaining to wildlife restoration projects, educational programs connected therewith, the collection and publication of data with respect to wildlife or any matter over which the Department has authority. The Department is further authorized to make and enforce all regulations that such cooperation and resulting agreements might necessitate. § 9-2-2 (5) Ala. Code (1975). A report is to be made annually to the Governor concerning the activities and accomplishments of the Department for the preceding year. § 9-2-2 (7) Ala. Code (1975). The Department is empowered to recommend to the Legislature such legislation as may be needed to further protect, conserve, increase or to make available or useful the wildlife and other natural resources of the state. § 9-2-2 (8) Ala. Code (1975).

The Department is under the direction of the Commissioner of Conservation and Natural Resources (§ 9-2-5 Ala. Code (1975)) and is organized functionally into several divisions:

1. State Lands Division - This division manages, controls and develops stateowned islands, sub-marginal lands and river and bay bottoms. It may sell timber, minerals and other resources from these lands. § 9-2-120 Ala. Code (1975).
2. State Parks Division - The State Parks Division performs all functions of the Department of Conservation with respect to State Parks. It makes explorations, surveys, studies and reports concerning the state parks and publishes those of general interest. §§ 9-2-100 to -108 Ala. Code (1975).
3. Game and Fish Division - The Game and Fish Division is responsible for carrying out those duties of the Department of Conservation that pertain to game and fish in the state. §§ 9-2-60 to -65 Ala. Code (1975). These duties include

enforcement of the game and fish laws of the state, management of game and fish resources, research, and supervision of game preserves, public hunting areas, public fishing lakes and fish hatcheries. This division is further divided into the following sections: Headquarters Staff, Inland Fish, Federal Aid to Wildlife, and Law Enforcement. Alabama Government Manual 87 (1977).

4. Marine Resources Division - The Marine Resources Division has the functions and duties of the Department that pertain to seafoods, including but not limited to law enforcement. §§ 9-2-80 to -89 Ala. Code (1975). Marine research is conducted under contract with the Division by the Department of Biology at the University of Alabama. . Alabama Government Manual 87 (1977).
5. Marine Police Division - This division enforces the Water Safety Law and helps to educate the public in water safety. Marine police officers may exercise all powers of peace officers granted to law enforcement officers in Alabama. § 33-5-4, -5 Ala. Code (1975). The Division has an extensive program of marking channels and hazards on the public waters of the state. Alabama Government Manual 88 (1977).

The Commissioner can, with the consent of the governor create new divisions within the Department. § 9-2-11 Ala. Code (1975).

The Department is assisted in policy formulations by the Advisory Board of Conservation which also examines all rules promulgated by the Commissioner, and assists in giving publicity to the Department's activities. Alabama Government Manual 86 (1977).

#### IV. COORDINATION

The Department may enter into reciprocal agreements with other states and into cooperative agreements and stipulations with the federal government.

The Department is authorized to cooperate with the federal government in restoration of wildlife in compliance with the Pittman-Robertson Act. § 9-2-26 Ala. Code (1977). It is authorized to expend such funds as may be necessary to comply with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970. § 9-2-27 Ala. Code (1975). The Marine Police Division furnishes reports of accidents to the proper federal agency as may be required by federal law. § 33-5-4 Ala. Code (1975).

#### V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

##### A. Federal:

1. Pittman-Robertson Act.
2. Uniform Relocation Assistance and Land Acquisition Policies Act of 1970. 42 U. S. C. A. §§ 4601-4655.

##### B. State:

1. §§ 9-2-1 to -130 Ala. Code (1975).
2. §§ 9-17-60 to -69 Ala. Code (1975).

##### C. Secondary Material:

1. Alabama Government Manual 85-88 (1977).

#### VI. INDEX

##### A. Coordinate Agencies:

###### State:

1. Governor of Alabama
2. Coastal Area Board
3. Soil and Water Conservation Commission
4. Water Resources Research Institute

###### Federal

1. Department of Agriculture
2. Department of Interior
3. E.P.A.
4. Department of Commerce

**B. Topics:**

1. Wildlife
2. Surveys
3. State Parks
4. State Lands
5. Educational Programs
6. Game and Fish
7. Marine Resources
8. Marine Police
9. Advisory Board of Conservation
10. Research
11. Coastal Zone

I. STATUTORY AUTHORITY: §§ 9-7-10 to -22 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Coastal Area Board is an agency of the State of Alabama, charged with land and water use planning in the state's coastal zone.

B. Specific Statutory Mandates:

Coastal Area  
Management  
Program

1. Development and implementation of a comprehensive "coastal area management program" for the coastal zone. The program shall include:

(1) Identification of all of the state's coastal resources;

(2) Evaluation of these resources in terms of their quality, quantity and capability for their use both now and in the future;

(3) Determination of the present and potential uses and the present and potential conflicts in the uses of each coastal resource;

(4) An inventory and designation of areas of particular concern within the coastal area;

(5) Broad guidelines on priority of uses in particular areas;

(6) Provisions for adequate consideration of the local, regional, state and national interest involved in the siting of facilities for the development, generation, transmission and distribution of energy, adequate transportation facilities and other public services necessary to meet requirements which are other than local in nature;

(7) Provisions for consideration of whether a proposed activity of an applicant for a federal license or permit complies with the state's coastal area program and for the issuance of notice to any concerned federal agency as to whether the state concurs with or objects to the proposed activity;

Energy  
Siting



(8) Adequate provision for public notice, public hearings and judicial review as provided for under Alabama law; and

The management program shall determine permissible land and water uses that have a direct and significant impact within the boundaries of the coastal area and must give due consideration to requirements for agriculture, industry, commerce, resource conservation, residential development, recreation, extraction of mineral resources and fossil fuels, harvesting of timber and pulpwood, transportation and navigation, waste disposal and harvesting of fish, shellfish and other living marine resources.

§ 9-7-15 Ala. Code (1975).

2. Certain activities are specifically deemed permissible in the coastal zone. § 9-7-13

Ala. Code (1975).

3. At the time of this memo the coastal area management program has not been implemented.

A workshop draft of the plan was completed in August, 1978, and the program is tentatively scheduled for implementation on August 30, 1979.

Alabama Coastal Area Management Program, Workshop Draft (August, 1978). (Workshop Draft).

p. 9. Before the plan may be implemented, it must be approved by the Governor. § 9-7-17 (a)

Ala. Code (1975).

### III. FULFILLMENT OF RESPONSIBILITIES

When implemented, the program will be effected through the permitting of activities which have a direct and significant impact on the coastal waters. If a particular activity already requires a permit from a state or local agency, rather than requiring another permit the Board is given authority to review, and veto if necessary, actions taken by the other agencies. Decisions made by the Board may be appealed pursuant to § 9-7-21 Ala. Code (1975). Provision is also made for coordination with federal agencies. § 9-7-20 Ala. Code (1975).

The Board is given authority pursuant to § 9-7-16 Ala. Code (1975) to promulgate such rules and regulations as are "necessary to carry out the management program". Such regulations must be approved by the Governor before becoming effective. § 9-7-17 (b) Ala. Code (1975).

The State of Alabama or local district attorneys may bring an action to restrain threatened or actual violation of the act in any county where the alleged violation occurs or in which property affected by such violation is located. All statutory and common law remedies are preserved. § 9-7-22 Ala. Code (1975).

#### IV. COORDINATION

The Alabama Coastal Area Board is charged with coordinating all state and federal activities which have a significant impact on the coastal waters.

Unlike the Alabama Air Pollution Control Commission, which is essentially an enforcement arm of the Environmental Protection Agency, the Board is largely an autonomous state agency, the existence of which is encouraged by federal grants administered through N.O.A.A. in the Department of Commerce. Conditioned on states meeting certain requirements, grants are given for both the development and administration of programs. See 15 C.F.R., part 920 and 15 C.F.R., part 923. Grants are also given in the coastal zone as part of the Coastal Energy Impact Program. 16 U.S.C. § 1456 (a).

The Governor must approve the plan and all rules and regulations of the Board.

The Attorney General and local district attorneys enforce compliance with the program.

Through the permit review program other state and local agencies coordinate with the Board. See discussion, Workshop Draft, pp. B-1 through B-22.

Federal agencies are required to conduct their activities in a manner consistent with the states' management programs. Once a plan is implemented, states are to receive notice of applications for federal

permits to conduct activities affecting land or water uses in the coastal zone and are given six months to approve or reject them. A slightly different procedure is followed with respect to leasing on the outer continental shelf. 16 U.S.C. § 1456 (c). Disputes between the Board and a federal agency are resolved by mediation conducted by the Secretary of Commerce and the Executive Office of the President. 16 U.S.C. § 1456 (h). For further discussion of coordination with federal agencies see Workshop Draft, pp. 73-77.

## V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

### A. Federal:

1. Coastal Zone Management Act 1972 (as amended 1976)  
16 U.S.C. § 1451, et seq.
2. 15 C.F.R. part 920 - Coastal Zone Management Program  
Development Grants.  
15 C.F.R. part 923 [Fed. Reg. March 1, 1978, part 2] -  
Coastal Zone Management Program Approval Regulations.

### B. State:

1. § 9-7-10 through § 9-7-22 Ala. Code (1975).
2. The Alabama Coastal Area Management Program: Workshop  
Draft, (August 1978) A. L. I. Office.

### C. Secondary Material:

1. 2 Grad. . Treatise on Environmental Law § 10.04 (1977).
2. Alabama Government Manual, 110-111 (1977).

## VI. INDEX

### A. Coordinate Agencies:

#### State

1. Governor of Alabama
2. Coastal Area Advisory Committee (Alabama)
3. Attorney General of Alabama
4. Local district attorneys (Alabama)
5. Alabama Water Improvement Commission
6. Alabama Air Pollution Control Commission
7. Alabama Oil and Gas Board
8. Alabama Department of Conservation and Natural Resources

9. Alabama State Forestry Commission
10. Alabama State Aeronautics Department
11. Alabama State Highway Department
12. Alabama State Docks Department
13. Alabama Public Service Commission
14. Ameraport Offshore Harbor and Terminal Commission
15. Alabama Department of Civil Defense
16. Alabama Historical Commission
17. Department of Industrial Relations
18. Alabama Surface Mining Reclamation Commission
19. Alabama Liquified Petroleum Gas Board
20. Alabama Water Well Standards Board
21. Alabama State Board of Health
22. Alabama Soil Conservation Districts
23. Alabama Watershed Conservancy Districts
24. Alabama Conservation and Irrigation Agency
25. Alabama local county commissions
26. Alabama local municipal governments

Federal

1. N. O. A. A
2. Department of Agriculture
3. Department of Commerce
4. Department of Defense
5. Department of Energy
6. Department of Health, Education and Welfare
7. Department of Housing, Urban Development
8. Department of Interior
9. Department of Transportation
10. Environmental Protection Agency
11. N. R. C.
12. General Service Administration

B. Topics:

1. Coastal Energy Impact Program
2. Coastal Area Management Program
3. Energy Facilities Siting
4. Permitting
5. Grants

I. STATUTORY AUTHORITY: Executive Order No. 47, issued November 9, 1973.

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Board (AEMB) as part of the state executive branch, develops, conducts and coordinates programs for the efficient use of energy resources in the state. It is the agency responsible for developing and implementing state energy conservation plans to comply with and take advantage of the federal Energy Policy and Conservation Act of 1975 (EPCA), as amended in 1976 by the Energy Conservation and Production Act (ECPA). AEMB also administers the Alabama Energy Extension Service program. AEMB relies completely on federal funds for its operation.

B. Specific Statutory Mandates:

- |                              |   |
|------------------------------|---|
| Planning Energy Distribution | 1. Develop an equitable distribution plan for the energy supplies in Alabama. Ex. Order 47.   |
| Study of Energy Sources      | 2. Prepare studies of energy sources in Alabama. <u>Id.</u>   |
| Energy Conservation Plan     | 3. Develop plan for energy conservation in Alabama in response to EPCA and ECPA.  |
| Implementation Plans         | 4. Prepare plans for the implementation of all state and federal laws and regulations concerning energy resources, supplies and distributions and make recommendations to the Governor. |
| Public Education             | 5. Develop and implement program measures for public education, intergovernmental relations and energy audits.  |

III. FULFILLMENT OF RESPONSIBILITIES

Work designated under each of the program measures called for by AEMB's energy conservation plan is assigned to other state agencies

and to universities. AEMB, however, retains responsibility for overseeing each program's successful operation.

#### IV. COORDINATION

AEMB is specifically directed to coordinate its activities with state agencies, boards and other entities and also with the federal government, particularly the Department of Energy. The membership of the board indicates that various state agencies will be involved in achieving the AEMB's goals: Chairman, Alabama Development Office, State Finance Director, Commissioner of Agriculture and Industries, State Health Officer and State Geologist.

#### V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

##### A. Federal:

1. Energy Policy and Conservation Act, 42 U.S.C. § 6201, et. seq.
2. Energy Conservation and Production Act, 42 U.S.C. § 6801 et. seq.
3. National Energy Conservation Policy Act of 1978, P.L. 95-619  
(Part of National Energy Act)
4. National Energy Extension Service Act, 42 U.S.C. § 7001 et. seq.
5. Regulations: 10 C.F.R. § 420 et. seq.; 43 Fed. Reg. 45536.

##### B. State:

Executive Order No. 47, issued November 9, 1973

##### C. Secondary Authority:

Alabama Government Manual 98-99 (1977).

#### VI. INDEX

##### A. Coordinate Agencies:

1. U.S. Department of Energy
2. Governor
3. Alabama Development Office
4. State Finance Director
5. Commissioner of Agriculture and Industries
6. State Health Officer
7. State Geologist

**B. Topics:**

1. **Planning Energy Distribution**
2. **Study of Energy Sources**
3. **Energy Conservation Plan**
4. **Implementation Plans**
5. **Educational Programs**

§ 8 (AL) ENVIRONMENTAL IMPROVEMENT AUTHORITIES ACT

I. STATUTORY AUTHORITY: §§ 9-6-1 to -17 Ala. Code (1975)

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Act was passed for the purpose of authorizing the establishment of public corporations which would have the power to cooperate with and lend financial assistance and other aid to municipalities, communities, counties, industries and public and private corporations in matters and undertakings pertaining to the control, abatement or prevention of water, air or general environmental pollution. Knight v. West Alabama Environmental Improvement Authority, 287 Ala. 15, 246 So. 2d 903 (1971). § 9-6-3 Ala. Code (1975). Each application to form such a corporation must be submitted by no less than three natural persons and must be approved by the Governor after a determination by the Governor that the proposed activities of such public corporation in the areas of operation described will promote the public health and welfare. § 9-6-4 Ala. Code (1975).

B. Specific Statutory Mandates:

- |   |  |
|---|--|
| Water Quality<br>Air Quality<br>Pollution | 1. Acquire, operate and improve any equipment that may be useful in connection with the control, abatement or prevention of water, air or general environmental pollution. § 9-6-8 (7) <u>Ala. Code (1975)</u> . |
| Studies                                   | 2. Conduct studies either through its own employees or in conjunction with others. § 9-6-8 (8) <u>Ala. Code (1975)</u> .   |
| Assistance                                | 3. Render financial, technical and other aid to counties, municipalities, businesses, and other public corporations and authorities. § 9-6-8 (9) <u>Ala. Code (1975)</u> .                                       |



### III. FULFILLMENT OF RESPONSIBILITIES

Duties and powers of each public corporation are executed by its board of directors. § 9-6-6 Ala. Code (1978). In the event the area of operation described in the certificate of incorporation of the authority includes three or more counties, then an advisory committee chaired by the Governor is created to consult and assist the authority. Remaining members of such an advisory committee include an appointed representative from each affected county, the State Health Officer, the Commissioner of Conservation and Natural Resources, the State Geologist, the director of the State Industrial Development Board, the chairman of the Alabama Water Improvement Commission, the president of the Alabama Wildlife Federation and the head of any air pollution regulating body that might be created by the legislature. § 9-6-7 Ala. Code (1975).

In the furtherance of its duties, each authority may: enter into contracts, agreements or leases (§ 9-6-8 (11) Ala. Code (1975)); borrow money to be evidenced by the authority's interest-bearing bonds and secured by a mortgage or other security instrument (§ 9-6-8 (12), (13) and § 9-6-9, -10, -11 Ala. Code (1975)); and exercise the power of eminent domain (§ 9-6-8 (14) Ala. Code (1975)).

### IV. COORDINATION

The activities of each authority are coordinate with the industrial community, county and municipal bodies within its area of operation, and with the state agencies represented by the ex officio members of its advisory committee, if any. The authority is also required by § 9-6-8 (18) to cooperate and contract with the USA, federal agencies, other states and their respective agencies or subdivisions, other public corporations, and any public or private utility, industry or business if the purpose for which the authority was created would be furthered by such cooperation or legal arrangements.

V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

A. Federal: none

B. State:

1. Environmental Improvement Authorities Act of 1969,  
§ 9-6-1 to -17 Ala. Code (1975).

VI. INDEX

A. Coordinate Agencies:

1. Governor
2. State Board of Health
3. Department of Conservation and Natural Resources
4. State Geologist
5. State Industrial Development Board
6. Alabama Water Improvement Commission
7. Alabama Wildlife Federation
8. EPA

B. Topics:

1. Water Quality
2. Air Quality
3. Pollution
4. Studies
5. Bonds
6. Eminent Domain

I. STATUTORY AUTHORITY: §§ 9-4-1 to -19 Ala. Code (1975)

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The State Geologist is appointed by the president of the University of Alabama with the approval of the Governor. § 9-4-1 Ala. Code (1975). He must "administer his office and the Geological Survey in making mineral, oil and gas, and water resources studies in the State. The State Geologist cooperates with the U. S. Geological Survey in making topographic maps, mineral deposit studies, geologic maps, and water resources investigations. He also cooperates with the U.S. Bureau of Mines... in making mineral exploration and evaluation studies."

The State Geologist also acts as State Oil and Gas Supervisor and must make reports to the Legislature at each regular session. He prepares material collected during mineral, oil and gas, and water resources studies for subsequent publication as a report to the Governor...." Alabama Government Manual 92 (1977).

B. Specific Statutory Mandates:

Studies

1. Conduct mineral, agricultural, biological and other natural resource surveys to determine the quality, character and capacity for development of the state's soils, mineral resources, water power, forests and wildlife. The state geologist is also required to notify landowners immediately of the discovery of ore deposits or other valuable resources upon their land. § 9-4-2 (a) Ala. Code (1975).
2. He must report to the legislature at each of its regular sessions on the progress of his explorations and examinations. § 9-4-2 (b) Ala. Code (1975).

Topographical  
Survey

3. He works with U. S. Geological Survey in preparing topographical surveys of Alabama. § 9-4-11 Ala. Code (1975).

State Oil &  
Gas Board

4. The state Geologist serves as the supervisor for the State Oil and Gas Board. See § 15 (AL).

### III. FULFILLMENT OF RESPONSIBILITIES

The office of the state geologist is subdivided into numerous sections. Several of the most important sections and their functions are as follows:

Programs  
and  
Plans

1. Programs and Plans Section: plans and implements survey projects. "From data on current demand for water, minerals, and energy resources, plans are formulated to develop a comprehensive program to meet the demands for resources in the future."

Minerals

2. Minerals Division: locates, maps and evaluates mineral deposits and determines efficient methods of production and processing minerals for industrial uses.

Water  
Resources

3. Water Resources Division: collects hydrologic data for "development of water supplies for industries, municipalitites" and other organizations.

Energy Resources

4. Energy Resources Research Division: utilizes geophysical studies, reservoir engineering, and geologic studies to develop methods and techniques allowing an orderly development of the state's energy sources.

Environment

5. Environmental Geology Division: develops data for incorporation into land use planning reports, evaluates environmental impact statements.

Water  
Quality

6. Water Quality Research Division: investigates the quality of ground and surface water for use by state planning agencies. Alabama Government Manual 92-5 (1977).

#### IV. COORDINATION

The State Geologist serves an integral part of several state agencies including the Oil and Gas Board and the Minerals Resource Management Committee. §§ 9-5-1 to -3 Ala. Code (1975). He provides basic research data for all state agencies in the area of natural resources including, oil and gas, water and minerals.

On the federal level, the state geologist interacts with the U. S. Geological Survey in preparing topographical surveys and the U. S. Bureau of Mines in conducting mineral explorations and evaluation.

#### V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

##### A. Federal:

1. U. S. Geological Survey, 43 U. S. C. A. § 31-50.
2. U. S. Bureau of Mines, 30 U. S. C. A. § 1-16.

##### B. State:

Statutory Authority: §§ 9-4-1 to -19 Ala. Code (1975).

##### C. Secondary Authority:

1. Alabama Government Manual 92-95 (1977).

#### VI. INDEX

##### A. Coordinate Agencies:

1. U. S. Geological Survey
2. U. S. Bureau of Mines
3. State Oil and Gas Board
4. Minerals Resource Management Commission
5. University of Alabama
6. Water Improvement Commission
7. Alabama Energy Management Board

**B. Topics:**

1. Studies
2. Topographical Surveys
3. State Oil and Gas Board
4. Planning
5. Minerals
6. Water Quality

§ 10 (AL)      DEPARTMENT OF INDUSTRIAL RELATIONS

- I. STATUTORY AUTHORITY: §§ 25-2-1 to -26 Ala. Code (1975) (general);  
§§ 25-9-1 to -370 Ala. Code (1975) (coal mine safety); and  
§§ 9-16-1 to -15 Ala. Code (1975) (surface mining reclamation).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Department of Industrial Relations was established in 1939 as an executive and administrative department of the state. § 25-2-1 Ala. Code (1975). The Department is under the direction and control of the Director of Industrial Relations, an officer who is appointed by and serves at the pleasure of the Governor. § 25-2-6 Ala. Code (1975).

The general functions of the Department of Industrial Relations include:

- (i) administer all labor laws and laws relating to the relationship between employer and employee, (ii) making necessary inspections to determine whether there is compliance with the rules and regulations promulgated pursuant to those laws, (iii) taking such action as may be necessary to enforce compliance, and (iv) administering and performing all functions concerning workman's compensation and unemployment compensation. § 25-2-2 Ala. Code (1975).

B. Specific Statutory Mandates:

Surface Mining  
Reclamation

- I. The Department has authority to regulate non-coal strip mining and enforce the Alabama Surface Mining Act of 1969. §§ 9-16-1 to -15 Ala. Code (1975). (Note: the Alabama Surface Mining Reclamation Commission regulates the surface mining and reclamation of coal. §§ 9-16-30 to -53 Ala. Code (1975)).

Coal Mine  
Safety

2. The Department has responsibility for the regulation of sub-surface mining and enforcement of the Alabama Coal Mine Safety Law of 1975. §§ 25-9-1 to -370 Ala. Code (1975).

Regulations

3. The Director may prescribe such general rules and regulations as are necessary to carry out the lawful duties of the Department. § 25-2-8 Ala. Code (1975).

Right of  
Entry;  
Inspection

4. The Director or his authorized representatives have authority to enter any place of employment for the purpose of collecting facts relating to the employment of workers or making inspections to determine whether there is compliance with existing labor laws. § 25-2-9 Ala. Code (1975).

Permits

5. The Department shall require permits for each non-coal surface mining operation. § 9-16-4 Ala. Code (1975).

### III. FULFILLMENT OF RESPONSIBILITIES

It is the duty of the Board of Appeals for the Department to hold public hearings on any proposed safety rules and regulations and amendments or repeals thereof, and to promulgate and publish such rules, regulations, amendments and appeals. § 25-2-13 Ala. Code (1975). The Board of Appeals is separate from the Department and consists of three members who are appointed by the Governor subject to Senate confirmation; one member each is appointed to represent employers, employees and the public. § 25-2-12 Ala. Code (1975). Following public hearing and decision by the Board, any employer or other person in interest who is dissatisfied with such ruling, may commence an action in circuit court. § 25-2-21 Ala. Code (1975).

The Department shall have enforcement power and authority through: requiring reports (§ 25-2-22, § 25-9-363 Ala. Code (1975)); utilization of



administrative hearings ( § 25-2-23, § 9-16-10 Ala. Code (1975)); discontinuance of use orders, suspensions and/or injunctions ( § 25-2-13, § 25-9-365, -368 Ala. Code (1975)); and initiation of a civil action through the Attorney General, the local district attorney or the attorneys regularly employed by the Department ( § 25-2-24, § 9-16-11 (a) Ala. Code (1975)).

#### IV. COORDINATION

The Department of Industrial Relations is the designated state agency for cooperating with all federal authorities having powers and duties under the 1933 Wagner-Peyser Act with regard to employment. § 25-2-2 (5) Ala. Code (1975). The Department is also the designated state agency for administering Title IV of the Federal Surface Mining Reclamation Act.

#### V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

##### A. Federal: none

##### B. State:

1. Statutory Authority: §§ 25-2-1 to -26 Ala. Code (1975)  
§§ 9-16-1 to -15 Ala. Code (1975)  
§§ 25-9-1 to -370 Ala. Code (1975).

##### C. Secondary Material:

1. Alabama Government Manual 231-36 (1977).

#### VI. INDEX

##### A. Coordinate Agencies:

1. Governor
2. Alabama Surface Mining Reclamation Commission

##### B. Topics:

1. Enforcement
2. Hearings
3. Rules and Regulations
4. Inspections
5. Permits

6. Coal Mine Safety
7. Non-coal Surface Mining
8. Mineral Resources

STATE BOARD OF HEALTH

I. STATUTORY AUTHORITY: § 22-2-1 to -14 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The medical association of the state of Alabama is the State Board of Health which has general enforcement authority regarding public health laws. Among the Board's powers is the right to inspect almost all buildings, plants, homes or structures of any sort for the purpose of determining if conditions dangerous to health exist. § 22-2-2 (4) Ala. Code (1975). The Board is empowered to inspect "source(s) of supply, tanks, reservoirs, pumping stations and avenues of conveyance of drinking water to detect pollution." Id. at (5). In addition, a council on animal and environmental health is created to report to the state committee of public health to provide health information, evaluation of data, research, advice and recommendations. § 22-2-9 Ala. Code (1975).

B. Specific Statutory Mandates:

- |            |   |
|------------|---|
| Studies    | 1. Pursuant to § 22-2-2 <u>Ala. Code</u> (1975), the State Board of Health has authority and jurisdiction to: |
|            | (a) Exercise general control over the enforcement of the law relating to public health.                       |
|            | (b) Investigate the causes, modes, or propagation and means of prevention of diseases.                        |
|            | (c) Investigate the influence of localities and employment on the health of the people.                       |
| Inspection | (d) Inspect public and private buildings for conditions prejudicial to health.                                |
| Pollution  | (e) Examine the sources of drinking water for pollution or conditions likely to lead to pollution.            |

- |          |  |
|----------|--|
| Advisory | (f) Act as an advisory board to the state in all medical matters and matters of sanitation and public health.  |
| Waste    | <p>(g) Administer the management of hazardous wastes and lands which are to be used as disposal sites.</p> <p>2. The State Board of Health reports annually to the governor of its transactions and recommends needed health legislation. § 22-2-3 <u>Ala. Code</u> (1975).</p> <p>3. The State Board of Health is accountable to the legislature and makes an annual report to the legislature. § 22-2-7 <u>Ala. Code</u> (1975).</p> |

### III. FULFILLMENT OF RESPONSIBILITIES

The State Board of Health has the power to adopt rules and regulations for administering the health and quarantine laws of Alabama, which rules are enforceable by the same courts or other entities as in the case of health laws. § 22-2-2 (6) Ala. Code (1975). The Board also has the authority to supervise county health boards and officers in the enforcement of the public health laws; if the county boards or officers fail in the discharge of their duties, those duties may be discharged by the State Board of Health. § 22-2-2 (7) Ala. Code (1975).

### IV. COORDINATION

The state health officer is chairman of the Alabama Air Pollution Control Board and of the Alabama Water Improvement Commission while the State Board of Health is the administrative agent for both of these organizations. The Director of environmental health of the State Health Department is chairman of the board of the Alabama Water Wells Standards Board. The Solid Waste Division of the Board is vested with control over hazardous waste management and is empowered to administer lands which are to be used as disposal sites. Ala. Acts No. 129, Regular Session, 1978.

### V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

- A. Federal: none

B. State:

1. Statutory Authority § 22-2-1 through -14 Ala. Code (1975).
2. Regulations

C. Secondary Material:

1. Alabama Government Manual 197-198 (1977).

VI. INDEX

A. Coordinate Agencies:

1. Environmental Protection Agency
2. U.S. Department of Health, Education and Welfare
3. Alabama Air Pollution Control Commission
4. Alabama Water Improvement Commission
5. Alabama Water Wells Standards Board
6. County Boards of Health

B. Topics:

1. Water Quality
2. Air Quality
3. Studies
4. Inspection
5. Pollution

§ 12 (AL) ALABAMA LIQUEFIED PETROLEUM GAS BOARD

I. STATUTORY AUTHORITY: §§ 9-17-100 to -110 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Board is an agency of the State of Alabama responsible for the permitting of retail sales, distribution, storing or transporting of liquefied petroleum gas. § 9-17-105 Ala. Code (1975). Liquefied petroleum gas is defined as "[a]ny material which is composed predominantly of any of the following hydrocarbons or mixtures of the same: propane, propylene, butanes . . . and butylenes." § 9-17-100 (1) Ala. Code (1975).

B. Specific Statutory Mandates:

Rules &  
Regulations

1. The Board is authorized to make such rules and regulations as reasonably necessary governing the design, construction, location installation and related subjects of tanks or other storage equipment for liquefied petroleum gas. In addition, the Board is directed to promulgate regulations insuring the "accuracy of all meters, safety devices and regulators generally used in connection with " liquefied petroleum gases. § 9-17-103 Ala. Code (1975).

Permits

2. The Board has permitting authority over all selling, distributing, storage or transportation of liquefied petroleum gas. (LPG).

Enforcement

3. The Board is authorized to seek to enjoin any person from engaging in LPG-related activity who has failed to obtain a permit or has been convicted

of at least two violations of either the statute or regulations. § 9-17-108 Ala. Code (1975). The Board may also seek penalties for violations. § 9-17-109 Ala. Code (1975).

Exemptions

4. Manufacturers and wholesalers of LPG or of appliances that utilize LPG are exempt from the above statutory and regulatory control. LPG operations owned and operated by any state municipality are also exempt. § 9-17-110 Ala. Code (1975).

III. FULFILLMENT OF RESPONSIBILITIES

Regulations

1. All regulations will be adopted only after a public hearing and all regulations adopted will be printed and mailed to all LPG dealers registered with the Board. § 9-17-103 Ala. Code (1975).

Permitting

2. In order to acquire a permit, all persons must execute a compliance bond and provide adequate proof of insurance coverage. § 9-17-105 Ala. Code (1975).

IV. COORDINATION

The Alabama Liquefied Petroleum Gas Board has direct ties with several state agencies. The state fire marshal, state director of public safety, and president of the Alabama Public Service Commission partially comprise the Board's membership. § 9-17-101 Ala. Code (1975). The Board coordinates enforcement of the controlling statutory and regulatory laws through the state attorney general or district attorneys. § 9-17-108 Ala. Code (1975).

There appears to be no coordination with federal activities at this time.

V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

A. Federal: none

B. State:

1. §§ 9-17-100 to -110 Ala. Code (1975).

C. Secondary Authority:

1. Alabama Government Manual 66-67 (1977).

VI. INDEX

A. Coordinate Agencies:

1. Governor
2. State Fire Marshall
3. Department of Public Safety
4. Alabama Public Service Commission

B. Topics:

1. Liquefied Petroleum Gas
2. Permits



I. STATUTORY AUTHORITY: §§ 16-45-1 to -5 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Consortium is a non-profit corporate body composed of a number of public and private universities in the state. § 16-45-1 Ala. Code (1975). Its purposes are to provide educational programs in marine sciences on both the undergraduate and graduate levels, to encourage pure and applied research in marine sciences and related areas, to promote and encourage communication among those interested in marine sciences. § 16-45-2 Ala. Code (1975). The Consortium operates the Sea Lab facilities and campus on Dauphin Island.

B. Specific Statutory Mandates:

- |                      |   |
|----------------------|---|
| Educational Programs | 1. To provide educational programs in marine sciences. § 16-45-2 <u>Ala. Code</u> (1975). |
| Research             | 2. To promote research in marine sciences and related areas.                              |

III. FULFILLMENT OF RESPONSIBILITIES

The Consortium has those rights, powers, duties and responsibilities necessary to promote the purpose for which it was created. § 16-45-3 Ala. Code (1975).

As a body corporate, the Consortium's management is vested in a Board of Directors composed of the chief executive officers of the member institutions. The Board determines the overall program and general policies of the Consortium. § 16-45-4 Ala. Code (1975).

IV. COORDINATION

The member colleges and universities of the Consortium sell, lease or give real or personal property to the Consortium. They are also

empowered to make annual expenditures for the support and maintenance of the Consortium. § 16-45-5 Ala. Code (1975).

V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

A. Federal: none

B. State:

1. §§ 16-45-1 to -5 Ala. Code (1975).

C. Secondary Material:

1. Alabama Government Manual 140 (1977).

VI. INDEX

A. Coordinate Agencies:

1. Member universities and colleges

B. Topics:

1. Marine Resources
2. Educational Programs

§ 14 (AL) MINERALS RESOURCE MANAGEMENT COMMITTEE

I. STATUTORY AUTHORITY: §§ 9-5-1 to -3 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Committee's major function is to maximize the income realized by the State from oil, gas and other mineral resources. § 9-5-3 Ala. Code (1975).

B. Specific Statutory Mandates:

In order to maximize the state income from oil, gas and other mineral resources owned by the state, the committee "coordinates the activities of all state departments and agencies, but particularly the Department of Conservation and Natural Resources and the State Oil and Gas Board relating to the development of mineral resources owned by the state." § 9-5-3 Ala. Code (1975).

III. FULFILLMENT OF RESPONSIBILITIES

The Committee holds public hearings as necessary. All recommendations made by the Committee and approved by the Governor are to be implemented as long as they are consistent with existing Alabama laws. § 9-5-3 Ala. Code (1975).

IV. COORDINATION

The Committee exists solely to coordinate the activities of all state agencies as they impact on the maximization of income from state owned mineral resources. The Committee is composed of the State Geologist, the Commissioner of Conservation and Natural Resources, and the Director of Finance. § 9-5-1 (a) Ala. Code (1975).

V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

A. Federal: none

B. State:

1. §§ 9-5-1 to - 3 Ala. Code (1975).

C. Secondary Material:

1. Alabama Government Manual 97-98 (1977).

VI. INDEX

A. Coordinate Agencies:

1. Governor
2. State Geologist
3. Department of Conservation and Natural Resources
4. Department of Finance
5. State Oil and Gas Board

B. Topics:

1. Oil and Gas
2. Mineral Resources

I. STATUTORY AUTHORITY: §§ 9-17-1 to -32 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The State Oil and Gas Board is an agency of the State of Alabama charged with regulation of state oil and gas industries; issuance of drilling permits, formulation of regulations and standards for operations including development of pollution and off-shore drilling regulations. A Catalog of Alabama's Environmental Resources 6 (1975). The Board has the general responsibility to prevent the waste of oil and gas and to protect correlative rights of landowners. § 9-17-2 Ala. Code (1975). Gulf Oil Co. v. Deese, 275 Ala. 178, 153 So. 2d 614 (1963).

B. Specific Statutory Mandates

Rules &  
Regulations

1. Promulgate, after hearing and notice, rules to enforce the statutory purpose of preventing waste of oil and gas and protection of correlative rights. Such regulations will cover, for example, drilling, prevention of pollution of fresh water supplies, prevention of injury from drilling to neighboring leases and property. § 9-17-6 (C) Ala. Code (1975).

Rules of Practice  
& Procedure

2. Establish rules of order and procedure after public hearings before the board is limited by statute. § 9-17-7 Ala. Code (1975). See "Rules of Practice and Procedure before the State Oil and Gas Board." Rules L-1 to L-23.

State  
Geologist

3. The State Geologist will serve ex-officio as the state oil and gas supervisor enforcing the statutes and regulations promulgated by the Board. § 9-17-9 Ala. Code (1975).

## Enforcement

4. The Board is empowered to enforce the statutes and its own regulations through the attorney general by enjoining violators from continued violations. The Board may "obtain such injunctions, prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant, including . . . an injunction restraining any person from . . . disposing of illegal oil, illegal gas, or illegal product. . . . § 9-17-17 Ala. Code (1975). Any party has immediate and direct appeal to the Alabama Supreme Court from any order granting or refusing an injunction or from any order granting or overruling a motion to dissolve such injunction. § 9-17-18 Ala. Code (1975). Civil actions for damages may be maintained despite any action for injunction whether pending or antecedent. § 9-17-19 Ala. Code (1975). The Board may levy a penalty for engaging in any transaction involving illegal gas, illegal oil or an illegal product when the person knew or had notice of the illegality of such oil, gas or product. The Board may close down any operations for failure of a person to comply with the Board rules and regulations or any Alabama statutes. Rules A-7, General Rules and Regulations of the State Oil and Gas Board (1978). § 9-17-21 Ala. Code (1975). The Board may also seize and have sold any illegal oil, gas or product with the proceeds going to the state following condemnation. § 9-17-22 Ala. Code (1975).

Prevent  
Waste

5. The Board is charged with the duty to "limit and promote production of oil and gas ... for the prevention of waste." § 9-17-6 (15) Ala. Code (1975). Waste is defined in the article to mean, inter alia, "Production of oil and gas in excess of reasonable market demand." § 9-17-1 (9) (1) Ala. Code (1975). Reasonable market demand is defined for oil as "the amount of oil reasonably needed for current consumption and use, together with a reasonable amount of oil for storage and working stock;" for gas as "the amount of gas of any type reasonably needed to supply the current consumption and use of such type of gas." § 9-17-1 (16) Ala. Code (1975). Accordingly, the Board has the power to regulate the production of oil and gas in Alabama consonant with current market needs. See also § 9-17-11 (waste unlawful) and § 9-17-14 (limitations on Board's powers to limit production) Ala. Code (1975).

Note: The Board also has jurisdiction over submerged offshore lands of Alabama.

Unitization  
& Integration

6. The Board may establish "drilling units" by requiring the owners of two separate tracts of land to integrate their interests to avoid waste; such integration makes possible the drilling of only one well to drain the entire pool area. § 9-17-13 (a) Ala. Code (1975). The Board may also require integration of tracts in cycling operations in which gas is cycled into a pool to repressurize such pool. § 9-17-13 (b) Ala. Code (1975).

### III. FULFILLMENT OF RESPONSIBILITIES

#### Permitting

1. Any person seeking to drill a well in search of oil or gas, drill for purposes of secondary recovery (i. e., recovery after initial reservoir, pool, pressure depleted), drill for storage purposes or for re-entry of a plugged well must obtain a permit from the Alabama Oil and Gas Board in accordance with Rule B-1, General Rules and Regulations of the State Oil and Gas Board (1978).

#### Rules & Regulations

2. The Board has promulgated regulations dealing specifically with well permitting, drilling, production, safety and environment, processing, reports, and rules of practice and procedure for hearings before the Board. See General Rules and Regulations of the State Oil and Gas Board of the State of Alabama. Additionally, the Board has promulgated regulations governing submerged off-shore lands of Alabama.

#### Enforcement

3. Through the Attorney General of Alabama, the Board may obtain injunctions against violators of statutes or regulations. § 9-17-17 Ala. Code (1975), or the Board itself may order the closing down of operations. Rules A-7, A-8, General Rules and Regulations of the State Oil and Gas Board. The Board may seize, condemn and sell any illegal oil, gas or products (as defined in the Act). § 9-17-22 Ala. Code (1975). The Board may also maintain civil actions to recover penalties for violations. § 9-17-32 Ala. Code (1975).

#### Prevention of Waste

4. The Board's primary function is to regulate and prorate the production of oil and gas in Alabama to ensure: (i) that production does not exceed current market needs, and (ii) that each producer's



right to produce an equitable share is balanced with protecting the correlative rights of other producers and landowners. § 9-17-6 (b) (15) Ala. Code (1975). Additionally, the Board may compel integration of separately owned tracts of land into one "drilling unit" as necessary to avoid waste. § 9-17-13 Ala. Code (1975).

#### IV. COORDINATION

The Alabama Oil and Gas Board is an autonomous state entity with no express legal ties with the federal government. Under the new Energy Act, however, the Board will certify gas wells drilled after January, 1977, for pricing regulation by the Federal Regulatory Commission. (Per conversation with Mr. James Griggs, attorney for the State Oil and Gas Board).

On the state level, two of the most direct coordinate agencies are the Office of the Attorney General and the State Geologist. Section 9-17-5 of the Alabama Code designates the Attorney General as the attorney for the Board. The State Geologist is, ex officio, the State Oil and Gas Supervisor charged with enforcement of the statutes and regulations pertaining to oil and gas. The Commissioner of Conservation and Natural Resources is authorized to lease any lands under his jurisdiction for the "exploration, development and production of oil, gas and other minerals." § 9-17-60 Ala. Code (1975). There may also be an indirect relationship between the Board and the Alabama Water Improvement Commission (§ 6 (AL)) as the Board is also charged with the prevention of pollution of fresh water supplies by oil, gas or salt water, one of the primary functions of the Water Improvement Commission. § 9-17-6 (c) (3) Ala. Code (1975). Finally, there is a direct interface between the Oil and Gas Board and the state judiciary because the Alabama Courts are available to review any rule, regulation or order promulgated by the Board. § 9-17-15 Ala. Code (1975).

V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

A. Federal:

1. National Energy Act of 1978, P. L. 95-619

B. State:

1. § 9-17-1 to -32 Ala. Code (1975).
2. § 9-17-80 to -88 Ala. Code (1975) (unit operations).
3. General Order prescribing Rules and Regulations Governing the Conservation of Oil and Gas in Alabama (Oil and Gas Report 1 Supplemented).

C. Secondary Material:

1. Cohen, Property Theories Affecting the Landowner In a New Oil and Gas Producing State, 10 Ala. L. Rev. 323 (1957-58), 11 Ala. L. Rev. 79 (1958-59).
2. Note, What Constitutes Adverse Possession of Several Mineral Interests by Surface Possessor, 17 Ala. L. Rev. 126 (1964-65).
3. Note, Oil and Gas - Lease - Construction of the Mother Hubbard Clause, 13 Ala. L. Rev. 236 (1960-61).
4. Cohen, Oil and Gas Conveyancing and Leasing in Alabama, 20 Institute on Mineral Law 1 (1973).
5. Validity of Imposition of State Regulation of Natural Gas Priorities, 84 A. L. R. 3d 541.

VI. INDEX

A. Coordinate Agencies:

1. Federal Regulatory Commission
2. Attorney General of Alabama
3. State Geologist of Alabama
4. Water Improvement Commission
5. Commissioner of Conservation and Natural Resources
6. State Judiciary

**B. Topics:**

1. State Geologist
2. Permitting
3. Pollution
4. Water Quality
5. Oil and Gas

I. STATUTORY AUTHORITY: §§ 22-29-1 to -23 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Pollution Control Finance Authority was created to enable the state, acting through it, to provide state financial aid to local public bodies for the prevention and control of water pollution. State aid is given in order to allow local water pollution prevention projects to become eligible for the maximum obtainable federal funding under the federal Water Pollution Control Act. § 22-29-2 Ala. Code (1975). The Authority is a public corporation composed of the Governor, the State Health Officer and the Director of Finance. § 22-29-3 Ala. Code (1975).

B. Specific Statutory Mandates:

Grants

1. The Authority can obligate the state to pay to a local public body such portion of the estimated cost of a project as shall be required in order that the project will be eligible for the maximum obtainable federal grant under the federal Water Pollution Control Act. § 22-29-7 (8) Ala. Code (1975).

Bond Issuance

2. It may issue bonds and invest the proceeds thereof, pending their use. § 22-29-7 (10) and (11) Ala. Code (1975).

III. FULFILLMENT OF RESPONSIBILITIES

See above.

IV. COORDINATION

Any local public body which is eligible for assistance under the federal Water Pollution Control Act may apply to the Authority for financial aid or grants. Such grants, if approved, will be administered by the Authority.

§ 22-29-17, -18, -19 Ala. Code (1975). [NOTE: The Pollution Control Finance Authority as a state executive entity that administers state grants and funds to local public bodies should be distinguished from the public corporations that are authorized by the Environmental Improvement Authorities Act of 1969. As discussed at § 8 (AL), the local environmental improvement authorities may with the approval of the Governor be incorporated by any three or more natural persons and function to aid in the control or prevention of pollution only within their chartered area of operation.]

V. STATUTES, REGULATIONS AND SECONDARY AUTHORITY

A. Federal:

1. Water Pollution Control Act, 33 U.S.C.A. § 115, et. seq.

B. State:

1. Pollution Control Finance Authority, §§ 22-29-1 to -23  
Ala. Code (1975).

C. Secondary Material:

1. Alabama Government Manual 29-30 (1977).

V. INDEX

A. Coordinate Agencies:

1. Environmental Protection Agency
2. State Health Officer
3. State Finance Officer
4. Water Improvement Commission
5. Water Resources Research Institute
6. State Health Department

B. Topics:

1. Water Quality
2. Grants
3. Bonds
4. Pollution

§ 17 (AL)      ALABAMA PUBLIC SERVICE COMMISSION

I. STATUTORY AUTHORITY: §§ 37-1-1 to -157 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The publicly elected Alabama Public Service Commission supervises and regulates public utilities, common carriers and all other aspects of intra-state commerce including intra-state air traffic, bridges and toll roads. Alabama Government Manual 67-8 (1977).

B. Specific Statutory Mandates:

General Supervision  
Electricity  
Natural Gas  
Pipelines

1. The Commission has general supervisory authority over all utilities defined to include "transportation companies" under § 37-2-1 of the Alabama Code (railroads and other common carriers) and any plant producing or distributing to the public electricity, gas, water or steam under section 37-4-1 (7) of the Alabama Code. § 37-1-30 Ala. Code (1975). Specifically included within the definition of transportation company (and thus subject to control by the Commission as a utility) are companies owning, leasing or otherwise operating "any pipeline for the transportation of oil or other commodity." § 37-2-1 Ala. Code (1975).

Jurisdiction

2. The Commission's authority does not directly extend to any person "engaged solely in interstate commerce of business." See § 37-2-1, 37-4-1 (7) Ala. Code (1975). Any person who produces steam, gas, electricity or water for his sole use (who is not otherwise a utility) or the tenant(s) of this

- producer is not subject to the authority of the Commission, nor is a person who supplies such products to a utility but does not participate in the use or distribution of the products. § 37-1-33 Ala. Code (1975). Utilities engaged in interstate commerce that are not regulated by Congress are subject to the powers of supervision of the Commission. § 37-1-43 Ala. Code (1975).
- Rules and Regulations 3. The Commission may promulgate any regulations necessary to govern proceedings and investigations. § 37-1-38 Ala. Code (1975).
- Standards 4. The Commission may establish standards of service to be provided by any utility. § 31-1-52 Ala. Code (1975).
- Rates 5. The Commission's primary function is to ensure that all rates and charges are "reasonable and just to both the utility and the public." §§ 37-1-80 to -81, 37-1-97 Ala. Code (1975).
- Consumer Interests 6. Money has been appropriated to finance legal services on behalf of consumers in any utility rate hike hearing or appeals.

### III. FULFILLMENT OF RESPONSIBILITIES

#### A. General Supervision of Utilities: § 37-1-32 Ala. Code (1975).

- General Supervision 1. The Commission shall monitor the management of all utilities and the manner and method in which each conducts its business. The Commission performs such monitoring by examination of all utilities for their general condition, and condition of franchises, capitalization, rates and other charges. The manner of operation of each utility is to be examined for both "security and accomodation

Rates

afforded by their service" and for compliance with the applicable statutory and regulatory law.

2. The Commission has an inherent duty to fix rates of utilities Illinois Central Railroad Co. v. Thomas Alabama Kaolin Co., 275 Ala. 236, 153 So. 2d 794 (1963) which is derived from the legislative grant of rate making power to the Commission. Alabama Gas Corp. v. Wallace, 293 Ala. 594, 308 So. 2d 674 (1975). The Commission may fix any rate which it determines is "unreasonable or unjustly discriminatory." § 37-1-97 Ala. Code (1975). However, the Commission cannot issue any order fixing rates until after a public hearing on such order has been held. § 37-1-96 Ala. Code (1975). Two methods exist for the adjustment of rates by parties other than by the Commission. A utility desiring to institute a new rate must file a schedule reflecting the new rate with the Commission at least thirty days prior to its effective date. § 37-1-81 Ala. Code (1975). The new rate will become effective at the designated time if the Commission fails to act on the request; the Commission may, however, still rule on the new rate after its effective date. Id. The Commission may temporarily suspend operation of the new rate for a period of up to six months in order to properly investigate the feasibility of the new rate. Id. A second method by which to achieve Commission review is to institute a complaint. "Any affected person" including a mercantile society, municipality or even a utility



may file a complaint with the Commission which must be acted upon within ninety days (the Commission can institute an investigation on its own motion also) alleging a rate to be invalid, unfair, or unreasonable. § 37-1-83 Ala. Code (1975). Again, the Commission may not issue any order affecting rates until after notice and hearing. Id.

#### Enforcement

3. Any person or organization may institute a complaint that any rate, practice or service of a utility or common carrier is unfair, or inadequate. § 37-1-83 Ala. Code (1975). The Commission may conduct an investigation of alleged unfair practices with or without a complaint. § 37-1-83 Ala. Code (1975). The Attorney General represents the Commission in all legal proceedings initiated by the Commission or against it. § 37-1-64 Ala. Code (1975).

#### Interstate Rates

4. The Commission is empowered to apply to the appropriate federal agency for relief from alleged excessive or discriminatory rates, rules or regulations of interstate commerce. § 37-1-44 Ala. Code (1975). The Commission may also intervene in any federal action involving interstate rates in Alabama. § 37-1-47 Ala. Code (1975).

#### IV. COORDINATION

The Public Service Commission as an agency of the State of Alabama regulates utilities and common carriers operating in intrastate commerce. By statute the Commission has the authority to regulate utilities engaged in interstate commerce that are not regulated under acts of Congress. § 37-1-43 Ala. Code (1975). By judicial authority, the Commission may

regulate intrastate transportation by common carriers under its inherent police powers even when this regulation has an incidental impact on interstate commerce. Southern-Pacific Railroad v. Arizona, 249 U.S. 472 (1919), Atchinson, Topeka & Santa Fe R. Co. v. Railroad Commission, 283 U.S. 380 (1931). As previously noted the Commission may apply to federal agencies for relief from what it believes are excessive or unjust rates, § 37-1-44 Ala. Code (1975), it may sit and confer with other state utility commissions, § 37-1-45 Ala. Code (1975), or confer with federal commissions or agencies § 37-1-46 Ala. Code (1975).

On the federal level, the Federal Energy Regulatory Commission regulates the transportation of interstate oil and gas (note that the PSC regulates intrastate pipelines, see § 37-4-80 Ala. Code (1975) and II. B. 1 above). 15 U.S.C. § 717-717W. This regulatory authority includes the power to set rates. The Secretary of Transportation enforces safety regulations for interstate transportation of oil and gas. 49 U.S.C. § 1671-1684 (Natural Gas Pipeline Safety Act). Federally promulgated safety standards apply to intrastate pipelines unless the state has its own federally qualifying regulatory program. 49 U.S.C. §1674.

In the area of electricity, the Federal Power Act gives the Federal Energy Regulatory Commission (formerly the Federal Power Commission) liberal authority to regulate wholesale rates for interstate transportation of electrical energy. 16 U.S.C. § 824 (a) (b). Although the Federal Power Act expressly limits federal jurisdiction to those areas not subject to regulations by the states, 16 U.S.C. § 824 (a), such a determination is not conclusive on the issue of federal jurisdiction. Indiana & Michigan Electrical Co. v. F.P.C., 365 F. 2d 180 (7th Cir. 1966). The Federal Power Act limits a state's exclusive jurisdiction to 1) power generated or sold wholly within the state; 2) retail rates for power transmitted interstate; and 3) local distribution facilities. F.P.C. v. Arizona Edison Co., 194 F. 2d 679 (9th Cir. 1952).

## V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

### A. Federal:

1. Federal Power Act, 16 U.S.C. § 824 et. seq.
2. Natural Gas Pipeline Safety Act, 49 U.S.C. §§ 1671-84.
3. Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801-12.
4. Natural Gas Act of 1938, 15 U.S.C. §§ 717-717W.

### B. State:

1. Statutory Authority of the PSC - §§ 37-1-1 to -157 Ala. Code (1975).
2. Transportation Companies: §§ 37-2-1 to -184 Ala. Code (1975).
3. Motor vehicle carriers: §§ 37-3-1 to -34 Ala. Code (1975).
4. Other public utilities: §§ 37-4-1 to -131 Ala. Code (1975).

### C. Secondary Authority:

1. Alabama Government Manual 67-70 (1977).
2. H. Green, The Energy Law Guide §§ 4.31 - 4.40, 5.01 - 5.86 (1978).
3. Stabler, The Alabama Public Service Commission and The Courts, 22 Ala. L. Rev. 113 (1969-70).
4. Note, Public Service Commission Denies Due Process When It Fails to Receive Examiner's Report as a Body With Notice to All Members, 21 Ala. L. Rev. 171 (1968-69).

## VI. INDEX

### A. Coordinate Agencies:

1. Interstate Commerce Commission
2. Secretary of Transportation
3. Federal Regulatory Commission
4. Governor of Alabama
5. Attorney General of Alabama
6. Other State Utility Commissions

B. Topics:

1. Electricity
2. Natural Gas
3. Pipelines
4. Utility Rates

I. STATUTORY AUTHORITY: § 22-14-5 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Board was established to review state policies relating to ionizing radiation and to advise the Radiation Control Agency. The purpose of the Advisory Board is to protect the public health and safety. The Board consists of nine members appointed by the Governor. The state health officer serves as chairman of the Board.

B. Specific Statutory Mandates:

- |        |   |
|--------|---|
| Review | 1. Review and evaluate policies and programs of the state relating to ionizing radiation and advise the Radiation Control Agency of its opinions and findings. § 22-14-5 (b) (1) <u>Ala. Code</u> (1975). |
| Advise | 2. Advise the Radiation Control Agency on any matter submitted to the Advisory Board by the Agency. § 22-14-5 (b) (2) <u>Ala. Code</u> (1975).  |
|        | 3. Propose, oppose, recommend or disapprove in an advisory capacity any matter that may come before the Radiation Control Agency. <u>Id.</u>  |

III. FULFILLMENT OF RESPONSIBILITIES

The Board is strictly an advisory board with no powers of enforcement. The Board advises the Radiation Control Agency on matters which the Agency submits to it. The Board reviews and evaluates state policies and programs relating to ionizing radiation and reports to the Agency its opinions and findings.

#### IV. COORDINATION

The Radiation Advisory Board advises the Radiation Control Agency.

#### V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

A. Federal: none

B. State:

1. § 22-14-5 Ala. Code (1975).

C. Secondary Material

1. Alabama Government Manual 224-225 (1977).

#### VI. INDEX

A. Coordinate Agencies:

1. Governor of Alabama
2. Alabama Board of Health
3. Alabama Radiation Control Agency
4. Alabama Department of Industrial Relations
5. Department of Energy
6. H. E. W.
7. E. P. A.
8. Nuclear Regulatory Commission

B. Topics:

1. Review
2. Advisory
3. Radiation

RADIATION CONTROL AGENCY

I. STATUTORY AUTHORITY: §§ 22-14-1 to -15 Ala. Code (1975)

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The State Board of Health is designated as the State Radiation Control Agency. § 22-14-4 (a) Ala. Code (1975). The Agency was established to protect the public from the hazards of ionizing radiation by instituting and maintaining a regulatory program for sources of ionizing radiation.

B. Specific Statutory Mandates:

- 1. Develop and conduct programs for evaluation of hazards associated with use of sources of ionizing radiation;
  - 2. Develop programs compatible with federal programs for regulation of by-product, source and special nuclear materials;
  - 3. Formulate, adopt, promulgate and repeal codes, rules and regulations relating to control of sources of ionizing radiation;
  - 4. Accept and administer loans, grants or other funds or gifts, in furtherance of its functions, from the federal government and from other sources, public or private;
  - 5. Encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to control of sources of ionizing radiation;
- Regulations
- Grants
- Studies

6. Collect and disseminate information relating to control of sources of ionizing radiation. § 22-14-4 (d) Ala. Code (1975).

### III. FULFILLMENT OF RESPONSIBILITIES

#### Permitting

1. The Agency shall license persons to receive, possess or transfer by-product, source or special nuclear materials, devices or equipment utilizing such materials or any other radioactive materials occurring naturally or produced artificially.

§ 22-14-6 Ala. Code (1975).

#### Inspection

2. The Agency shall have the power to enter upon private or public property to determine whether or not there is compliance with its rules and with the law. § 22-14-7 Ala. Code (1975).

3. The Agency shall require persons who use a source of ionizing radiation to maintain certain records. § 22-14-8 Ala. Code (1975).

#### Regulations

4. The Agency may issue orders or regulations without notice or hearing whenever an emergency exists that requires immediate action to protect the public health and safety. § 22-14-11 Ala. Code (1975).

#### Enforcement

5. The Agency can request the Attorney General to make application to the circuit court for an order enjoining acts or practices which constitute a violation of chapter 22-14 or any rule made thereunder. § 22-14-12 Ala. Code (1975). In the event of an emergency the Agency can impound sources of ionizing radiation. § 22-14-13 Ala. Code (1975). A violation of chapter 22-14 or of any rules, regulations or orders issued by the Agency is punishable by fine (not exceeding \$10,000) or imprisonment or both. § 22-14-14 Ala. Code (1975).



#### IV. COORDINATION

The Radiation Control Agency is to advise and consult with other state agencies, the federal government, other states and interstate agencies, political subdivisions and with groups concerned with control of sources of ionizing radiation. § 22-14-4 (d) (5) Ala. Code (1975). The programs that the Agency develops are to be compatible with the standards and regulatory programs of the federal government.

The Governor is authorized to enter into agreements with the federal government providing for discontinuance of certain federal responsibilities and the assumption thereof by the state. § 22-14-9 Ala. Code (1975).

The Agency is authorized to enter into agreements with the federal government, other states or interstate agencies whereby cooperative inspections or other functions relating to control of ionizing radiation will be performed. § 22-14-10 Ala. Code (1975).

#### V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

##### A. Federal:

1. Atomic Energy Act, 42 U. S. C. § 2011
2. Nuclear Regulatory Commission, 42 U. S. C. § 5801 et seq.

##### B. State:

1. § 22-14-4 to -15 Ala. Code (1975).

##### C. Secondary Material:

1. Alabama Government Manual 222-224 (1977).

#### VI. INDEX

##### A. Coordinate Agencies:

1. Nuclear Regulatory Commission
2. Environmental Protection Agency
3. Department of Energy
4. Department of Transportation
5. H. E. W.

6. T. V. A
7. Attorney General of Alabama
8. Alabama State Board of Health
9. Radiation Advisory Board
10. Southern Interstate Nuclear Board
11. Alabama Department of Industrial Relations

B. Topics:

1. State Board of Health
2. Nuclear Regulatory Program
3. Permitting
4. Loans
5. Grants
6. Research
7. Inspection

§ 20 (AL) STATE SOIL AND WATER CONSERVATION COMMITTEE

I. STATUTORY AUTHORITY: § 9-8-22 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Alabama Soil and Water Conservation Committee was organized to coordinate and provide assistance to the 67 Soil and Water Conservation Districts of the state in both rural and urban resource development. Alabama Government Manual (1977). The nine-member Committee is composed of the director of the State Cooperative Agricultural Extension Service, the director of the State Agricultural Experiment Station, the supervisor of Vocational Agricultural Education and six Governor-appointed members who are Soil and Water Conservation District supervisors.

B. Specific Statutory Mandates:

1. To offer assistance to the supervisors of the soil and water conservation districts. § 9-8-22 (d) (1) Ala. Code (1975).
2. To inform the several supervisors of the activities of the other districts and to facilitate an exchange of advice and experience between districts. § 9-8-22 (d) (2) Ala. Code (1975).
3. To coordinate the programs of the districts so far as this may be done by advice and consultation. § 9-8-22 (d) (3) Ala. Code (1975).
4. To secure the cooperation and assistance of the United States and its agencies and of agencies of this state in the work of the districts. § 9-8-22 (d) (4) Ala. Code (1975).
5. To disseminate information throughout the state concerning the activities of the soil and water conservation districts. § 9-8-22 (d) (5) Ala. Code (1975).

### III. FULFILLMENT OF RESPONSIBILITIES

By statute, the Committee may perform such acts, conduct such public hearings and promulgate such rules and regulations as are necessary to carry out its duties. § 9-8-22 (c) Ala. Code (1975). The Committee receives and reviews petitions and after notice, hearing and public referendum determines whether or not the petitioned soil and water conservation district is needed and feasible in the territory described in the petition; if so, upon approval of the subsequent application to and issuance of a certificate by the Secretary of State, the petitioned district constitutes a governmental subdivision of the state. § 9-8-23 Ala. Code (1975).

### IV. COORDINATION

The Alabama Soil and Water Conservation Committee acts as a liason between the districts and the federal and state government. § 9-8-22 Ala. Code (1975). For example, it assists the districts in small watershed developments under the Federal Small Watershed and Flood Prevention Act of 1954. Alabama Government Manual 100 (1977).

### V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

#### A. Federal:

1. Federal Small Watershed and Flood Prevention Act of 1954, 16 U. S. C. A. § 100-1007;

#### B. State:

1. § 9-8-22, -23 Ala. Code (1975).

#### C. Secondary Material:

1. Alabama Government Manual 99-100 (1977).

### VI. INDEX

#### A. Coordinate Agencies:

1. State Geologist and Geological Survey
2. Department of Conservation
3. Alabama Development Office
4. Water Improvement Commission
5. Water Resources Research Board

B. Topics:

1. Advisory
2. Water Quality
3. Watersheds
4. Soil Conservation

§ 21 (AL) ALABAMA SURFACE MINING RECLAMATION COMMISSION

I. STATUTORY AUTHORITY: Alabama Surface Mining Reclamation Act of 1978 (as amended 1978) §§ 9-16-30 to -53 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Alabama Surface Mining Reclamation Commission is an agency of the State of Alabama charged with the duties of studying and regulating all phases of surface mining not "presently subject to the jurisdiction of the Alabama Water Improvement Commission (see OEEL § 6 (AL)) and the Environmental Protection Agency." § 9-16-32 (b) Ala. Code (1975). The Commission seeks to ensure lands subject to surface coal mining are reclaimed in a safe and reasonable manner. In so doing, the Commission is charged with the duty to 1) reduce the adverse environmental effects of surface coal mining; 2) insure that surface coal mining is performed in a manner which conserves the natural resources of the state; 3) provide for adequate reclamation of mined surface areas. § 9-16-32 (i) Ala. Code (1975).

B. Specific Statutory Mandates:

Note: "The Alabama Surface Mining Reclamation Act of 1975" (§ 9-16-30 to -53 Ala. Code (1975)) was amended by the Alabama Legislature twice during the Summer of 1978. Act of August 7, 1978, Pub. Act No. 51, 1978 Ala. Acts \_\_\_\_\_ (designating the commission the state agency for purposes of the Federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201-1328); Act of August 9, 1978, Pub. Act No. 101, 1978 Ala. Acts \_\_\_\_\_ (amending § 9-16-34 Ala. Code (1975) to comply with the Federal Surface Mining Control and Reclamation Act of 1977, supra).

- Rules and Regulations 1. Adopt and enforce "reasonably necessary" rules and regulations. Act 101 (to be codified in § 9-16-34 (1)) Ala. Code.
- Hearings 2. Conduct hearings on any aspect of the Act. Act 101 (to be codified in § 9-16-34 (2)).
- Enforcement 3. Enforce all rules, regulations and standards as appropriate by orders other administrative action or judicial proceedings. Act 101 (to be codified in § 9-16-34 (4)) Ala. Code.
- Coordination 4. Require notification to the Commission of the issuance of an Alabama Water Improvement Commission permit. Act 101 (to be codified in § 9-16-34 (8)) Ala. Code).
- Reclamation Standards 5. Establish surface coal mining reclamation standards. Act 101 (to be codified in § 9-16-34 (9)) Ala. Code.
- Grants 6. Receive and administer all grants including those received from the federal government. To this end the Commission is designated the state surface mining regulation agency for purposes of federal law. Act 101 (to be codified at § 9-16-34 (13)) Ala. Code.
- Settlement Authority 7. Settle or compromise any civil penalty action or compliance action or waiver or refund up to 90 percent of any penalty in response to satisfactory remedial action by the violator. Act 101 (to be codified at § 9-16-34 (15)) Ala. Code.
- Permits 8. Issue, deny or revoke permits for surface coal mining. Act 101 (to be codified at § 9-16-34 (20) and 9-16-35 Ala. Code (1975)).

Federal  
Agency

9. Enforce applicable sections of the Federal Surface Mining Control and Reclamation Act (to be codified at 30 U.S.C. §§ 1201-1328). Act 101, (to be codified at § 9-16-34 (23) Ala. Code).
10. Monitor sales of coal to vendees in Alabama including purchases by such venders outside the state. § 9-16-49 Ala. Code (1975).
11. Review and approve all proposed coal leases for all state institutions which own land or mineral interests. § 9-16-48 Ala. Code (1975).

### III. FULFILLMENT OF RESPONSIBILITIES

Licensing  
Permitting

A. Surface mining operators in Alabama must obtain a general license to conduct surface mining in accordance with § 9-16-36 and must obtain a permit to surface mine at a particular location in accordance with § 9-16-37 Ala. Code (1975). Applicants for a license must demonstrate that they have sufficient technical skill and financial ability to comply with the safety standards and bonding requirements of the Act. § 9-16-37 (b) (1), (2) Ala. Code (1975). Each permit application must be accompanied by a topographical map of the area proposed to be mined and a plan of reclamation. § 9-16-39 Ala. Code (1975). A permit may be revoked for willful failure to comply with the permit's conditions. Rules and Regulations Surface SMRC Regulation 2 § 1 (a) (1977).

Rules &  
Regulations

B. The Commission is given authority pursuant to § 9-16-34 (1) (see Act 101 supra) to promulgate "reasonably necessary rules and regulations to control surface coal mining reclamation." An express rule-making procedure is set forth at section 9-16-47 of the Alabama Code (1975) requiring publication of proposed rules, circulation of proposed rules to organizations requesting such circulation and holding public hearings on such regulations if requested.

C. The Commission is empowered to "[i]ssue warnings and initiate civil or criminal actions" to enforce the provisions of the Act. § 9-16-34



(21) Ala. Code (1975). Additionally, the Commission may hold hearings upon receipt of a verified complaint of violation. § 9-16-51 Ala. Code (1975). Private citizens may bring an action for mandamus against any public officer or employee if that officer or employee is not fulfilling his duties under the Act. § 9-16-53 Ala. Code (1975).

#### IV. COORDINATION

The Alabama Surface Mining Reclamation Commission occupies a similar position with respect to the Federal government as do the Alabama Air Pollution Control Commission and Alabama Water Improvement Commission, viz: as an enforcement arm of the Department of the Interior. The Department of the Interior is charged with administering the Federal Surface Mining Control and Reclamation Act of 1977. Pub. L. No. 95-87, 91 Stat. 445 (1977) (to be codified in 30 U.S.C. § 1201-1328). Similarly to the Air Pollution and Water Pollution schemes, the Reclamation Act sets forth certain minimum uniform performance standards. 30 C.F.R §§ 700, 710, 715-18, 720-23, 725, 740, 795, 830. These standards may be effectuated by qualifying state agencies. Specifically, the Office of Surface Mining Reclamation and Enforcement within the Department of the Interior administers the federal act. 30 U.S.C. § 1211. The states, however, have primary enforcement responsibility. 30 C.F.R. § 720. If the state fails to implement, enforce or maintain an approved program, the Secretary of the Interior may implement a federal program. 30 U.S.C. § 1254 (a) (1)-(3). The Secretary may also order inspections to evaluate administration of state programs. 30 U.S.C. § 1267 (a). Citizen suits requiring only the minimum constitutional test for standing are permitted under the federal act by "any person having an interest which is adversely affected." See NRDC v. Train, 510 F. 2d 692, 700-01 nn. 47-48 (D.C. Cir 1974). 30 U.S.C. § 1270 (a).

Coordination on the state level is somewhat ambiguous. There is a clear link to the Alabama Water Improvement Commission in that it regulates surface mining as it has an impact on water pollution. See Surface Mining Regulations of the Alabama Water Improvement Commission.

OEEL File 6 (AL). Furthermore, the Surface Mining Reclamation Commission receives notice of any permit issued by the Water Improvement Commission. § 9-16-34 (8) Ala. Code (1975).

The interface between the Alabama Surface Mining Reclamation Commission created by the "Alabama Surface Mining Reclamation Act of 1975" (§ 9-16-30 to -53 Ala. Code (1975)) and the Alabama Department of Industrial Relations created by the "Alabama Surface Mining Act of 1969" (§ 9-16-1 to -15 Ala. Code (1975)) is less clear. The Department of Industrial Relations appears to have many of the same functions as the Commission including permitting, § 9-16-4, enforcement, § 9-16-10. Ala. Code (1975).

## V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

### A. Federal:

1. Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, 91 Stat. 445 (1977), ( to be codified in 30 U. S. C. § 1201-1328).
2. 30 C.F.R. §§ 700, 710, 715-18, 720-23, 725, 740, 795, 830. Minimum uniform performance standards.

### B. State:

1. Alabama Surface Mining Act of 1969, § 9-16-1 to -15 Ala. Code (1975).
2. Alabama Surface Mining Reclamation Act of 1975, § 9-16-30 to -53 Ala. Code (1975) as amended, Act of August 7, 1978, Pub. Act. No. 51, 1978 Ala. Acts \_\_\_\_\_; Act of August 9, 1978 Pub. Act. No. 101, 1978 Ala. Acts \_\_\_\_\_.
3. Rules and Regulations Adopted by the Alabama Surface Mining Reclamation Commission (Nov. 1977).

### C. Secondary Authority:

Note: The Surface Mining Reclamation Act of 1977: An Analysis, 2 Harv. Envt'l L. Rev. 288 (1978).

## VI. INDEX

### A. Coordinate Agencies:

1. Department of the Interior
2. Office of Surface Mining Reclamation & Enforcement
3. Alabama Water Improvement Commission
4. Alabama Department of Industrial Relations (Surface Mining Section)
5. Attorney General of Alabama

### B. Topics:

1. Reclamation Standards
2. Permitting
3. Coal Sales
4. Licensing
5. Mineral Resources

§ 22 (AL) ALABAMA WATER IMPROVEMENT COMMISSION

I. STATUTORY AUTHORITY: §§ 22-22-1 to -14 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The purpose of the Alabama Water Improvement Commission is to promote the conservation of state waters and to provide for the prevention, abatement and control of new or existing water pollution. § 22-22-2 Ala. Code (1975). It is "[r]esponsible for state's water pollution control through 1) strip mining regulation; 2) clear cutting provisions for state's timberlands; 3) technical assistance to industry on design; construction and operation of waste treatment systems; aide in eligibility of plans for Federal funding". A Catalog of Alabama's Environmental Resources 6 (1975). The chairman of the Commission is the State Health Officer; the vice-chairman is the Commissioner of the Department of Conservation. § 22-22-3 (a) (1), (2) Ala. Code (1975). The remaining five members of the Commission are from the public-at-large and are appointed by the Governor with the advice and consent of the senate. § 22-22-3 (b) Ala. Code (1975).

B. Specific Statutory Mandates:

- |                                    |  |
|------------------------------------|--|
| Grants                             | 1. Administration and receipt of grants; disbursement of funds. § 22-22-10, -11 <u>Ala. Code</u> (1975).   |
| Pollution Control                  | 2. Control pollution through investigation of all problems of pollution and conservation, research and proposal of practical remedial measures for abatement. § 22-22-9 (a) <u>Ala. Code</u> (1975). |
| Reporting, Monitoring Requirements | 3. Require maintenance of records, monitoring and reports of any person discharging or applying to discharge pollution into state waters. § 22-22-9 (c) <u>Ala. Code</u> (1975).                     |

- |                              |   |
|------------------------------|---|
| Enforcement                  | 4. Administer and enforce all laws relating to water pollution initially by providing notice to any person determined in violation of these laws. § 22-22-9 (f) <u>Ala. Code</u> (1975).          |
| Promulgate Quality Standards | 5. Hold public hearings in conjunction with the adoption and promulgation of quality standards of pollution § 22-22-9 (g) <u>Ala. Code</u> (1975).  |
| Rules and Regulations        | 6. Adopt applicable rules and regulations. § 22-22-9 (h) <u>Ala. Code</u> (1975).   |
| Permits                      | 7. Issue permits for discharge of wastes into state waters and for installation, modification or operation of disposal systems. § 22-22-9 (j) (2) <u>Ala. Code</u> (1975).                        |
| Cease Orders                 | 8. Issue cease and desist orders for violations of its rules and regulations. § 22-22-9 (l) <u>Ala. Code</u> (1975).  |
| Violations Hearings          | 9. Hold hearings on request of any party who has received a Commission cease order. § 22-22-9 (m) <u>Ala. Code</u> (1975).  |
|                              | 10. The Commission is designated the state water pollution control agency for purposes of the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.). § 22-22-12 <u>Ala. Code</u> (1975). |

### III. FULFILLMENT OF RESPONSIBILITIES

#### Permits

A. In order to control and abate pollution the Commission adopts effluent limitation guidelines and issues permits for discharge of wastes which meet these standards. Procedural Regulations of the Alabama Water Improvement Commission § 2A (4) (Amended 1975).

B. The Commission will conduct public hearings on all proposed regulations. Procedural Regulations supra § 3C. Private parties may submit proposed regulations by a petition of fifty or more citizens of Alabama.

Enforcement

C. The Commission may enforce all provisions of the Act or its own regulations by:

1. Issuance of cease orders to violators § 22-22-9 (l) Ala. Code (1975).
2. Commence legal actions in conjunction with the attorney general or any district attorney to recover civil penalties for violations; damages for pollution of state waters (including clean up costs), and costs to restock waters or replenish wildlife. § 22-22-9 (o), (p), (q), Ala. Code (1975).
  - a. Civil Penalty - Injunction § 22-22-9 (s), and penalty of not less than \$100 and not more than \$10,000 for said violation. § 22-22-9 (o) Ala. Code (1975).
  - b. Civil Damages - Damages may be recovered for pollution of state waters including but not limited to reasonable costs to clean up, minimize or prevent pollution resulting from the wrongful act, omission, or negligence of a person. Both punitive and compensatory damages may be recovered if defendant found guilty of wanton or wilful conduct; otherwise, compensatory damages alone are permitted. § 22-22-9 (q) Ala. Code (1975).
  - c. Restocking - Person in violation may also be liable for cost of restocking waters or wildlife including punitive damages as appropriate. § 22-22-9 (q) Ala. Code (1975).
  - d. Criminal Penalty - Fine of \$2,500 to \$25,000 per day of violation or imprisonment of not more than one year for wilful or grossly negligent violation. A violation following a conviction may result in a fine of not more than \$50,000 per day of violation or imprisonment for not more than two years or both. Person as used in this section includes "any responsible corporate officer." § 22-22-14 Ala. Code (1975).

#### IV. COORDINATION

##### A. Federal:

1. National Pollutant Discharge Elimination System (NDPES) (33 U.S.C. § 1342 (a) (1)) -- Under the 1972 amendments to the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) the EPA issues waste discharge permits on a national basis. Although this function may be delegated to qualifying state agencies, 33 U.S.C. § 1342 (b) (1972), in Alabama NDPES permitting authority still remains with the EPA. Criteria, Policies, and Administrative Procedures of the Alabama Water Improvement Commission Governing the Issuance of Waste Discharge Permits to Industrial Applicants at 17. The procedure for obtaining such a permit requires application to the Region IV office of the EPA using standard form OMB No. 158-R0100. Federal Register May 22, 1973.

2. Enforcement: Administrator of the EPA may issue compliance orders to violators or initiate civil actions as appropriate irrespective of state enforcement, but notice must be given to the appropriate state of any such action taken. 33 U.S.C. § 1319 (a) (1) and (b). The Administrator may also commence proceedings for temporary or permanent injunction. 33 U.S.C. § 1319 (c) (4). No discharge permit may issue from a state agency if the Administrator objects to such issuance. 33 U.S.C. § 1342 (a) (5). The Administrator may also initiate a "period of federal assumed enforcement" of a state's implementation plan if he deems it necessary. 33 U.S.C. § 1319 (a) (2).

Note: The Federal Water Pollution Control Act expressly authorizes civil actions by any citizen against any person including the United States or any governmental agency to the extent permitted by the XI Amendment to the U. S. Constitution, for the violation of an EPA effluent standard or compliance order. 33 U.S.C. § 1365.

Direct actions by one state against another for pollution, utilizing the United States Supreme Court's original jurisdiction, U.S. Const. Art. III, § 2, cl. 2, are possible under the federal common law of nuisance. E.g. Illinois v. City of Milwaukee, 406 U.S. 91 (1971); See generally F. Grad, Treatise on Environmental Law § 3.03 at 3-178 to -84 (1977).

B. Additional Requirements of Associated Regulations and Authorities.

1. U.S. Army Corps of Engineers (Section 10 of the River and Harbor Act of 1899).

The U. S. Army Corps of Engineers has authority to regulate offshore deep port development and authority over navigable waters with regard to construction, dredging and related activities resulting therefrom. Under the provisions of a memorandum of understanding between the Corps of Engineers and the Alabama Water Improvement Commission regarding joint public notice of the above projects within state waters, it will be necessary for the applicant for a Corps permit to request certification, as required under Section 401 of Public Law 92-500, from the State at the time an application is filed. The applicant should also furnish the Commission with a copy of the Corps application materials. Upon receipt of a request for certification and a copy of the application materials, the Commission will contact the Corps and request that a joint public notice of the application for a permit and certification be made. During the public notice period, which is normally thirty days, the Commission will contact the applicant if there are any questions relative to certification which need to be resolved.

Upon completion of the public notice period, the Corps will notify the Commission of same and will also advise of any adverse comments relative to certification which may have been received. Assuming there are no objections, or objections which are made



can be resolved, the Commission will furnish certification to the applicant, with a copy to the Corps, and the Corps will then be in a position to issue a permit.

2. U. S. Coast Guard (Federal Water Pollution Control Amendments PL 92-500 Section 311 and 40 CFR Chapter I Subchapter D, part 112).

The U. S. Coast Guard in cooperation with the Commission and EPA administers oil and hazardous materials regulations on State waters. Portions of applications that address spills prevention and control will be forwarded to the appropriate Coast Guard Station for review, comment and approval if not done previously by the applicant.

A requirement of the above regulation that appeared in the Federal Register on December 11, 1973, is the preparation of an SPCC Plan. On inspection by federal authorities if such a plan is not on file, the respective discharges may be subject to civil penalties.

3. Alabama Department of Conservation (§§ 9-15-31 and -48 Ala. Code (1975)).

The Alabama Department of Conservation exercises authority over marshes and wetlands under the above statute. When construction of a facility requiring a waste discharge permit will affect territory designated as a marsh or wetland, appropriate contacts should be made and approvals obtained from the Department of Conservation and a copy of any agreement, permit, or approval should be furnished, together with or supplementary to, application to the Commission.

4. Alabama Oil and Gas Board (§§ 9-17-6, -7 Ala. Code (1975) and Rules Promulgated Thereunder; and §§ 22-22-1 to -13 Ala. Code (1975), and Contract Between Alabama Water Improvement Commission and Alabama Geological Survey).

The Alabama Oil and Gas Board is the responsible agency in the case of oil field operations involving reinjection of brine and drilling mud. In the case of a surface discharge, the Commission becomes the regulatory body and issues a waste discharge permit. The Alabama Geological Survey, which is closely associated with the Oil and Gas Board, acts in an advisory capacity to the Commission, providing expertise and advice to the Commission staff about geological and hydrological matters relating to construction of waste treatment facilities. Normally exchanges of discussion are confined to the Commission staff and the Geological Survey; however, on occasion it is advantageous for an applicant to make direct contact with Survey personnel.

5. Tennessee Valley Authority (Section 26a Tennessee Valley Authority Act of 1933, as amended).

Those applicants making application for construction or waste discharge in the Tennessee River Basin should also provide appropriate application to the Tennessee Valley Authority. Unless proper approvals are obtained by the applicant, the Commission cannot act on projects in this part of the State. Copies of agreements, approvals, or permits from TVA should be provided as part of the application to the Commission.

6. Solid Waste Division, Alabama Health Department (§§ 22-27-1 to -7 Ala. Code (1975), and Associated Requirements).

Applications to the Commission which propose a method of treatment resulting in a solid or semi-solid residue requiring disposal in a public or private solid waste disposal facility should obtain the approval of the local authorities having jurisdiction over the facility and/or the approval of the Solid Waste Division. It is Commission policy to require dewatering to a reasonable degree of solid or semi-solid residues resulting from waste water treatment. A letter of acceptance of residues by public disposal facilities is required.

7. Alabama Air Pollution Control Commission (§§ 22-28-1 to -23 Ala. Code (1975), and Associated Rules and Regulations). Applications proposing a method of waste water treatment having a potential for air pollution must be acceptable to the Alabama Air Pollution Control Commission before such methods can be considered by the Alabama Water Improvement Commission.

8. Environmental Impact Statement (National Environmental Policy Act of 1969, 42 U.S.C., Section 4321 et seq.).

Under the National Environmental Policy Act and in accordance with the provisions of Public Law 92-500, an environmental impact statement will be required for new sources upon promulgation of effluent limitation guidelines by EPA. Although the act specifies that EPA or the applicant will prepare such a report, it is anticipated that the burden will be absorbed by the applicant. Regardless of the preparer, the Commission requests that a copy of such a document be submitted with the permit application in the interest of ascertaining that all known requirements will be satisfied.

V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

A. Federal:

1. Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (as amended)
2. 40 C.F.R., part \_\_\_\_\_

B. State:

1. Alabama Water Improvement Commission Act, § 22-22-1 to -14 Ala. Code (1975).
2. Regulations:
  - a. Surface Mining Regulations (Rev. Dec. 1977).
  - b. Procedural Regulations of the Alabama Water Improvement Commission (Amended Dec. 1975).

- c. Regulations Governing State Certification of Water Pollution Control Facilities of Small Business Concerns.
- d. Regulations Governing AWIC Administration of the Federal Construction Grant Program.
- e. Criteria, Policies, and Administrative Procedures of the Alabama Water Improvement Commission Governing the Issuance of Waste Discharge Permits to Industrial Applicants.

C. Secondary Authority:

- 1. F. Grad, Treatise on Environmental Law § 3.03 - .04 (1977).

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A. Coordinate Agencies:

- 1. EPA
- 2. U. S. Army Corps of Engineers
- 3. U. S. Coast Guard
- 4. Alabama Department of Health
- 5. Alabama Department of Conservation
- 6. Alabama Oil and Gas Board
- 7. Tennessee Valley Authority
- 8. Solid Waste Division, Alabama Health Department
- 9. Alabama Air Pollution Control Commission

B. Topics:

- 1. Grants
- 2. Pollution Control
- 3. Permits
- 4. Research
- 5. Water Quality

I. STATUTORY AUTHORITY: §§ 9-8-1 to -4 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Water Resources Research Institute is to be established by the board of trustees of Auburn University and is to conduct original research in the field of water resources for the purpose of assuring that the state will have sufficient water, both as to quantity and quality, to meet the needs of the future. § 9-8-1. -2 Ala. Code (1975).

B. Specific Statutory Mandates:

It is the duty of the Institute to stimulate, plan and conduct original research of a basic or practical nature in relation to water resources, including but not limited to aspects of the hydrological cycle and conservation. § 9-8-3 Ala. Code (1975).

III. FULFILLMENT OF RESPONSIBILITIES

The Institute is funded partially by Auburn University and the Geological Survey of Alabama and is designated as the state agency to accept federal funds appropriated or allocated under the Water Resources Research Act of 1964. (42 U.S.C. § 1961 et seq.). § 9-8-2 Ala. Code (1975). The results of the research conducted by the Institute are reported or published upon approval by the director of the Institute. § 9-8-3 Ala. Code (1975).

IV. COORDINATION

The Institute and its programs are subject to the management of Auburn University and are coordinated with the Geological Survey of Alabama. § 9-8-3 Ala. Code (1975).

V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

A. Federal:

1. Water Resources Research Act of 1964. 42 U.S.C.A. § 1961 et seq.

B. State:

1. § 9-8-1 to -4 Ala. Code (1975).

C. Secondary Material:

1. Alabama Government Manual 104-105 (1977).

VI. INDEX

A. Coordinate Agencies:

1. Alabama Geological Survey
2. Soil and Water Conservation Commission
3. Water Improvement Commission
4. Environmental Improvement Authority

B. Topics:

1. Water Quality
2. Research

§ 24 (AL) SOUTHERN INTERSTATE NUCLEAR COMPACT

I. STATUTORY AUTHORITY: §§ 9-18-1 to -6 Ala. Code (1975).

II. NATURE OF RESPONSIBILITIES

A. Narrative Summary:

The Southern Interstate Nuclear Compact establishes the "Southern Interstate Nuclear Board" composed of one representative from each member state. The purpose of the Board is "to provide the instruments and framework" for "the proper employment of nuclear energy, facilities, materials, and products" to aid "substantially in the industrialization of the south and the development of a balanced economy for the region."

§ 9-8-1 Ala. Code (1975).

B. Specific Statutory Mandates:

- |                                |   |
|--------------------------------|---|
| Reports                        | 1. Make a report at least annually on the activities of the Board for the preceding year to the governor of each member state and state legislature.<br>§ 9-18-1 <u>Ala. Code</u> (1975). |
| Advisory Committees            | 2. Establish any advisory or technical committees it deems necessary. <u>Id.</u> at Art. IV.  |
| Encourage Use of Nuclear Power | 3. Encourage the development and use of nuclear power as part of a balanced economy. <u>Id.</u> at Art V.   |
| Information                    | 4. Collect, correlate and disseminate information for civilian uses of nuclear energy. <u>Id.</u>   |
| Training                       | 5. Aid in state nuclear training programs. <u>Id.</u>   |
| Safety                         | 6. Formulate safety measures related to nuclear energy. <u>Id.</u>  |
| Bulletins:                     | 7. Publish bulletins and reports it deems appropriate. <u>Id.</u>   |
| Statutory Changes              | 8. Recommend changes in health, safety, and other standards, laws, codes, rules, etc. <u>Id.</u>  |

- Licensee 9. Act as licensee of United States government or any party state for any research activity requiring a license. Id.
- Nuclear Incidents 10. Develop methods and practices to prevent and control nuclear incidents. Id.

### III. FULFILLMENT OF RESPONSIBILITIES

See above.

### IV. COORDINATION

The primary function of the Southern Interstate Nuclear Board appears to be a coordinating facility for the fourteen member states and between the federal government and the party states. The powers of the Board are non-regulatory and express provision is made indicating that the Atomic Energy Commission's (or its successor the Nuclear Regulatory Commission) jurisdiction is not impaired in any way.

### V. STATUTES, REGULATIONS AND SECONDARY MATERIAL

A. Federal: none

B. State:

1. §§ 9-18-1 to -6 Ala. Code (1975).

### VI. INDEX

A. Coordinate Agencies:

1. Nuclear Regulatory Commission
2. Governor

B. Topics:

1. Nuclear Energy



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