

**S B**

**544**

**STATE OF ALASKA**  
**1990 LEGISLATIVE SESSION**

BILL VERSION : CSSB 544

PUBLISH DATE : \_\_\_\_\_

**FISCAL NOTE**

**REQUEST:**

Revision Date: 4-May-90  
 Title: An Act relating to the reclamation  
land and water - after mining activities.  
 Sponsor: Senate Resources  
 Requestor: House Resources

Agency Affected: Natural Resources  
 BRU: Mining Management  
 Components: Mining Management

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	48.9	250.0	260.0	270.0	280.0	290.0
TRAVEL	12.0	50.0	50.0	50.0	50.0	50.0
CONTRACTUAL	12.0	40.0	40.0	40.0	40.0	40.0
SUPPLIES	3.0	10.0	10.0	10.0	10.0	10.0
EQUIPMENT	3.0	10.0	10.0	10.0	10.0	10.0
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>78.9</b>	<b>360.0</b>	<b>370.0</b>	<b>380.0</b>	<b>390.0</b>	<b>400.0</b>

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	78.9	360.0	370.0	380.0	390.0	400.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>78.9</b>	<b>360.0</b>	<b>370.0</b>	<b>380.0</b>	<b>390.0</b>	<b>400.0</b>

**POSITIONS:**

FULL-TIME	1.0	5.0	5.0	5.0	5.0	5.0
PART-TIME						
TEMPORARY						

**ANALYSIS: (Attach a separate page if necessary)**

See Attached

Prepared by: Gerald Gallagher Phone: 762-2165  
 Division: Mining Management Date: 4-May-90

Approved by Commissioner: *Lennie Gorsuch* Date: 4-May-90  
 Agency: Department of Natural Resources

Distribution (by preparer) :  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Position Title <b>Geologist II</b>		No. of Positions <b>1</b>	Range/Step <b>16A</b>	Barg. Unit <b>CGU</b>
Time Status <b>PFT</b>	Staff Months <b>12</b>	Location <b>Fairbanks</b>		Election District
Justification				
See attached				
Type of Expenditure			Amount	
	<b>1</b>	<b>2</b>	<b>3</b>	
Salary	3014 x 12	36,178		
Benefits	1060 x 12	12,720		
Premium Pay				
Other				
<b>Total Personal Services</b>			<b>48,888</b>	
Travel			12,000	
Contractual			12,000	
Commodities			3,000	
Equipment			3,000	
Other				
<b>Total Cost</b>			<b>78,880</b>	
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004		78,880	
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For  
New Position**

Agency Natural Resources  
 BRU Mining Management  
 Component Mining Management

Page      of       
 Revised Date     

**FY 91**

Original sponsor(s): Resources Committee

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
2 HOUSE CS FOR CS FOR SENATE BILL NO. 544 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to the reclamation of land and  
7 water; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 27 is amended by adding a new chapter to read:

10 CHAPTER 19. RECLAMATION.

11 Sec. 27.19.010. ADMINISTRATION; APPLICABILITY. (a) The commis-  
12 sioner of natural resources shall implement this chapter.

13 (b) This chapter applies to state, federal, municipal, and  
14 private land and water subject to mining operations.

15 (c) Except as provided in AS 27.19.040(b), this chapter does not  
16 apply to an activity regulated under AS 27.21.

17 (d) This chapter does not alter or diminish the authority of  
18 another state agency, a state corporation, the University of Alaska,  
19 or a municipality under its laws and regulations.

20 (e) The owner of private land may establish requirements for  
21 reclamation in excess of those established by this chapter.

22 Sec. 27.19.020. RECLAMATION STANDARD. A mining operation shall  
23 be conducted in a manner that prevents unnecessary and undue degrada-  
24 tion of land and water resources and the mining operation shall be  
25 reclaimed as contemporaneously as practicable with the mining opera-  
26 tion to leave the site in a stable condition.

27 Sec. 27.19.030. RECLAMATION PLAN. (a) Except as provided in  
28 AS 27.19.050, a miner may not engage in a mining operation until the  
29 commissioner has approved a reclamation plan for the mining operation.

1 (b) In reviewing a reclamation plan for state, federal, or  
2 municipal land under (a) of this section, the commissioner may consid-  
3 er, after consultation with the commissioners of environmental conser-  
4 vation and fish and game and with the concurrence of the miner and  
5 landowner, uses to which the land may be put after mining has been  
6 completed, including trails, lakes, recreation sites, fish and wild-  
7 life enhancement, commercial, and agriculture uses.

8 Sec. 27.19.040. RECLAMATION BONDING. (a) The commissioner  
9 shall require an individual performance bond in an amount not to  
10 exceed an amount reasonably necessary to ensure the faithful perfor-  
11 mance of the requirements of the approved reclamation plan. The  
12 commissioner shall establish the amount of the performance bond to  
13 reflect the reasonable and probable costs of reclamation but the bond  
14 may not exceed \$750 for each acre of mined area.

15 (b) The commissioner shall establish a statewide bonding pool  
16 for mining operations as an alternative to individual performance  
17 bonds. A miner participating in the bonding pool shall contribute an  
18 initial deposit not to exceed 15 percent of the reclamation bond plus  
19 an additional nonrefundable annual fee not to exceed five percent of  
20 the reclamation bond. The commissioner shall refund the 15 percent  
21 deposit upon satisfactory completion of the approved reclamation plan.  
22 If requested by the miner, the commissioner may apply the deposit to a  
23 new reclamation plan. The commissioner may allow the bonding pool to  
24 be used to meet the requirements of AS 27.21.160.

25 (c) If the commissioner determines that a miner has violated or  
26 permitted a violation of the approved reclamation plan and has failed  
27 to comply with a lawful order of the commissioner, the commissioner  
28 shall forfeit the performance bond and deposit the bond in the state-  
29 wide bonding pool. The commissioner shall use the reclamation and

1 administrative costs recovered under AS 27.19.070(a) to supplement the  
2 forfeited bond deposited in the statewide bonding pool for reclamation  
3 of the site subject to the forfeiture. If the commissioner is unable  
4 to recover the full cost of reclamation under AS 27.19.070(a), the  
5 commissioner may use the bonding pool to reclaim the site to the  
6 standards of this chapter.

7 (d) A miner not required to post a bond may submit a reclamation  
8 plan under AS 27.19.030(a) and participate in the bond pool.

9 Sec. 27.19.050. EXEMPTION FOR SMALL OPERATIONS. (a) AS 27.19.-  
10 030(a) and 27.19.040 do not apply to a mining operation

11 (1) where less than five acres are mined at one location in  
12 any year and there is a cumulative unreclaimed mined area of less than  
13 five acres at one location; or

14 (2) where less than five acres and less than 50,000 cubic  
15 yards of gravel or other materials are disturbed or removed at one  
16 location in any year and there is a cumulative ~~undisturbed~~ area of  
17 less than five acres at one location.

18 (b) To obtain an exemption under (a) of this section, a miner  
19 shall file a letter of intent notifying the commissioner of the

- 20 (1) total acreage and volume of material to be mined;  
21 (2) total acreage to be reclaimed; and  
22 (3) specific reclamation measures to be used to comply with  
23 AS 27.19.020.

24 (c) A miner exempt under (a) of this section shall file an  
25 annual reclamation statement with the commissioner disclosing the  
26 total acreage and volume of material mined by the operation in the  
27 current year, the total acreage reclaimed, and the specific reclama-  
28 tion measures used to comply with AS 27.19.020. A miner does not  
29 qualify for an exemption under (a) of this section for subsequent

1 operations unless the annual reclamation statement for the previous  
2 operation has been filed with the commissioner.

3 (d) A miner exempted from the requirements of AS 27.19.030(a)  
4 and 27.19.040 under (a) of this section that fails to reclaim a mining  
5 operation to the standards of AS 27.19.020 is required for two consec-  
6 utive years to conduct each subsequent mining operation, regardless of  
7 size, under an approved reclamation plan and to post a performance  
8 bond.

9 Sec. 27.19.060. COOPERATIVE MANAGEMENT AGREEMENTS. The commis-  
10 sioner, on a determination that an agreement is in the best interest  
11 of the state, may enter into a cooperative management agreement with  
12 the federal government or a state agency to implement a requirement of  
13 this chapter or a regulation adopted under it.

14 Sec. 27.19.070. VIOLATIONS. (a) A miner who violates or per-  
15 mits a violation of an approved reclamation plan and fails to comply  
16 with a lawful order of the commissioner forfeits the reclamation bond  
17 or a portion of the bond and is liable to the state in a civil action  
18 for the full amount of reclamation and administrative costs incurred  
19 by the state related to the action. A miner exempted under AS 27.19.-  
20 050(a) is subject to civil action for the full amount of reclamation  
21 and administrative costs incurred by the state related to the action  
22 if the commissioner determines that reclamation was not conducted  
23 under AS 27.19.020.

24 (b) In addition to other remedies available under this chapter,  
25 the commissioner may suspend or revoke permits or approvals of op-  
26 erations not being conducted under the approved reclamation plan and  
27 deny future mining permits and approvals under this title and AS 38  
28 related to the mining operation for failure to reclaim the mining  
29 operation to the standards of this chapter.

1 (c) A miner who has forfeited a reclamation bond or has been  
2 held liable in a civil action under (a) of this section may conduct  
3 future mining operations only after posting a reclamation risk assess-  
4 ment fee equal to five times the bond liability for the proposed  
5 mining operation. The reclamation assessment fee shall be refunded  
6 after two consecutive years of operation consistent with this chapter.

7 Sec. 27.19.080. ADMINISTRATIVE PROCEDURE ACT. The Administra-  
8 tive Procedure Act (AS 44.62) applies to this chapter.

9 Sec. 27.19.100. DEFINITIONS. In this chapter,

10 (1) "materials" means sand, gravel, riprap, rock, lime-  
11 stone, slate, peat, and other substances from the ground that are not  
12 locatable or leasable under state law;

13 (2) "mined area"

14 (A) means an active site of physical extraction,  
15 stockpiling, or the disposal of ore, overburden, tailings, or  
16 processed materials, stream diversions, bypasses, and settling  
17 ponds;

18 (B) does not include reclaimed areas approved by the  
19 commissioner;

20 (3) "miner" means the owner, operator, or leaseholder of a  
21 mining operation;

22 (4) "mining operation"

23 (A) means each function, work, facility, and activity  
24 in connection with the development, extraction, and processing of

25 (i) a locatable or leasable mineral deposit  
26 except oil, gas, or coal;

27 (ii) other materials or of a sand and gravel  
28 deposit; and

29 (iii) each use reasonably incident to the

1 development, extraction, and processing of a locatable or  
2 leasable mineral deposit or materials;

3 (B) includes the construction of facilities, roads,  
4 transmission lines, pipelines, and other support facilities;

5 (5) "reclamation plan" means a plan submitted by a miner  
6 under regulations adopted by the commissioner for the reclamation of a  
7 proposed mining operation;

8 (6) "stable condition" means the rehabilitation of the  
9 physical environment of the site to a condition that allows for the  
10 reestablishment of renewable resources on the site within a reasonable  
11 period of time by natural processes.

12 (7) "state land" includes

13 (A) the land of the University of Alaska;

14 (B) the land of state corporations;

15 (8) "unnecessary and undue degradation"

16 (A) means surface disturbance greater than would  
17 normally result when an activity is being accomplished by a  
18 prudent operator in usual, customary, and proficient operations  
19 of similar character and considering site specific conditions;

20 (B) includes the failure to initiate and complete  
21 reasonable reclamation under the reclamation standard of AS 27.-  
22 19.020 or an approved reclamation plan under AS 27.19.030(a).

23 \* Sec. 2. The commissioner of natural resources shall adopt regulations  
24 implementing AS 27.19 as enacted in sec. 1 of this Act. The proposed  
25 regulations shall be forwarded on their preparation to the chairs of the  
26 resource committees of the legislature, but in any case not later than  
27 January 15, 1991. The commissioner may not adopt the regulations before  
28 October 15, 1991.

29 \* Sec. 3. AS 27.05.250 is repealed.

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\* Sec. 4. Sections 2 and 3 of this Act take effect immediately under AS 01.10.070(c).

\* Sec. 5. Section 1 of this Act takes effect October 15, 1991.



# Alaska State Legislature

## HOUSE RESOURCES COMMITTEE

P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3715

### LETTER OF INTENT

It is the intent of the House Resources Committee that the word "feasible" as used in HCS Senate Bill 544 (RES) be defined in regulation in a similar manner to the following definition:

"Feasible" means technically capable of being accomplished in a successful manner within a reasonable period of time.

Handwritten signature of Cliff Davidson.

Representative Cliff Davidson  
Co-Chair  
House Resources Committee

Handwritten signature of Curt Menard.

Representative Curt Menard  
Co-Chair  
House Resources Committee

A M E N D M E N T #1

TO HCS FOR CS FOR SENATE BILL NO. 544 (Resources)

Amend AS 27.19.050(b) (3) to read:

(3) [SPECIFIC] reclamation measures to be used. [TO COMPLY  
WITH AS 27.19.020.]

A M E N D M E N T #2

TO HCS FOR CS FOR SENATE BILL NO. 544

Page 6, line 8, after "rehabilitation" add:

", where feasible,"

AMENDMENT #3

HCSCSSB544

Page 6, Line 22, after "1991." insert new sentence as follows: "Notwithstanding A.S. 27.19, the commissioner may not adopt regulations that would require a miner to be responsible for any reclamation on any portion of a mined area or a previously mined area attributable to activity of a mining operation prior to the effective date of this act."

\*\*\*DRAFT\*\*\*

MEMORANDUM

To: Senator Drue Pearce  
From: Reps. Menard, Brown, Navarre, Davidson  
Date: May 4, 1990  
Subj: HB 567 - 72 Hour Response Planning

-----  
The following language is proposed to address the 72-hour response issue.

Page 8, line 6-21, replace subsection (3) of the 5/3/90 draft:

(3) for a discharge of crude oil from a tank vessel or oil barge, contain or control, and clean up an amount equal to the maximum crude oil cargo volume of the tank vessel or oil barge within 72 hours: the plan holder shall maintain, or have available under contract, in the applicable region of operation all equipment and resources necessary to attain a recovery rate, as expressed in the equipment manufacturer's rated skimming or recovery capacity of 50,000 barrels per hour; the equipment maintained or available in the applicable region must also include adequate pumping equipment, transfer and lightering equipment, storage capacity and ancillary equipment adequate to receive, transfer, and store recovered oil so as to not impede the recovery rate; in addition, the plan holder must demonstrate access to supplemental equipment located outside the applicable region of operation to accomplish containment or control and clean-up of the maximum crude cargo volume to be delivered to the discharge site within 72 hours except to the extent that the department has modified the clean-up planning capability standards in recognition of prevention measures under subsection (m).

## Discussion

This response standard has two fundamental components:

- 1) the *in-region* response for the first 72 hours; and
- 2) the additional *out-of-region* response capability.

### In-Region 72-Hour Response

This in-region 72 hour response planning standard of 50,000 barrels per hour as expressed in the equipment manufacturer's rated skimming or recovery (ie, *nominal* rate) would provide for an *actual* recovery rate of about 15,000 barrels per hour. At this actual rate of recovery, it would take approximately 90 hours of constant operation from the instant the spill occurred to remove a 1.8 million barrel spill (this assumes that evaporation reduces the recoverable discharge by 25%).

Under this 50,000 nominal standard for in-region response, after 72 hours, approximately 1,080,000 barrels could be cleaned up *but only assuming ideal weather and 24-hour operation from the instant the spill occurred*. As a practical matter, it is more reasonable to assume that operations will not continue around the clock nor start with full capacity at the instant of the spill. The proposed 50,000 barrel nominal clean-up standard will thus provide for substantially less recovery than 1,080,000 barrels, perhaps on the order of 540,000 barrels. This represents *less than half* of the total discharge being planned for (ie, 1.8 million barrels), even after accounting for evaporation.

*This proposal for an in-region 72 hour response capability of 50,000 barrels/hour is a substantial compromise relative to the House approved position in CS HB 567 (Finance) am. It is also a substantial retreat from the position advocated by Walt Parker on behalf of the Alaska Oil Spill Commission.*

The House approved CS HB 567 (Finance) am established a planning standard for crude oil releases from tankers and barges requiring removal of a discharge "equal to the maximum capacity of the vessel or barge and to remove that discharge within 72 hours." This is the position advocated by the Alaska Oil Spill Commission.

During the Work Group discussions, Alyeska has put forth a proposal calling for a cleanup capacity of 25,000 barrels/hour *nominal* (as expressed in the equipment manufacturer's rated skimming or recovery) that would mean an *actual* rate of 7,500 barrels per hour. At this actual rate of recovery, it would take approximately 180 hours of constant operation from the instant the spill occurred to remove a 1.8 million barrel spill (this assumes that evaporation reduces the discharge by 25%).

Under the Alyeska 25,000 nominal standard for in-region response, after 72 hours, approximately 540,000 barrels would be cleaned up *but only assuming ideal weather and 24-hour operation from the instant the spill occurred*. Again, it is more reasonable to assume that operations will not continue around the clock, nor start with full capacity at the instant of the spill. The Alyeska 25,000 barrel nominal clean-up standard will thus provide for substantially less recovery than 540,000 barrels, perhaps on the order of 270,000 barrels.

This represents *less than a quarter* of the total discharge being planned for (ie, 1.8 million barrels), even after accounting for evaporation. It should be noted that the State's Emergency Order already requires a clean up capability nearly this great (ie, 222,480 barrels within 72 hours).

This is not an appreciable improvement over currently required practices and would probably not even provide for the clean up of another *Exxon Valdez* were it to happen again today.

### Out of Region Response

The second component of the standard concerns access to out-of-region response capacity and calls for a demonstration that sufficient additional equipment can be delivered to the site within 72 to clean-up the maximum crude cargo volume to the *extent that the department has modified the clean-up planning capability standards in recognition of prevention measures* under subsection (m) of the 5/3/90 draft.

### Response Capability and the Prevention Investment Incentive

A substantially higher standard than what Alyeska has proposed is needed in order to provide the necessary incentive to pursue prevention measures

as specifically provided for in subsection (m). The language in subsection (m) provides that the department can modify (ie, reduce) the response capability required, based upon prevention investments (ie, double hulls, enhanced navigational equipment, escort vessels, etc). The higher standard would also provide a needed incentive to pursue the development of new technologies to improve response capability (eg, the development of ARCO's "Big Gulp" skimmer).

The Alyeska proposal essentially represents the status quo as established through the State's Emergency Order. The proposed standard discussed above is:

- 1) a compromise relative to earlier House-approved position;
- 2) necessary to assure a significant improvement in response capability relative to current practices: and
- 3) necessary to provide an appropriate incentive for prevention investments.

attachments

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### DIVISION OF BOARDS

AD F&G  
Div of Boards  
STEVE COWPER, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 485-4110

November 7, 1989

TO WHOM IT MAY CONCERN:

The Joint Board of Fisheries and Game has serious concerns about the level of funding available to the Department of Fish and Game, Division of Boards. This concern is based on our State and Federal ANILCA mandate, as well as the practical aspects of doing board business. We list below the specific violations we see with the spirit and intent of ANILCA Sec. 805(D):

ANILCA Sec. 801(5) "rural residences...to have a meaningful role in the management of fish and wildlife and of subsistence uses..."

ANILCA Sec. 805(a)(C) "the encouragement of local and regional participation...in the decision making process..."

ANILCA Sec. (d) "...establishing a system of local advisory committees and regional advisory councils...shall provide that the State rule making authority...the advice and recommendations..."

In addition to those legal mandates, the practical aspect of advisory committee and regional council participation in the board process is apparent. We cannot and should not engage in the allocation process without informed and widespread public comment from affected resource users. The funding of this activity is an important public policy decision.

Please read the attached letter carefully. The Joint Board of Fisheries and Game is in full support with the spirit and detail of the Regional Councils' letter.

Thank you for your attention to this concern.

Sincerely,

*for Gary Slaven*  
for Gary Slaven  
Chair  
Board of Fisheries

*Henry Springer*  
Henry Springer  
Chair  
Board of Game



# REGIONAL FISH & GAME COUNCILS

c/o ADF&G, DIVISION OF BOARDS, P.O. BOX 3-2000, JUNEAU, ALASKA 99802 PHONE: (907) 465-4110

October 27, 1989

Dear Mr. Coghill:

The Regional Council representatives met in Anchorage at the Joint Board of Fisheries and Game meeting October 22-26, 1989. The six Regional Fish and Game Councils (see appendix I) are made up of 79 local Fish and Game Advisory Committees throughout the state. The Division of Boards which provides administrative support to the Boards of Fisheries and Game and to the regional councils/advisory committees, presented a disturbing budget which would make the public advisory system completely ineffectual. The proposed budget would allow for only one regional council meeting per region this year and the attendance of the one regional council member to represent their region at upcoming board meetings (see appendix II).

The key to our ability to function properly is funding! At this meeting, the six Regional Councils recommended an acceptable minimum standard for meetings and funding of the public advisory system established by the State statutes and ANILCA. The six regional council representatives agreed that the minimum we should meet for conducting business and still have some degree of efficiency would be twice a year for each regional council. We agreed that each local fish and game advisory committee must meet at least 3 times a year. One representative from each fish and game advisory committee should attend the Board meetings for at least five days.

3 advisory committee meetings/year	Minimum Standards (Cost: \$1.2 mil)
2 regional council meetings/year	
1 advisory committee representative to attend 5 days at Board meetings	

Without this minimum amount of participation, the regional council/advisory committee structure will not be able to function. Furthermore, without adequate funding it will violate ANILCA Sec. 805 (d).

The State of Alaska has been charged with implementing the subsistence resources management as mandated by ANILCA. The public advisory system has the responsibility to protect subsistence uses in Alaska through recommendations to the regulatory body of the Boards of Fisheries and Game. This cannot be done without appropriating full funding needed for travel and per diem for the members of the public advisory system to attend the Board meetings, attend advisory committee meetings, and regional council meetings.

If this regulatory process is improperly funded or does not receive sufficient funds, it delays the implementation of the subsistence law, and reduces the public advisory system to the Board's deliberations. The domino effect will be the Board's decisions would be made without proper public information propelling the state into the courts repeatedly. Thus, it causes the whole process to be taken out of the public domain and into the courts where there is no public input or public control. These court cases will be and are becoming more and more costly to the State of Alaska and eventually to the federal government. If the State of Alaska and the federal government give full funding now, it will allow the public advisory system to work effectively in a shorter span of time which will save a lot of money over the long term for both bureaucracies.

The advisory committee/regional council system needs a supplement of \$1.2 million now to meet our responsibilities for this year which includes the present supplemental request from the Division of Boards. When you meet this fiscal responsibility, you should also plan to appropriate full funding until the subsistence regulatory process has been established. Give us (the regional councils, advisory committees, the Board of Fisheries and Game, and the Alaska Department's Subsistence Division) the full funding now to do at least an adequate job.

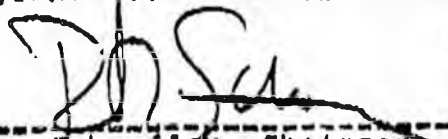
The advisory committee/regional council participation has not been given the priority status it needs for funding by the State of Alaska, or by the federal government in the budgetary process. All agencies involved in appropriating fiscal notes need to re-evaluate their priorities and decide if this is a valuable process or not. If it is, fund it.


We appreciate the support that has been given to our request for full staffing to provide administrative support to the public advisory process. This, however, is only half of the solution to our problem. The other is the ability to come together for the common purpose of helping implement subsistence uses and priorities.


We thank you in advance for your assistance as we are sure you will understand the priority needs of this process.

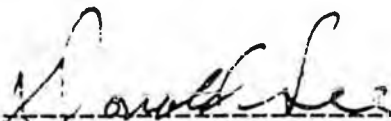
Sincerely,

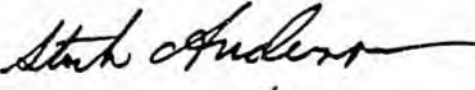
Regional Councils of Alaska

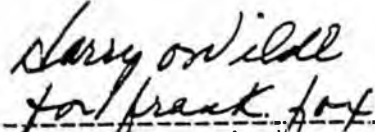
  
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Pete Schaeffer, Chairman  
Arctic Regional Council

  
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Royce Purinton, Chairman  
Interior Regional Council

  
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Bill Ellis, Chairman  
Southcentral Regional Council

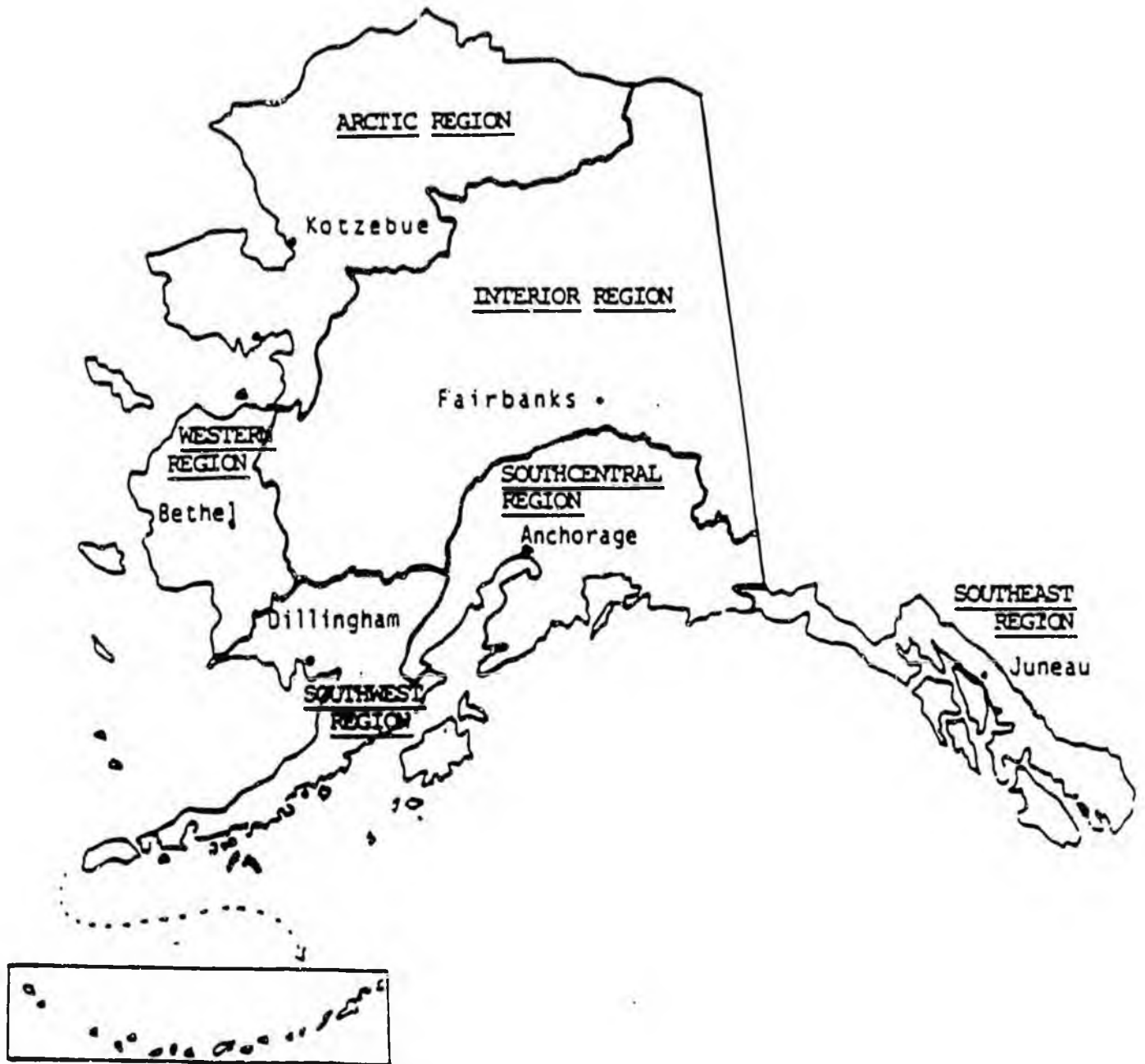
  
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Donald See, Chairman  
Southeast Regional Council

  
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Robert Heyano, Chairman  
Southwest Regional Council

  
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Frank Fox, Chairman  
Western Regional Council

APPENDIX I

FISH AND GAME REGIONAL COUNCILS





**STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
BILL ANALYSIS**

DEPARTMENT Fish and Game	DIVISION Administration	BILL NUMBER SJR No. 64	SPONSOR Coghill, et al
SHORT TITLE OF BILL Relating to federal funding for local fish and game advisory committees.			
DEPARTMENT POSITION Support.			
PREPARED BY Beverly Reaume	DATE 02/26/90	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 2/26/90

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
ORGANIZATIONAL SUPPORT	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT.       NONE       FISCAL NOTE ATTACHED

**BACKGROUND/LEGISLATIVE INTENT**

Section 805(e) of the Alaska National Interest Lands Conservation Act (ANILCA) (P.L. 96-487) authorizes Congress to reimburse states for up to 50 percent of costs for a maximum of \$5,000,000 per year. In recent years our highest reimbursement has been \$974,000 per year.

**ANALYSIS OF BILL/PROGRAM EFFECTS**

In FY 87 the state spent \$2,561,951 and was reimbursed \$939,394. Reimbursement at 50 percent would have required an additional \$341,581.

In FY 88 expenditures were \$2,471,986 with a reimbursement of \$987,000, for a variance of \$248,993.

In FY 89 expenditures were \$2,553,228 with a reimbursement of \$987,000, for a variance of \$289,614.

The FY 90 reimbursement will be \$974,000 and the FY 91 reimbursement \$750,000.

**AMENDMENTS PROPOSED**

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

## FISCAL NOTE

**REQUEST:**

Revision Date: 1/29/90  
 Title: Relating to federal funding for local fish and game advisory. . .  
 Sponsor: Coghill, et al  
 Requestor: \_\_\_\_\_

Agency Affected: Fish and Game  
 BRU: Subsistence and Boards  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL	214.6	215.0	215.0	215.0	215.0	215.0
CONTRACTUAL	75.0	75.0	75.0	75.0	75.0	75.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>289.6</b>	<b>290.0</b>	<b>290.0</b>	<b>290.0</b>	<b>290.0</b>	<b>290.0</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS	289.6	290.0	290.0	290.0	290.0	290.0
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

No FY 90 impact.

Increased revenue for Boards and Subsistence based on FY 89 actual expenditures.

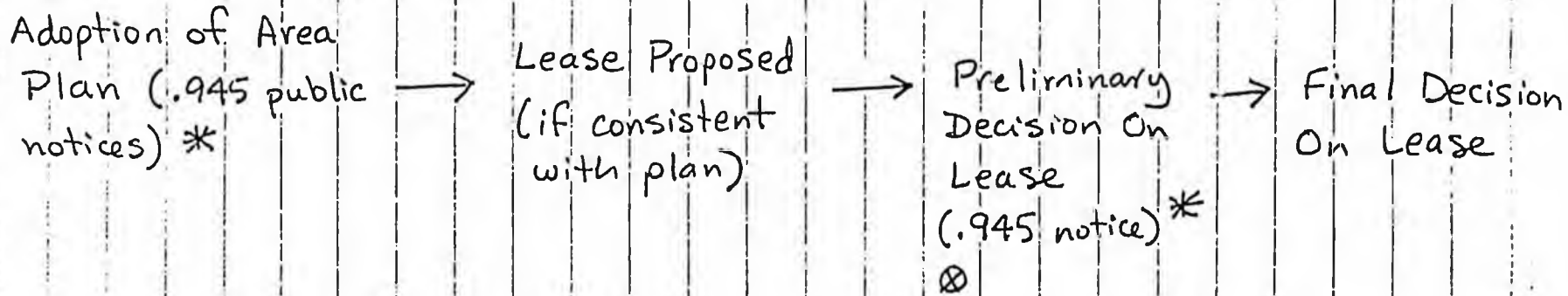
Prepared by: Beverly Reaume *Beverly Reaume* Phone: 465-4120  
 Division: Administration Date: 02/26/90

Approved by Commissioner: *Thomas H. Peltola* Date: 02/26/90  
 Agency: Fish and Game

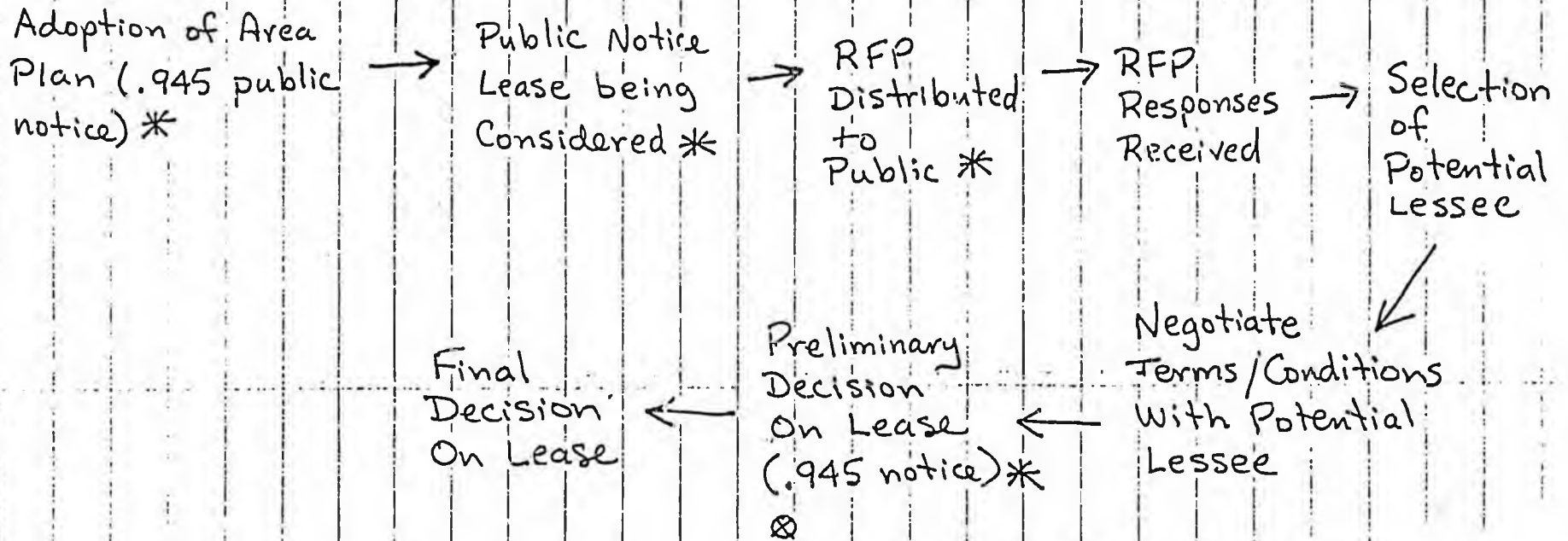
Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

EXISTING LEASE LAW - AS 38.05.070 - .075

\* public notice  
⊗ public hearing



PROPOSED CSSB 213



Preferred  
alt 1

Amend AS 27.19.090(2)(A) to read:

(2) "mining operation"

(A) means each function, work, facility, and activity in connection with the development, extraction, and processing of a locatable or leasable mineral deposits, except oil and gas and coal, [OTHER MATERIALS OR OF A SAND AND GRAVEL DEPOSIT] and each use reasonably incident to the development, extraction, and processing;

Amend AS 27.19.090(2)(A) to read:

(2) "mining operation"

(A) means each function, work, facility, and activity in connection with the development, extraction, and processing of a locatable or leasable mineral deposits, except oil and gas and coal, [OTHER MATERIALS] or of a sand and gravel deposit and each use reasonably incident to the development, extraction, and processing;

Amend AS 27.19.090 to add the following definitions:

( ) "gravel" means a mixture of small stones and pebbles or pebbles and sand that will pass through a three-inch, and be retained on a No. 4 United States standard, sieve;

( ) "sand" means separate grains or particles of disintegrated rock, easily distinguished by the unaided eye, which is finer than gravel and coarser than dust but not large enough to constitute pebbles;

Amend AS 27.19.040 to read:

Sec. 27.19.040. EXEMPTION FOR SMALL OPERATORS. (a) The requirements of AS 27.19.025(a) and AS 27.19.030 do not apply to a [MINER WHO MINES] mine of less than five acres [AT ONE LOCATION IN ANY YEAR AND HAS A CUMULATIVE UNRECLAIMED MINED AREA OF LESS THAN 5 ACRES AT ONE LOCATION OR TO A MINER WHO DISTURBS OR REMOVES] or which produces less than [25,000] 50,000 cubic yards of ~~gravel~~ ~~or other~~ material in any year.

Amend AS 27.19.025(b) to read:

(b) In reviewing a reclamation plan for federal, state or municipal land under (a) of this section, the commissioner may consider, after consultation with the commissioners of environmental conservation and fish and game, uses to which the land may be put after mining has been completed, including, but not limited to, trails, lakes, recreation sites, fish and wildlife enhancement, commercial, and agriculture uses.

Amend AS 27.19.010 to read:

(b) Unless specifically provided for this chapter does not apply to activities regulated under AS 27.21 or to the mining of forest road material within an area covered by a notification filed under AS 41.17.090.

Amend AS 27.19.010 to read:

Sec 27.19.010. JURISDICTION. (a) The commissioner of Natural Resources shall implement this chapter. This chapter applies to state, municipal, federal and private land and water subject to mining operations.

# MEMORANDUM

# State of Alaska

TO: Gerald Gallagher  
Director  
Division of Mining  
Department of Natural Resources

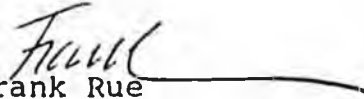
DATE: April 10, 1990

FILE NO:

TELEPHONE NO: 465-4105

THRU:

SUBJECT: SB 544:  
Reclamation  
Legislation

FROM:   
Frank Rue  
Director  
Habitat Division  
Department of Fish and Game

The Alaska Department of Fish and Game (ADF&G) has completed an analysis of SB 544 and prepared the enclosed recommendations for development of a state resource agency position on the bill. I was disappointed to hear that you did not mention these issues at the Senate Resources Committee hearing on April 9 as we had agreed you would.

As you are aware, the Senate Resources Committee's draft bill contains the following provisions:

1. Requires reclamation for all mining and sand and gravel developments; subject to a small mine exclusion for operations disturbing less than five acres or removing less than 1,500 cubic yards in any one year.
2. Extends reclamation requirements to state, federal, and private land; subject to a grant of authority to enter into cooperative management agreements.
3. Requires submission and approval of a site-specific reclamation plan before mining may commence.
4. Establishes a maximum bond ceiling of \$750 for each acre of land subject to the reclamation plan.
5. Establishes an "undue or unnecessary degradation" and return to "stable condition" performance standard for reclamation. This standard parallels the existing BLM standard.

We strongly support inclusion of sand and gravel mining operations based on their similarity to placer mining operations and the strong potential for beneficial fish and wildlife habitat enhancement upon reclamation.

We also support extension of state reclamation requirements to state, federal, and private land. There are substantial advantages to adopting a uniform state program which avoids piecemeal regulation. Under cooperative agreements authorized by the draft bill, the BLM, USFWS, USFS, and NPS could continue to assume responsibility for administration of the reclamation requirements on federal land, so long as their program was as stringent or more stringent than state requirements.

We further support establishing a statutory framework based on site-specific reclamation plans rather than prescribing state-wide technical performance standards. We believe site-specific plan development will maximize fish and wildlife habitat protection and enhancement while minimizing reclamation costs for the minerals industry.

We concur with the proposed bonding approach requiring bonding if DNR determines that an operator has failed to follow an approved plan. The 6i legislation required future bonding in those instances. Given the economic realities of securing bonding for small operators, this approach grants DNR the flexibility and authority to firmly deal with problem operations without imposition of economic hardships on the major segment of the industry who are complying with reclamation requirements.

Notwithstanding this support, we believe the draft reclamation bill needs strengthening in the following areas:

1. Enforcement. Specific criminal and civil penalty provision granting DNR enforcement jurisdiction are needed. DNR's existing enforcement authorities are extremely limited and cumbersome. Under existing authorities, blatant violations have taken years to legally resolve.

Under the draft bill, DNR has two enforcement options: (a) initiate permit revocation proceedings under AS 44.62, or (b) require bonding for all subsequent operations. With a \$750/acre ceiling on bonding, the threat of bonding is a relatively minor inconvenience.

2. Bonding. The \$750 bond ceiling per acre is inadequate to protect the state's interest in the event of bond forfeiture. The draft legislation should either raise the bond ceiling to cover all reasonable state expenses or authorize DNR to establish bonding levels on an individual basis as is currently the practice with other state land use activities.
3. Abandoned Mines Program. Specific provisions are needed to establish a funding mechanism and program for restoring lands degraded prior to passage of the reclamation legislation or that are abandoned when the operator moves outside of the state's jurisdiction and no other recourse, state or federal,

is available. While the state's Abandoned Mines Reclamation Fund under SCMCRA (AS 27.21) authorizes limited use of federal funds for restoration of non-coal abandoned mines, the program is primarily targeted at abatement of public safety nuisances; not restoration of environmental productivity and stability. Several individuals testifying at the recent Resources Committee reclamation hearing suggested that the state or mining districts would have to reclaim abandoned mines if public opposition to mining related impacts is to be abated. As long as abandoned scars are visible, they felt the public would be unwilling to believe that the industry has made substantial progress in recent years. We further suggest that it is in the public interest to return degraded state lands to a productive and useful state.

4. Reclamation Standard. The proposed "undue or unnecessary" performance standard maintains the status quo by accepting a level of impact consistent with industry norms. While this performance standard parallels the Bureau of Land Management's standard and certainly can be used to obtain reasonable reclamation, a more progressive standard would focus greater emphasis on avoidance, minimization, restoration, and enhancement of state resources.
5. Small Miner Exemption. Under the draft bill, a substantial percentage of the state's mining operations would fall under the small miners exemption. While the intent of this provision was to parallel BLM's five acre "Notice of Intent" threshold, it should be noted that BLM's threshold is five cumulative acres, not acres per year. Adequately planned and executed at the start of operations, reclamation costs for small mines are relatively insignificant compared to gross operating expenses. We believe that all mining and sand and gravel operations should be reclaimed in accordance with a reclamation plan. At a minimum the small miner exemption should not exceed BLM's standard of five cumulative acres. An operator wishing to move up his/her claim would have to reclaim the first five acres before they could regain exempt status.

We have enclosed suggested legislative language to address each of the above concerns. The focus of our proposals is to provide DNR with adequate management tools to protect the state interest while regulating industry on a site-specific basis. Since the legislative session is rapidly coming to a close, the Administration will need to be prepared to respond to the Senate Resources Committee's draft bill on short notice. We look forward to discussing the proposed legislation as soon as you have had an opportunity to review our recommendations.

Enclosure (1)

cc: Denby Lloyd  
Larry Dietrick  
Gary Gustafson  
Molly McCammon  
Bruce Baker  
ADF&G Division Directors  
Al Ott  
Lance Trasky  
Rick Reed  
Deena Henkins

ADF&G Recommended  
DNR Reclamation Statutes  
April 9, 1990

AS 38.90.010. Jurisdiction. The commissioner of natural resources shall exercise jurisdiction to implement this chapter over all land and water within the state subject to mining exploration or development under AS 27.10 or AS 38.05.185-.280 or sand and gravel exploration or development under AS 38.05.110-.120.

AS 38.90.020. Reclamation of state lands and waters. (a) All activities subject to this chapter must be reclaimed in accordance with the provisions of this chapter and regulations adopted under AS 38.90.030. Reclamation shall be completed in accordance with a reclamation plan approved by the commissioner and shall provide for long-term environmental stability, renewable resource productivity and the maintenance of the land and water resources of the state in the manner which best provides for the present needs and preserves the future options of the people of Alaska.

AS 38.90.030. Reclamation standards. (a) By July 1, 1991, the commissioner shall adopt reclamation performance standards and procedures by regulation in accordance with the Administrative Procedures Act (AS 44.62) necessary to accomplish the purposes of this chapter, and shall consult with the commissioners of the departments of environmental conservation and fish and game in the development of such regulations. All permits and leases issued under this chapter shall require that mining operations must comply with those reclamation performance standards. The regulations adopted under this chapter shall, at a minimum,

(1) assure that mining operations are conducted in a manner that will avoid degradation of land and water resources both during and after the period of actual mining operations;

(2) assure that mining operations are not conducted where reclamation required by this chapter and the regulations adopted under it is not feasible;

(3) assure that reclamation is accomplished as contemporaneously as practicable with the mining activity;

(4) provide for the protection, restoration and, where appropriate, enhancement of the biological productivity of terrestrial and aquatic environments through inclusion of specific performance requirements; and

(5) establish appropriate procedures for meaningful consultation with the commissioners of fish and game and environmental conservation in the review of individual reclamation plans submitted for the commissioner's approval under Section 38.90.020.

AS 38.90.100. Alternate post-mining purposes and experimental practices. In order to encourage advances in mining and reclamation practices, and to allow post-mining land use for industrial, commercial, residential, recreational, or public purposes, the commissioner may, after consultation with the commissioners of fish and game and environmental conservation, authorize departures in individual cases from the requirements of this chapter or a regulation adopted under it if

(1) the alternate post-mining use is in the overall public interest and all feasible and prudent measures are incorporated to maximize compliance with the provisions of this chapter or regulations adopted under it; or

(2) the experimental practices are potentially more protective of the environment, or at least as protective of the environment, as those required by this chapter and regulations adopted under it, and

(3) the mining operation for which the departure is authorized is not larger than necessary to determine the effectiveness and economic feasibility of the experimental practices, and

(4) the experimental practices do not reduce the protection afforded public health and safety or environmental protection below that provided by other law or regulation.

AS 38.90.600. Mine Reclamation Fund. (a) To promote reclamation of areas that have been mined and left without adequate reclamation, and that degrade the quality of the environment, prevent the beneficial use or cause damage to land or water resources, or endanger the health or safety of the public, there is created a revolving "Mine Reclamation Fund," which shall be used exclusively,

(1) to carry out the purposes and provisions of this chapter or regulations adopted under it or other duties that may be delegated by the legislature to the commissioner or the department; and

(2) to carry out such purposes and objectives within the scope of this chapter or regulations adopted under it as may be directed by the donor of any such funds.

(b) The Mine Reclamation Fund must be utilized to augment and supplement federal funding available to the Abandoned Mines Reclamation Fund under the Alaska Surface Coal Mining Control and Reclamation Act (AS 27.21) and to provide a funding source for reclamation of mining operations which are ineligible under that act;

(c) The Mine Reclamation Fund must be made up of the following money and other money the legislature appropriates, which shall be deposited and retained in the fund until expended:

(1) money received in settlement of a criminal or civil complaint under AS 38.90.900 - .910 or a lien under AS 38.90.620 and reappropriated by the legislature for deposit in the Fund;

(2) money received from federal, state, or other governmental unit, a private donor or an industry or governmental agency bonding pool for mine reclamation purposes;

(3) interest earned upon money in the fund;

(4) money from any other source appropriated by the legislature for deposit in the Fund.

AS 38.90.610. Eligible land and water. (a) Land and water eligible for reclamation expenditures under AS 38.90.600 are those that were mined for locatable, leasable or other minerals, either prior to or after enactment of this section, or were affected by such mining, and abandoned or left in an inadequate reclamation status, which are ineligible for reclamation under the Abandoned Mines Reclamation Fund (AS 27.21.270 - .280 and for which there is no continuing reclamation responsibility or civil remedy under state or federal law.

(b) The commissioner shall identify land and water eligible for reclamation under AS 38.90.600, the anticipated costs for restoring such lands to comply with the provisions of this chapter and regulations adopted under it, and a schedule for completion and shall forward them to the governor and the legislature within the first 10 days of each regular session of the legislature.

AS 38.90.620. Relationship to Alaska Surface Coal Mining Control and Reclamation Act (AS 27.21) authorities. For purposes of implementation and enforcement of the provisions of this chapter or regulations adopted under it, the powers and authorities vested in the commissioner under AS 27.21.290 - .310 for purposes of participation in the Abandoned Mines Reclamation Fund under the Alaska Surface Coal Mining Control and Reclamation Act (AS 27.21) are extended to include this chapter.

AS 38.90.700. Performance bond. (a) The commissioner will in his or her discretion require a performance bond with a surety company authorized to transact business in Alaska or other such security as the commissioner may approve to secure the performance of the terms and conditions of a permit or lease issued under this chapter. On a determination by the commissioner that a miner has failed to follow the approved reclamation plan, the commissioner shall require proof of financial responsibility before the miner undertakes any further mining activity.

(b) A performance bond or security required by (a) of this section is limited to an amount reasonably necessary to insure faithful performance of the requirements of this chapter and the approved reclamation plan. The amount of the bond or other security shall be determined by the commissioner and shall reflect

the probable difficulty of the reclamation considering the topography, geology, hydrology, environmental and biological factors, revegetation potential, site accessibility, and similar factors relating to the area.

(c) Liability under a performance bond required by (a) of this section must exist for the duration of the mining and reclamation operation and for the period of time of the permittee's or lessee's responsibility under the performance standards established by this chapter or regulations adopted under it.

(d) The posting of a performance bond or the taking of other security under (a) of this section does not limit the department's right, under applicable law, to seek further compensation from the permittee or lessee for actual damages to state lands or waters or for a violation of the performance standards established by this chapter or regulations adopted under it.

AS 38.90.800. Criminal penalties. (a) A person or governmental agency who causes or permits a violation of this chapter or a regulation, lawful order, or permit, approval, or acceptance, or term or condition of a permit, approval or acceptance issued under this chapter, is guilty of a Class A misdemeanor. Each day on which a violation constitutes a separate offense.

(b) A person or government agency who fails to provide or falsely states information required under this chapter or a regulation adopted under it is guilty of a Class A misdemeanor. Each unlawful act constitutes a separate offense.

(c) The court shall transmit the proceeds of all penalties and fines to the proper state officer for deposit in the General Fund subject to reappropriation by the legislature for deposit in the Mine Reclamation Fund established under AS 38.90.600.

AS 38.90.810. Civil penalties. A person or governmental agency who causes or permits a violation of this chapter or a regulation, lawful order, or permit, approval, or acceptance, or term or condition of a permit, approval or acceptance issued under this chapter, is liable to the state in a civil action for the full amount of actual damages caused to the state by the violation, including direct and indirect costs associated with the abatement of the violation, restoration of the environment to its former state, and all incidental administrative costs.

(b) The court shall transmit the proceeds of all fines and civil judgements to the proper state officer for deposit in the General Fund subject to reappropriation by the legislature for deposit in the Mine Reclamation Fund established under AS 38.90.600.

AS 38.90.900. Miscellaneous powers. (a) The commissioner may request the attorney general to initiate, in addition to any other

remedies provided in this chapter, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct reclamation under this chapter or a regulation adopted under it.

(b) The commissioner has the power and authority to construct and operate facilities or to implement other management practices for the control and treatment of water pollution resulting from abandoned mine drainage, so long as that control and treatment complies with 33 U.S.C. 1251-1376 (Clean Water Act).

AS 38.90.910. Emergency powers. (a) When the commissioner finds, after investigation, that a person or government agency is causing, engaging in or maintaining a condition or activity which, in the judgement of the commissioner presents an imminent or present danger to the health or welfare of the people or would result or is likely to result in irreversible or irreparable damage to the natural resources or environment of the state, and it appears to be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided, the department may with written notice, without prior hearing, order that person or government agency to discontinue, abate or alleviate the condition or activity. The proscribed condition or activity shall be immediately discontinued, abated or alleviated.

(b) Upon receipt of an order of the commissioner made under (a) of this section, the person or government agency has the right to be heard and to present proof to the commissioner that the condition or activity does not constitute an actual or potential source of irreversible or irreparable damage to the natural resources or environment of the state, or that the order may constitute a substantial private hardship.

(c) In the commissioner's discretion or upon application made by the recipient of an order within 15 days of receipt of the order, the commissioner shall schedule a hearing at the earliest possible time. The hearing shall be scheduled within 5 days of receipt of the application. The submission of the application or the scheduling of the hearing does not stay the operation of the commissioner's order made under (a) of this section.

(d) After a hearing, the commissioner may affirm, modify, or set aside an order. An order affirmed, modified, or set aside after hearing is subject to judicial review as provide in AS 44.62.560. The order is not stayed pending judicial review unless the commissioner so directs. If an order is not immediately complied with, the attorney general, upon request of the commissioner, shall seek enforcement of the order.

(e) The commissioner may adopt additional regulations prescribing the procedure to be followed in the issuance of emergency orders.

AS 38.90.920. Relationship to other laws. Nothing in this chapter abrogates or modifies the power of another state agency to enforce laws and regulations within its jurisdiction.

AS 38.90.930. Cooperative management agreements. (a) The commissioner, after determining that the agreement is in the best interests of the public and state, may enter into cooperative management agreements with the federal government or a state agency to implement the requirements, in full or in part, of this chapter or a regulation adopted under it. Specific guidelines to protect the state and public interest shall be established, if necessary, by the commissioner before entering into an agreement under this section.

(b) A summary of agreements entered into under this section shall be submitted to the legislature within 30 days of the beginning of each regular session.

AS 38.90.940. Exemptions. The requirements of this chapter do not apply to mining activities

(1) authorized under the Alaska Surface Coal Mining Control and Reclamation Act (AS 27.21); or

(2) by a landowner or lessee for the landowner's or lessee's own noncommercial use from land owned or leased by it.

AS 38.90.950. Severability. If any provisions of this chapter or the applicability of it to any person or government agency or circumstances is held invalid, the remainder of this chapter and the application of that provision to other persons, government agency or circumstances is not affected.

AS 38.90.960. Conflict of interest. An employee of the department, a private contractor, or a government agency performing a function or duty under this chapter may not have a direct or indirect financial interest in a mining operation regulated under this chapter. A person or government agency who knowingly violates this section is guilty of a Class A misdemeanor.

AS 38.90.970. Administrative Procedures Act. Except as provided under AS 38.90.910, the Administrative Procedures Act (AS 44.62) applies to this chapter.

AS 38.90.990. Definitions. In this chapter, unless otherwise specified,

(1) "commissioner" means the commissioner of natural resources or the commissioner's authorized representative or agent;

(2) "other minerals" means clay, stone, sand, gravel, metalliferous and non-metalliferous ores, and other solid materials

or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal, and those minerals that occur naturally in liquid or gaseous form;

(3) "person" means an individual, partnership, association, society, joint-stock company, firm, company, corporation, or other business organization;

(4) "reclamation plan" means a plan submitted for the reclamation of an applicant's proposed mining operation submitted by the applicant under regulations adopted under AS 38.90.030.



## Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3366

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### CONCEPTUAL COMMENTS ON SB 544 - RECLAMATION

We thank the Senate Resources Committee for addressing this important issue, and strongly support the intent of this legislation. Reclamation is a key component of the public acceptance necessary to a thriving mineral industry in Alaska. The industry has made commendable progress in the area of environmental responsibility in recent years, and we encourage continuation of that trend.

We have focused on basic, attainable requirements, and have included several suggestions which are intended to provide positive assistance to the industry. These suggestions are intended to be an outline of our ideas, rather than precisely-drafted language.

1.) We support the provisions for applicability to all land in the state. The recognition of the legitimate public interest in seeing that all land is reclaimed after mining is a key to effective reclamation legislation; and a single clear standard will give the industry both the regulatory uniformity and public acceptance it needs to thrive.

It is not, however, appropriate to require private landowners to manage for multiple use, and we would support language to allow private landowners to manage for whatever post-mining use they designate; so long as public resources on the private land or adjacent land are protected by some sort of phrasing such as "considering the effects of operations on other public resources and public land uses."

2.) We support the inclusion of sand and gravel.

3.) We believe the standard of "prevention of undue or unnecessary degradation...and return of the site to a stable condition consistent with the reclamation plan" does not adequately safeguard the public interest. Our suggestion is:

Sec. 27.19.020. STANDARDS. (a) Reclamation for a mining operation shall be completed under a reclamation plan approved by the commissioner. The reclamation plan must provide for long-term environmental stability, renewable resource productivity, and the maintenance of the land and water resources of the state in the manner which best provides for the present needs at the same time as it preserves the future options for the people of the state. The plan must

(1) provide for the protection, restoration, and enhancement of the biological productivity and diversity of terrestrial and aquatic environments through inclusion of specific performance requirements; and

(2) assure that reclamation is accomplished as contemporaneously as practicable with the mining activity, but in any case, is completed within one 12 months after the termination of mining operations;

(3) assure that mining operations are not conducted where reclamation required by this chapter and the regulations adopted under it is not feasible;

(b) The commissioner shall establish appropriate procedures for meaningful public and agency participation in the development, revision, and enforcement of regulations, standards, and reclamation plans or programs established under this chapter.

4.) To allow necessary flexibility to accommodate a variety of post-mining uses, and to encourage development of improved practices, we suggest insertion of a new section to read:

Sec. 27.19.---. ALTERNATE POST-MINING PURPOSES AND EXPERIMENTAL PRACTICES. In order to encourage advances in mining and reclamation practices, and to allow post-mining land use for industrial, commercial, residential, recreational, or public purposes, the commissioner may, after consultation with the commissioners of fish and game and environmental conservation, authorize departures in individual cases from the requirements of this chapter or a regulation adopted under it if

(1) the alternate post-mining use is in the overall public interest and all feasible and prudent measures are incorporated to maximize compliance with the provisions of this chapter or regulations adopted under it; or

(2) the experimental practices are potentially more protective of the environment, or at least as protective of the environment, as those required by this chapter and regulations adopted under it, and

(3) the mining operation for which the departure is authorized is not larger than necessary to determine the effectiveness and economic feasibility of the experimental practices, and

(4) the experimental practices do not reduce the protection afforded public health and safety or environmental protection below that provided by other law or regulation.

5.) Bonding or other financial surety requirements must be both attainable and flexible. A bond pooling mechanism would help the industry. Wyoming has a successful bond pooling program; one modeled on it would appear to be an excellent solution. In the absence of some sort of bond pooling program, the flexibility to accept other financial sureties would be necessary. Bonding must not be limited to a set amount, but should be consistent with the amount that would be reasonably required to reclaim the particular type of mine and site in question. We would suggest rewording as follows:

Sec. 27. 19. 030. RECLAMATION PLAN AND BONDING. (a) The commissioner shall adopt regulations which establish a collective bond pooling program to ensure financial responsibility for completion of requirements established in a reclamation plan.

(b) A miner may not engage in a mining operation until the commissioner has approved a reclamation plan for the mining operation.

(c) The commissioner shall require a miner to post an individual performance bond on a determination by the commissioner that the miner has failed to follow an approved reclamation plan, and may require a miner to post a performance bond as part of a bond pooling program.

(d) The commissioner may not require an individual performance bond under this section in an amount in excess of the amount reasonably necessary to ensure faithful performance of the requirements of the approved reclamation plan. The amount of the performance bond shall be determined by the commissioner and shall reflect the reasonable and probable costs of reclamation.

(e) The establishment of an individual performance bond under this section does not limit the authority of the commissioner to seek further compensation from a miner for actual damages to state land or water or for a violation of the performance standards established by this chapter or for a

violation of the performance standards established by this chapter or by regulations adopted under it.

6.) We support the intent of providing an incentive for reclaiming land as mining progresses, but blanket small mine exemptions have been a problem in other states. We suggest that the noticing, planning, and other requirements be structured differentially, so that there is significantly less red tape for small operators.

7.) The cooperative management provisions are an effective means of streamlining administration of the program, for all concerned.

8.) Appropriate changes in numbering of sections and in definitions would have to be made to accommodate these changes.

9.) Enforcement provisions are also needed. If responsible operators are to be protected from the adverse effects of the irresponsible few, DNR will need a reasonable and graduated system of enforcement powers.

A major item which should be included to streamline procedures and save time and money for all parties involved is the power to assess administrative penalties ("writing a ticket"), so it is not necessary to haul miners into court for every small infraction. Here are additional suggestions for enforcement language:

Sec. 27. 19. ---. CRIMINAL PENALTIES. (a) A person who causes or permits a violation of this chapter, or a regulation, lawful order, or reclamation plan under this chapter is guilty of a violation.

(b) A person who knowingly causes or permits a violation of this chapter, or a regulation, lawful order, or reclamation plan under this chapter is guilty of a class A misdemeanor.

(c) A person who fails to provide or falsely states information required under this chapter or a regulation adopted under it is guilty of a class A misdemeanor.

Sec. 27. 19. ---. CIVIL PENALTIES. A person who causes or permits a violation of this chapter, or a regulation, lawful order, or reclamation plan under this chapter is liable to the state in a civil action for the full amount of actual damages caused to the state by the violation, including direct or indirect costs associated with the abatement of the violation, restoration of the environment to its former state, and all incidental administrative costs.

Sec. 27.19. ---. EMERGENCY POWERS. (a) If the commissioner finds, after investigation, that a person engaged in a mining operation is causing, engaging in, or maintaining a condition or activity that presents an imminent or present danger to the health or welfare of the residents of the state or would likely result in irreversible or irreparable damage to the natural resources or environment of the state and the commissioner determines that it would be prejudicial to the interests of the residents of the state to delay action until an opportunity for a hearing can be provided, the commissioner may, by written notice, order that person immediately to discontinue, abate, or alleviate the condition or activity.

(b) On receipt of an order under (a) of this section, the person has the right to be heard and to present proof in opposition to the order of the commissioner.

(c) The commissioner shall schedule a hearing within 10 days of the receipt of the application for a hearing. The scheduling of the hearing does not stay the operation of the order of the commissioner.

(d) After the hearing, the commissioner may affirm, modify, or withdraw an order. The decision of the commissioner is subject to judicial review under AS 44.62.560, and judicial review does not stay the order unless the commissioner agrees.

10.) Consideration of an abandoned mines reclamation program would be worthwhile.

Bill Glude, 4-10-90

22 April 1990

Rep. Menard  
Pouch Y  
Juneau, AK 99811

Dear Representative Menard,

As an Ester resident virtually surrounded by active mines and mining claims, I am pleased to see some legislative action to require reclamation of mine sites. For all the rhetoric about "development with environmental safeguards" we require darn little from some of our extractive industries. However, I have some objections to the mining reclamation bill recently passed by the Senate (Senate Bill 544).

It is unwise to exempt claims of 5 acres or less. The cumulative impact of lots of small unreclaimed mine sites could be significant. I understand that the small operator may be less financially able to meet reclamation requirements, but this issue must be addressed.

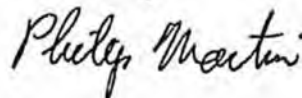
Why do we require more stringent esthetic regulations of coal miners, compared with gold miners? Revegetation and buffer strips are required between coal mines and private residences, public thoroughfares, and other valuable lands. As a matter of fairness and good public policy, this should be required of all mineral extraction operations.

The bonding requirement calls for a \$750 per acre ceiling. Where did that number come from? It sounds far too low. What do other states require? What would it really take to reclaim mining land in Alaska?

I would like to see the House deal with these problems contained in the Senate legislation.

I would be interested to hear your position on this bill, in general, and specifically on the issues I have raised.

Sincerely,



Philip Martin  
P.O. Box 195  
Ester, AK 99725

June Weinstock  
1339 6th Avenue  
Fairbanks, AK 99701  
(907) 452-8610

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23 April 1990

Representative Curt Menard  
P.O. Box V  
Juneau, AK 99811

RE: SB 544 (Mining Reclamation)

Dear Representative Menard:

I am writing about the Mining Reclamation Bill, SB 544, that just passed into the House. Common Ground-Alaska, a group of people in whom I have great faith, has thoroughly researched and analyzed the provisions of this bill and found it seriously lacking in several essential points. I share their concerns.

Specifically, SB544 contains

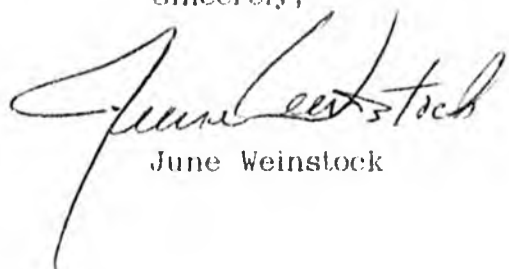
1. **Inadequate enforcement provisions**, a lack which should be remedied by insertion of stricter civil penalties for failure to make good-faith reclamation efforts;
2. **Inadequate bonding requirements**—a maximum of \$750/acre, which is neither adequate to ensure compliance nor in line with the provisions of other states;
3. **Inadequate buffer requirements**, which could be remedied by requiring gold mines to meet the same requirements for buffer strips between the mine and private residences/public thoroughfares as must coal mines; and
4. **Exemption for claims of 5 acres or less**—which invites a multitude of scars and cumulative impacts.

Let us not forget that gold mining is a private business carried out on public lands and waters. In the process of seeking profit, gold miners destroy or adversely alter the value of those lands and waters as fish and wildlife habitat, as wild places, and as desirable places to live next to. Philosophically, then, it is hard for me to understand why anyone (including the miners) should object to a requirement that, at the end of the day, they restore and revegetate the land—not necessarily to its original condition, but to a condition where further erosion will not occur and natural revegetation is given a head start. Such requirement is not unreasonable; it seems merely fair.

I therefore ask you to do whatever you can to turn the final Reclamation Bill into an effective tool for reclamation. We need assurance that reclamation really will be carried out, and that those miners who might choose to overlook that final, essential part of their mining operation will be penalized. The modifications we suggest to SB 544 would accomplish those ends.

Thanks for your attention to this.

Sincerely,

A handwritten signature in cursive script that reads "June Weinstock". The signature is written in dark ink and is positioned above the printed name.

June Weinstock

CARGO AND REFINED PRODUCT VESSELS SUNK, WORLDWIDE, WITH A TOTAL LOSS OF CARGO (1979 TO PRESENT)

Record#	DATE	NAME	SIZE	COUNTRY	SPILL	CARGO	CAUSE
1	1/79	Betelgeuse	121,000 tons	French	40,000 tons	Crude	Exploded at dock
2	4/79	Gino	49,000 tons	Liberia	32,000 tons	Carbon Blk.	Collision
3	7/79	Atlantic Empress	293,000 tons	Greek	275,00 tons	Crude	Collision
4	9/79	Chevron Hawaii	71,000 tons	U.S.A.	3,000 tons	Crude	Exploded at dock
5	2/80	Irenes Serenade	150,000 tons	Cyriot	40,000 tons	Crude	Exploded at anchor
6	3/80	Tanio	29,000 tons	Malagasy	13,000 tons	Fuel Oil	Broke up
7	1/83	Assimi	59,000 tons	Greek	55,000 tons	Crude	Fire, explosion
8	8/83	Castillo De Bellver	267,000 tons	Spanish	260,000 tons	Crude	Fire, broke up
9	11/83	Proc Basilan	16,000 tons	Phillipines	13,000 tons	Gasoline	Fire, sunk
10	10/84	Puerto Rican	35,000 tons	U.S.A	5,000 tons	Fuel Oil	Fire & explosion at port
11	3/85	Lyudrik Svobode	16,000 tons	Russia	1,000 tons	Crude	Explosion while loading
12	5/85	Petrageon I	30,000 tons	Panama	5,000 tons	Refined oil	Explosion and sunk in port
13	4/88	Athenim Venture	31,000 tons	Cypriot	30,000 tons	Crude	Explosion
14	11/88	Odyssey	140,000 tons	Liberia	131,000 tons	Crude	Sunk
15	3/89	Maasgusar	39,000 tons	Liberia	30,000 tons	Chemicals	Explosion and fire

933,000 tons

90,000 tons\*

1,023,000

x 7.4

=7,570,200 barrels

x310

=317,130,000 gallons

\* Vessels can reasonably be expected to be carrying 2,000-10,000 tons of fuel, (mean 6,000).

Source = Phone conversation with Mr. Arthur McKinzie, Tanker Advisory Center, Inc. NY, NY 3-6-90.

CONCEPTUAL ADMINISTRATION  
RECLAMATION BILL  
Version 5 - Edit From DOM version 1  
April 24, 1980

NOTE: Draft in non-bill format. Advisory for House consideration.

CHAPTER 19. RECLAMATION

Sec. 27.19.010. JURISDICTION. (a) The commissioner of natural resources shall implement this chapter. This chapter applies to state, federal, and private land and water subject to

- (1) mining development; or
- (2) sand and gravel development.

(b) This chapter does not apply to activities regulated under AS 27.21.

Sec. 27.19.020. RECLAMATION STANDARD. (a) All mining and sand and gravel developments shall be operated in a manner that prevents unnecessary or undue degradation of land and water resources and shall be reclaimed as contemporaneously as practicable with the mining operation to provide for long-term environmental stability and the protection, ~~restoration~~, and where appropriate, enhancement of the biological productivity of terrestrial and aquatic environments.

(b) Except as provided under AS 27.19.040, a miner may not engage in a mining operation until the commissioner has approved a reclamation plan for the mining operation.

(c) In reviewing a reclamation plan under (b) of this section, the commissioner may consider, after consultation with the commissioner of environmental conservation and fish and game, alternative uses to which the land may be put after mining has been completed, including trails, lakes, recreation sites, fish and wildlife habitat, and agricultural uses.

Sec. 27.19.030. BONDING. (a) The commissioner ~~shall~~ require an individual performance bond under this section in an amount not to exceed that reasonably necessary to ensure the faithful performance of the requirements of the approved reclamation plan and shall reflect the reasonable and probable costs of reclamation.

(b) In lieu of individual performance bonds, the commissioner may establish a state-wide bonding pool for mining operations with reclamation liabilities less than \$50,000. Miners participating in the bonding pool shall contribute an initial deposit not to exceed 10% of their reclamation liability plus an additional three percent for an annual payment. Upon initiation of reclamation, the annual payment shall be suspended. The deposit shall be refunded upon satisfactory completion of reclamation under the approved reclamation plan.

(c) In the event of failure to comply with the reclamation plan, the bond shall be forfeited and shall supplement any civil remedy under AS 27.19.060(a) for reclamation of the site subject to the forfeiture.

(d) A miner that fails to comply with the reclamation plan, and forfeits the bond, will not be eligible to participate in the state-wide bonding pool until he has complied with an approved reclamation plan for a period of two years, unless otherwise approved by the commissioner.

(e) The commissioner may expend funds determined to be in excess of the present and future needs of the state-wide bonding pool for reclamation of abandoned mines.

Sec. 27.19.040. EXEMPTION FOR SMALL OPERATORS. (a) The requirements of AS 27.19.020(b) and AS 27.19.030 do not apply to a miner who mines less than five acres in any year and has unreclaimed mined area less than five acres or to a miner who removes less than 1,500 cubic yards of gravel or other material in any year. A miner exempted by this section from the requirements of AS 27.19.020(b) and AS 27.19.030 who, in the determination of the commissioner, fails to reclaim a mining operation to the standards of AS 27.19.020(a) is required to submit a reclamation plan under AS 27.19.020(b) and post a performance bond for any subsequent mining operation.

(b) To maintain an exemption under (a) of this section, a miner shall file an annual reclamation statement with the commissioner disclosing the total acreage and volume of material disturbed by the mining operation in the current year, the total acreage reclaimed, and the specific reclamation measures used to comply with AS 27.19.020(a). A miner may not claim an exemption under (a) of this section for subsequent operations unless the annual reclamation statement for the previous operation has been filed with the commissioner.

(c) This section does not prevent the owner of private land from establishing requirements for reclamation in excess of those established by this chapter.

Sec. 27.19.050. COOPERATIVE MANAGEMENT AGREEMENTS. The commissioner, on a determination that an agreement is in the best interests of the state, may enter into a cooperative management agreement with the federal government or state agency to implement a requirement of this chapter or a regulation adopted under it.

#### AS 27.19.060. VIOLATIONS.

NOTE: Judd, it is our position that the state should retain discretion to use all possible enforcement options including criminal and/or civil. At this juncton, this policy decision has been left for final resolution by the directors.

(a) An operator or owner of a mining operation who violates or permits a violation of this chapter or a regulation, lawful order, permit, or term, stipulation, or condition of a permit issued under it, is liable to the state in a civil action for the full amount of reclamation costs to reclaim the area to the standards of this chapter, and all incidental administrative costs.

(b) In addition to other remedies available under this chapter, the commissioner may suspend or deny present and future mining permits or approvals under AS 27 and AS 38 for failure to reclaim a mining operation to the standards of this chapter.

Sec. 27.19.090. DEFINITIONS. In this chapter,

(1) "miner" means the owner, operator, or lease holder of a mining operation;

(2) "mining operation"

(A) means each function, work, facility, and activity in connection with the development, extraction, and processing of a locatable or leaseable mineral deposit, except oil and gas, other materials, or of a sand and gravel deposit and each use reasonably incident to the development, extraction, and processing;

(B) includes the construction of facilities, roads, transmission lines, pipelines, and other support facilities;

(3) "unnecessary or undue degradation"

(A) means surface disturbance greater than would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and considering site specific consideration, including those resources and uses outside the area of operations;

(B) includes a failure to initiate and complete reasonable reclamation under the general reclamation requirement of AS 27.19.020(a), the approved reclamation plan under AS 27.19.030, or the creation of a nuisance.

(4) "reclamation plan" means a plan submitted by a miner under regulations adopted by the commissioner for the reclamation of a proposed mining operation.

(5) "reclaimed area" means the active site of physical extraction, stockpiling or disposal of ore, overburden, tailings and processed materials, stream diversions, bypasses, and settling ponds. Reclaimed areas approved by the commissioner are not included as part of the mined area.

WORKING GROUP DRAFT #2 5-1-90

RECLAMATION BILL VERSION OF CSSB 544

For an Act entitled: "An Act relating to the reclamation of land and water; requiring land and water within the state to be reclaimed to a stable condition without undue or unnecessary degradation due to mining activities and exempting small operators mining less than five acres per year from this requirement; Limiting reclamation bonds to no more than \$750 per acre; and providing for an effective date."

Section 1. AS27 is amended by adding a new chapter to read:

CHAPTER 19. RECLAMATION

Sec/ 27.19.010. JURISDICTION. (a) The commissioner of Natural Resources shall implement this chapter. This chapter applies to state, federal and private land and water subject to mining operations.

(b) Unless specifically provided for this chapter does not apply to activities regulated under AS 27.21.

(c) Nothing in this chapter alters or diminishes the authority of another state agency under its laws and regulations. The owner of private land may establish requirements for reclamation in excess of those established by this chapter.

Sec. 27.19.020 RECLAMATION STANDARD. All mining and sand and gravel developments shall be operated in a manner that prevents unnecessary and undue degradation of land and water resources and shall be reclaimed as contemporaneously as practicable with the mining operation to leave the site in a stable condition.

Sec. 27.19.025 RECLAMATION PLAN. (a) Except as provided under AS 27.19.040, a miner may not engage in a mining operation until the commissioner has approved a reclamation plan for the mining operation.

(b) In reviewing a reclamation plan under (a) of this section, the commissioner may consider, after consultation with the commissioners of environmental conservation and fish and game, uses to which the land may be put after mining has been completed, including, but not limited to, trails, lakes, recreation sites, fish and wildlife enhancement, commercial, and agriculture uses.

Sec 27.19.030 RECLAMATION PLAN BONDING. (a) The commissioner shall require an individual performance bond under this section in an amount not to exceed the amount reasonably necessary to ensure the faithful performance of the requirements of the approved

reclamation plan. The amount of the performance bond shall be determined by the commissioner and shall reflect the reasonable and probable costs of reclamation but may not exceed \$750 for each acre of mined area.

(b) In lieu of individual performance bonds, the commissioner shall establish a state-wide bonding pool for mining operations. Miners participating in the bonding pool shall contribute an initial deposit not to exceed 10% of their reclamation bond plus an additional non-refundable annual fee not to exceed 3% of the reclamation bond. The 10% deposit shall be refunded upon satisfactory completion of the approved reclamation plan. If requested by the miner, the deposit may be applied to a new reclamation plan. The commissioner may allow this bonding pool to be used to meet the requirements of AS 27.21.160.

(c) A miner not otherwise required to post a bond, may elect to participate in the bond pool.

(d) This section does not prevent a land owner or other state or federal authority from establishing bonding requirements under applicable law in excess of those established by this chapter.

Sec. 27.19.040. EXEMPTION FOR SMALL OPERATORS. (a) The requirements of AS 27.19.025(a) and AS 27.19.030 do not apply to a miner who mines less than five acres at one location in any year and has a cumulative unreclaimed mined area of less than 5 acres at one location or to a miner who disturbs or removes less than 25,000 cubic yards of gravel or other material in any year.

(b) To obtain an exemption under (a) of this section, a miner shall file a letter of intent notifying the commissioner of the total acreage and volume of material to be disturbed, total acreage to be reclaimed, and the specific reclamation measures to be used to comply with AS 27.19.020.

(c) To maintain an exemption under (a) of this section, a miner shall file an annual reclamation statement with the commissioner disclosing the total acreage and volume of material disturbed by the mining operation in the current year, the total acreage reclaimed, and the specific reclamation measures used to comply with AS 27.19.020. A miner may not claim an exemption under (a) of this section for subsequent operations unless the annual reclamation statement for the previous operation has been filed with the commissioner.

(d) A miner exempted from the requirements of AS 27.19.025(a) and AS 27.19.030 under (a) of this section that fails to reclaim a mining operation to the standards of AS 27.19.020 shall be required, for a period of two consecutive years, to conduct all subsequent mining operation, regardless of size, under a reclamation plan and post a performance bond.

Sec. 27.19.050. COOPERATIVE MANAGEMENT AGREEMENTS. The

commissioner, on a determination that an agreement is in the best interest of the state, may enter into a cooperative management agreement with the federal government or state agency to implement a requirement of this chapter or a regulation adopted under it.

AS 27.19.060. VIOLATIONS.

(a) A miner who violates or permits a violation of an approved reclamation plan will forfeit the reclamation bond or a portion thereof and is liable to the state in a civil action for the full amount of reclamation and administrative costs. Miners exempted under Sec. 27.19.040 (a) may be subject to civil action for the full amount of reclamation and administrative costs incurred by the state related to the action if the commissioner determines that reclamation was not conducted in accordance with Sec. 27.19.020.

(b) In addition to other remedies available under this chapter, the commissioner may suspend or revoke permits or approvals of operations not being conducted in accordance with the approved reclamation plan or deny future mining permits and approvals under AS 27 and AS 38 related to the mining operation for failure to reclaim a mining operation to the standards of this chapter.

Sec 27.19.070. ADMINISTRATIVE PROCEDURE ACT. Unless otherwise provided, the Administrative Procedure Act (AS 44.62) applies to this chapter.

Sec. 27.19.090. DEFINITIONS. In this chapter,

(1) "miner" means the owner, operator, or lease holder of a mining operation;

(2) "mining operation"

(A) means each function, work, facility, and activity in connection with the development, extraction, and processing of a locatable or leasable mineral deposits, except oil and gas and coal, other materials or of a sand and gravel deposit and each use reasonably incident to the development, extraction, and processing;

(B) includes the construction of facilities, roads, transmission lines, pipelines, and other support facilities;

(3) "unnecessary and undue degradation"

(A) means surface disturbance greater than would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and considering site specific conditions.

(B) includes a failure to initiate and complete reasonable reclamation under the reclamation standard of AS 27.19.020 or the approved reclamation plan under AS 27.19.025(a).

(4) "reclamation plan" means a plan submitted by a miner under regulations adopted by the commissioner for the reclamation of a proposed mining operation.

(5) "mined area" means active site of physical extraction, stockpiling and or disposal of ore, overburden, tailings or processed materials, stream diversions, bypasses, and settling ponds. Reclaimed areas approved by the commissioner are not included as part of the mined area.

(6) "stable condition" means the return of the physical environment of the site to a condition that provides for the rehabilitation of the renewable resources of the site within a reasonable period of time by natural processes.

(7) "state land" includes lands as defined in AS 38.05.965(19), university lands as defined in AS 38.05.965(23), and state lands conveyed to a borough or municipality under AS 29.65.

Sec. 2. The commissioner of natural resources shall adopt regulations implementing AS 27.19 as enacted in sec. 1 of this act. The proposed regulations shall be forwarded on their preparation to the chairs of the resource committees but in any case not later than January 15, 1991. The commissioner may not adopt the regulations before October 15, 1991.

Sec. 3. Subject to appropriation, the commissioner may establish a program and expend funds for the reclamation of abandoned mines.

Sec. 4. AS 27.05.250 is repealed.

Sec. 5. Sections 2 and 3 of this Act take effect immediately under AS 01.10.070(c)

Sec. 6. Section 1 of this Act takes effect October 15, 1991

WORKING GROUP RECOMMENDATION  
5-2-90

RECLAMATION BILL CSSB 544

For an Act entitled: "An Act relating to the reclamation of land and water; requiring land and water within the state to be reclaimed to a stable condition without undue or unnecessary degradation due to mining activities and exempting small operators mining less than five acres per year from this requirement; Limiting reclamation bonds to no more than \$750 per acre; and providing for an effective date."

Section 1. AS 27 is amended by adding a new chapter to read:

CHAPTER 19. RECLAMATION

Sec. 27.19.010. JURISDICTION. (a) The commissioner of Natural Resources shall implement this chapter. This chapter applies to state, federal and private land and water subject to mining operations.

(b) Unless specifically provided for this chapter does not apply to activities regulated under AS 27.21.

(c) Nothing in this chapter alters or diminishes the authority of another state agency under its laws and regulations. The owner of private land may establish requirements for reclamation in excess of those established by this chapter.

Sec. 27.19.020 RECLAMATION STANDARD. All mining operations shall be conducted in a manner that prevents unnecessary and undue degradation of land and water resources and shall be reclaimed as contemporaneously as practicable with the mining operation to leave the site in a stable condition.

Sec. 27.19.025 RECLAMATION PLAN. (a) Except as provided under AS 27.19.040, a miner may not engage in a mining operation until the commissioner has approved a reclamation plan for the mining operation.

(b) In reviewing a reclamation plan under (a) of this section, the commissioner may consider after consultation with the commissioners of environmental conservation and fish and game and with the concurrence of the miner and land owner, uses to which the land may be put after mining has been completed, including, but not limited to, trails, lakes, recreation sites, fish and wildlife enhancement, commercial, and agriculture uses.

Sec. 27.19.030 RECLAMATION BONDING. (a) The commissioner shall require an individual performance bond under this section in

an amount not to exceed the amount reasonably necessary to ensure the faithful performance of the requirements of the approved reclamation plan. The amount of the performance bond shall be determined by the commissioner and shall reflect the reasonable and probable costs of reclamation but may not exceed \$750 for each acre of mined area.

(b) To provide for an alternative to individual performance bonds, the commissioner shall establish a state-wide bonding pool for mining operations. Miners participating in the bonding pool shall contribute an initial deposit not to exceed 15% of their reclamation bond plus an additional non-refundable annual fee not to exceed 5% of the reclamation bond. The 15% deposit shall be refunded upon satisfactory completion of the approved reclamation plan. If requested by the miner, the deposit may be applied to a new reclamation plan. The commissioner may allow this bonding pool to be used to meet the requirements of AS 27.21.160.

(c) A miner not otherwise required to post a bond, may elect to submit a reclamation plan under AS 27.19.025(a) and participate in the bond pool.

(d) If the commissioner determines a miner has violated or permitted a violation of the approved reclamation plan and fails to comply with a lawful order of the commissioner, the performance bond shall be forfeited and deposited in the state wide bonding pool. Reclamation and administrative costs recovered under AS 27.19.060(a) shall be used to supplement the forfeited bond deposited in the state wide bonding pool for reclamation of the site subject to the forfeiture. If the commissioner is unable to recover the full cost of reclamation under AS 27.19.060(a), the commissioner may use the bonding pool to reclaim the site to the standards of this chapter.

(e) This section does not prevent a land owner or other state or federal authority from establishing bonding requirements under applicable law in excess of those established by this chapter.

Sec. 27.19.040. EXEMPTION FOR SMALL OPERATORS. (a) The requirements of AS 27.19.025(a) and AS 27.19.030 do not apply to a miner who mines less than five acres at one location in any year and has a cumulative unreclaimed mined area of less than 5 acres at one location or to a miner who disturbs or removes less than 25,000 cubic yards of gravel or other material in any year.

(b) To obtain an exemption under (a) of this section, a miner shall file a letter of intent notifying the commissioner of the total acreage and volume of material to be mined, total acreage to be reclaimed, and the specific reclamation measures to be used to comply with AS 27.19.020.

(c) To maintain an exemption under (a) of this section, a

miner shall file an annual reclamation statement with the commissioner disclosing the total acreage and volume of material mined by the operation in the current year, the total acreage reclaimed, and the specific reclamation measures used to comply with AS 27.19.020. A miner may not claim an exemption under (a) of this section for subsequent operations unless the annual reclamation statement for the previous operation has been filed with the commissioner.

(d) A miner exempted from the requirements of AS 27.19.025(a) and AS 27.19.030 under (a) of this section that fails to reclaim a mining operation to the standards of AS 27.19.020 shall be required, for a period of two consecutive years, to conduct all subsequent mining operations, regardless of size, under an approved reclamation plan and post a performance bond.

Sec. 27.19.050. COOPERATIVE MANAGEMENT AGREEMENTS. The commissioner, on a determination that an agreement is in the best interest of the state, may enter into a cooperative management agreement with the federal government or state agency to implement a requirement of this chapter or a regulation adopted under it.

#### AS 27.19.060. VIOLATIONS.

(a) A miner who violates or permits a violation of an approved reclamation plan and fails to comply with a lawful order of the commissioner will forfeit the reclamation bond or a portion thereof and is liable to the state in a civil action for the full amount of reclamation and administrative costs incurred by the state related to the action. Miners exempted under Sec. 27.19.040 (a) may be subject to civil action for the full amount of reclamation and administrative costs incurred by the state related to the action if the commissioner determines that reclamation was not conducted in accordance with Sec. 27.19.020.

(b) In addition to other remedies available under this chapter, the commissioner may suspend or revoke permits or approvals of operations not being conducted in accordance with the approved reclamation plan or deny future mining permits and approvals under AS 27 and AS 38 related to the mining operation for failure to reclaim the mining operation to the standards of this chapter.

Sec. 27.19.070. ADMINISTRATIVE PROCEDURE ACT. Unless otherwise provided, the Administrative Procedure Act (AS 44.62) applies to this chapter.

#### Sec. 27.19.090. DEFINITIONS. In this chapter,

(1) "materials" means sand, gravel, rip rap, rock, limestone, slate, peat and any other substances from the ground that are not taken through the location or leasing.

(2) "mined area" means active site of physical extraction, stockpiling or disposal of ore, overburden, tailings or processed materials, stream diversions, bypasses, and settling ponds. Reclaimed areas approved by the commissioner are not included as part of the mined area.

(3) "miner" means the owner, operator, or lease holder of mining operation;

(4) "mining operation"

(A) means each function, work, facility, and activity in connection with the development, extraction, and processing of a locatable or leasable mineral deposits, except oil and gas and coal, other materials or of a sand and gravel deposit and each use reasonably incident to the development, extraction, and processing;

(B) includes the construction of facilities, roads, transmission lines, pipelines, and other support facilities;

(5) "reclamation plan" means a plan submitted by a miner under regulations adopted by the commissioner for the reclamation of a proposed mining operation.

(6) "stable condition" means the rehabilitation of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.

(7) "state land" includes lands as defined in AS 38.05.965(19), university lands as defined in AS 38.05.965(23), and state lands conveyed to a borough or municipality under AS 29.65.

(8) "unnecessary and undue degradation"

(A) means surface disturbance greater than would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and considering site specific conditions.

(B) includes a failure to initiate and complete reasonable reclamation under the reclamation standard of AS 27.19.020 or the approved reclamation plan under AS 27.19.025(a).

Sec. 2. The commissioner of natural resources shall adopt regulations implementing AS 27.19 as enacted in sec. 1 of this act. The proposed regulations shall be forwarded on their preparation to the chairs of the resource committees but in any case not later than January 15, 1991. The commissioner may not adopt the regulations before October 15, 1991.

Sec. 3. Subject to appropriation, the commissioner may establish a program and expend funds for the reclamation of abandoned mines.

Sec. 4. AS 27.05.250 is repealed.

Sec. 5. Sections 2 and 3 of this Act take effect immediately under AS 01.10.070(c)

Sec. 6. Section 1 of this Act takes effect October 15, 1991