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MEMORANDUM

State of Alaska

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

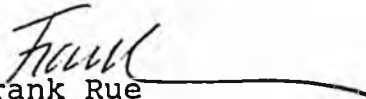
DATE: April 10, 1990

FILE NO:

TELEPHONE NO: 465-4105

THRU:

SUBJECT: SB 544:
Reclamation
Legislation

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

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

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

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

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

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

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

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

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

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

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

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

wants flexibility

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

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

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

Enclosure (1)

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

ADF&G Recommended
DNR Reclamation Statutes
April 9, 1990

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

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

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

(1) assure that mining operations are conducted in a manner that will avoid degradation of land and water resources both during and after the period of actual mining operations; No

stand.
(3) ✓ (2) assure that mining operations are not conducted where reclamation required by this chapter and the regulations adopted under it is not feasible; No

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) interest earned upon money in the fund;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3366

CONCEPTUAL COMMENTS ON SB 544 - RECLAMATION

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

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

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

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

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

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

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

allowable
within
title

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

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

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

exception
for ex.
hardrock
mining

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

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

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

allowable
within
the title

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

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

overall
public
interest
(how to determine)

habitat
protection

flexible

refers to
alternate
reclamation

reclamation

innovative
techniques
or pilot
projects
Q
revised

(from fed. coal reclamation act)

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

~~OK~~
OK

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

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

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

not allowable
under
title
\$750

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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violation*

*Class
A misdemeanor*

Sec. 27. 19. ---. EMERGENCY POWERS. (a) If the commissioner finds, after investigation, that a person engaged in a mining operation is causing, engaging in, or maintaining a condition or activity that presents an imminent or present danger to the health or welfare of the residents of the state or would likely result in irreversible or irreparable damage to the natural resources or environment of the state and the commissioner determines that it would be prejudicial to the interests of the residents of the state to delay action until an opportunity for a hearing can be provided, the commissioner may, by written notice, order that person immediately to discontinue, abate, or alleviate the condition or activity.

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

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

(d) After the hearing, the commissioner may affirm, modify, or withdraw an order. The decision of the commissioner is subject to judicial review under AS 44. 62. 560, and judicial review does not stay the order unless the commissioner agrees.

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

*Abandoned
mines*

Bill Glude, 4-10-90

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 9, 1990

The Honorable Bettye Fahrenkamp
Alaska State Senator
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

We are pleased to offer our comments on SB 544, "An Act relating to reclamation of land and water within the state; and providing for an effective date."

The Department of Natural Resources is supportive of the Senate Resource Committee's intention to address the important issue of mine reclamation. Although reclamation language was adopted last session as part of the 6(i) bill (AS 27.05.250), many of the substantive provisions received too little discussion and deferred issues of major statewide importance to the regulation process. SB 544 addresses many of those issues directly.

The department supports the provision to include all lands (state, federal and private) in conjunction with the authority to enter into cooperative management agreements with state agencies, federal agencies or private land owners to implement this act. This should prevent duplication of permitting activities. We further support the inclusion both of locatable minerals and sand and gravel operations.

The department is supportive of the concept of a statutory standard for reclamation in statutes. However, we have not yet had the opportunity to discuss the specific language of AS 27.19.020 to determine if it meets the needs of all the agencies. Likewise, we believe the idea of an "exception for small operators" is good.

The department's major concern with SB 544 is the limitation on the bond. The language in SB 544 parallels that adopted last year (see AS 27.19.050), with the major difference that SB 544 caps the maximum bond at \$750 per acre. We believe this is

Senator Bettye Fahrenkamp

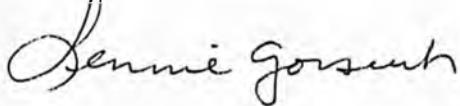
-2-

April 9, 1990

potentially too low to reflect fully the actual reclamation costs should the state be forced to conduct reclamation upon a miner's default.

We look forward to working with you on this issue.

Sincerely,



Lennie Gorsuch
Commissioner

Enclosure

cc: Commissioner Don Collinsworth
Department of Fish and Game
Commissioner Mark Hickey
Department of Transportation and Public Facilities
Denby Lloyd, Special Staff Assistant
Office of the Governor
Bob Evans, Legislative Liaison
Office of the Governor

DATE: 4/5/90

FURTHER:

Date of 5-Day Notice: 4-5-90
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-10-90

Resources

Committee considered

SB 544

Reclamation of land and water within the state; efd.

and recommended:

- replace with _____ CS SB544 (RES) same title
 new title
- attached amendment(s)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) DNR

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]

OTHER RECOMMENDATIONS:

None NO Rec
~~_____~~

[Signature] do Pass
Chair: Signature (and Recommendation)

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 9, 1990

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Alaska State Senator
P.O. Box V
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Dear Senator Fahrenkamp:

We are pleased to offer our comments on SB 544, "An Act relating to reclamation of land and water within the state; and providing for an effective date."

The Department of Natural Resources is supportive of the Senate Resource Committee's intention to address the important issue of mine reclamation. Although reclamation language was adopted last session as part of the 6(i) bill (AS 27.05.250), many of the substantive provisions received too little discussion and deferred issues of major statewide importance to the regulation process. SB 544 addresses many of those issues directly.

The department supports the provision to include all lands (state, federal and private) in conjunction with the authority to enter into cooperative management agreements with state agencies, federal agencies or private land owners to implement this act. This should prevent duplication of permitting activities. We further support the inclusion both of locatable minerals and sand and gravel operations.

The department is supportive of the concept of a statutory standard for reclamation in statutes. However, we have not yet had the opportunity to discuss the specific language of AS 27.19.020 to determine if it meets the needs of all the agencies. Likewise, we believe the idea of an "exception for small operators" is good.

The department's major concern with SB 544 is the limitation on the bond. The language in SB 544 parallels that adopted last year (see AS 27.19.050), with the major difference that SB 544 caps the maximum bond at \$750 per acre. We believe this is

Senator Bettye Fahrenkamp

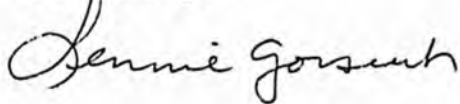
-2-

April 9, 1990

potentially too low to reflect fully the actual reclamation costs should the state be forced to conduct reclamation upon a miner's default.

We look forward to working with you on this issue.

Sincerely,



Lennie Gorsuch
Commissioner

Enclosure

cc: Commissioner Don Collinsworth
Department of Fish and Game
Commissioner Mark Hickey
Department of Transportation and Public Facilities
Denby Lloyd, Special Staff Assistant
Office of the Governor
Bob Evans, Legislative Liaison
Office of the Governor

FISCAL NOTE

REQUEST:

Revision Date: 5/6/90
Title: Land and Water Reclamation
Sponsor: Senate Resources Committee
Requestor: Senate Resources Committee

Agency Affected: Natural Resources
BRU: Minerals Management
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Carol Wilson Phone: 465-2400
Division: Commissioner's Office Date: 5/6/90

Approved by Commissioner:  Date: _____
Agency: Natural Resources

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: 5/6/90
Title: Land and Water Reclamation
Sponsor: Senate Resources Committee
Requestor: Senate Resources Committee

Agency Affected: Natural Resources
BRU: Minerals Management
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Carol Wilson Phone: 465-2100
Division: Commissioner's Office Date: 5/6/90

Approved by Commissioner: [Signature] Date: _____
Agency: Natural Resources

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

Changes in CS SB 544 (Res) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact would continue through 1996.

FISCAL NOTE

REQUEST: _____

Revision Date: 4/10/90
 Title: An Act relating to the
reclamation of land and water
 Sponsor: Resources Committee
 Requestor: _____

Agency Affected: Dept. of Fish and Game
 BRU: Habitat
 Components: Habitat

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary) The department does not anticipate a fiscal impact from this bill, because it would allow staff to more effectively focus the attention they are already directing to mining operations. The department would, however, like to reassess the situation at the end of the first year following passage of the bill to determine if additional funding is needed after all. Frank Rue, Director *Frank H. Baker*

Prepared by: Habitat Phone: 465-4105
 Division: _____ Date: 4/11/90

Approved by Commissioner: *William H. Selby* Date: 4/11/90
 Agency: Department of Fish and Game

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

20-0
7

SB 544 Relating to reclamation
of land + water

(file enclosed) →

TALKING POINTS FOR FLOOR SESSION.

I INTRODUCED SB 544 PRIMARILY BECAUSE IT PROVIDES A REASONABLE STANDARD FOR RECLAMATION OF LAND AND WATER AND IT ESTABLISHES A REASONABLE BONDING REQUIREMENT ONLY IN THE EVENT THAT A MINING OPERATION FAILS TO FOLLOW AN APPROVED RECLAMATION PLAN.

THE SENATE RESOURCES CS CHANGES THE TITLE TO HELP ENSURE THAT IMPORTANT PROVISIONS OF THE BILL REMAIN INTACT.

IT ALSO ADDS WILDLIFE HABITAT TO THE ALLOWABLE USES TO WHICH THE LAND MAY BE UTILIZED AFTER THE MINING OPERATION OCCURS.

WITHOUT THIS BILL, THE DIVISION OF MINING HAS NO GUIDELINE TO FOLLOW WHEN WRITING REGULATIONS THAT WILL AFFECT THE MINING INDUSTRY.

ALSO, WE CAN EXPECT MINING WASTE TO BE ADDRESSED IN FEDERAL LAW WITHIN THE NEXT COUPLE OF YEARS. IT IS IMPORTANT THAT WE HAVE OUR PLAN IN PLACE.

FOR THOSE REASONS, IT IS IMPORTANT WE PASS THIS LEGISLATION. IT IS A STARTING POINT TO SET IN PLACE A PLAN WHICH CAN BE FINE TUNED THE NEXT LEGISLATIVE SESSION. WE SIMPLY DO NOT HAVE TIME TO DEVELOP THE LEGISLATION TO ADDRESS EVERY CONCERN ANYONE MAY HAVE.

I URGE YOUR SUPPORT FOR THIS BILL.

⊖ Fiscal note - DNR

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), memo/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)

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)

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

Triennial state program review wanted (17).

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

<u>EPA</u>	<u>WGA TASK FORCE STATES</u>	<u>MINING INDUSTRY</u>	<u>ENVIRONMENTAL GROUPS</u>
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, <u>not</u> 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. WHICH 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 re-mining; don't treat old mining areas as new or require operators to bear entire responsibility for old areas when re-mining. (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)

ALLOW 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 accommodate 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

EPA

EPA includes detailed design/operating criteria for specific types of mine waste units (e.g. impoundments, piles). (1)

No comment on mixing hazardous waste with mine waste. (1)

WGA TASK FORCE STATES

Most of EPA's detailed design and operating requirements for specific types of waste units are removed. (2)

Specific design and operating criteria for heap and dump leach units are included. (2)

The "location specific" criteria are retained to allow for state specific and site specific application. (2)

A "RESPONSE TO DESIGN FAILURE MECHANISM" HAS BEEN ADDED TO SUBPARTS F AND G. (34)

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)

MINING INDUSTRY

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)

No time limits should be set for attaining compliance. (21)

All wetland elements should be deleted (defer to existing programs).(21)

Concerned that floodplain limits would eliminate placer mining. (21)

Most respondents object to the hazardous waste admixture prohibition; they argue that mixing is a valid and acceptable disposal method.

One respondent suggests to only prohibit mixing of hazardous or small quantity generator wastes from off-site unrelated sources.

ENVIRONMENTAL GROUPS

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)

Need a "reponse to design failure" mechanism (which is seen as different from corrective action process); (4)(17)(19)(26)

Want more stringent, nationally defined siting (location specific) criteria (find WGA version too loose).(4)(17)(19)

No comment yet on mixing hazardous wastes with mine wastes.(4)(17)

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

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)

WGA TASK FORCE STATES

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 preducted 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)

MINING INDUSTRY

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).

ENVIRONMENTAL GROUPS

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. (4)

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. (8)(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)

Original sponsor(s): Resources Committee

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

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

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

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

10 CHAPTER 19. RECLAMATION.

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

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

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

17 (d) This chapter does not alter or diminish the authority of
18 another state agency under its laws and regulations.

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

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

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

29 (b) In reviewing a reclamation plan under (a) of this section,

1 the commissioner may consider, after consultation with the commis-
2 sioners of environmental conservation and fish and game and with the
3 concurrence of the miner and landowner, uses to which the land may be
4 put after mining has been completed, including trails, lakes, recrea-
5 tion sites, fish and wildlife enhancement, commercial, and agriculture
6 uses.

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

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

24 (c) If the commissioner determines that a miner has violated or
25 permitted a violation of the approved reclamation plan or has failed
26 to comply with a lawful order of the commissioner, the commissioner
27 shall forfeit the performance bond and deposit the bond in the state-
28 wide bonding pool. The commissioner shall use the reclamation and
29 administrative costs recovered under AS 27.19.070(a) to supplement the

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

6 Sec. 27.19.050. EXEMPTION FOR SMALL OPERATIONS. (a) AS 27.19.-
7 030(a) and 27.19.040 do not apply to a mining operation

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

11 (2) where less than 50,000 cubic yards of gravel or other
12 material are disturbed or removed in any year.

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

15 (1) total acreage and volume of material to be mined;

16 (2) total acreage to be reclaimed; and

17 (3) specific reclamation measures to be used to comply with
18 AS 27.19.020.

19 (c) A miner exempt under (a) of this section shall file an
20 annual reclamation statement with the commissioner disclosing the
21 total acreage and volume of material mined by the operation in the
22 current year, the total acreage reclaimed, and the specific reclama-
23 tion measures used to comply with AS 27.19.020. A miner does not
24 qualify for an exemption under (a) of this section for subsequent
25 operations unless the annual reclamation statement for the previous
26 operation has been filed with the commissioner.

27 (d) A miner exempted from the requirements of AS 27.19.030(a)
28 and 27.19.040 under (a) of this section that fails to reclaim a mining
29 operation to the standards of AS 27.19.020 is required for two

1 consecutive years to conduct each subsequent mining operation, regard-
2 less of size, under an approved reclamation plan and to post a perfor-
3 mance bond.

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

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

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

25 (c) A miner who has forfeited a reclamation bond or has been
26 held liable in a civil action under (a) of this section may conduct
27 future mining operations only after posting a reclamation risk assess-
28 ment fee equal to five times the bond liability for the proposed
29 mining operation. The reclamation assessment fee shall be refunded

1 after two consecutive years of operation consistent with this chapter.

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

4 Sec. 27.19.100. DEFINITIONS. In this chapter,

5 (1) "materials" means sand, gravel, riprap, rock, lime-
6 stone, slate, peat, and other substances from the ground that are not
7 taken through location or leasing;

8 (2) "mined area"

9 (A) means an active site of physical extraction,
10 stockpiling, or the disposal of ore, overburden, tailings, or
11 processed materials, stream diversions, bypasses, and settling
12 ponds;

13 (B) does not include reclaimed areas approved by the
14 commissioner;

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

17 (4) "mining operation"

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

20 (i) a locatable or leasable mineral deposit
21 except oil, gas, or coal;

22 (ii) other materials or of a sand and gravel
23 deposit; and

24 (iii) each use reasonable incident to the develop-
25 ment, extraction, and processing of a locatable or leasable
26 mineral deposit;

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

29 (5) "reclamation plan" means a plan submitted by a miner

1 under regulations adopted by the commissioner for the reclamation of a
2 proposed mining operation;

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

7 (7) "state land" includes the land of the University of
8 Alaska;

9 (8) "unnecessary and undue degradation"

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

14 (B) includes the failure to initiate and complete
15 reasonable reclamation under the reclamation standard of AS 27.-
16 19.020 or an approved reclamation plan under AS 27.19.030(a).

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

23 * Sec. 3. AS 27.05.250 is repealed.

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

26 * Sec. 5. Section 1 of this Act takes effect October 15, 1991.
27
28
29

Reclamation

Sitnasuak Native Corporation

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(907) 443-5296 • (907) 443-2632 • Fax: 443-3063

March 20, 1990

MAR 26 1990

Senator Bettye M. Fahrenkamp
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Honorable Fahrenkamp,

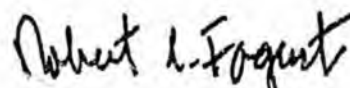
Our village corporation has heard that you may be introducing a bill to the Senate Resources Committee which we are concerned about. The proposed bill is on reclamation.

We were under the impression that the Department of Natural Resources would be developing regulations on reclamation. During the system of developing regulations, the public in general has a right to comment.

If you do propose a reclamation bill, please provide the opportunity of hearings. We would like to review your bill and have an opportunity to comment - prior to the vote by the Senate. We believe others would like this same opportunity.

Thank you for your consideration.

Respectfully,



Robert L. Fagerstrom
President

RLF/IA

cc: Representative Richard Foster - Juneau
Alaska Miners Association - Nome & Anchorage