

**Briefing by
Jerry
Gallagher
(Div. of
Mining)**

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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

Joint S & H Resources

1/10/90

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING

STEVE COWPER, GOVERNOR

- P.O. BOX 107016
ANCHORAGE, ALASKA 99510-7016
PHONE: (907) 561-2020
- 3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709
PHONE: (907) 451-2790
- 400 WILLOUGHBY #400
JUNEAU, ALASKA 99801-1000
PHONE: (907) 465-3400

November 3, 1989

The Honorable Curt Menard
351 W. Swanson Avenue, Suite #1
Wasilla, AK 99687

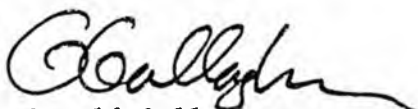
Dear Representative Menard:

Enclosed is a copy of draft regulations prepared by the Department of Natural Resources to implement the rental requirements of SB 129(CS), the "6(i) mineral rents and royalty" legislation. The public comment period is open until December 8 and public hearings are scheduled on December 4 in Anchorage and December 6 in Fairbanks.

If you wish, I am prepared to brief you individually or the Resources Committee as a group on the content of these draft regulations. I am available to meet with you at your convenience.

Please feel free to call me at 762-2165 if I can be of assistance.

Sincerely,



Gerald Gallagher
Director

Enclosure

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING

STEVE COWPER, GOVERNOR

PO BOX 107016
ANCHORAGE, ALASKA 99510-7016
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400 WILLOUGHBY #400
JUNEAU, ALASKA 99801-1000
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November 3, 1989

Dear Alaskan:

Enclosed are proposed new regulations of the Alaska Department of Natural Resources (DNR) that are necessary to implement the legislature's passage of the so-called "6(i) mineral rents and royalties" bill. The Division of Mining is soliciting comments on these proposed regulations. Public hearings will be held in Anchorage on December 4, 1989 and in Fairbanks on December 6, 1989. You may also comment by submitting written comments to DNR through December 8, 1989. Please see the enclosed "Notice of Proposed Changes in the Regulations of the Department of Natural Resources" for more information on how, when, and where to comment on the proposed regulations.

The enclosed draft regulations concern mining rights on state land and state selected land. Most of the proposed changes affect chapter 86 of Title 11 of the Alaska Administrative Code. The proposal includes both comprehensive and minor amendments to existing regulations as well as several new regulations.

In chapter 101, SLA 1989, the Alaska legislature amended several state mining statutes and enacted three new statutes in response to the Supreme Court's decision in Trustees for Alaska v. Alaska, 736 P.2d 324 (Alaska 1987), cert. denied, 108 S.Ct. 2013 (1988). The regulations proposed for adoption in the enclosed package implement the portions of the new legislation dealing with rent, but not the portions of the new legislation dealing with production royalties and reclamation. Regulations dealing with production royalties and reclamation will be proposed at a later date.

Please refer to the "Notice" for a summary of the proposed changes. Implementation of the new rental statute, AS 38.05.211, is one of the major issues addressed in the enclosed draft regulations. The statute became effective August 31, 1989 and requires rent for mining claims, leasehold locations, and upland and offshore mining leases on state land. Payment of rent for the rental year that began on September 1, 1989 is deferred under proposed 11 AAC 86.106. Most holders of mining rights on state land will have to make their rental payments for that rental year on or before June 29, 1990. In subsequent years, the annual rental payment is due on September 1 and must be paid no later than November 30.

Three new regulations, 11 AAC 86.221, 11 AAC 86.313, and 11 AAC 541, are proposed to provide for payment of the annual rent. In addition, amendments are proposed to 11 AAC 86.215 to provide for a \$20 payment for each new location on state land or state selected land to be made within 90 days of posting of a notice of location. On state land, the payment will cover the rent due from the date of posting to the following September 1. On state selected land, the payment will be a nonrefundable deposit to be applied to the rent due from the date the state receives title to the land until the following September 1.

Rent begins at \$20 for each mining claim and leasehold location and \$.50 per acre for each mining lease. The rent escalates depending on the length of time the location is held. All mining claims, leasehold locations and mining leases located or issued before August 31, 1989 are considered to have been located or issued on August 31, 1989 for the purpose of determining the rental amount. The amount of rent also will be revised every ten years based upon the consumer price index for Anchorage.

The rental year coincides with the annual labor year. However, rent must be paid in advance. Failure to pay the required rent will result in the abandonment of the location.

An amendment is proposed to 11 AAC 86.220 to provide for a cash payment to be made in lieu of performing annual labor in accordance with AS 38.05.210. If a cash payment is made, it must be submitted to DNR with a copy of the annual labor affidavit within 90 days of the end of the labor year.

Within the last few years very few upland mining leases have been issued due to the assertion of conflicting rights. Proposed amendments to 11 AAC 86.305 outline procedures for asserting conflicting rights and for the director's determination whether or not to adjudicate conflicts. The proposed amendment would allow a lease to be issued, notwithstanding the assertion of conflicting rights, unless the director is prevented from issuing the lease by a court order.

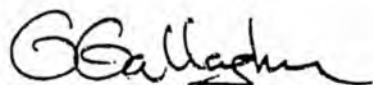
Numerous other minor changes to the regulations are being proposed. Amendments and additions to the definitions in chapter 88 of Title 11 of the Alaska Administrative Code are also proposed. Unnecessary, inaccurate, and obsolete language is deleted for accuracy and to reflect changes in both policy and law that have occurred since adoption of the existing regulations.

As you review the enclosed draft regulations, you will notice some wording that is underlined. This underlining indicates new material that the department is proposing to add to an existing regulation. Other wording is bracketed and capitalized [IN THIS MANNER], showing that it is proposed to be repealed or deleted. A regulation that has no underlining or bracketing at all is a completely new section that the department is proposing to adopt.

Your comments on the draft regulations will be most helpful if you refer to particular regulations by section number rather than page, and if you suggest specific wording changes that you feel would improve the clarity of the regulations or would constitute better public policy.

If you have any questions on any part of this proposal, the department's contact on this project is Kerwin Krause who can be contacted at 762-2162. The Department of Natural Resources thanks you for your time and interest in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gallagher".

Gerald Gallagher
Director

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE
DEPARTMENT OF NATURAL RESOURCES

Notice is given that the Department of Natural Resources, under the authority vested by sec. 11, ch. 101, SLA 1989, AS 38.05.020, and AS 38.05.035 proposes to adopt, amend, and repeal regulations in Title 11, Chapters 86 and 88 of the Alaska Administrative Code, dealing with Mining Rights (chapter 86) and Practice and Procedure (chapter 88) to interpret and implement ch. 101, SLA 1989 and AS 38.05 as follows:

Major changes are proposed for Chapter 86 regulations (Mining Rights) to implement recent legislation requiring the payment of annual rent for mining locations on state land. In 1989, the Alaska legislature enacted ch. 101, SLA 1989 partly in response to the ruling of the Alaska Supreme Court in Trustees for Alaska v. Alaska, 736 P.2d 324 (Alaska 1987), cert. denied, 108 S.Ct. 2013 (1988). AS 38.05.211 requires payment of rent for mining claims, leasehold locations, and mining leases on state land.

The legislation also includes provisions concerning reclamation and payment of a production royalty. The regulations proposed for adoption at this time do not deal with the reclamation or the production royalty provisions of the legislation. Regulations dealing with those subjects will be adopted at a later date.

New sections concerning the requirements and procedures for payment of rent are proposed for Articles 2, 3, and 5 of 11 AAC 86. A new 11 AAC 86.221 is proposed to provide for the annual rental requirements for mining claims and leasehold locations. A new 11 AAC 86.313 is proposed to provide for the annual rental requirements for upland mining leases. A new 11 AAC 86.541 is proposed to provide for the annual rental requirements for offshore mining leases. The annual rental amount starts at \$20.00 per claim or leasehold location for mining claims and leasehold locations and \$.50 per acre for upland and offshore mining leases.

Rental payments for the rental year that began September 1, 1989 are deferred by a new 11 AAC 86.106 and must be paid on or before June 29, 1990, no later than 90 days after posting notice of location, or upon execution of a mining lease. Payments for subsequent rental years are due on September 1 and payment must be received by the department on or before November 30.

Except for the rental year that began on September 1, 1989, rent must be paid in advance. Rental payments for mining claims and leasehold locations must be submitted with a rental form provided by the department. Rental payments for mining claims and leasehold locations that are submitted without the information required on the form will, in the discretion of the department, not be accepted.

If a rental payment is not made or is untimely, the claim, leasehold location, or mining lease will be considered abandoned under AS 38.05.265.

The rental amount will increase depending on the number of years the mining claim, leasehold location, or mining lease is held. Mining claims, leasehold locations, upland mining leases, and offshore mining leases which were located or issued before August 31, 1989 are considered to have been located or issued

on August 31, 1989 for the purposes of calculating the rental amount, with the first rental year beginning on September 1, 1989. The rental amount for these mining claims, leasehold locations, and mining leases will escalate for the rental year beginning September 1, 1994. Under AS 38.05.211, the rental amount will be revised every ten years based on the consumer price index for Anchorage.

Amendments to 11 AAC 86.215 (Certificate of Location and First Rental Payment) are proposed to change the title of the section and to provide for the first rental payment for new claims and leasehold locations on state land or state selected land. The proposed amendment would require a \$20.00 payment within 90 days of posting the notice of location. The payment must be accompanied by a copy of the location certificate. On state land, the payment will cover the rent from the date of posting to the following September 1. On state-selected land, the payment will be a non-refundable deposit to be credited to the first rental due after the state receives title to the land and will cover the rent from the date of conveyance to the following September 1. The amendment would also require that location certificates be recorded on a form or photocopy of the form provided by the department or a form approved by the director.

Other regulation changes are proposed in 11 AAC 86 and 11 AAC 88 to implement the new legislation and to make necessary housekeeping changes to eliminate obsolete language and to clarify procedures for the initiation and maintenance of mining rights, as follows:

Chapter 86, Article 1 General Provisions

A new 11 AAC 86.107 (Payments and refunds) is proposed to establish where payments required under Chapter 86 are to be made and it also establishes the procedure for requesting funds.

A new 11 AAC 86.108 (Notices) is proposed to provide that the department will send necessary notices to the current owner of mining rights at that person's current address as shown on the records of the division. The proposed regulation states how the division is to be informed of transfers in ownership and changes in address for the purpose of changing the records of the division. It is the responsibility of the locator to provide the division with accurate and current information.

Amendments to 11 AAC 86.115 (Locations on State Selected Land) are proposed to reflect current federal law regarding conveyance of land to the state and to require the \$20.00 rental deposit for locations on state selected land, described above.

Repeal of 11 AAC 86.120 (Conditional Mining Leases and Locations) is proposed because it is inconsistent with current federal law providing that the state receives legal title to selected land at the time of tentative approval.

Amendment of 11 AAC 86.135 (Mineral Deposits Open to Location) is proposed to redefine state land restricted to mining by lease to include only that land which the state has sold or leased with a reservation of the mineral estate.

Amendments to 11 AAC 86.155 (Sale, Lease or Transfer of Locations) are proposed to clarify recording requirements for transfer documents and to require that transfer documents contain the claim name(s) and ADL number(s) of locations transferred.

Chapter 86, Article 2 Staking, Recording and Maintaining Locations

A new 11 AAC 86.203 (Applicability) is proposed to provide that the regulations in Article 2 apply to locations on state selected land as well as those on state land, unless a regulation expressly provides otherwise.

Amendments to 11 AAC 86.205 (Marking Boundaries) are proposed to substitute the words "locator" and "location" for "discoverer" and "mining claim or leasehold location" to be consistent with the terminology used in other regulations and to make the provision applicable to locations on state selected land.

Amendments to 11 AAC 86.220 (Annual Labor) are proposed to provide for a cash payment to be made in lieu of performing annual labor for locations on state land, in accordance with the 1989 amendment to AS 38.05.210. Payments must be received by the department with a copy of the annual labor affidavit no later than 90 days after the close of the annual labor year.

Chapter 86, Article 3 Upland Mining Leasing

Amendments to 11 AAC 86.300 (Preference Right by Leasehold Location) are proposed to reflect current federal law regarding conveyance of title to state land and to maintain a preference right to a lease though a lease has been denied.

Amendments to 11 AAC 86.305 (Application for Lease) are proposed to reflect current federal law regarding conveyance of title to state land and to add procedures for the assertion of conflicting rights and the determination whether or not the director will adjudicate conflicts. The proposed amendments provide that the director may issue a lease, notwithstanding the assertion of conflicting rights, after completing the outlined procedures unless prevented from doing so by a court order.

The repeal of 11 AAC 86.308 (Rental) is proposed. The provisions of the regulation are now obsolete. Rental for upland mining leases is provided for in proposed 11 AAC 86.313, discussed above.

An amendment to 11 AAC 86.311 (Survey of Exterior Boundary) is proposed to substitute the word "lease" for "leasehold" for consistent and accurate wording.

Chapter 86, Article 4 Prospecting Sites

An amendment to 11 AAC 86.430 (Extension) is proposed to provide for procedures for extending the term of a prospecting site. A one year extension of a prospecting site may be obtained by recording a notice of extension. Subsequent extensions will only be granted in the discretion of the director and if requested in writing no less than 90 days before the site expires.

An amendment to 11 AAC 86.435 (Staking Claims on Expired Sites) is proposed to substitute "sites" for "permits" for consistent and accurate wording.

Chapter 86, Article 5 Offshore Prospecting Permits and Leases

Repeal of 11 AAC 86.540 (Lease Rental) is proposed. The provisions of the regulation are now obsolete. Rental for offshore mining leases is provided for in proposed 11 AAC 86.541 (Offshore Mining Lease Rental) discussed above.

Chapter 86, Article 7 Mining Production Licenses

Amendments to 11 AAC 86.700 (Applications for Production Licenses) are proposed to substitute "ADL" for "serial" and to delete obsolete language.

Chapter 88, Practice and Procedure

Three amendments to 11 AAC 88.185 (Definitions) are proposed. The definition of "location" or "mining location" is changed to expressly include locations made under the authority of AS 38.05.275 on state selected land. The term "locator" is defined to be the initial person to locate a mining location or the current owner of a mining location. The term "ADL number" is defined as the serial number assigned by the department to a casefile.

This notice is given so that any person interested in the proposed changes may present oral or written statements or arguments relevant to the proposed action at hearings to be held in the level 1 Public Conference Room of the Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska at 7:00 p.m. on December 4, 1989; and in the large conference room of the Department of Natural Resources Regional Office Building at 3700 Airport Way, Fairbanks, Alaska at 7:00 p.m. on December 6, 1989.

In addition, written statements or arguments may be sent to Kerwin Krause, Division of Mining, Department of Natural Resources, P.O. Box 107016, Anchorage, Alaska 99510-7016 to be received no later than December 8, 1989.

This action is not expected to require an increased appropriation. Copies of the proposed regulations may be obtained by writing to the Division of Mining at the above address. Copies may also be picked up in person from the Division's Anchorage office located in Suite 880 of the Frontier Building, 3601 C Street. If you wish a copy to be mailed to you, please call the Division of Mining at 762-2162.

The Department of Natural Resources, upon its own initiative or at the request of any interested person, may after the comment period adopt proposals within the scope of this notice without further notice or may decide to take no action on them.

November 3, 1989
Gerald Gallagher, Director, Division of Mining

CHAPTER 86. MINING RIGHTS.

Article

1. General Provisions (11 AAC 86.100 -- 11 AAC 86.155)

Section

106. Deferral of Rent for Annual Rental Year Beginning September 1, 1989

11 AAC 86. 1s amended to add:

11 AAC 86.106. DEFERRAL OF RENT FOR ANNUAL RENTAL YEAR BEGINNING SEPTEMBER 1, 1989. Under the authority of sec. 11 (d), ch. 101, SLA 1989, the commissioner hereby defers the requirement to make rental payments for the annual rental year that began on September 1, 1989 until no later than June 29, 1990, 90 days from the date of posting of a notice of location, or the date of execution of a mining lease, whichever is later. All rental payments for the annual rental year that began on September 1, 1989 that are made by the deadlines in the previous sentence are considered timely under AS 38.05.211. (Eff. __/__/__, Register ____)

Authority: AS 38.05.020
Ch. 101, SLA 1989

11 AAC 86. 1s amended by adding a new section to read:

Section

107. Payments and Refunds

11 AAC 86. 1s amended by adding a new section to read:

11 AAC 86.107. PAYMENTS AND REFUNDS. All payments required under this chapter must be received at one of the following addresses:

Mailing Address:

State of Alaska
Department of Natural Resources
Division of Management
P.O. Box 107036
Anchorage, AK 99510-7036
Attention: Financial Services

Personal Delivery Address:

DNR Financial Services
Suite 1234, Frontier Building
3601 C Street
Anchorage, AK

Refunds for overpayments will only be made upon written request submitted to the above address. (Eff. / / , Register)

Authority: AS 38.05.020
AS 38.05.035

Article

1. General Provisions.

Section

108. Notices

11 AAC 86. is amended to add:

11 AAC 86.108. NOTICES. Any notice given to a locator under the provisions of this chapter must be made in writing and delivered in person or mailed by registered or certified mail, return receipt requested, to the address of the current owner of the location as shown on the records of the Division of Mining. Changes in ownership will be made on the records of the division in accordance with 11 AAC 86.155. Changes in the address of record will be made in accordance with 11 AAC 88.140(b). It is the responsibility of the locator to keep the division informed of changes in ownership or address. (Eff. __/__/__, Register __)

Authority: AS 38.05.020

Section

115. Locations on State Selected Land

11 AAC 86.115 is amended to read:

11 AAC 86.115. LOCATIONS ON STATE SELECTED LAND [BEFORE TENTATIVE APPROVAL]. (a) Locations made on state selected land that has not been conveyed to the state through [received] tentative approval or patent by the federal government [UNITED STATES FOR CONVEYANCE TO THE STATE] are made at the locator's risk. Because the state does not have management authority over the land unless [UNTIL] the selection has been conveyed [TENTATIVELY APPROVE,] and cannot authorize exploration work or mining until that time, the locator is responsible for obtaining any necessary permits from the federal land manager and other permitting authorities.

(b) Locations made on state-selected land in accordance with this chapter create prior rights against subsequent locators and [. SUBJECT TO THE STATE'S ULTIMATE RECEIPT OF PATENT TO THE LAND, LOCATIONS MADE ON STATE-SELECTED LAND IN ACCORDANCE WITH THIS CHAPTER] become [VALID] mining claims, leasehold locations, or prospecting sites when [AS SOON AS] the federal government [TENTATIVELY APPROVES] conveys the selection to the state through tentative approval or patent [THE STATE'S SELECTION], unless the [TENTATIVE APPROVAL] conveyance restricts or bars the locations, or a state mineral closure is in effect on the date of [TENTATIVE APPROVAL] conveyance. If a leasing restriction is in effect on the date of [TENTATIVE APPROVAL] conveyance, prior locations are subject to that restriction. If the land is closed to mineral entry or restricted to leasing after the date of [TENTATIVE APPROVAL] conveyance, valid prior locations are unaffected.

(c) The provisions of AS 38.05.210 and AS 38.05.212 -- 38.05.240 do not apply to locations made on state-selected land until the state receives conveyance [TENTATIVE APPROVAL] of the selection from the federal government. The first labor year for a mining claim[,] or [AND THE FIRST RENTAL YEAR FOR] a leasehold location[,] made on state-selected land begins at noon on the September 1 after the date the federal government conveys [TENTATIVELY APPROVES] the selection. For the purpose of determining the amount of annual rent, a location on state selected land is considered to have been first located on the date the federal government conveys the selection.

11 AAC 86.115 is further amended by adding a new subsection to read:

(d) A non-refundable rental deposit of \$20 for each location made on state selected land is required. The deposit will be credited to the first rental payment if the state receives conveyance to the selection. The deposit for each location made on state selected land must be received on or before June 29, 1990 or within 90 days of the date of location of the notice of location as provided in 11 AAC 86.215(f). A location located after (the effective date of these regulations) must comply with 11 AAC 86.215(f). (Eff. 9/6/74, Register 51; am. __/__/__, Register __)

Authority: AS 38.05.020
AS 38.05.185
AS 38.05.275
Ch. 101, SLA 1989

Section

120. Conditional Mining Leases and Locations.

11 AAC 86.120. CONDITIONAL MINING LEASES AND LOCATIONS. Repealed.
(Eff. __/__/__, Register __)

Section

135. Mineral Deposits Open to Location

11 AAC 86.135 (b) is amended to read:

11 AAC 86.135. MINERAL DEPOSITS OPEN TO LOCATION.

(b) This section constitutes the commissioner's finding, in accordance with AS 38.05.185(a), that selling[,] or leasing[, OR OTHERWISE DISPOSING OF ANY INTEREST IN] of land other than a locatable mineral interest, with the mineral rights reserved to the state, creates potential use conflicts requiring that mining be allowed only under written leases. If the land

remains open to location, any location made on that land after such a sale or lease [DISPOSAL] is a leasehold location. (Eff. 9/5/74, Register 51; am 5/30/85, Register 94; am __/__/__, Register __)

Authority: AS 38.05.020
AS 38.05.185
AS 38.05.275
AS 38.05.300

Section

11 AAC 86.155 (a) is amended to read:

11 AAC 86.155. SALE, LEASE, OR OTHER TRANSFER. (a) The rights held under a mining location on state land, or any interest in an undivided location, may be sold, leased, or otherwise transferred without the approval of the director. However, the sale, lease, or other transfer must be recorded in the recording district in which the mining location is located, [WITHIN 90 DAYS AFTER THE DATE OF THE TRANSACTION] and the transfer document must include the claim name, ADL number, and current mailing address of all involved parties. The department will not change the owner of record for a mining location on its records unless a properly completed transfer document is recorded. (Eff. 9/5/74 , Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94; am __/__/__, Register __)

Authority: AS 38.05.020
AS 38.05.270
AS 38.05.920

CHAPTER 86. MINING RIGHTS

Article

- 2. Staking, Recording and Maintaining Locations on State Land and State Selected Land (11 AAC 86.200 -- 11 AAC 86.221)

Section

203. Applicability

11 AAC 86. 1s amended by adding a new section to read:

11 AAC 86.203. APPLICABILITY. Except as otherwise expressly provided the provisions of this article apply to all locations on state land and state selected land except for prospecting sites. (Eff. __/__/__, Register __)

Authority: AS 38.05.020

Section

205. Marking Boundaries

11 AAC 86.205 is amended to read:

11 AAC 86.205. MARKING BOUNDARIES. The locator [DISCOVERER OF A MINING CLAIM OR LEASEHOLD LOCATION] shall designate a [THE] location by erecting at each corner of the location substantial monuments of stone or setting posts, not less than three feet in height nor less than three inches in diameter [HEWN] and marked with the name of the location, the number of the monument beginning with number 1 at the northeast corner and proceeding in a clockwise direction around the claim, and by [CUTTING OUT, BLAZING, OR] marking the boundary lines so that they can readily be traced. Where it is impracticable to place a monument in its true position, a witness monument shall be erected and marked so as to indicate the true position of the corner. Where locations under common ownership have common corners, a common corner monument may be used. (Eff. 9/4/74, Reg. 51; am __/__/__, Register)

Authority: AS 38.05.020

AS 38.05.195

AS 38.05.205

Section

215. Certificate of location and First Rental Payment

11 AAC 86.215 (a) is amended to read:

11 AAC 86.215. CERTIFICATE OF LOCATION AND FIRST RENTAL PAYMENT. (a) A [THE] locator [OF A MINING CLAIM OR LEASEHOLD LOCATION ON STATE LAND] shall, within 90 days after the date of posting of the notice of location, record a certificate of location in conformance with AS 38.05.195. The certificate of location must be recorded on a form provided by the department [DIVISION,] a photocopy of that form, or a form approved by the director, and must

- (1) contain the name or number of the location;
- (2) contain the date of the locator's discovery and the date of posting the notice of location;
- (3) contain the length and width of the location in feet;
- (4) contain the name and current mailing address of each locator and the signature of each locator or of the locator's agent;
- (5) indicate the recording district in which the claim is located;
- (6) include a map at an indicated scale of 1:63,360 (1 inch = 1 mile) or a more detailed scale which shows the boundaries of the claim or leasehold location, the dominant physical features of the land, the protracted or surveyed section lines surrounding the location and, to the best of the locator's knowledge, the relationship of the location to adjacent or [AND] contiguous mining claims, leasehold locations, mining leases and prospecting sites; if more than one contiguous location is being recorded simultaneously, a single map showing all of the locations may be attached to one of the certificates of location if the document to which the map is attached is cross-referenced on each certificate of location; and
- (7) indicate every township, range, meridian, section, and quarter section in which the claim is located.

11 AAC 86.215 is amended to add a new subsection to read:

(f) The locator shall, within 90 days after the date of posting of the notice of location, submit \$20 for each location made payable to the Alaska Department of Revenue. The payment must be accompanied by a copy of each certificate of location. The payment must be received as required under 11 AAC 86.107. Payments for locations on state land will be applied as rent for the period from the date of posting to noon of the following September 1. Payments for locations on state selected land will be a non-refundable deposit

credited to the first rental payment if the state receives conveyance to the selection and will be applied as rent for the period from the date of conveyance to the following September 1. (Eff. / / , Register ; am / /89, Register)

Authority: AS 38.05.020
AS 38.05.195
AS 38.05.205

AS 38.05.205
AS 38.05.265
AS 44.37.025

Section

220. Annual Labor

11 AAC 86.220 (c) is amended to read:

11 AAC 86.220. ANNUAL LABOR.

(c) During each year in which the performance of annual labor is required, or within 90 days after the close of that annual labor year, the owner of each mining claim, [OR] leasehold location, or mining lease on state land or some other person having knowledge of the facts, shall make and file for record an affidavit. The affidavit must describe [DESCRIBING] the performance of the labor or the making of improvements for the immediately preceding assessment year and any cash payment made in lieu of performing labor. The affidavit must describe any labor in excess of that required for the preceding year that is to be applied to the subsequent year or years. The affidavit must contain [STATE] the following essential facts:

(1) the name or ADL number of the mining claim, [or] leasehold location, or mining lease;

(2) a legal description of where it is situated, and the recording district in which it is located;

(3) the name and current mailing address of each owner;

(4) [(2)] the number of days' work done and the character and value of the improvements made[;] or labor performed, or the amount of cash payment made instead of annual labor;

[5] [(3)] the dates of performance of the labor and of the making of improvements, unless cash payment is made: [AND THE NAME AND MAILING ADDRESS OF THE PERSON WHO DID THE WORK;]

[(4)] THE ACTUAL AMOUNT PAID FOR THE WORK AND IMPROVEMENTS, AND, IF THE WORK WAS NOT DONE BY THE OWNER OR THE OWNER'S LESSEE, A STATEMENT OF WHO PAID.]

11 AAC 86.220 is further amended by adding the following new subsection to read:

(h) Cash payment made instead of annual labor must be received within 90 days after the end of the labor year and must comply with 11 AAC 86.107. The payment must be accompanied by a copy of the affidavit of annual labor. If a cash payment instead of annual labor is untimely paid or not paid, the affidavit of annual labor is void. (Eff. 9/5/74, Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94; am ___/___/___, Register ___)

Authority: AS 27.05.010
AS 38.05.020
AS 38.05.242
AS 38.05.265
Ch. 101, SLA 1989

Section

221. Annual Rental.

11 AAC 86. is amended by adding the following new section to read:

11 AAC 86.221. ANNUAL RENTAL (a) Rental for a mining claim or leasehold location must be made in accordance to 11 AAC 86.107 and must be accompanied by a rental form provided by the department or a photocopy of the rental form. The form must contain the name and address of the owner of record, the ADL number(s) assigned by the department to the claim(s) or leasehold location(s), and the name of the claim(s) or leasehold location(s). The department will in its discretion refuse to accept payments submitted without the required information and will return the payments to the remitter.

(b) The annual rental amount is based on the number of years since a mining claim or leasehold location was first located, as follows:

Number of Years Since First Located	Rental Amount for Each Mining Claim or Leasehold Location
0-5	\$20
6-10	\$40
11-more	\$100

(c) A claim or leasehold location located before August 31, 1989 is considered to have been first located on August 31, 1989 for purposes of determining the amount of annual rental and the first rental year began at noon on September 1, 1989. Each subsequent rental year begins at noon on September 1. For purposes of this section the annual rental for mining claims or leasehold locations located before September 1, 1990 will escalate to \$40 for the annual rental year beginning September 1, 1994.

(d) Payment for the rental year which begins at noon on September 1, 1989 must be paid on or before June 29, 1990 or within 90 days of the date of posting of the notice of location as provided in 11 AAC 86.215(f). The annual rental payment for subsequent years is due on September 1 and must be paid on or before November 30.

(e) If a locator fails to make the rental payment or the rental payment is untimely, the claim or leasehold location will be considered abandoned under AS 38.05.265. If a rental payment is timely submitted to the department, but the director finds the payment is less than the amount due, the locator will be granted 30 days after a notice is sent by the department to submit the additional rental due. If full payment is not received within 30 days, the claim or leasehold location will be considered abandoned without further notice. (Eff. __/__/__, Register __)

Authority: AS 27.05.020
AS 38.05.185
AS 38.05.265
Ch. 101, SLA 1989

CHAPTER 86. MINING RIGHTS

Article

3. Upland Mining Leases (11 AAC 86.300 -- 11 AAC 86.313)

Section

300. Preference right by leasehold location

11 AAC 86.300 is amended to read:

11 AAC 86.300. PREFERENCE RIGHT BY LEASEHOLD LOCATION. The preference right to a lease that is acquired by establishing and maintaining a leasehold location remains in existence until a lease is issued [OR DENIED], the leasehold location is adjudicated and found invalid[,] or the leasehold location is abandoned.[, OR THE STATE'S SELECTION OF THE LAND IS REJECTED OR RELINQUISHED.] (Eff. 9/5/74, Register 51; am 5/30/85, Register 94; am ___/___/___, Register ___)

Authority: AS 38.05.020
AS 38.05.205

Section

305. Application for lease

11 AAC 86.305 (b), (e) and (f) are amended to read:

11 AAC 86.305. APPLICATION FOR LEASE.

(b) The division will publish the notice required by AS 38.05.205(a) and subsequently mail a lease application form to the locator only when

(1) it learns that the leasehold locator is ready to begin production or, if authorized by sec. 5, ch. 108, SLA 1981, as amended by sec. 1, ch. 90, SLA 1985, is already producing;

(2) the leasehold locator requests a lease application form; or

(3) the locator [owner] of a mining claim requests a lease application form.

(e) A lease application received for a location on state selected land that has not been conveyed [RECEIVED TENTATIVE APPROVAL BY THE UNITED STATES FOR CONVEYANCE] to the state by the federal government, or on other land to which the state does not hold title to the locatable mineral estate, will be rejected.

(f) The director will notify by certified mail, holders of apparent conflicting rights, as shown on state land records, that a lease application has been requested. The notice will provide an opportunity for holders of apparent conflicting rights to object to issuance of a lease. Objection must be made in writing and received by the director within two weeks after publication of the notice. Conflicting rights asserted more than two weeks after publication of the notice under AS 38.05.205(a) will not be considered by the director. If conflicting rights are timely asserted by another locator, [AND] the director may request additional information from the lease applicant and any party asserting conflicting rights. The director will send the lease applicant and the party or parties asserting conflicting rights his decision whether or not to adjudicate the matter within 30 days after receiving all necessary information. [DECIDES NOT TO ADJUDICATE THE CONFLICT, THE LEASE APPLICATION WILL BE REJECTED AND THE PARTIES ADVISED TO RESOLVE THE CONFLICT. A NEW APPLICATION MAY BE FILED AFTER THE CONFLICT HAS BEEN RESOLVED. THE DIRECTOR WILL ALSO SEND A COPY OF THE NOTICE BY CERTIFIED MAIL TO THE HOLDERS OF APPARENT CONFLICTING RIGHTS, AS SHOWN ON STATE LAND RECORDS, THAT A LEASE APPLICATION IS BEING PROCESSED.]

11 AAC 86.305 is further amended by adding the following subsections to read:

(h) The director will not adjudicate matters involving difficult or complicated conflicts between locators. However, the director may decide to adjudicate minor conflicts which do not involve complicated factual or legal issues. This discretionary authority to adjudicate conflicts will be used sparingly.

(i) If the director decides not to adjudicate the conflict, the director will notify the parties of that decision, and unless prevented by a court order, the director may issue a lease no less than 60 days thereafter.

(j) Reconsideration and appeal of the director's determination under this section may be requested under procedures set out in 11 AAC 88.155 -.185. (Eff. 9/5/74, Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94; am ___/___/___, Register ___)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.185
AS 38.05.205

Section

308. Rental

11 AAC 86.308. RENTAL. Repealed and readopted as 11 AAC 86.313.
(Eff. ___/___/___, Register ___)

Section

311. Survey of Exterior Boundary

11 AAC 86.311 (b) is amended to read:

11 AAC 86.311. SURVEY OF EXTERIOR BOUNDARY.

(b) The [LEASEHOLD'S] exterior boundary of the lease must be kept brushed or, in treeless terrain, flagged or otherwise marked so as to be reasonably visible, until the survey is completed. It is not necessary to clear interior boundaries if mining claims or leasehold locations included within the lease [LEASEHOLD] adjoin each other. (Eff. 5/30/85, Register 94; am __/__/__, Register __)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.205

Section

313. Annual rental

11 AAC 86 is amended by adding the following new regulation to replace regulation 11 AAC 86.308 which is repealed:

11 AAC 86.313. ANNUAL RENTAL. (a) Rental for a mining lease must be made in accordance with 11 AAC 86.107 and must be accompanied by a rental form provided by the department or photocopy of the rental form. The form must contain the name and address of the owner of record and the ADL number assigned by the department to the mining lease.

(b) The provisions of this subsection apply to rental payments for mining leases other than for leases under AS 38.05.250.

(1) the annual rental amount is based on the number of acres included in the lease and the number of years since a mining lease's predecessor claim or leasehold location was first located, as follows:

Number of Years Since First Located	Rental Amount Per Acre for Mining Leases
0-5	\$.50
6-10	\$1.00
11-more	\$2.50

Prior to survey under 11 AAC 86.311, the rent will be based on the number of acres estimated in the lease document.

(2) if a mining lease contains more than one claim or leasehold location, the predecessor claim or leasehold location for determining the rental amount is the claim or leasehold location which was located first;

(3) a claim, or leasehold location, located before August 31, 1989 is considered to have been first located on August 31, 1989 for purposes of determining the amount of annual rental and the first rental year begins at noon on September 1, 1989. Each subsequent rental year begins at noon on September 1. For purposes of this section the annual rental for leases on which the predecessor claim or leasehold location was located before September 1, 1990 will calculate to \$1.00 per acre for the annual rental year beginning September 1, 1994;

(4) the first annual rental payment for a mining lease which became effective after August 31, 1989 will be applied to the period from the effective date of the lease to the next September 1;

(5) rental paid for predecessor mining claims and leasehold locations during the rental year in which a lease is issued will be credited toward the first annual rental for the lease.

(c) Payment for the rental year which begins at noon on September 1, 1989 must be paid on or before June 29, 1990. The amount of rental for subsequent years is due on September 1 and must be paid before November 30.

(d) If the lessee fails to make the rental payment or the rental payment is untimely, the mining lease will be considered abandoned under AS 38.05.265. If a rental payment is timely submitted to the department, but the director finds the payment is less than the amount due, the lessee will be granted 30 days after a notice is sent from the department to submit the additional rental due. If the default is not corrected within 30 days, the mining lease will be considered abandoned without further notice. (Eff. 5/30/85, Register 94)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.205
AS 38.05.211
AS 38.05.185
AS 38.05.265
Ch 101, SLA 1989

CHAPTER 86. MINING RIGHTS

Article

4. Prospecting Sites (11 AAC 86.400 -- 11 AAC 86.435)

Section

430. Extension.

11 AAC 86.430 (a), (b) and (c) is amended to read:

11 AAC 86.430. EXTENSION. (a) The [A] first one year [REQUEST FOR] extension of a prospecting site may be made by [MUST BE FILED] recording [IN WRITING] a notice of extension in the recording district where the prospecting site is located [DIVISION] before the prospecting site expires.

(b) The notice of [REQUEST FOR] extension must

- (1) contain the name and current mailing address of the locator;
- (2) contain the name and any ADL [SERIAL] number assigned by the department to the prospecting site;
- (3) state why an extension is needed;
- (4) be signed by the owner or the owner's agent; and
- (5) contain the recording district and legal description.

(b) Requests for further extensions must be made in writing and received by the director no later than 90 days before the expiration of the prospecting site. The request for extension must contain the information required under (b) above. The director will, in his or her discretion, request that additional information be supplied to support the request for extension. The director will grant additional extensions sparingly and only under extraordinary and unusual circumstances grant further extensions. (Eff. 9/5/74, Register 51; am 5/30/85, Register 94; am __/__/__, Register __).

Authority: AS 38.05.020
AS 38.05.245

Section

435. Staking claims on expired permits

11 AAC 86.435 is amended to read:

11 AAC 86.435. STAKING CLAIMS ON EXPIRED SITES [PERMITS]. The expiration

of a prospecting site [PERMIT] does not prevent the locator or his successor from staking a mining claim or leasehold location in the area formerly covered by his prospecting site location if no intervening locations have been made by others. (Eff. 9/5/74, Reg. 51; am ___/___/___, Register ___)

CHAPTER 86. MINING RIGHTS

Article

5. Offshore Prospecting Permits and Leases. (11 AAC 86.500 -- 11 AAC 86.580)

Section

540. Lease rental

11 AAC 86.540. LEASE RENTAL, Repealed and readopted as regulation 11 AAC 86.541. (Eff. ___/___/___, Register ___)

Section

541. Offshore Mining Lease Rental.

11 AAC 86 is amended to add the following new regulation to replace regulation 11 AAC 86.540 which is repealed:

11 AAC 86.541. OFFSHORE MINING LEASE RENTAL. (a) The first rental year for a submerged land mining lease effective before August 31, 1989 begins at noon on September 1, 1989. The first annual rental payment for a submerged land mining lease effective after August 31, 1989 must be paid within 90 days after the effective date of the lease and will be applied to the period from the effective date of the lease to the following September 1. Each subsequent rental payment is due on or before September 1 and is payable before November 30.

(b) Rental is \$.50 per acre during the first five years of the lease, increasing to \$1.00 per acre during the next five years of the lease, and increasing again to \$2.50 per acre during the next 10 years. Excess rental or credit for an offshore prospecting permit may not be applied against rental after conversion to lease.

(c) Payment for the rental year which begins on September 1, 1989 must be paid on or before June 29, 1990. The amount of rental for subsequent years is due on September 1 and must be paid before November 30.

(d) If the lessee fails to make the timely rental payment the lease will be considered abandoned under AS 38.05.265. If a rental payment is timely submitted to the department, but the director finds the payment is less than the amount due, the lessee will be granted 30 days after notice is sent from the

department to submit the additional rent due. If the default is not corrected within 30 days, the lease will be considered abandoned without further notice. (Eff. / / , Register)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.185
AS 38.05.210
AS 38.05.211
AS 38.05.250
AS 38.05.265
Ch. 101, SLA 1989

CHAPTER 86. MINING RIGHTS

ARTICLE

7. Mining production licenses. (11 AAC 86.700 -- 11 AAC 86.750)

Section

700. Applications for Productions Licenses

11 AAC 86.700(c) (2) is amended to read:

11 AAC 86.700. APPLICATIONS FOR PRODUCTION LICENSES.

(2) the name and ADL number [SERIAL NUMBER (IF ASSIGNED BY THE DIVISION OF MINERALS AND ENERGY MANAGEMENT)] of the mining claim, mining leasehold location, or mining lease; (Eff. 5/12/83, Reg. 86; am 5/30/85, Register 94; am __/__/__, Register __)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.207

CHAPTER 88. PRACTICE AND PROCEDURE (11 AAC 88.100 -- 11 AAC 88.185)

Section

185. Definitions

11 AAC 88.185 is amended as follows:

11 AAC 88.185. DEFINITIONS. As used in 11 AAC 82 - 11 AAC 88 and unless the context clearly requires a different meaning or unless otherwise defined in these chapters

(35) "location" or "mining location" means a location on state selected land authorized under 11 AAC 86.275, a mining claim made under AS 38.05.195, a leasehold location made under AS 38.05.205 or a prospecting site location made under AS 38.05.245;

(36) "locator" means the initial person to stake or locate a mining location or the current owner of a mining location;

(37) "ADL number" means the serial number assigned by the department to a casefile. (Eff. 9/5/74, Register 51; am 3/27/82, Register 81; am 5/30/85, Register 94; am __/__/__, Register __)

Authority: AS 38.05.020

BRIEF HISTORY OF RCRA AND MINE WASTE REGULATORY DEVELOPMENT EFFORT

RCRA History

- 1976 Resource Conservation and Recovery Act (RCRA) was enacted. Congress made a distinction between solid wastes, e.g. High volume, low hazard as in municipal wastes (RCRA Subtitle D) and hazardous wastes (RCRA Subtitle C).
- 1980 Comprehensive Environmental Response and Liability Act (CERCLA) and "Superfund" is enacted, which ultimately has affected several old mining facilities.
- 1980 Solid waste disposal act passes congress with the "Bevill Amendment" which specifically excludes mining wastes from regulation under RCRA Subtitle C until further studies by EPA.
- 1985 EPA provides congress with the report requested in 1980 (Report to Congress #1, Dec. 1985). Report describes the health and environmental effects from a group of mining segments, focusing on the largest waste generators.
- 1986 EPA publishes a regulatory determination that the following miners should be regulated as solid wastes under Subtitle D of RCRA: base and precious metals, phosphates, oil shale, asbestos and overburden from uranium.
- 1988 Western Governors' Association forms the Mine Waste Task Force to provide guidance to EPA on a suitable mine waste management framework and program.
- 1988 EPA distributes "Draft Strawman", an informal package of mining waste regulatory concepts. These were released to generate public discussion and input to EPA in regulatory development.
- 1989 WGA Mine Waste Task Force released for public response Recommended Changes to the EPA Strawman (March 21, 1989).

Projections

- 1990 EPA plans to release a "Strawman #2" early 1990 and will very likely hold public discussions shortly after this release.
- 1990-91 Congress is expected to take up RCRA Reauthorization and pass an amended act with changes specifically dealing with mine waste.
- 1990-91 Based upon RCRA Reauthorization and the ongoing regulatory development, EPA projects it will publish Notice of Proposed Rulemaking for Mine Wastes late in the year.

DRAFT

**SUMMARY OF MAJOR MINE WASTE
REGULATORY ISSUES:**

A COMPARATIVE ANALYSIS

REVISED DECEMBER 18, 1989

**Mine Waste Task Force
Western Governors' Association**

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**SUMMARY OF MAJOR MINE WASTE
REGULATORY ISSUES:**

A COMPARATIVE ANALYSIS

Revised, December 18, 1989

INTRODUCTION

During the summer of 1989, members of the Western Governors' Association's (WGA) Mine Waste Task Force met with representatives of their state's environmental community and industry associations to elicit comments on the Task Force's proposed changes to EPA's spring 1988 "Strawman" regulations for non-coal mining wastes.

As a result of these meetings and written comments which were also provided, a number of major mine waste regulatory issues and perspectives were identified. In late October 1989, the twenty-one state Mine Waste Task Force reconvened to discuss the comments they had received, and to reevaluate their recommendations to EPA.

This revised document updates an earlier draft dated October 16, 1989. Revisions to the earlier draft are noted in UPPERCASE. The revisions were made at the WGA Mine Waste Task Force meeting on October 23, 1989 after consideration of the comments provided by interested parties.

REFERENCES

The documents, meeting notes and references listed below were used to compile the following issues analysis. Please note: Each reference identifies the individual who transmitted the comments, who that individual represents, to whom the comments were addressed and the date of the transmittal.

- | | | | |
|------|--|------|--|
| (1) | Strawman Regulations for Mine Waste, U.S. Environmental Protection Agency, "Preliminary Working Draft", May 31, 1988. | (13) | Gary W. Lynch, Oregon Department of Geology and Mineral Industries, memo to Debbie Welles and Don Ostler, "WGA/AMC Meeting", September 26, 1989. |
| (2) | Western Governors' Association (WGA), Mine Waste Task Force, "Draft States' Revisions to EPA Strawman", March 21, 1989. | (14) | Bert Doughty, Cyprus Thompson Creek, letter and comments to John Moeller, Idaho Department of Health and Welfare, September 18, 1989. |
| (3) | "Addendum to WGA Mine Waste Task Force Revisions to EPA Strawman", September 30, 1989. | (15) | Norm Greenwald Associates, memo to M.B. Donnelly, Newmont Mining, "Detailed Comments on Western Governors' Association Strawman Proposal", August 14, 1989. |
| (4) | Notes from EPA-Environmental Groups Network meeting of September 26, 1989, Denver, CO (R.D. Andrews) | (16) | Gary Broetzman, Colo. Dept. of Health, memo to file, "Meeting with Colorado Mining Association on WGA Mining Waste Regs.", September 11, 1989. |
| (5) | Notes from EPA-Industry Representatives meeting of September 27, 1989, Denver, CO (R.D. Andrews) | (17) | Gary Broetzman, Colo. Dept of Health, memo to Fred Banta, Colo. Mine Land Reclamation, "Meeting with National Environmental Representatives re: WGA Mining Waste Workgroup", August 29, 1989. |
| (6) | David B. Crouch, Homestake Mining Co., letter and comments to James Pompy, California Department of Conservation, July 6, 1989. | (18) | Melinda Kassen, Environmental Defense Fund (EDF), memc/fax to D.G.Welles, WGA, October 13, 1989. |
| (7) | Jon B. Marshack, California Regional Water Quality Control Board, memo to Harold Singer, Land Disposal Branch, Division of Water Quality, May 10, 1989. | (19) | Thomas W. Reese, representing Alaska Center for the Environment, Colorado Trout Unlimited, EDF, Greater Yellowstone Coalition, Manasota-88, Mineral Policy Center, National Audubon Society, Project Environmental Foundation, Sierra Club, Southwest Research and Information Center, and Wyoming Wildlife Federation, letter to Dave Bussard, EPA, October 13, 1989. |
| (8) | Larry A. Drew, Hecla Mining Co., letter and comments to Debbie Welles, WGA, September 27, 1989. | (20) | James E. Good, California Mining Association, letter to Darlene Ruiz, California State Water Resources Control Board, September 29, 1989. |
| (9) | Michael H. Gibson, Kennecott, Utah Copper, letter and comments to Kenneth L. Alkema, Utah Department of Health, September 20, 1989. | (21) | Curtis McVee, Alaska Miners Association, Inc., letter to Gerald Gallagher, Alaska Department of Natural Resources, October 4, 1989. |
| (10) | David C. Ridinger, Arizona Mining Association, letter and comments to Randolph Wood, Arizona Department of Environmental Quality, September 22, 1989. | | |
| (11) | Leroy E. Kissinger, Arizona Department of Mines and Mineral Resources, letter to Mike J. Doyle, Arizona Department of Environmental Quality, September 25, 1989. | | |
| (12) | "Comments of the Precious Metals Producers Regarding the Western Governors' Association Revision of the EPA Strawman Mining Waste Regulation", submitted by FMC Corporation (9/13/89), American Barrick Resource Corp, and Echo Bay Mines, Ltd. (8/17/89). | | |

(continued on next page)

REFERENCES (continued)

- (22) James A. Joy, III, South Carolina Department of Health and Environmental Control and Patrick T. Walker, South Carolina Mining and Reclamation, memo to D.G. Welles and Richard Andrews, "Comments from Environmental Groups and Industrial Representatives on WGA Strawman (3/21/89)," October 13, 1989.
- (23) Krishna Parameswaran, ASARCO, letter to D. G. Welles, WGA, October 13, 1989. (incomplete review, received 10/16/89)
- (24) Robert Oringdulph, Colorado Aggregate Company, Subsidiary of Hecla Mining Company, letter to Richard Mitzelfelt, New Mexico Environmental Improvement Division, October 5, 1989. (also see reference (8), Hecla Mining)
- (25) Jeremy Craft, Florida Division of Resource Management, memo/fax to Debbie Welles, "Meeting with Industry (Phosphate)", October 16, 1989. (incomplete review, received 10/16/89).
- (26) Phil Hocker, Mineral Policy Center, telephone conversation with D.G. Welles, October 13, 1989.
- (27) Rob Walline, EPA, National Mine Waste Program Coordinator, personal communication with R.D. Andrews, August-October 1989.
- (28) David R. Cole, Colorado Mining Association, letter to Fred R. Banta, Colorado Mined Land Reclamation Division, October 4, 1989.
- (29) David P. Kimball, III, Gallagher and Kennedy for Cyprus Minerals Company, letter to Michael Doyle, Arizona Department of Environmental Quality, October 4, 1989. (same attachment as reference 14)
- (30) Scott A. Crozier, Phelps Dodge Corporation, letter and comments to Michael Doyle, Arizona Department of Environmental Quality, October 4, 1989.
- (31) Rick Englemann, Wyoming Land Quality Division, letter to D.G. Welles, WGA, October 11, 1989.
- (32) Jack Christiansen, Utah Mining Association, letter to Kenneth L. Alkema, Utah Department of Health, August 18, 1989.
- (33) Michael Doyle, tabular summary of comments received by State of Arizona on WGA strawman, received by WGA October 23, 1989.
- (34) Record of discussion and decisions made by full WGA Mine Waste Task Force, October 23-25, 1989 for incorporation into the Task Force's subsequent draft recommendations on EPA's "Strawman" regulations.

NOTE: Additional information on the American Mining Congress recommendations for a mine waste regulatory program can be found in the AMC document entitled "State Mining and Mineral Processing Waste Management Plans," July 1988.

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: How should State Issued Permits or Approvals be structured?

REFERENCE: 40 CFR XXX, Section C and D.

<u>EPA</u>	<u>WGA TASK FORCE STATES (*)</u>	<u>MINING INDUSTRY</u>	<u>ENVIRONMENTAL GROUPS</u>
Comprehensive multi-media permit;(1)	<u>No</u> comprehensive permit required except at state's option;(2)	<u>No</u> comprehensive permits;	Master or consolidated permit;
Referencing to other exiting permits is acceptable;(1)	Multiple permits or approvals can constitute a "permit";(2)	Incorporation of multiple permits by reference not necessary;	Other permits incorporated "by reference" is acceptable; State wide general permits or reference to control regulations are <u>not</u> acceptable;
Waste unit management permits rather than facility permits. (1)(27)	Waste unit or facility permits are both acceptable, at the option of states.(2)	Prefer facility wide permit, <u>not</u> waste unit permit;	Want waste unit specific permits.
	PERMITS SHOULD BE FEDERALLY ENFORCEABLE THROUGH STATE PLAN CODIFICATION BY EPA. (34)	Want life of operation permit with periodic review.	Permits must be federally enforceable. (4)(17)(19)

Note: * The "WGA Task Force States" represented in this column include twenty-one states of the Mine Waste Task Force, many of them Western Governors' Association member states plus several additional states with significant mining activity.

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: How should a State Plan be Approved?

REFERENCE: 40 CFR Part XXX, Sections B,C,D,E,F & J

EPA

WGA TASK FORCE STATES

MINING INDUSTRY

ENVIRONMENTAL GROUPS

Requires lead agency (1) but concept under review (27).

No lead agency required; lead contact for EPA oversight and intrastate coordination (2).

Some prefer lead agency but others find lead contact acceptable (9); some want a single contact point which must be a state agency (21)

Lead agency is necessary, don't want a coordination entity or lead contact (4) (17).

STATE SELF-CERTIFICATION PROCESS PROPOSED WITH STATE PLAN DEVELOPED IN COOPERATIVE MODE WITH EPA. (34)

Support concept of state self certification (20).

Program approval criteria include interdepartmental coordination, joint decision making, conflict resolution and public participation elements (27).

REQUIRE FULL ARRAY OF PROGRAM, RESOURCES, AND LEGAL CRITERIA TO HAVE A CERTIFIABLE STATE PLAN; STATE FLEXIBILITY EMPHASIZED (34).

Only Part XXY, Subpart D (Performance Standards) should be relevant to state plan approval (15). Plan approval criteria need to allow flexibility and diversity from state to state.

States must demonstrate financial and staff resources to implement State Plan and show sufficient statutory/regulatory authorities (4)(19). States required to establish permit fees to cover permit review and compliance inspection costs (19).

State Plans must be resubmitted every 5 years for review (1) but review cycle is under review (27).

No periodic state plan revisions unless made necessary by changes in federal or state laws, rules or programs. (2)

Split opinion on whether a partial state plan should be allowed (5)(8).

Triennial state program review wanted (17).

Implied full plan; no mention of partially approved state plan.

STATES MUST DEVELOP FULL PLAN TO CERTIFY; ONLY PARTIAL PLAN SITUATIONS WOULD BE A RESULT OF EPA REVOCATION OF PART OF A STATE PLAN. (34)

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: *What should be the nature and degree of EPA Oversight?*

REFERENCE: 40 CFR XXX, Section G

EPA

WGA TASK FORCE STATES

MINING INDUSTRY

ENVIRONMENTAL GROUPS

Individual permit review and veto (1).
Consideration being given for EPA review of "major permits with EPA permits and enforcement in some limited cases (27).

EPA program oversight based upon state implementing Part XXY standards with mine waste facility site reviews for program evaluation, not for site enforcement; no permit by permit review by EPA or EPA veto. (2)(34)

No site specific review except as part of periodic program audit; (5)

Individual permit and program-wide EPA review, oversight and veto (4)(18).

Annual program audit (minimum frequency) including individual permit audits.(1) Moving toward non-designated periodic program audit frequency (27).

EPA PROGRAM AUDITS TO BE TRIENNIAL UNLESS STATE PLAN CALLS FOR A DIFFERENT FREQUENCY (34).

EPA audits no more frequent than annual (21).

Triennial program audit (minimum) (19).

EPA MUST INTEGRATE AUDITS UNDER THIS PROGRAM WITH OTHER EXISTING PROGRAM AUDITS (E.G. NPDES). (34)

EPA WILL FUND THE STATES FOR COSTS RELATED TO EPA PROGRAM AUDITS.(34)

Linkage of degree of federal oversight to federal funding is unacceptable (19).

Limit federal role to program review (not permits) with technical and fiscal support (20).

Citizen option to trigger an EPA audit is requested (26). Want National Applicant Violator System (4).

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: How should a Federal Program for mine waste be implemented?

REFERENCE: 40 CFR XXX and new 40 CFR XXZ

EPA

Not described.(1)

[A key issue under discussion is EPA enforcement of state standards; resolution will be important to EPA program definition.] (27)

WGA TASK FORCE STATES

FOR STATES WITHOUT CERTIFIED STATE PLANS UNDER PART XXX OR IN THE EVENT OF STATE PLAN REVOCATION, A SEPARATE 40 CFR PART XXZ IS PROPOSED TO DEFINE THE EPA STATE-SPECIFIC PROGRAM IMPLEMENTATION GUIDELINES (34).

PRINCIPLE ELEMENTS OF AN EPA IMPLEMENTED STATE PLAN ARE:

- EACH PLAN IS STATE-SPECIFIC, NOT GENERIC
- EPA DEVELOPS PLAN IN COOPERATION WITH STATE
- PLAN UTILIZES TECHNICAL CRITERIA OF PART XXY
- FEDERAL PLAN MUST NOT DUPLICATE ELEMENTS OF PLAN THAT ARE ALREADY EFFECTIVELY IMPLEMENTED BY STATE
- ENFORCES EXISTING STATE STANDARDS WHEN ADEQUATE OR MORE STRINGENT
- 10 YEAR LIFE RENEWABLE PERMITS
- PUBLIC NOTICES ON INITIAL PERMIT AND SUBSEQUENT MAJOR CHANGES, CLOSURE CERTIFICATIONS, AND PLAN DEVELOPMENT (34)

MINING INDUSTRY

Respondents split on whether partial or full programs should be allowed by states;

Federal program should only fill gaps not already adequately covered by states.(5)

Federal program should not be redundant of programs under other statutes (e.g. CWA, CAA). (5)(20)

Federal program should not be the de facto criteria for approved state programs. (15)(20)

ENVIRONMENTAL GROUPS

Federal implementation should include enforcement of state standards when state requirements are more stringent than minimum national standards or criteria. (4)(17)(19)

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: *How should the State Plan be Enforced?*

REFERENCE: *40 CFR XXX and new 40 CFR XYZ*

EPA

WGA TASK FORCE STATES

MINING INDUSTRY

ENVIRONMENTAL GROUPS

Primacy State:

EPA could enforce individual permits with 30-day notice to states if state did not act.

STATE ENFORCEMENT IS NORMAL MODE IN CERTIFIED PLAN STATES(34); EPA ENFORCES ONLY IN: (a) CASE OF IMMINENT AND SUBSTANTIAL THREAT TO HEALTH AND ENVIRONMENT, AND (b) WHEN STATE FAILS TO IMPLEMENT ITS STATE PLAN. NOTICE REQUIRED TO STATE BEFORE FEDERAL ENFORCEMENT. (34)

State enforcement in approved states; no federal duplicate enforcement except in imminent and substantial threat.

All state standards, program components, and permits must be EPA enforceable, administratively and through courts; want ability to sue in federal courts; third party suits allowed. (4)(18)

Non-Primacy States:

Not described.

EPA ISSUES PERMITS (34)

EPA MUST USE EXISTING STATE STANDARDS IN PERMITS WHEN THEY MEET PART XXY MINIMUMS.(34)

EPA only enforces elements not present in state programs (fills gaps in implementation and enforcement);

Not described explicitly.(4); EPA must enforce state standards even if stricter than federal standards;(18)

Partial Approval State:

Not described.

PARTIAL ENFORCEMENT BY STATE WOULD ONLY OCCUR IN EVENT OF A PARTIAL REVOCATION OF STATE PLAN BY EPA. NORMAL STATE CERTIFIED PLAN DOES NOT PROVIDE FOR PARTIAL STATE PLANS.(34)

Same as in non-primacy state.

Opposed to concept of partial approval. (18)(19)(26)

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: *How should Public Participation be structured?*

REFERENCE: 40 CFR Part XXX and Part XXY

EPA

No description of public participation in EPA administered program (1);

EPA considering requiring a hearing for projects with significant impact or high public interest. (27)

WGA TASK FORCE STATES

STATE TO PROVIDE PUBLIC NOTICE AND OPPORTUNITY FOR HEARING ON INITIAL PERMITS OR PROJECT AUTHORIZATIONS, AND FOR SUBSTANTIAL MODIFICATIONS TO PERMITS (34).

Provide for public concerns in corrective action process (2).

STATE TO PROVIDE PUBLIC NOTICE AND OPPORTUNITY FOR HEARING ON DEVELOPMENT OF AND REVISIONS TO STATE PLAN. (34)

STATE TO PROVIDE PUBLIC NOTICE PRIOR TO STATE ACCEPTANCE OF CERTIFICATION OF CLOSURE FROM OPERATOR.(34)

EPA TO PROVIDE PUBLIC NOTICE OF A STATE'S PLAN CERTIFICATION PRIOR TO EPA CODIFICATION OF THE STATE PLAN.(34)

EPA AUDITS OF STATE PROGRAMS MUST FOCUS ON STATE'S ABILITY TO SOLVE PROBLEMS. ONE MEASURE IS STATE RESPONSES TO CITIZEN COMPLAINTS. (34)

MINING INDUSTRY

Public participation generally adequate in most states now; notice or hearings on initial permits acceptable but not on renewal of permits if facilities are in compliance; public involvement with major permit changes but no hearings/notice necessary on minor permit modifications. (5)

Opportunity for public comment needed in developing state plans or amending plans. (21)

ENVIRONMENTAL GROUPS

Thorough public participation on state program approval, standards setting, individual permits, enforcement actions; states need judicial and administrative penalties; want third party consent orders provisions; expanded public notice on permits and violations and on modifications; open records. (4)(17)(19)

Also want public notice of state program audits and opportunity for public comment. (19)

Want right to: (a) petition EPA to modify, suspend or revoke state program approval or veto a state site specific permit; and (b) challenge any state site-specific permit enforcement action in state administration & judicial system.(19)

Want citizen option to petition/call for a mandatory site inspection with good reason. (26)

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: What Mineral Segments & Activities should be covered?

REFERENCE: 40 CFR XXY, Subpart B

EPA

Only extraction and beneficiation wastes from 1st Report to Congress (RTC) minerals; not including active phase of heap and dump leach; not including processing wastes. (1)

Make dump & heap leaching regulated activities; potentially include some non-hazardous processing wastes. (5)(27)

WGA TASK FORCE STATES

MINE WASTES TO BE REGULATED ARE: EXTRACTION, BENEFICIATION AND PROCESSING MATERIALS WITH A POTENTIAL TO CONTAMINATE WATER, AIR OR SOILS AND WHICH ARE NOT OTHERWISE REGULATED UNDER SUBTITLE C. SUCH MATERIALS DERIVED FROM METALLIC ORES OR MINERALS, INCLUDING URANIUM MINING (BUT NOT URANIUM BENEFICIATION OR PROCESSING), PHOSPHATE ROCK AND OIL SHALE (34)(2).

MATERIALS GENERATED FROM EXPLORATION ACTIVITIES ARE EXCLUDED. (34)

THE MINE WASTE DEFINITION INCLUDES BOTH OPERATIONAL AND CLOSURE PERIODS OF HEAP AND DUMP LEACH FACILITIES, AND STORED MATERIALS WITH A POTENTIAL TO POLLUTE, e.g. ORE PILES.(34)

MINING INDUSTRY

Extraction and beneficiation wastes, from minerals as listed in the EPA First RTC should be regulated.(5)(6)(8)(9)(12)(14)(15) Some also want processing wastes included which are still Bevill exempt. (9)(5)

All object to including active heap and dump leach until leaching is complete. (5)(6)(8)(9)(12)(14)(15)(20) One respondent accepts regulation of design of new heap and dump leach units but not operational regulation. (9) Several respondents object to regulation of ore or low grade ore stockpiles. (5)(12)(20) Some object to possible regulation of mine drainage. (6)

Notice and evaluation necessary before expanding scope beyond 1st RTC minerals. (5)(21)

Mine waste as backfill should be excluded. (21)

ENVIRONMENTAL GROUPS

No comment on specific mineral segments. (4)

Want heap and dump leach wastes regulated. (4)(17)(18)

Suggestion that exploration waste be covered. (4)

No comments yet on low grade ore stockpile inclusion as wastes.(4)

Favor including toxic mine drainage as waste. (18)(26)

Note: First Report to Congress (RTC) (Dec. 1985) includes extraction and beneficiation mine wastes from base and precious metals, phosphate, asbestos, uranium (overburden only) and oil shale.

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: *Which Operational Categories should be regulated?
Active. Inactive. Abandoned ?*

REFERENCE: *40 CFR Part XXY, Subparts B, C and others*

EPA

Regulate only new and existing active waste units, but not inactive or abandoned units.(1)

The option of regulation of inactive units on an active site is being considered. (27)

WGA TASK FORCE STATES

Regulate new units and existing units, including ONLY active operational status (34); definitions of active, inactive and new units are provided (34);

ABANDONED AND INACTIVE MINE WASTES ARE NOT REGULATED UNDER THIS RECOMMENDATION UNLESS THE UNITS ARE REACTIVATED. HOWEVER, INACTIVE AND ACTIVE WASTE UNITS ON THE SAME SITE MAY REQUIRE REGULATION AS ONE UNIT IF INDIVIDUAL WASTE UNIT IMPACTS CANNOT BE DISTINGUISHED. (34)

THERE IS A NEED TO REMEDIATE SOME NON-COAL ABANDONED AND INACTIVE MINE WASTES. HOWEVER, RCRA, IN ITS CURRENT FORM, IS NOT SEEN AS THE APPROPRIATE LEGAL TOOL. THE STATES RECOMMEND MORE EVALUATION OF REGULATORY AND CORRECTIVE OPTIONS FOR NON-COAL ABANDONED AND INACTIVE MINE WASTE PROGRAMS. THE STATES AGREE THAT REMINING, MINE WASTE REPROCESSING, CLOSURE AND RECLAMATION PROGRAMS SHOULD BE ENCOURAGED. ANY NEW PROGRAMS SHOULD BE STATE OPERATED. (34)

MINING INDUSTRY

Several respondents say regulate only existing active and new units, recognize differences in performance standards, criteria and closure requirements whether new, or existing (10) (20); don't regulate abandoned units. (5)(8)(21)

Some accept including inactive units but want flexible closure triggers (9) or clearly distinct standards/criteria (9) (14)

Need to encourage reprocessing and remaining; don't treat old mining areas as new or require operators to bear entire responsibility for old areas when remaining. (20)(21)

ENVIRONMENTAL GROUPS

Regulate all units at active sites; regulate inactive sites where responsible party is known; no statement on abandoned; (4)(17)(18)

Suggestion offered that exploration waste should also be covered. (4)

All active, inactive and abandoned units at a (active) site operated by a single permittee shall be subject to regulation. All units at an inactive site (not connected to active site) should be regulated when owner/operator is known. (19)

Note: Others recommend that the regulations should not retroactively regulate waste units that were established under different rules; hence, do not include inactive or abandoned wastes and carefully consider how rules are applied to existing units.(11)

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: What should be the General Approach to Performance Standards?

REFERENCE: 40 CFR Part XXY, Subpart D

EPA

Use concept of Performance Goals (1);

Include standards for ground water, surface water and air (1);

Considering including a performance standard for soils and putting structural stability requirements in design/operating criteria (Subpart E). (27)

WGA TASK FORCE STATES

Use performance standards not goals (2);

Include standards for ground water, surface water, air, soils, direct contact and structural stability.(2)

Broad flexibility in adopting existing state and federal standards with back up procedures in absence of existing state or federal standards.(2) ESTABLISH A CLEAR HIERARCHY FOR SETTING STANDARDS WHICH RELIES FIRST ON STATE SPECIFIC STANDARDS. USES SITE SPECIFIC RISK STANDARDS AS LAST CHOICE APPROACH. DEFERS TO EXISTING MEDIA SPECIFIC PROGRAM (e.g. CLEAN AIR ACT) STANDARDS.(34)

ALLOWS FOR DISTINCTION IN COMPLIANCE SCHEDULE BETWEEN EXISTING ACTIVE AND NEW MINE WASTE UNITS.

MINING INDUSTRY

Standards should focus on ground water, not surface water or air.

Several object to soils standards.

More beneficial use basis should be emphasized.

Object to including standards for surface water and air, duplication of existing federal media specific laws. (5)(20)

Concern that standard setting "checks & balances" of CAA, CWA, SDWA will be by compromised, particularly in air performance standards.(5)

Should allow flexibility, not prescribe national minimum standards. Should consider site-specific conditions and risks in setting performance standards. (20)

Should differentiate between "existing" and "new" facilities with standards. (20)

ENVIRONMENTAL GROUPS

Don't want MCL's since this pre-allows degradation. Prefer MCLG's or a non-degradation policy. Like inclusion of soils and stability standards.

Concern that "risk based assessment" process will not work due to lack of resources and information, process predicted to become snarled in fate and transport arguments. Seem to prefer more specific minimum national design and operating criteria. (4)(17)

Use performance standards in conjunction with minimum national design & operating criteria. (18)

States shall retain authority to adopt standards more stringent than EPA. (19)

"No migration of contaminants from any mining units throughout the life of facility and its post-closure period." (19)

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: Should Performance Standards be Different for Different Operational Categories?

REFERENCE: 40 CFR Part XXY, Subparts D, E and others

EPA

No distinction; EPA only proposes to regulate new and existing (active) waste units. (1)

No mention of inactive or abandoned waste units (not included in proposed regulation). (1)

EPA is considering different criteria and timing for different classes of units. (27)

WGA TASK FORCE STATES

Same standards apply to all new and existing units, but existing units have 5 years to meet standards; new unit must meet standards on effective date of regulations. (2) INACTIVE AND (34) abandoned units would not be regulated under this program (2) UNLESS UNITS ARE REACTIVATED. (34)

CONSIDERATION SHOULD BE GIVEN TO REGULATION OF INACTIVE WASTE UNITS FOR WHICH IMPACTS CANNOT BE SEGREGATED FROM ACTIVE WASTE UNITS. (34)

ALLOWS FOR DISTINCTION IN COMPLIANCE SCHEDULE BETWEEN EXISTING ACTIVE AND NEW WASTE UNITS. THE CORRECTIVE ACTION PROCESS IS A PRIMARY MECHANISM TO DEAL WITH EXISTING ACTIVE UNIT COMPLIANCE. CORRECTIVE ACTION PROCESS RESULTS IN APPLYING BEST PRACTICABLE TECHNOLOGY FOR INDIVIDUAL SITES.(2)(34)

MINING INDUSTRY

Definite need to distinguish applicable standards between new, existing and inactive waste units; to apply "new" standards to existing units would be technically and economically impossible and sometimes environmentally unsound.

Strong objection to inactive closure trigger of 24 months; should be flexible or much longer, perhaps 10 years. (10)

Abandoned units should not be regulated under RCRA-D.

Cessation of activity should not trigger closure; it should be decision to abandon by operator. (21)

ENVIRONMENTAL GROUPS

Not commented on except that inactive and active units should both be regulated. (4)(17)

Do not want relaxation of standards for any operational category. (26)

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: How should Ground Water Performance Standards be set?

REFERENCE: 40CFR Part XXY, Subpart D

<u>EPA</u>	<u>WGA TASK FORCE STATES</u>	<u>MINING INDUSTRY</u>	<u>ENVIRONMENTAL GROUPS</u>
<p>Hierarchy established for standards: (a) SDWA MCL's; (b) Health based, risk assessment standard. (1)</p>	<p>Use state standards system or fall back to proposed EPA hierarchy to set standards if no state standards exist. (2) Provides for standards based on beneficial uses, GW classification systems or other state GW quality protection control systems.(2)</p>	<p>Beneficial use and background quality must be accommodated. (5)</p>	<p>Preferred performance standard is "no discharge" to groundwater. Otherwise prefer MCLGs for new or expansion units, MCLs for units with existing contamination. (18) Prefer MCLG's over MCL's since goals do not include economic and technical factors. (4)</p>
<p>or (c) Background concentration if MCL or risk based standard is exceeded in existing groundwater. (1)</p>	<p>Use background concentration WITH A ALLOWABLE STATISTICAL DEVIATION (34) as standard if STATE STANDARD MCL, or risk based standard is exceeded in existing ground water.(2)</p>	<p>Respondents object to using background concentration as standard when MCL or other standards do not exist. Need some flexibility from such an absolute limit.(5)</p>	<p>Don't accept existing condition as necessarily same as background due to problem of past contamination by mining. (4)(17)</p>
		<p>Should not require improvement over natural or ambient levels of contaminants. (21)</p>	<p>Natural background concentrations to be established at all mining waste units or, where technically or practically infeasible, apply best professional judgement. (19)</p>

Note: A. Others advise to protect the ground water resource by beneficial use based standards and non-degradation policies. States should be allowed flexibility to use different standards, other than MCL's which don't necessarily protect the resource and may result in degradation. (7)

B. MCL mean "maximum contaminant level".

C. MCLG means "maximum contaminant level goal".

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: How should Surface Water and Air Performance Standards be set?

REFERENCE: 40 CFR Part XXY, Subpart D

EPA

For surface water, defer to Clean Water Act based standards ("goals" in EPA Strawman) but provide for setting new standards in absence of existing standards. (1)

For air standards (EPA uses "goals"), refers to Clean Air Act SIP but also requires examination of other emissions, including fugitive dust, for other unregulated CAA pollutants. Uses health based risk assessment methods for new standards (implies site by site basis). (1)

WGA TASK FORCE STATES

For surface water defer to Clean Water Act state surface water quality standards, NPDES, and area wide management plans and don't duplicate. (2)

For air standards defer to Clean Air Act, and don't duplicate existing standards but provide for setting new standards in absence of CAA standards ON A PERMIT SPECIFIC BASIS. (34) Use health based or environmental risk assessment methods for any new standards on site by site basis. (2)(34)

MINING INDUSTRY

Most respondents recommend relying solely on existing federal and state programs, several suggest to delete air and surface water sections entirely. Most respondents are very concerned that RCRA should not be used to set air or water standards outside of the normal processes of media specific laws (CAA, CWA, SDWA). Concern is that established scientific, technical checks and balances could be ignored and invalid standards could result.(5)(20)

ENVIRONMENTAL GROUPS

Want the air and surface water media standards included. Incorporation of existing CAA, CWA standards by reference is OK. Desire ability to set standards beyond, CWA, CAA (NESHAPS or CAA criteria pollutants) if needed on site by site basis.(4)(17)

Must establish and enforce standards for mine process waters. (19)

Note: CAA means Clean Air Act; CWA means Clean Water Act; SDWA means Safe Drinking Water Act.

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: How should Soils Performance Standards be established?

REFERENCE: 40 CFR Part XXY, Subpart, D and H

EPA

Not included in original strawman.
Indications that it may be adopted as a media to regulate. (4)(27)

WGA TASK FORCE STATES

New section on soils added by WGA. (2)
Focus is on on-site soil preservation and off-site prevention of contamination.(3)

SPECIFIC PROVISIONS ARE INCLUDED TO ALLOW AND REGULATE LAND APPLICATION OF MINE WASTES AS A SOIL AMENDMENT OR A WASTE TREATMENT PROCESS IF ALL PERFORMANCE STANDARDS ARE MET. (34)

Requirements provide for soil preservation for closure purposes. (3)

NO NATIONAL NUMERIC SOILS STANDARDS ARE TO BE SET. ALL SUCH STANDARDS WILL BE ESTABLISHED BY THE STATE, NORMALLY BASED ON SITE SPECIFIC EVALUATIONS. (34)

A PROVISION HAS BEEN ADDED TO RECOGNIZE AND ADJUST FOR NATURALLY OCCURRING ELEVATED CONCENTRATIONS OF CONTAMINANTS. (34)

MINING INDUSTRY

Some respondents agree that soil is a suitable media for performance standards (14) if limited to the post closure period (9).

Some feel soils standards should be deleted (10) (15) or only dealt with as reclamation material (16).

Some express concern that bio-accumulation and bio-concentration statements may not be achievable due to natural deep rooted plants which predominate in arid lands. (8)(6)
Requirements may also conflict with existing reclamation and revegetation laws in states.

Regulations must accomodate natural background elevated levels of "contaminants" in mining areas. (8)

ENVIRONMENTAL GROUPS

Agree with including soils performance standards.(4)(17)

EPA and state program regulations must establish and enforce soil standards for both the mine waste processing unit and the mine reclamation site. (19)(26)

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: How should Design and Operating Criteria be established?

REFERENCE: 40 CFR Part XXY, Subpart E

<u>EPA</u>	<u>WGA TASK FORCE STATES</u>	<u>MINING INDUSTRY</u>	<u>ENVIRONMENTAL GROUPS</u>
EPA includes detailed design/operating criteria for specific types of mine waste units (e.g. impoundments, piles). (1)	Most of EPA's detailed design and operating requirements for specific types of waste units are removed. (2)	Generally prefer WGA version over EPA version (5); suggest shortening "specific location" criteria to a general requirement for review of main WGA list of factors. (8)	Favor EPA or more detailed minimum national acceptable design & operating standards (BAT requirements); variances allowed on "performance equivalency assessment" basis; don't want to allow "controlled release", want "containment" philosophy in defining minimum acceptable design. (4)(17)
	Specific design and operating criteria for heap and dump leach units are included. (2)	No time limits should be set for attaining compliance. (21)	
	The "location specific" criteria are retained to allow for state specific and site specific application. (2)	All wetland elements should be deleted (defer to existing programs).(21)	Need a "reponse to design failure" mechanism (which is seen as different from corrective action process); (4)(17)(19)(26)
	"RESPONSE TO DESIGN FAILURE MECHANISM" HAS BEEN ADDED TO SUBPARTS F AND G. (34)	Concerned that floodplain limits would eliminate placer mining. (21)	Want more stringent, nationally defined siting (location specific) criteria (find WGA version too loose).(4)(17)(19)
No comment on mixing hazardous waste with mine waste. (1)	MIXING OF SMALL QUANTITIES OF HAZARDOUS WASTES OR OTHER HAZARDOUS WASTES WHICH ARE GENERATED OFF OF THE MINE WASTE FACILITY SITE WITH SUBTITLE D REGULATED MINE WASTES IS NOT ALLOWED. (34)	Most respondents object to the hazardous waste admixture prohibition; they argue that mixing is a valid and acceptable disposal method.	No comment yet on mixing hazardous wastes with mine wastes.(4)(17)
		One respondent suggests to only prohibit mixing of hazardous or small quantity generator wastes from off-site unrelated sources.	Agrees with WGA position on prohibition of mixing hazardous waste with mining waste. (26)

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: How should Monitoring and Verification be structured?

**REFERENCE: 40 CFR Part XXY, Subpart F
and related areas of Subpart D**

EPA

WGA TASK FORCE STATES

MINING INDUSTRY

ENVIRONMENTAL GROUPS

Original Strawman combined elements of corrective action with monitoring and media protection standards. (1)

Point of compliance is determined by regulatory authority. For groundwater this must be in the uppermost aquifer and within property boundary of facility. (1)

Point of compliance to be established site by site by regulatory authority at representative location(s) (2);

For groundwater, use of "uppermost aquifer" is eliminated as sole point of compliance since all groundwaters are of interest (2);

Property boundary is eliminated in favor of "close...to predicted lifetime boundaries" of waste unit. (2)

No definite provisions are made for distinguishing "early warning monitoring" versus "compliance monitoring". (2)

A "RESPONSE TO DESIGN AND OPERATING CRITERIA SYSTEM FAILURE" MECHANISM HAS BEEN ADDED TO DETECT PROBLEMS AND RESPOND BEFORE MEDIA PERFORMANCE STANDARDS VIOLATIONS REQUIRE CORRECTIVE ACTION. (34)

Point of compliance to be determined site by site, proposed by operator, approved by regulatory agency based on all relevant factors (9);

Upper most aquifer should be GW point of compliance, not all groundwaters (8);

One respondent suggests an exemption for "zero discharge" facilities from GW monitoring (14)

One respondent is concerned with applying financial guarantees to corrective action (14).

Point of compliance at unit boundary (or disturbed area) or as close as reasonably feasible. (18)

Point of compliance: "the most likely points of discharge at the edge of the unit." (19)

Point of compliance as close to unit as possible rather than at "artificial distant point" which would allow for mixing zone and only detect violation after significant pollution had occurred. (4)

A "response to system failure mechanism" is needed to deal with problems which must be solved before they result in need for corrective action. ()

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: How should Corrective Action be Implemented?

REFERENCE: 40 CFR Part XXY, Subpart G

EPA

Any exceedance (violation) of standard triggers corrective action study. (1)
(originally found in Subpart F)

Corrective Action Standards (See Subpart F) are set at time of violation and can be different from performance standards in Subpart D. (1)

WGA TASK FORCE STATES

The original EPA Strawman is completely revised and reorganized. (2)(3)(34)

Any performance standard exceedance (violation) triggers a corrective ACTION. (2)

Similar CORRECTIVE ACTION REGULATIONS for all regulated media. (2)

Standards to be met in corrective action are same as performance standards for operation and closure.(2)

A NEW SECTION DEALING WITH CORRECTIVE ACTION FOR DESIGN AND OPERATING CRITERIA (SYSTEM FAILURES) HAS BEEN ADDED. (34)

RECOMMENDED REGULATIONS FOR SOILS AND STRUCTURAL STABILITY HAVE BEEN ADDED. (3)(34)

MINING INDUSTRY

Trigger for corrective action should be a "statistically significant" violation not just any violation of any standard. (8)(9)(12)

Violation consideration must consider background. (21)

Recommend determination that "violation" is real and significant before performing corrective measures study. (8)
Acceptance of closure by regulatory authority should render corrective action program inapplicable. (12)

One respondent suggests study only be required in "verified significant" exceedance with "significant threat to human health & environment". (10)

ENVIRONMENTAL GROUPS

Too many "exit ramps" provided in WGA Strawman. Concerned that WGA corrective action process is too cumbersome, with too many opportunities for extension of compliance. (4)

Want greater public participation and notification of impacted parties (in and near contaminated zone). (4)

Concerned that regulatory agency releases without clean up could jeopardize subsequent CERCLA actions. (4)
Clean up standards must not be just to MCL's which imply pollution up to worse than background, want more protective standards to apply. (4)

Trigger for remediation study to be "detection of any statistically significant levels above established natural ambient background levels." Remediation commences: (a) when necessary to meet standards or if standards not applicable, (b) when contaminant levels exceed risk level for remediation at hazardous waste sites. (19)

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: How should Closure and Post Closure plans be structured?

REFERENCE: 40 CFR Part XXY, Subpart H

EPA

Separate plans required for closure and post closure. (1)

WGA TASK FORCE STATES

Closure and post closure plans ARE COMBINED INTO A SINGLE PLAN, as in many existing state programs. (2)

24 months of inactivity is the trigger on any regulated waste unit to require initiation of closure. (2)

CLOSURE PLANS MUST BE SUBMITTED WITHIN ONE YEAR AFTER STATE PLAN CERTIFICATION FOR EXISTING WASTE UNITS OR PRIOR TO CONSTRUCTION OF NEW WASTE UNITS. (2) TIME EXTENSIONS FOR EXISTING WASTE UNITS ARE ALLOWED WITH GOOD CAUSE AND WITH A DEFINITE APPROVED SCHEDULE. (34)

PUBLIC NOTICE BY STATE IS PROVIDED PRIOR TO STATE ACCEPTANCE OF CERTIFICATION OF CLOSURE BY OPERATOR. (34)

MINING INDUSTRY

Support combined closure and post closure plan concept. (9)

Oppose the 24 month inactivity trigger for closure. (8)(9)(10)(21) One respondent suggests a 10 year trigger is more realistic in the boom-bust mining industry. (10)

Suggestion that a "conceptual" closure plan is sufficient early in mine life with details submitted near actual closure time. (6)

Suggestion that closure time be determined by operator so long as compliance monitoring and enforcement continues. (8)(9)(12)(21)

Oppose continuation of liability despite release of surety and acceptance of closure. (3)(14)

Suggest closure trigger be "recommended" versus required. Need up to 10 yrs closure timelines. (21)

ENVIRONMENTAL GROUPS

Nothing in RCRA program should be construed to affect liabilities under CERCLA. (19)

Closure and post closure plans should be a component of initial program permit application for a site. As the operating plan is amended, and closure plan should be updated. Provide for 48 to 60 month inactivity on any waste unit to trigger closure initiation. (26)

- Notes: A. Other regulatory agency commenters note that closure completion approval by regulatory authority should not indicate any transfer of responsibility for environmental protection for owner/operator to regulatory authority. (7)
- B. Closure deadlines are considered unrealistic due to the wide fluctuation of mineral prices and normal swings of inactivity in the mining industry. (11)

ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS

ISSUE: How should Financial Responsibility requirements be established?

REFERENCE: 40 CFR Part XXY, Subpart I

EPA

Requires financial responsibility coverage by owner/operator for closure, post-closure, and corrective action for known releases. Applies to new and existing mine waste units. (1)

Does not allow salvage value to be credited in closure cost estimate. (1)

WGA TASK FORCE STATES

WGA Task Force totally rewrote this Subpart. (2)

Includes "credible accident coverage" requirement plus planned closure and known corrective active surety coverage. (2) CREDIBLE ACCIDENT FINANCIAL ASSURANCE REQUIREMENTS DO NOT APPLY TO STATES THAT HAVE PROVIDED EQUIVALENT ALTERNATIVE FINANCIAL MECHANISMS FOR SUCH CORRECTIVE ACTIONS. (34)

Salvage value not credited in financial responsibility (since most mine salvage is associated with production units, not waste units). (2)

ALL FUNDS PROVIDED BY A SURETY MUST BE UTILIZED AT WASTE UNIT FOR WHICH SURETY WAS ESTABLISHED. (34)

A PREVIOUSLY RECOMMENDED FEDERAL MINE WASTE REMEDIAL ACTION FUND HAS BEEN DELETED SUBJECT TO FURTHER PROGRAM REVIEW FOR ABANDONED AND INACTIVE WASTES. (34)

MINING INDUSTRY

Strongly oppose the "credible accident" coverage. (6)(8)(9)(10)(12)(13)(14)(15) Suggest that CERCLA & other laws already cover the credible accident. (8) One respondent suggests a maximum of \$500,000 per operation for credible accident. (8)

Salvage value should be allowed as credit in closure cost estimates and surety determinations. (9)(14)

One respondent opposed all financial responsibility provisions. (10)

Suggested alternative to bonding-generate a "pay-as-you-mine" fund for each facility. (21)

ENVIRONMENTAL GROUPS

Surety instrument must not depend on operator payment of premium to be viable. Don't accept "self bonding". (4)

Prefer WGA version over original EPA strawman. (4)

Duplicate bonding avoidance is OK if releases of financial assurance are approved by all jurisdictional entities, no deferral of authority. (4)

Want acts of God covered by financial assurance. (4)

No specific comments on "credible accident". (4) (17)

Surety must cover "chronic releases of contaminants." (19)

Want public notice of proposed release of surety and forum for public objections. (19)