

Overview
Reclamation
Mining
Regs.

3-21-92

March 5, 1991
SUPPLEMENTAL COMMENTS OF
THE NORTHERN ALASKA ENVIRONMENTAL CENTER
ON THE SECOND DRAFT OF PROPOSED REGULATIONS FOR
SB544, RECLAMATION.

Article 2 RECLAMATION STANDARD

The current draft of the regulations discounts references to waters of the state and therefore is legally not adequate.

Any reclamation standard must, at a minimum, be judicially reviewable with objective enforceable criteria which cover lands *and* waters of the state.

Most states in the west with similar legislation use performance standards, while many in the east use actual technical standards.

The language in the November 6, 1990 draft, while not perfect, was far superior to the current draft in acknowledging the full intent of the statute to cover all phases of mining activity - exploration, development, and mining - and that such activity must be planned and conducted in a manner that prevents unnecessary and undue degradation of land and water resources.

"Stable condition" must be defined to include biological and hydrological function, not just appearance of the stream, banks, and uplands. There is no point in requiring the miner to do reclamation work for appearance sake when functional stabilization might entail less work.

Mining standards were removed from the November draft regulations and should be a part of the final regulatory package. Mining practices and reclamation are inextricably part of the same process; they must be planned and executed concurrently so that one does not preclude the other.

ARTICLE 3. Performance Standards.

Most performance standards were eliminated from the November draft, and this section is now so lacking in specificity as

to be only marginally useful.

Access - The first draft rightly recognized that waste minimization, source reduction and access guidelines (such as the requirement to only drive across frozen, snow covered tundra) result in less reclamation liability and requirements.

Topsoil, stripping, stockpiling, revegetation, and recontouring- These performance standards lie at the heart of the regulations and must be reinstated, with improvements, into subsequent drafts.

Exploration - all phases of mining are covered by the statute. The second draft's exemption of exploration from the regulations should be deleted.

Heap Leach operations - we recommend that the language in the present draft be expanded to include consultation with DEC.

Sand and Gravel - we recommend that this section be entirely re-written following formal agency and public review.

Finally, the loopholes and inconsistencies in the "excavations exempted" and "stockpiles" sections should be rewritten or dropped.

Article 4 - The second draft provides very little guidance on the contents of a reclamation plan, a central requirement of the statute, and must be strengthened. 11 AAC 97.420 provides a loophole that virtually guarantees any mine a ten year approval. This is totally out of step with the life cycle of most operations today. We suggest three years for placer mines.

The section on modification of reclamation should require changing the reclamation plan before changing the reclamation operations.

The second draft drops important language on unanticipated conditions, such as archaeological discovery.

The second draft opens a loophole for miners transferring their operations to escape liability to successor operators.

The section on Interim Mine stabilization is another largely unenforceable loophole. We recommend that the section be rewritten along the lines of the first draft, with a clearly defined needs test and enforceable criteria.

Article 5 - The state of Alaska must not be exempt from bonding requirements, but should "self-bond", with the applicable agency paying into the pool like everyone else.

Article 6 - Violations and penalties. The definition of miner must explicitly include owner, operator, or leaseholder. Non-compliance should preclude operation for three years anywhere in the state. A risk assessment fee should be paid pending resolution of Notice of Violation or appeal.

Article 7 - The language for "Letter of Intent" found in the first draft should be adopted wholesale.

Article 8 - Cooperative agreements
11 AAC 97.800 (3)(c) is unacceptable as it undercuts a state department's ability to implement a portion so as to avoid redundant efforts.

FORUM

Mining Reclamation from a Nevada Perspective:

Molding the Landscape

by Glenn Miller, Ph.D.

In keeping with Clementine's policy of providing an open forum, we offer the following essay by Dr. Glenn Miller. The views and recommendations below are those of Dr. Miller's and not necessarily those of the Mineral Policy Center.

Dr. Miller is an environmental chemist and has been active in environmental protection issues in Nevada for many years. He was intensely involved in the recent enactment of Nevada's new state reclamation law, for which final regulations are now being issued.

The lack of adequate hardrock mine reclamation is one of the major problems on the public lands of Nevada. Reclamation of lands disturbed by hardrock mining is not adequately considered in any federal legislation, and should be treated in a comprehensive manner in any new mining legislation.

In my home state of Nevada, gold and silver mining has undergone a very large expansion in recent years and is now a \$2 billion industry each year. Approximately 100 separate mines are in operation and are creating substantial surface disturbances. The methods used to reclaim those lands will affect people for centuries. Great care must be taken when making land-use decisions which preclude productive uses of mined land for those time frames, and new federal legislation is required to regulate long-term mining land disturbances.

RECLAMATION DEFINED

Reclamation is composed of three primary issues: environmental safety, land productivity, and aesthetics.

— **Environmental safety:** Any reclamation plan must ensure physical and chemical safety for humans and wildlife. The obvious physical safety problems of falling into 500 foot drops in an area that is otherwise comprised of gentle hills must be precluded. Less visible, but perhaps more important, are the chemical hazards associated with mining. Mercury used during Comstock mining days still contaminates fish in the Carson River of Nevada, and acids and toxic metals from past mining in Montana and Colorado have

destroyed many miles of fishing streams. Current precious metal mining has its own set of chemical problems, from heavy metal residues and cyanide solution used in extraction processes. Any reclamation effort should preclude release of any of these toxic substances to those levels that existed prior to mining.

— **Land productivity:** Following reclamation, the land should be able to support the same level of productive uses as existed prior to mining, including wildlife, agriculture, and recreation. Return of lands to productivity will not happen without effort, particularly in the arid west. Many disturbances created over 100 years ago remain barren waste rock dumps without useful vegetation. Careful management of topsoil and encouragement of plant growth is essential.

— **Aesthetics:** Dumps and other land carvings should be recontoured to conform to the surrounding land. Flattopped, angle-of-repose dumps should be recontoured to an aesthetically pleasing form and integrated into the natural topography. Too often the mining engineers' opinion of what is visually acceptable is based more on economics than visual quality, and has resulted in large-scale downright ugliness. Yet it is the mining engineer who usually determines the final shape of mined public lands, and not a landscape architect. None of the major hardrock mines in Nevada today has a landscape architect on its senior reclamation staff.

MINING IMPACTS

Impacts from mining activity occur in all phases of mining, beginning with exploration, continuing with mine development and creation of pits and waste rock dumps, and finally processing of ore which results in leached heaps and tailings impoundments. The type of reclamation required for each phase of mining varies on a site-specific basis, but any new legislation addressing reclamation must give much clearer policy direction than presently exists. New legislation must encourage creative approaches to reclamation, and require the agencies to approve only those mining plans

that protect the public resources.

For example, exploration impacts generally consist of a cobweb of roads and drill pads. These roads often switchback up a mountain, cross streams, and create channels for erosion. Much of Nevada's surface area is scarred by such exploration damage, which is clearly apparent when flying over the state. However, with proper planning and regulatory enforcement, these impacts can either be avoided or completely reclaimed to the original contour of the land. Unless the agency has a clear reason to retain a road, exploration scars can and should be completely eliminated. Legislation can explicitly require restoration of exploration impacts back to the original condition.

WASTE ROCK DUMPS AND PITS

For waste rock dumps and pits, reclamation should consist of recontouring disturbances into the natural landforms. Refilling of pits is a very visual issue which receives a large amount of public attention. Although pit refilling is perhaps not the most important issue of reclamation, the sheer magnitude of some of the pits deserves comment.

If present federal land management practices are followed, it is probable that Nevada will have over 200 major pit mines within the next 20 years that will be permanent scars on the landscape. Most of the pits being created in Nevada will exist for thousands of years. These impacts are similar to the scars left by meteorites striking the Earth, since the depth and amount of earth moves are in many cases comparable. Some of the pits along the Carlin and Getchel trends in Nevada will plunge over 1000 feet below the surrounding landscape. The Barrick Goldstrike pit will be 1400 feet deep and require removal of a billion tons of rock. When water infiltrates the pit over several decades, it will form the largest manmade lake completely in Nevada. This stagnant body of water will be unlike any in the state and will permanently affect the hydrologic characteristics of that groundwater basin. Other nearby mines promise to be nearly as large and may, in fact, connect hydrologically with the Barrick Pit.

These scars on the landscape are intrinsically undesirable and the burden should be placed on the industry to demonstrate why they should not be refilled. There are many cases where complete restoration of the landscape should be required to protect other public values. Other cases, where resources conflicts may not be as great, can perhaps be treated differently. However, when pits

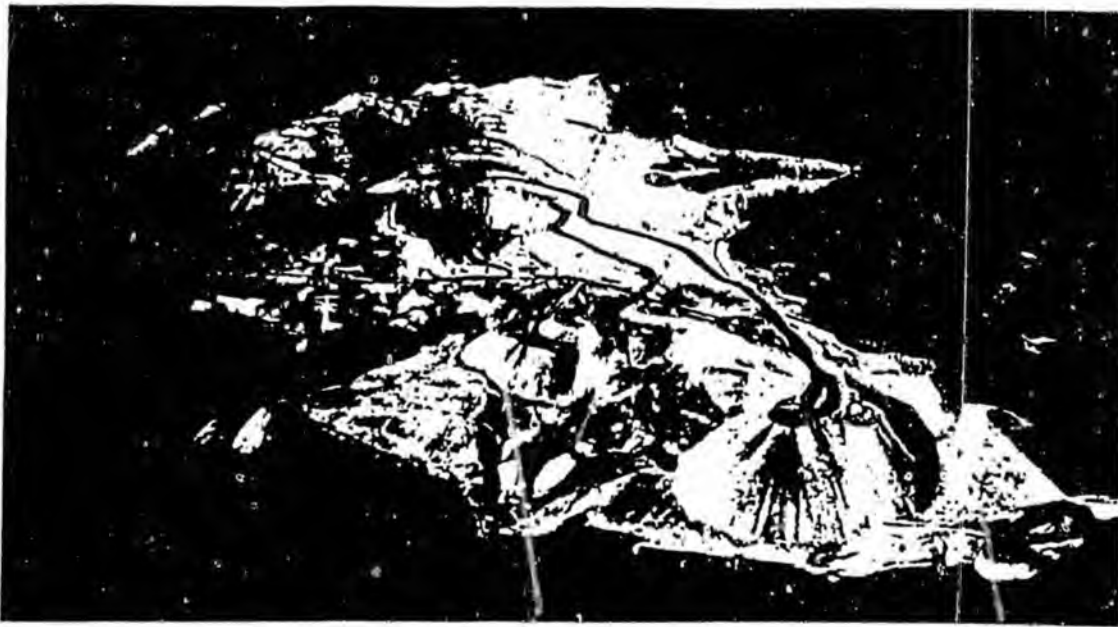
can be developed sequentially and are in ably close proximity, they should be refilled and federal agencies should be given dire require refilling of nearby existing pits with excavated rock from new mines. Complete refilling of small pits may be appropriate, and successful examples of small pits exist in Nevada. Currently, the agency is unwilling to consider pit refilling as a native in the many documents I have reviewed even though they have that authority under 3809 regulations.

Over the long term, the land is always more than the gold, and we must wonder what future generations will look back on us for. Why we didn't require those who gained the land to also restore the land.

More important, however, is the question of what happens to all of the rock that is taken out of the pit. When a billion tons of rock is removed, that rock must be placed somewhere. In many cases, the rock is simply dumped in nearby



Angle-of-Repouse: The ridges in the foreground are composed entirely of waste rock from the Rabbit Ears gold mine, north of Winnemucca, Nevada. Such angle-of-repose dumps are usually unreclaimable and become permanent unproductive land and visual problems.



Golden Sunlight Mine: Plans to double the size of the mining operation in Montana are being opposed by environmentalists because there is no adequate reclamation plan and the mine's impacts on water resources have not been considered. Photo: Daniel M. Horowitz

and left as waste rock or tailings. This geologic material has essentially no productive potential, and waste dumps from the Comstock era over 100 years ago remain devoid of vegetation today.

These disturbances are usually the ones that have the most impact on safety, productivity, and aesthetics of the resulting disturbed land. Reclaiming dumps, heaps, tailings, and other surface disturbances is where the most focus should be placed during reclamation planning and implementation. If the rock is not going to be put back in the pits, it should be placed in areas where it will be stable and not adversely affect other environmental values.

Too often in Nevada rock is simply dumped down the side of the mountain. These long angle-of-repose dumps are usually unreclaimable and create permanent unproductive land and visual problems. An equally unacceptable option is to create long, flat-topped dumps with angle-of-repose sides that are nearly as difficult to reclaim. As indicated above, planning for reclamation is fundamental for precluding the problems associated with misplaced dumps.

RESTORING VEGETATION

Once recontouring of the disturbance is accomplished, establishing a productive soil is critical. Conditions for establishing vegetation in the Intermountain West are generally harsh, and

substantial effort and planning are required for developing a productive topsoil to allow revegetation. Industry often argues that topsoil is not available and hence they should be able to leave the land in a low productivity condition. While there are obvious difficulties in revegetating arid lands, it is simply not acceptable to leave the land barren. Various options do exist for developing topsoil, and the industry needs to look seriously at those issues.

Off-site mitigation is an issue which should also be considered. If a resource is lost due to mining, the company should be required to mitigate and or compensate that loss by enhancing environmental quality somewhere else. Examples include reclamation of other historically disturbed areas, repair of streams damaged by overgrazing, or purchase and transfer of lands into public ownership which have high public values.

RECLAMATION DONE RIGHT

Several examples of excellent reclamation exist in Nevada. The best I have seen is the Pinson mine north of Winnemucca. This group has created rolling hills of waste dumps that are indistinguishable from surrounding hills, and have been revegetated using soils that support excellent plant growth. The mine is still active, but the operators are performing reclamation concurrently with mining. The characteristic that sets this

mine apart is the realization that reclamation is an intrinsic part of mining which must be considered throughout the development of the mine, rather than an add-on at the end.

BLM's FLPMA OBLIGATION

I also want to comment on BLM's regulations that deal with mining [Code of Federal Regulations Part 43, Section 3809, the "3809 regulations"]. The Federal Land Policy and Management Act of 1976 (FLPMA) requires, in section 302(b) that, "the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." Reasonable interpretation of this clause would mean that "best available technology" should be used. Best available technology would include clearly defined recontouring and revegetation.

Use of the best available technology is not the interpretation that BLM is taking of the 3809 regulations. In fact, the BLM interprets this clause to mean some degradation is due and necessary. The 3809 regulations set a reclamation standard for what had historically been the level of disturbance for "normal" mining. This level of disturbance was not acceptable when these regulations were implemented in 1982, and it is not acceptable now. One can argue that the BLM interprets the 1872 Mining Law as having precedence over the Federal Land Policy and Management Act of 1976. However, this agency interpretation has no real basis in law.

One of the problems with BLM's management of hardrock mining in Nevada is provided by a recent example of an Environmental Assessment on a major expansion of an existing mine south of Battle Mountain. Because of BLM staff limitations, most environmental documents are being prepared by consultants who are selected and paid by the mining company. In this example the consultant was hired by the company to prepare the Environmental Assessment. BLM commented on the EA, the consultants made comments to BLM's draft, and the resulting EA was released to the public as a BLM document. At the very least, the perception exists that the BLM is abdicating its environmental duties to a company-paid consultant.

From an environmentalist viewpoint, the BLM has a track record of not requiring acceptable reclamation nor requiring protection of public values from the impacts of mining. As indicated above, the reasons for this are the lack of a clear national policy and the lack of sufficient agency resources to accomplish this task.

RECOMMENDATIONS

Reform of the 1872 Mining Law must include comprehensive requirements for environmental protection and address the following two issues. First, any new legislative program must be very specific about reclamation and establish clear reclamation goals and mandate workable methods to achieve those goals. Second, any new legislation should require that mining companies pay permit fees which will cover the total costs of environmental evaluation directly to the responsible agency. The BLM can then hire additional staff or outside consultants who will be accountable to the federal agency. The current practice in which mining companies hire their own consultants to prepare public agency Environmental Assessments must be ended. Those consulting firms are responsive to the people paying the consulting bill, not the public.

Finally, the agencies must have discretion to deny mining on public lands when other public values outweigh mining. Some sites simply cannot be reclaimed and the only way to prevent future problems is to prohibit mining. I became involved with mining over 10 years ago because of a proposal to put a road up a small stream in what is now part of the National Wilderness Preservation System. The miner illegally bulldozed a road up the river last summer but up until then, he had been kept out of the canyon only because of extensive efforts by the local conservation community. The Forest Service should have been able to evaluate the relative public values and have discretion to exclude him on that basis.

Although mineral wealth is where you find it, the same can be said for fishing, hunting, scenery, and solitude. Until the federal agencies are allowed to weigh the relative values other than mining on an equal plane, those valuable places will be threatened. The land-use planning process is critically important, and the highest and best use for each piece of land should be determined in the plans.

I agree that much land can be left open to mining under reasonable reclamation requirements. Other land may be available for mining but may require complete restoration of the land, including refilling of the pits. However, other public land with high scenic, recreational, agricultural, or wildlife values should be completely protected if mining would cause those values to be lost. The public good will only be realized when agencies are required to develop land-use plans which consider all public values. *

11 AAC is amended by adding a new chapter to read:

CHAPTER 97. MINING RECLAMATION.

Article

1. Applicability (11 AAC 97.100)
2. Reclamation Standard (11 AAC 97.200)
3. Reclamation Performance Standards (11 AAC 97.300 -- 11 AAC 97.340)
4. Reclamation Plan (11 AAC 97.400 -- 11 AAC 97.450)
5. Reclamation Bonding (11 AAC 97.500 -- 11 AAC 97.555)
6. Violations and Penalties (11 AAC 97.600 -- 11 AAC 97.640)
7. Exemptions for Small Operations (11 AAC 97.700 -- 11 AAC 97.720)
8. Cooperative Management Agreements (11 AAC 97.800)
9. Miscellaneous Provisions (11 AAC 97.900)
10. Definitions (11 AAC 97.990)

ARTICLE 1. APPLICABILITY.

Section

100. Applicability

ARTICLE 2. RECLAMATION STANDARD.

Section

200. Reclamation standard

ARTICLE 3. RECLAMATION PERFORMANCE STANDARDS.

Section

300. Land reclamation performance standards
310. Disposal of buildings, structures, and debris on state land
320. Underground mines
330. Heap leach operations
340. Sand, gravel, and other materials

ARTICLE 4. RECLAMATION PLAN.

Section

400. Reclamation plan approval
410. Reclamation plan
420. Term and stipulations
430. Modification of reclamation plan and site inspection by the commissioner
440. Successor operator
450. Interim mine stabilization

ARTICLE 5. RECLAMATION BONDING.

Section

500. Bonding required
505. Surety bond

- 510. Personal bond and letter of credit or certificate of deposit
- 515. Amount of bond
- 520. Bonding pool
- 525. Liability exceeding bond amount; bonding pool deposit
- 530. Increase in bond or bonding pool deposit
- 535. Release or decrease of bond, and refund of bonding pool deposit
- 540. Use of bonding pool
- 545. Interest accruing on bonding pool
- 550. Assignment
- 555. Exceptions to bonding requirement

ARTICLE 6. VIOLATIONS AND PENALTIES.

Section

- 600. Failure to file reclamation statement
- 610. Failure to meet requirements or reclaim small operation
- 620. Violation of reclamation plan
- 630. Administrative determination of violation
- 640. Reclamation risk assessment fee

ARTICLE 7. EXEMPTIONS FOR SMALL OPERATIONS.

Section

- 700. Exemption for small operations
- 710. Letter of intent
- 720. Annual reclamation statement

ARTICLE 8. COOPERATIVE MANAGEMENT AGREEMENTS.

Section

- 800. Cooperative agreements

ARTICLE 9. MISCELLANEOUS PROVISIONS.

Section

- 900. Miscellaneous provisions

ARTICLE 10. DEFINITIONS.

Section

- 990. Definitions

ARTICLE 1. APPLICABILITY..

Section

- 100. Applicability

11 AAC 97.100. **APPLICABILITY.** (a) This chapter deals with the approval of reclamation plans, reclamation bonding, and enforcement of reclamation requirements under AS 27.19.

(b) AS 27.19.020 sets the minimum standard for mining reclamation in Alaska, without regard to land ownership. The commissioner has no authority under this chapter to require reclamation to a higher standard than that set by AS 27.19.020. Nor does the commissioner have any authority to waive the requirements of AS 27.19.020.

(c) Under its own regulatory or proprietary authority, a state or federal agency, state corporation, the University of Alaska, a municipality, or a private land owner may establish and enforce additional requirements or higher standards for reclamation. Compliance with this chapter does not waive or excuse compliance with those other applicable requirements or standards.

(d) This chapter does not apply to:

(1) chemical neutralization, detoxification, or clean-up of hazardous substances associated with mining operations;

(2) surface coal mining or related operations regulated under AS 27.21; or

(3) a previously mined area that was part of a mining operation activity occurring before October 15, 1991. However, mining activity that disturbs a previously mined area after October 14, 1991 must be reclaimed to the standards of AS 27.19 and this chapter. If only a portion of the previously mined area is disturbed, this chapter applies only to that disturbed portion. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.010
AS 27.19.100

ARTICLE 2. RECLAMATION STANDARD.

Section
200. Reclamation standard

11 AAC 97.200. RECLAMATION STANDARD. AS 27.19.020 sets the minimum standard¹ for mining reclamation in Alaska, without

¹A mining operation shall be conducted in a manner that prevents undue and unnecessary degradation of land and water resources and the mining operation shall be reclaimed as contemporaneously as practicable with the mining operation to leave the site in a stable condition." "Stable condition" is defined by AS 27.19.100(7) to mean "the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural

regard to land ownership. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.010
AS 27.19.020
AS 27.19.100

ARTICLE 3. RECLAMATION PERFORMANCE STANDARDS.

Section

- 300. Land reclamation performance standards
- 310. Disposal of buildings, structures, and debris on state land
- 320. Underground mines
- 330. Heap leach operations
- 340. Sand, gravel, and other materials

11 AAC 97.300. LAND RECLAMATION PERFORMANCE STANDARDS. (a)
The surface of reclaimed ground must be left in a condition that will promote natural revegetation. Measures taken to promote natural revegetation may include redistribution of topsoil or applications of fines, where available, if the natural composition, texture, or porosity of the surface materials is not conducive to natural revegetation. However,

(1) a pit wall is exempt from this requirement if the steepness of the wall makes it impractical or impossible to accomplish;

(2) topsoil and fines must not be redistributed or spread over an active floodplain.

(b) The surface contours of unconsolidated material after reclamation is complete must be generally consistent with adjacent terrain features. Measures taken to accomplish this result may include backfilling, contouring, and grading. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.020
AS 27.19.100

11 AAC 97.310. DISPOSAL OF BUILDINGS, STRUCTURES, AND DEBRIS ON STATE LAND. Buildings and structures constructed, used, or improved by the operator on state land must be removed, dismantled, or otherwise properly disposed of unless the land manager authorizes the buildings and structures to stay. All

processes."

scrap iron, equipment, tools, piping, hardware, and general construction debris on state land must be removed or otherwise properly disposed of. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.020
AS 27.19.100

11 AAC 97.320. UNDERGROUND MINES. The openings of all shafts, adits, and air vents to underground mine workings must be stabilized and properly sealed at closure to ensure protection of the public, wildlife, and the environment. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.020
AS 27.19.100

11 AAC 97.330. HEAP LEACH OPERATIONS. Once neutralization of heaps, pads, ponds, and other such facilities has been approved by the appropriate permitting authority, the site must be reclaimed to the standards of AS 27.19 and this chapter. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.020
AS 27.19.100

11 AAC 97.340. SAND, GRAVEL, AND OTHER MATERIALS. (a) Gravel used for logging. This subsection applies to the reclamation of sand, gravel, or other material extraction sites used for a logging operation regulated under 11 AAC 95, Forest Resources and Practices.

(1) If the mining operation will disturb less than five acres and remove less than 50,000 cubic yards of materials,

(A) submission of a plan of operations under AS 41.17.090, or compliance with an adopted site-specific forest land use plan for an operation on state land, satisfies the requirement of AS 27.19.050(b) for a letter of intent;

(B) inspection under 11 AAC 95 satisfies the requirement of AS 27.19.050(c) for an annual reclamation statement; and

(C) compliance with 11 AAC 95.242² fulfills all other requirements of AS 27.19 and this chapter.

(2) If the mining operation will disturb five or more acres, or remove 50,000 cubic yards or more of materials, the miner must satisfy the bonding requirement of AS 27.19.040 in one of the ways set out in 11 AAC 97.500 -- 11 AAC 97.555. However,

(A) submission of a plan of operations under AS 41.17.090, or compliance with an adopted site-specific forest land use plan for an operation on state land, satisfies the requirement of AS 27.19.030 for a reclamation plan;

(B) this subparagraph constitutes the commissioner's prior approval of that plan; and

(C) compliance with 11 AAC 95.242 fulfills all other requirements of AS 27.19 and this chapter.

(b) **Gravel used for other mines.** If the primary use of the extracted materials is to assist another mining operation regulated under this chapter (such as gravel to build a road to a lode mine), the miner is encouraged to cover reclamation of the material operation in the letter of intent or reclamation plan for the primary mine so that no duplication of effort is necessary.

(c) **Excavations exempted.** If materials are extracted primarily to get them out of the way (such as when preparing a building site or road cut, dredging a channel, or drilling an access tunnel), the requirements of this chapter do not apply even if the materials are sold commercially or used as fill.

(d) **Stockpiles.** The requirements of this chapter do not apply to materials stockpiled at a location other than the mined area, nor to materials stockpiled at a mined area where no mining has taken place since October 14, 1991. For materials stockpiled at an active mine site, reclamation is not required until the

²This citation is subject to change, as the draft Forest Practices Act regulations have not yet reached the public hearing stage. The standards in the current draft of the Forest Practices regulations for material extraction, soil disposal, and rehabilitation of the extraction site are more stringent than the requirements of 11 AAC 97. Thus compliance with the Forest Practices Act regulations (assuming that the final version is similar to the present draft) will be more than adequate to satisfy the reclamation standard in AS 27.19.020. However, some procedural requirements that would be mandatory under AS 27.19 (prior approval, bond) are absent. In most cases, a gravel pit used to build a logging road will be below the 50,000-cubic-yard threshold at which AS 27.19 requires an approval and a bond.

stockpile is used up. In the interim, such a stockpile must be located where it will not erode into a water body.

(e) **Continuous use; intermittent use of a material site.** If mining will occur continuously until a material site or one cell of a material site is exhausted or abandoned, reclamation as required by 11 AAC 97.300, 11 AAC 97.310, and this section must take place immediately after the material site or cell is mined. However, the commissioner will postpone the reclamation obligation if the landowner satisfies the commissioner that contemporaneous reclamation is impracticable, because the landowner plans to allow intermittent use of the material site by one or more miners over a several-year period. To make this showing, the landowner must submit a reclamation plan for the entire material site, including stockpiles, and must assume the obligation to comply with 11 AAC 97.300, 11 AAC 97.310, and this section immediately after the material site is ultimately exhausted or abandoned. In the meantime, each miner may recover his or her bond at the completion of that miner's operations by leaving the site in a condition that will prevent off-site environmental degradation. The landowner is not required to file a bond.³

(f) **Gravel bailing from riverbeds.** This subsection applies to the extraction of materials from the bed of a watercourse. The miner shall maintain or reestablish a stable bed and bank profile after the extraction. A stable bed and bank profile is one that will not alter river currents or change erosion and deposition patterns downstream. In reviewing a reclamation plan for such an operation, the commissioner will use hydrology information available to the department.

(g) **Gravel bailing from water bodies generally.** If the extraction site is a water body or the site is to be flooded after mining, the requirement of 11 AAC 97.300 to apply topsoil or other fine material as a growing medium applies only to the banks.

(h) **Peat and topsoil mines.** A reclamation plan for a mine that produces peat, topsoil, or similar materials must provide for at least two inches of a suitable growing medium to be left on the mined land. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.020
AS 27.19.100

ARTICLE 4. RECLAMATION PLAN.

³It may not be possible to exempt the landowner from the bond requirement.

Section

- 400. Reclamation plan approval
- 410. Reclamation plan
- 420. Term and stipulations
- 430. Modification of reclamation plan and site inspection by the commissioner
- 440. Successor operator
- 450. Interim mine stabilization

11 AAC 97.400. RECLAMATION PLAN APPROVAL. (a) A proposed reclamation plan must be submitted to the commissioner for approval a minimum of 60 days before the proposed start of mining activities. The proposed plan must be correct and complete to the best of the miner's knowledge and be signed and dated by the miner or the miner's designee.

(b) Reclamation plans must be submitted to the department of natural resources or the appropriate management agency subject to cooperative management agreements authorized in 11 AAC 97.800.

(c) The commissioner will notify an applicant within 30 days after receiving a proposed plan if the commissioner determines: (1) that the plan is approved; (2) that no plan is required; (3) that the proposed plan is incomplete and additional information is needed in order to conduct the plan review; or (4), for a mine on state, federal, or municipal land, that a landowner, a department with consultation rights, or the commissioner proposes that the miner reclaim the land to a land use set out in AS 27.19.030(b). A proposed plan or plan amendment is considered complete, and the reclamation standard to be used is AS 27.19.020, unless the applicant is otherwise notified within 30 days after the commissioner receives it.

(d) If a proposed plan is found to be incomplete under (c) of this section, the commissioner will notify the applicant that review is suspended pending receipt of the requested information. Failure to submit the requested information within 30 days after notification, or within a longer period allowed by the commissioner at the request of the applicant, constitutes withdrawal of the proposed plan from consideration. After all of the requested information is submitted, the 30-day review schedule resumes at the step it had reached before the suspension, except that the commissioner will have no less than 10 days to review the requested information.

(e) The commissioner will not issue the approved plan or plan amendment until the miner has satisfied the bond requirement under 11 AAC 97.500 -- 11 AAC 97.555.

(f) Lack of response by the commissioner within the time schedule set out in (c) or (d) of this section constitutes interim approval by the commissioner. If the commissioner does not act within the time schedule set out in (c) or (d) of this section, the applicant may, after submitting the reclamation bond in accordance with 11 AAC 97.500 -- 11 AAC 97.555, proceed with the operation subject to the reclamation standards set out in AS 27.19.020 and 11 AAC 97.300 -- 11 AAC 97.340 and the provisions of the permit or amendment when issued.

(g) If the commissioner determines, in his or her discretion, that additional time is needed because of the size or complexity of the operation, the commissioner will, with written notice to the applicant, extend the period described in (c) or (d) of this section and establish a separate review schedule.

(h) If a state or federal land management agency has entered into a cooperative management agreement with the commissioner to implement all or part of this chapter, the application review schedule will comply with that agency's applicable review schedule. If the operation requires an individual project review to determine its consistency with the Alaska Coastal Management Program, the application review schedule will comply with 6 AAC 50.

(i) The commissioner has no authority to impose an alternate reclamation standard under AS 27.19.030(b) on private land. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.030
AS 27.19.100

11 AAC 97.410. RECLAMATION PLAN. Before starting a mining operation subject to AS 27.19, or if a miner otherwise exempted wishes to use the provisions of AS 27.19 and this chapter, the miner must submit a plan for the reclamation of the mining operation as defined in AS 27.19.100(4) and this chapter. A reclamation plan not submitted on a form provided by the commissioner must include the following:

(1) the names, addresses, and telephone numbers of the operator who will be responsible for the mining operation, owners, lessees, and holders of record;

(2) a list of all properties, mining locations, or leases on which activity is to be conducted, giving the ADL or BLM casefile number if on state or federal land, and the legal description of the land on which reclamation will be conducted,

described by legal subdivision, section, quarter-section, township, range, and meridian;

(3) if on private land, a signed and notarized statement by the landowner that the operator has permission to mine the area (except that the landowner's permission is not required if the mining operation is on a prior federal mining location and the private landowner received title subject to that location under sec. 22(b) of PL 92-203, the Alaska Native Claims Settlement Act); in addition, if the private landowner believes that reclamation to the standard set out in AS 27.19.020 is not feasible because the landowner intends to use the land after mining for a purpose incompatible with natural revegetation, the landowner is encouraged to provide this information as part of the statement;

(4) a map (U.S. Geological Survey topographic map or the equivalent) at a scale no smaller than 1:63,360 (inch to the mile) showing the general location of the area to be mined and indicating the specific property to be worked;

(5) a diagram of the reclamation site that states the number of acres to be mined for each year covered by the plan and that shows the location corners or property boundaries and their relationship to the reclamation work, the tailings or soil disposal areas, and the areas otherwise to be affected by the operation; the information furnished must be reasonably appropriate to the scale and complexity of the mine;

(6) the estimated number of yards or tons of overburden or waste and ore to be mined for each year covered by the plan;

(7) a description of the reclamation measures that will be taken to comply with AS 27.19.020 and 11 AAC 97.300 -- 11 AAC 97.340, including the equipment to be used, and a time schedule for the reclamation activity. However, a miner on state, federal, or municipal land may propose to reclaim the land for one of the uses set out in AS 27.19.030(b) instead of AS 27.19.020. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SIA 1991
AS 27.19.030
AS 27.19.100

11 AAC 97.420. TERMS AND STIPULATIONS. (a) Approval of a reclamation plan will be granted for any term not to exceed ten years and is renewable upon request and demonstration that the miner is in compliance with the approved reclamation plan and

requirements of AS 27.19. The commissioner may condition approval of the reclamation plan upon inclusion of additional stipulations specific to the operation to specify monitoring, reporting, and reclamation requirements or performance standards.

(b) Each approval or amendment issued is subject to the provisions of AS 27.19.020 and 11 AAC 97.300 -- 11 AAC 97.340, and to any other reasonable provisions or stipulations the commissioner determines necessary to comply with the requirements of AS 27.19 and this chapter.

(c) A miner on state, federal, or municipal land whose reclamation plan did not propose reclamation for a land use set out in AS 27.19.030(b) has a right of concurrence before final approval of the reclamation plan if

(1) the commissioner proposes to require reclamation for a land use set out in AS 27.19.030(b), and

(2) reclamation for the proposed use would cost the miner more, in time, equipment, or material, than reclamation to the standard required by AS 27.19.020. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.030
AS 27.19.100

11 AAC 97.430. MODIFICATION OF RECLAMATION PLAN AND SITE INSPECTION BY THE COMMISSIONER. (a) If a modification of the approved reclamation plan is necessary because of changing product prices, economics, financing, or unanticipated conditions, it is the responsibility of the miner to ensure that the approved reclamation plan corresponds with the actual reclamation being done and to obtain approval of amendments as they become necessary.

(b) Until completion of the mining activity, a miner shall keep a copy of the approved reclamation plan, including any approved amendments, at the field office for onsite operations, and shall make the plan available upon request by an authorized representative of the commissioner.

(c) The miner shall allow access to the mine site to an authorized representative of the commissioner at reasonable times for the purpose of inspecting or monitoring compliance with the reclamation plan. The miner shall furnish whatever information the representative reasonably requires for monitoring and inspection purposes. (Eff. / /91, Register

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.030
AS 27.19.100

11 AAC 97.440. **SUCCESSOR OPERATOR.** When interest in a mining operation transfers from one miner to another by sale, assignment, lease, or otherwise before completion of reclamation and approval by the commissioner, the operator must submit an amendment to the approved reclamation plan as provided in 11 AAC 97.430. The commissioner will transfer the approved reclamation plan to the successor and release the first miner from the reclamation plan obligations of the operation, provided that

(1) the operation is in compliance with the reclamation plan or the successor agrees to bring the operation into compliance,

(2) the successor assumes all responsibility and liability for the approved reclamation plan, and

(3) the bonding requirements are met. (Eff. / /91,
Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.030
AS 27.19.100

11 AAC 97.450. **INTERIM MINE STABILIZATION.** (a) If economic conditions or unanticipated conditions make it unprofitable to continue mining as originally planned, the miner shall apply for an amendment to the approved reclamation plan for suspension of operations and interim mine stabilization. The period will not exceed five years.

(b) A mined area approved for interim mine stabilization must be left in a condition that will prevent environmental degradation off the mine site.

(c) An approved interim mine stabilization plan may be renewed upon application to and approval of the commissioner. The miner's written application for renewal must contain supportive evidence for the continuing suspension and information demonstrating that the interim mine stabilization and monitoring requirements, if applicable, have been and are being satisfied.

(d) The reclamation bond will continue and be held in effect as if the mining operation were not suspended. If the miner participates in the statewide bonding pool, the deposit remains in the bonding pool and the annual nonrefundable fee must continue to

be paid. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.030
AS 27.19.040
AS 27.19.100

ARTICLE 5. RECLAMATION BONDING.

Section

- 500. Bonding required
- 505. Surety bond
- 510. Personal bond and letter of credit or certificate of deposit
- 515. Acreage to be bonded
- 520. Amount of bond
- 525. Bonding pool
- 530. Liability exceeding bond amount; bonding pool deposit
- 535. Increase in bond or bonding pool deposit
- 540. Release or decrease of bond, and refund of bonding pool deposit
- 545. Interest; use of bonding pool
- 550. Assignment
- 555. Exceptions to bonding requirement

11 AAC 97.500. BONDING REQUIRED. A miner who is not exempt under 11 AAC 97.700 or 11 AAC 97.555 shall post a performance bond consisting of either (1) a surety bond, or (2) a personal bond accompanied by a letter of credit or by a certificate of deposit, to ensure complete compliance with AS 27.19, this chapter, and the approved reclamation plan. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.040
AS 27.19.100

11 AAC 97.505. SURETY BOND. A surety bond must

(1) be executed by a corporate surety approved and authorized to do business in this state;

(2) be submitted on a form prescribed by the commissioner, and

(3) remain in effect until the reclamation of all land covered by the bond is completed to the standard of AS 27.19 and this chapter, and its release is approved by the commissioner. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991

AS 27.19.040
AS 27.19.100

11 AAC 97.510. **PERSONAL BOND AND LETTER OF CREDIT OR CERTIFICATE OF DEPOSIT.** (a) A personal bond furnished on a form prescribed by the commissioner must be accompanied by an irrevocable letter of credit issued by a bank organized to do business in the United States or by a certificate of deposit in the amount of the bond issued in sole favor of the department by a bank authorized to do business in this state.

(b) A personal bond and letter of credit or certificate of deposit must remain in effect until the reclamation of all lands covered by the bond is completed to the standard of AS 27.19 and this chapter and their release is approved by the commissioner. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.040
AS 27.19.100

11 AAC 97.515. **ACREAGE TO BE BONDED.** (a) For the 1991 reclamation year, the acreage subject to the bond requirement is the total acreage mined or to be mined between October 14, 1991, and December 31, 1991, that has not yet been reclaimed to the standards of AS 27.19, this chapter, and the approved reclamation plan.

(b) Acreage that must be bonded before an approval of a reclamation plan becomes effective includes all acres to be mined during that calendar year, plus acreage from previous years for which reclamation must be carried out under this chapter.

(c) After a multi-year reclamation plan is in effect, the bond amount must be adjusted as of the first day of each calendar year to cover all acres to be mined during that calendar year, plus acreage from previous years that has not yet been reclaimed.

(d) Any previously reclaimed acreage that is to be mined again is subject to the bond requirement.

(e) In calculating the number of acres that must be bonded, the miner must round up to the next whole number. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.040
AS 27.19.100

11 AAC 97.520. AMOUNT OF BOND. (a) The amount of the performance bond required by 11 AAC 97.500 is \$750 per acre, or the reduced per-acre amount determined by the commissioner under (b) of this section, multiplied by the acreage total determined under 11 AAC 97.515.

(b) If the reasonable and probable costs of reclamation under an approved reclamation plan are less than \$750 per area, the commissioner will reduce the amount of the bond from \$750 per acre mined to the amount reasonably necessary to ensure faithful performance of the requirements of this chapter and the approved reclamation plan. In evaluating an application for reduction of the bond amount, the commissioner will consider the nature of the surface, its uses, improvements in the vicinity of the land, and the degree of risk involved in the mining operation, as well as other relevant factors.

(c) A miner may, at his or her discretion, provide a bond for more than the amount required by (a) and (b) of this section. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.100

11 AAC 97.525. BONDING POOL. (a) A statewide bonding pool has been established by the department for mining operations subject to AS 27.19. Instead of posting an individual performance bond, a miner may participate in the bonding pool.

(b) To participate in the bonding pool, the miner must pay into the pool a deposit of fifteen percent of the total bond amount determined under 11 AAC 97.520(a). The miner must also pay into the bonding pool an annual nonrefundable fee of five percent of the total bond amount determined under 11 AAC 97.520(a). These percentages are the same for all operations. In 1996 and at five-year intervals after that time, the commissioner will consider amending this subsection to change one or both of these percentages, based on the purpose of the bonding pool, the history of deposits and fees in the bonding pool, the amount then in the bonding pool, anticipated deposits and fees, and public comments, as well as other relevant factors. If the commissioner proposes to amend the regulation, notice will be given as required by AS 44.62.190, the Administrative Procedure Act. If the commissioner does not propose to amend the regulation, the commissioner will solicit public comment by publication of notice in a newspaper of general or statewide circulation and will allow at least 30 days for public comment.

(c) Except for an operation whose bond amount is reduced

below \$750 per acre under 11 AAC 97.515(b), the percentages set by (b) of this section result in a bonding pool deposit of \$112.50 per acre and an annual nonrefundable fee of \$37.50.

(d) The bonding pool deposit and first annual nonrefundable fee must be paid before the commissioner issues the approved reclamation plan. The annual nonrefundable fee for the first year of a reclamation plan may not be prorated or reduced. Subsequent annual nonrefundable fees for a multi-year plan are due on the first business day of each calendar year. If the amount of acreage requiring reclamation varies from year to year under the plan, the miner is responsible for making the appropriate payment (including an increased deposit where required) each year. If the acreage decreases, the miner may apply for a refund of the excess deposit under 11 AAC 97.540. The miner must pay the annual nonrefundable fee, and the increased deposit where required by the reclamation plan, without billing from the department. A late payment accrues interest at the rate of 10.5% per annum. The commissioner will, in his or her discretion, suspend approval of the reclamation plan until full payment, including interest, is received. Interest is deposited in the bonding pool and is nonrefundable.

(d) If the commissioner allows a miner who is subject to the bonding requirement of AS 27.21.160 to participate in the bonding pool and the miner defaults, the bonding pool may only be used for reclamation to the standard of AS 27.19. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.040
AS 27.19.100

11 AAC 97.530. LIABILITY EXCEEDING BOND AMOUNT; BONDING POOL DEPOSIT. The posting of a performance bond, or participation in the bonding pool, does not limit the department's right to seek further compensation for damages or for a violation of AS 27.19, this chapter, or the approved reclamation plan. The miner is liable for the full costs of reclamation to the standards of AS 27.19, this chapter, and the approved reclamation plan, regardless of the amount of the reclamation bond or bonding pool deposit and fees. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.040
AS 27.19.100

11 AAC 97.535. INCREASE IN BOND OR BONDING POOL DEPOSIT. A miner shall, on his or her own initiative, increase the amounts of

the miner's performance bond, or bonding pool deposit and bonding pool annual fee, for any acre mined after October 14, 1991 that is not already covered by an existing performance bond, or a bonding pool deposit and bonding pool annual fee. The increase must be paid before the issuance of an amendment to an approved plan under 11 AAC 97.410. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.100

11 AAC 97.540. RELEASE OR DECREASE OF BOND, AND REFUND OF BONDING POOL DEPOSIT. (a) An application to release or decrease the amount of a performance bond, or to refund a deposit paid into the bonding pool, must include a sworn statement, executed under penalty of perjury, verifying that the miner has examined the requirements of his or her approved reclamation plan, has investigated the nature and extent of reclamation, and certifies as true that all applicable reclamation responsibilities have been completed. The commissioner must inspect or review actions taken under the approved reclamation plan, and must make a written finding that each applicable term and condition of the approved reclamation plan has been completed before authorizing release or decrease in the amount of the bond, or refund of a deposit paid into the bonding pool. The commissioner will, in his or her discretion, require the miner to submit photographs documenting the reclamation.

(b) Upon request by the miner and consent of the affected surety or financial institution, the commissioner will apply the performance bond, or the bonding pool deposit or a portion of it, to new acreage under a new reclamation plan or amendment to a reclamation plan submitted by the miner. The non-refundable annual fee is not transferable and is due for all new acreage to be mined. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.040
AS 27.19.100

11 AAC 97.545. INTEREST; USE OF BONDING POOL. (a) The bonding pool will be deposited in an interest-bearing account. No miner or surety is entitled to receive interest on any sum deposited into the bonding pool.

(b) The bonding pool may be used by the department only to pay the reclamation costs that have not been paid by the miner or the miner's surety despite the department's reasonable efforts to recover the costs from the miner and the miner's surety. Reclamation funded from the bonding pool will be performed to the

standard of AS 27.19.020 and 11 AAC 97.300 -- 11 AAC 97.340. Any monies in the bonding pool may be used for reclamation, except that a refundable deposit will not be used to fulfill another miner's reclamation obligation. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.100

11 AAC 97.550. ASSIGNMENT. If a miner assigns his or her interest in any uncompleted operation, and the commissioner has transferred the approval of the mining and reclamation plan to the assignee and released the assignor in accordance with 11 AAC 97.440, the commissioner will transfer the assignor's bonding pool deposit and annual nonrefundable bonding pool fee to the assignee upon the written request of the assignee and written consent of the assignor. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.100

11 AAC 97.555. EXCEPTIONS TO BONDING REQUIREMENT. (a) No bond is required by 11 AAC 97.500 if the miner

(1) is an agency of the State of Alaska or federal government, or

(2) has posted a general performance bond that meets the requirements of (b) of this section.

(b) The general performance bond referred to in (a)(2) of this section must

(1) be posted in favor of an agency of the State of Alaska;

(2) require reclamation to standards no less stringent than those of AS 27.19 and this chapter;

(3) be in an amount no less than \$750 per acre mined or to be mined, in whole or in part, after October 14, 1991;

(4) remain in effect until the reclamation of all land disturbed is completed to standards no less stringent than those of AS 27.19 and this chapter;

(5) require that, if the bond is liquidated, proceeds in the amount of \$750 per acre mined, in whole or in part, after October 14, 1991 will be paid or reserved exclusively for the purpose of reclamation until such time as reclamation of all land

disturbed is completed to standards no less stringent than those of AS 27.19 and this chapter. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.040
AS 27.19.100

ARTICLE 6. VIOLATIONS AND PENALTIES.

Section

- 600. Failure to file reclamation statement
- 610. Failure to meet requirements or reclaim small operation
- 620. Violation of reclamation plan
- 630. Administrative determination of violation
- 640. Reclamation risk assessment fee

11 AAC 97.600. FAILURE TO FILE RECLAMATION STATEMENT. If the commissioner determines that a miner exempted under 11 AAC 97.700 has failed to file an annual reclamation statement in accordance with 11 AAC 97.720, the miner is required to file a reclamation plan under 11 AAC 97.410 and be bonded under the requirements of 11 AAC 97.500 -- 11 AAC 97.555 for subsequent operations on that site during the next calendar year. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.050
AS 27.19.100

11 AAC 97.610. FAILURE TO MEET REQUIREMENTS OR RECLAIM SMALL OPERATION. (a) If the commissioner determines that a miner who obtained an exemption under 11 AAC 97.700 has exceeded the limits of 11 AAC 97.700(b)(1) or (2), or has failed to reclaim the mining operation to the standards of AS 27.19 and this chapter, the miner does not qualify for an exemption under 11 AAC 97.700 for the next two years of operation, regardless of size.

(b) A miner who loses an exemption under (a) of this section must file a reclamation plan under 11 AAC 97.410 for the unreclaimed acreage in addition to new acreage to be mined and must be bonded under the requirements of 11 AAC 97.500 -- 11 AAC 97.555 for all operations for the next two years of operation. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.050
AS 27.19.070
AS 27.19.100

11 AAC 97.620. VIOLATION OF RECLAMATION PLAN. (a) If the commissioner determines that a miner has both violated or permitted a violation of an approved reclamation plan, and failed to comply with a lawful order of the commissioner, either the miner's performance bond will be liquidated, with all the proceeds being placed in the bonding pool, or the miner's bonding pool deposit will become nonrefundable.

(b) Any portion of the performance bond, or any portion of a miner's bonding pool deposit that has become nonrefundable, but that is not needed to pay the costs or fees described in (a) of this section, will be repaid to the miner or the miner's surety after all reclamation work has been completed. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.040
AS 27.19.070
AS 27.19.100

11 AAC 97.630. ADMINISTRATIVE DETERMINATION OF VIOLATION. The commissioner will initiate proceedings for determining that a violation described in 11 AAC 97.600 -- 11 AAC 97.620 has occurred by service of an accusation or statement of issues in accordance with AS 44.62.360, AS 44.62.370, and AS 44.62.380, and will conduct those proceedings in accordance with AS 44.62.330 -- AS 44.62.650. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.070
AS 27.19.100

11 AAC 97.640. RECLAMATION RISK ASSESSMENT FEE. (a) The reclamation risk assessment fee required by AS 27.19.070(c) is five times the bond amount computed under 11 AAC 97.520. The reclamation risk assessment fee applies

(1) under the circumstances set out in AS 27.19.070(c),

(2) to a miner who has had any portion of his or her bonding pool deposit become nonrefundable, and

(3) to a miner who has defaulted on a general performance bond by failing to perform a reclamation obligation.

(b) The reclamation risk assessment fee must be tendered to the department in the form of a performance bond meeting the requirements of 11 AAC 97.505 or 11 AAC 97.510.

(c) The reclamation risk assessment fee supplements, and does not replace, the bonding requirements of this chapter for the proposed mining operation.

(d) The reclamation risk assessment fee will be returned to the miner after two consecutive years of mining operations in complete compliance with AS 27.19, this chapter, and the approved mining reclamation plan then in effect for that miner.

(e) After the miner meets the requirements of (d) of this section, the reclamation risk assessment fee will be waived for future operations so long as the miner remains in compliance with AS 27.19, this chapter, and the approved mining reclamation plan then in effect for the miner. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.070
AS 27.19.100

ARTICLE 7. EXEMPTIONS FOR SMALL OPERATIONS.

Section

700. Exemption for small operations

710. Letter of intent

720. Annual reclamation statement

11 AAC 97.700. EXEMPTION FOR SMALL OPERATIONS. (a) All mining operations, including those exempted under AS 27.19.050(a), must comply with the provisions of AS 27.19.020 and 11 AAC 97.300 -- 11 AAC 97.340.

(b) Mining operations exempted under AS 27.19.050(a) are exempt from the provisions of 11 AAC 97.400 -- 11 AAC 97.450 and 11 AAC 97.500 -- 11 AAC 97.555.

(c) The effect of AS 27.19.050(a) is that mining operations that reclaim as they proceed and maintain a cumulative unreclaimed mined area of less than five acres at one site remain eligible for the exemption for small operators. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.050
AS 27.19.100

11 AAC 97.710. LETTER OF INTENT. The letter of intent required by AS 27.19.050(a) must be filed on a form provided by the department and may cover a period of up to three years. The following information must be provided:

(1) the names, addresses, and telephone numbers of the

operator who will be responsible for the mining operation, owners, lessees, and holders of record;

(2) a list of all properties, mining locations, or leases on which activity is to be conducted, giving the ADL or BLM casefile number if on state or federal land, and the legal description of the land on which activity is to be conducted, described by legal subdivision, section, quarter-section, township, range and meridian;

(3) if on private land, a signed and notarized statement by the landowner that the operator has permission to mine the area (except that the landowner's permission is not required if the mining operation is on a prior federal mining location and the private landowner received title subject to that location under sec. 22(b) of PL 92-203, the Alaska Native Claims Settlement Act);

(3) a location map (U.S. Geological Survey topographic map or the equivalent) at a scale no smaller than 1:63,360 (inch to the mile); the map must show the general location of the area to be mined and the specific property to be worked;

(4) total acreage and volume of material to be mined for each year covered by the letter of intent;

(5) total acreage to be reclaimed in each year covered by the letter of intent;

(6) a description of the reclamation measures that will be taken to comply with AS 27.19.020 and 11 AAC 97.300 -- 11 AAC 97.340. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.100

11 AAC 97.720. ANNUAL RECLAMATION STATEMENT. (a) A miner exempt under 11 AAC 97.700 must file an annual reclamation statement with the commissioner on a form provided by the department disclosing the following information:

(1) total acreage and amount of material mined in the current year;

(2) total acreage reclaimed;

(3) the specific reclamation measures used to comply with AS 27.19.020 and 11 AAC 97.300 -- 11 AAC 97.340, including photographs described as to location and date photographs were

taken, and state or federal identification number or the legal description of the area reclaimed.

(b) The annual reclamation statement required by (a) of this section must be filed with the commissioner no later than the close of business January 31 for the previous calendar year.

(c) If none of the activity described in the letter of intent took place, a miner must nevertheless file an annual reclamation statement stating that fact. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.050
AS 27.19.100

ARTICLE 8. COOPERATIVE MANAGEMENT AGREEMENTS.

Section

800. Cooperative agreements

11 AAC 97.800. COOPERATIVE AGREEMENTS. (a) Upon a written finding that the state's best interest will be served, the commissioner will, in his or her discretion, enter into a cooperative agreement with a federal, local, or state agency to implement AS 27.19 and this chapter. Except as provided in (c) of this section, the cooperative agreement will, in the commissioner's discretion, provide

(1) for the federal or state agency to implement AS 27.19 and this chapter;

(2) for the department to implement the federal, local, or state agency's reclamation authorities; or

(3) for the department and the federal or state agency to implement both their own and the other's reclamation authorities on a reciprocal basis.

(b) While a cooperative agreement with a federal or local agency may generally delegate administration of AS 27.19 and this chapter, including inspection and enforcement authority, it may not delegate to a federal or local agency administrative review authority under the Administrative Procedure Act.

(c) A cooperative agreement with another state agency will, in the commissioner's discretion, delegate administrative review authority under the Administrative Procedure Act.

(d) In this section,

(1) "state agency" means any organizational unit of the executive branch of the state, but does not include any agency in the judicial or legislative branches of the state government;

(2) "federal agency" means any organizational unit of the executive branch of the federal government, but does not include an agency in the judicial or legislative branches of the federal government;

(3) "local agency" means a borough, city, or unified municipality organized under state law. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.010
AS 27.19.060
AS 27.19.100
AS 38.05.020
AS 44.62.340
AS 44.62.640
Alaska Const. art. X, sec.13

ARTICLE 9. MISCELLANEOUS PROVISIONS.

Section

900. Miscellaneous provisions

11 AAC 97.900. MISCELLANEOUS PROVISIONS. (a) All location corners or property boundaries described in the reclamation plan must be maintained or reestablished during the reclamation before site inspection by the commissioner for reclamation approval or bond release under 11 AAC 97.535. The intent is to provide an accurate reference for the location of the reclaimed area. (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.100

ARTICLE 10. DEFINITIONS.

Section

990. Definitions

11 AAC 97.990. DEFINITIONS. The following definitions apply to this chapter:

(1) "commissioner" means the commissioner of natural

resources;

(2) "materials" is as defined in AS 27.19.100(1);

(3) "mined area" is as defined in AS 27.19.100(2);

(4) "miner" is as defined in AS 27.19.100(3); for the purposes of AS 27.19.100(3) and this chapter, "miner" does not include the land owner unless the land owner has a financial interest, managing interest, or royalty interest in the mining operation, nor does it include a state or federal public land manager administering state and federal mining laws or materials sales;

(5) "mining operation" is as defined in AS 27.19.100(4);

(6) "previously mined area" means the land surface, reclaimed or not, that is left by a mining activity;

(7) "reclamation plan" is as defined in AS 27.19.100(5);

(8) "stable condition" is as defined in AS 27.19.100(6);

(9) "state land" is as defined in AS 27.19.100(7);

(10) "unnecessary and undue degradation" is as defined in AS 27.19.100(8). (Eff. / /91, Register)

Authority: Sec. 2, ch. 92, SLA 1991
AS 27.19.100

DRAFT RECLAMATION REGULATIONS

STATUS REPORT

JANUARY 15, 1991

Prepared by

Department of Natural Resources

Introduction

The 1990 legislature passed a reclamation act, AS 27.19, which requires the Department of Natural Resources to prepare reclamation regulations. The effective date of the act is October 15, 1991. Draft reclamation regulations are to be submitted to the chairs of the resource committees of the 1991 legislature. Reclamation regulations may not be adopted before October 15, 1991.

Summary of the Reclamation Act

It is important to note that this is a reclamation act, it is not a mining practices act. The requirements of this act do not supersede, reduce or replace any other permits or permitting authority of any agency. This act establishes an additional permit required of all mining operations in Alaska in addition to the existing approvals and operational permits required by state and federal agencies. In case of gravel operations on private land, the act requires a permit for mining operations that previously have never required state or federal permits.

The act contains the following provisions:

- 1) Requires reclamation for all mining operations including sand and gravel and other materials.
- 2) Extends reclamation requirements to state, federal, and private land; subject to a grant of authority for DNR to enter into cooperative management agreements with state and federal agencies.
- 3) Requires submission and approval of a site-specific reclamation plan before mining may commence; subject to a small mine exemption for operations disturbing less than five acres or removing less than 50,000 cubic yards in any one year.
- 4) Reclamation bonding is made mandatory with a maximum bond ceiling of \$750 per acre; subject to a small mine exemption for operations disturbing less than five acres or removing less than 50,000 cubic yards in any one year.
- 5) Gives DNR the authority to establish and manage a state wide bond pool.
- 6) Establishes an "undue and unnecessary degradation" and return to "stable condition" performance standard for reclamation.

7) Establishes two categories of mining operations in regard to the bonding and permitting of reclamation activity:

a) Mines with a cumulative unreclaimed mined area of greater than five acres at any one time or that remove greater than 50,000 cubic yards of material in any one year must be bonded and submit a reclamation plan for approval.

b) Mines smaller than five acres or 50,000 cubic yards do not need approval of a reclamation plan and no bonding is required. This category of mines must simply give notice of the reclamation measures they will take to comply with the reclamation performance standards of the regulations. No reclamation permit or approval is required. These mines must still obtain operational permits required under other state and federal authorities.

Status of Draft Regulations

After carefully studying the reclamation legislation and reviewing the mining reclamation regulations of all western States, DNR prepared a discussion document that was distributed to over 30 state and federal agencies, industry organizations, environmental groups and the Alaska Federation of Natives. This distribution was made November 6, 1990. All these organizations subsequently distributed copies to member organizations and interested individuals. Response for DNR's request for comments and constructive input has been phenomenal. Since this November 6 distribution, representatives from Division of Mining and Division of Land and Water Management have attended over 30 meetings with agencies and interest groups explaining the requirements of the act, presenting the discussion document of the regulations and receiving feedback. Environmental interest groups have generally presented the position that they are too busy to make comments and have declined invitations to meet with DNR staff.

Summary of Feedback

Comments on the discussion regulations document have ranged from "the mining industry is already over regulated and no regulations are needed" to basically 100% support for the document except for a few clarifications. The majority of the comments constructively criticized the document as going beyond the intent of the legislation. In some cases, an entire rewrite of the discussion draft was prepared by the interest groups and presented back to DNR as input.

Current Status of Draft Regulations

DNR is in the process of evaluating all comments and input and is preparing a complete rewrite that will again be distributed to the agencies and interest groups for review and input. The edited version of this rewrite will be presented as draft regulations to the legislature as required by AS 27.19. Currently there is no regulation draft that has a general consensus as being a document that should be presented to the legislature. Therefore, no drafts or discussion documents are being presented with this status report. This is to avoid the legislature having to work with a document that will be considerably changed before a final draft is completed.

**TANANA CHIEFS CONFERENCE, INC.**

122 FIRST AVENUE
FAIRBANKS, ALASKA 99701-4897
PHONE (907) 462-8261 FAX (907) 451-8930

*Rep. Davidson**Cptl. Rm. 108***RECEIVED MAR 14 1991**

March 12, 1991

Senate and House Resource Committees
P.O. Box V
Juneau, Alaska 99811

Dear Members of the Senate and House Resource Committees:

As you know the Tanana Chiefs Conference represents 43 villages in the Interior. As a follow-up to the Senate Resources Committee hearing of March 6, 1991, we would like to express some concerns about the draft mining reclamation regulations in front of both Resource Committees for consideration.

In terms of mining issues, the people we represent wear two hats. The majority are shareholders of Doyon Ltd. which certainly has mining interests. There are seven Native owned mines in the Region, and, a number of Native people are employed by the mining industry. At the same time, the majority of the 12,800 people we represent eat fish and are land users, having a keen interest in environmental quality. We try to balance our positions on mining issues with these considerations.

Tanana Chiefs staff were involved with the drafting of the legislation that prompted these regulations. The final bill was produced through a consensus of very diverse groups. We would like to see a consensus building process continued in the evolution of these regulations. After the first draft regulations were circulated in November, the groups involved were narrowed down to the mining interests. Using a consensus approach now will increase cooperation in the future and over the long run, is well worth the extra effort.

Tanana Chiefs commented favorably on the discussion draft regulations circulated in November of 1990. The draft regulations presently in front of us are substantially different. We will be commenting on specific points as these go to formal public comment. However, we do have a major concern with these regulations at this time: They do not provide performance guidelines to clarify the legislative intent of the reclamation standard. The reclamation standard is, after all, what the legislation and regulations are trying to accomplish.

Providing performance guidelines for the reclamation standard is in everyone's interest. At the ends of the spectrum, the mining industry needs the guidance for investment decisions and the environmentalists needs that guidance for reassurance. We have reason to believe that the mandates of the reclamation standard can be further illuminated through a consensus process.

In summary, Tanana Chiefs asks that the Resources Committees request two things of the Department of Natural Resources in the promulgation of these regulations:

1. That performance guidelines be developed to clarify the legislative intent of the reclamation standard, and
2. That the Department of Natural Resources employ a consensus process in further development of the regulations.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

Cathie Ipalook

Cathie Ipalook
President

cc: Judd Peterson, Division of Mining
Julie Kitka, Alaska Federation of Natives
Norm Phillips, Doyon Ltd.
Marna Swartz, Alaska Environmental Lobby

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

February 15, 1991

The Honorable Cliff Davidson
Chair, House Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Davidson:

Enclosed, as required by Sec. 2, Ch. 92, SLA 1990, are draft regulations to implement Alaska's recently enacted mining reclamation law, AS 27.19. In addition, enclosed is a memorandum addressing how the regulations were prepared as well as some of the concerns expressed by the public about the act and regulations.

In addition to the public concerns presented in the enclosed transmittal letter, there are two policy areas on which you may wish to provide us guidance:

(1) The terms and stipulations section (11 AAC 97.420) seems to be a permit type standard rather than a planning standard. The legislative intent may have been that the department approve a plan prepared by the miner rather than issue an approval with additional reclamation stipulations that attach to that plan.

(2) The use of a bonding requirement (11 AAC 97.500), as opposed to a financial responsibility requirement, leads to a state bonding pool without an actuarial basis.

We look forward to working with the Legislature on these draft regulations. Please feel free to call on me for any assistance that might be needed.

Sincerely,


Harold C. Heinze
Commissioner

Enclosure

Representative Davidson

- 2 -

February 15, 1991

cc: Senator Bettye Fahrenkamp
Senator Lloyd Jones, Chair
Senate Resources Committee
Sam Dunaway, Acting Director
Division of Mining
Gary Gustafson, Director
Division of Land & Water



Alaska State Legislature

Please enter into the record my testimony to the House Resources
 committee name
 committee on Mining Regs . dated 3/24/91
 bill/subject

I feel that the gentleman from Fairbanks representing the environ gp. needs to remember that ~~that~~ ^{that} ~~area~~ was an active mining district before he moved into the area. He does not have any right to put ^{the} economic security of a population in jeopardy just to secure scenic values for a few homeowners. ~~Barren~~ ^{Barren} approval of home building in a dormant mining district ^{was a} poor decision ^{and} ~~since~~ since its mineral potential was already ^{known} ahead of time, the land ^{should} be condemned & put back into industrial status. Also economic security should over shadow someone's idea of scenic values if mineral values are present.

Signed: Baerent R. Strandberg

Testifier

Baerent R. Strandberg

Representing (Optional)

PO Box 874296

Address

Wasilla AK 99687

373-5016

Phone No.

MEMORANDUM



Alaska Department of
**NATURAL
RESOURCES**

STATE OF ALASKA

TO: The Honorable Harold C. Heinze
Commissioner

DATE: February 15, 1991

FILE NO.:

TELEPHONE: 465-2400

FROM: Judd Peterson
Chief, Permitting
& Field Operations
Division of Mining

SUBJECT: Draft Reclamation
Regulations

Attached are draft regulations to implement Alaska's recently enacted mining reclamation law, AS 27.19.

The draft was a joint effort of the Division of Mining and Division of Land and Water. But it could not have been produced without the contribution of hundreds of hours of analysis and comment by many interested and affected parties, including the Alaska Miners Association, the AFN Land Managers' Association, Native regional corporations, the Associated General Contractors, Corroon and Black, the Department of Transportation and Public Facilities, the Department of Fish and Game, the Department of Environmental Conservation, the Bureau of Land Management, and others. We are deeply grateful for this generous effort.

It is important to emphasize that the draft regulations have not yet been through the formal hearing process required by the Administrative Procedure Act, nor have they been reviewed and approved by the Department of Law. Because these essential steps have not taken place, the draft should be viewed as only a preliminary indication of how the new law could be implemented.

During the preparation of the regulations, several concerns were raised about some aspects of the regulations. Many of these concerns relate to requirements of the act. Of particular concern are the following:

- AS 27.19 created a true regulatory program that governs all mining operations, without regard to land ownership. Several private landowners who reviewed the draft regulations expressed surprise that the law applied to them. They agreed that a permit and bonding program might be necessary to ensure that mining claimants on public land undertake reclamation, but argued that private landowners do not need this incentive to restore their land to productive use after mining.

- AS 27.19 requires reclamation not only of lode and placer mines but of material extraction sites (mines producing sand, gravel, riprap, etc.). This aspect of the law also surprised some reviewers. Sand and gravel developers tend to consider the requirement that reclamation take place "as contemporaneously as practicable" to be particularly onerous, because many borrow pits along the state's road system and in remote villages are used only intermittently for road or airport maintenance and it could be costly to mandate that the operator reclaim the site after each round of extraction. We sought to address this problem in 11 AAC 97.340(e), but our solution may reflect more flexibility than the law intended.
- AS 27.19.080 makes any enforcement action subject to the Administrative Procedure Act. Although this requirement was undoubtedly intended to protect miners against bureaucratic excesses, the Administrative Procedure Act is equally complicated and unwieldy for the defendant in an enforcement action. Thus, several reviewers recommended that a simpler set of procedures be enacted. One suggestion is to adopt those set out in the 1990 revision of the Forest Resources and Practices Act, AS 41.17.120--41.17.143.
- Several reviewers also questioned how the new program was to be funded. As you may recall, funding for the fiscal note attached to the bill last year was apparently overlooked in the rush to adjournment.

Attachment

cc: Sam Dunaway, Acting Director
Division of Mining
Gary Gustafson, Director
Division of Land and Water