

**SB**

**374**

(9)

Date Referred: April 18, 1994

HOUSE COMMITTEE REPORT  
FURTHER REFERRALS:

Date of Committee Action: 4/25/94

The RESOURCES Committee considered:

SB 374

SENATE BILL NO. 374

MATERIAL SITES FOR TIMBER OPERATIONS

"An Act extending the period of regulation of material sites used for timber operations under the Forest Practices Act and extending a corresponding exemption from provisions regulating mining reclamation; and providing for an effective date."

RECOMMENDATIONS:

be replaced with \_\_\_\_\_ [ ] the same title  
[ ] a new title

[ ] have attached amendment(s)

[X] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note \_\_\_\_\_

[X] zero fiscal note(s) DNR / 4-14-94

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Bill Hudson	✓	Jan 1994			✓
John G. ...	✓				
John B. ...	✓				
Ed ...	✓				
Dr. Dan ...	✓				
W.K. Williams	✓				
Janette James	✓				

W.K. Williams  
CHAIRMAN'S SIGNATURE

# FISCAL NOTE

No. 1

Bill Version: SB 374

(S) Publish Date: 4-14-94

STATE OF ALASKA

B

1994 LEGISLATIVE SESSION

Revision Date: Original Dept. Affected: Natural Resources  
 Title: "An Act extending the period of regulation of BRU: Resource Development  
material sites used for timber operations under the Forest Practices..." Component: Mining Development  
 Sponsor: Senate Resources Committee  
 Requestor: Senate Resources Committee Component Serial No. 442

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

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)

There is no anticipated fiscal impact to the Department of Natural Resources associated with this bill.

Prepared by: Jerry Gallagher, Director Phone: 465-2400  
 Division: Mining Date: 12-Apr-94  
 Approved by Commissioner: Harry A. Noah Date: 12-Apr-94  
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE



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FAX (907) 586 - 9214

March 29, 1994

Senator Mike Miller  
Chair, Senate Resources Committee  
Alaska State Legislature  
Capitol Building, Rm. 423  
Juneau, Alaska 99811

Re: Enclosed Draft Legislation Concerning Forest Material Sites

Dear Senator Miller:

Enclosed is draft legislation, endorsed by Sealaska Corporation and the Alaska Department of Natural Resources ("DNR"), that would temporarily extend an about-to-expire statute that requires forest material sites (rock pits) to be regulated under the Forest Practices Act ("FPA"; AS 41.17) rather than the Mining Reclamation Act ("MRA"; AS 27.19). The legislation is necessary this session because:

(1) the existing statute, under which forest landowners have operated for the past two years, sunsets on July 1, 1994; and

(2) regulations assuring that forest material sites will be regulated under the FPA, rather than the MRA, will be published for public review shortly, but will not be adopted by the July 1, 1994 deadline. A copy of those regulations is enclosed.

Let me explain the background of this legislation. The legislature enacted comprehensive revisions to the FPA in 1990, providing for

stringent new controls on virtually all aspects of public and private forestry in the state--including the operation and reclamation of forest material sites. AS 41.17.080(a)(1)(D). One principal goal of the new FPA was to centralize control of all forestry activities in one agency--the Division of Forestry.

In the same year, however, the legislature enacted the MRA, which required the submission of bonds and reclamation statements, and imposed reclamation requirements, on all private mines--including material sites that supply rock to construct forest roads, landings, log transfer facilities and other logging-related infrastructure.

DNR was quick to recognize the unnecessary regulatory duplication created by the uncoordinated enactment of these two statutes. DNR also recognized that the FPA, rather than the MRA, was the preferable vehicle for regulating forest material sites, for two reasons:

(1) forest operations, including forest material sites, would be subject to an aggressive field inspection program involving not only DNR, but inspectors from the departments of Fish and Game and Environmental Conservation as well. Sites regulated under the MRA would not be subject to anything approaching this intense on-the-ground scrutiny; and

(2) DNR envisioned that both operational and reclamation standards for material sites would be considerably stricter, and more protective of the environment, under the FPA. And this, in fact, has turned out to be true. The forest material sites standard of 11 AAC 95.325 is considerably stricter than the corresponding MRA standards, especially with respect to reclamation.

Accordingly, in August, 1991, DNR proposed MRA regulations--ones virtually identical to those enclosed--that would defer to the FPA in the regulation of forest material sites. Unfortunately, unanticipated delays in the completion of the FPA regulations left the MRA proposal referring to a forestry regulation that did not, as yet, exist. Therefore, in April, 1992, DNR decided to remove the forest material site proposal from its MRA regulations' package--promising, however, to adopt that forestry provision once the FPA regulations were adopted.

This, of course, left forest operations subject to both the FPA and the MRA--a situation which the legislature, as well as DNR, found intolerable. Accordingly, the legislature enacted Section 34, Ch. 2, SLA 1992, which provided that forest material sites would be regulated solely

under the FPA. Section 35 of that law, however, provided that Section 34 would be repealed on July 1, 1994. This was because the legislature believed that, by that date, DNR would finalize its FPA regulations, and its Division of Mining would have then reinserted the special forest material site provision. <sup>1/</sup>

Unfortunately, the FPA regulations were not adopted until June, 1993. As a result, DNR has not yet had the time to republish, and adopt, the forest site provision of the MRA regulations. It is now diligently trying to do so, as the enclosure indicates. However, it simply isn't possible for DNR to complete all the steps necessary to adopt that regulation before the existing MRA exclusion expires on July 1, 1994.

As a result, the enclosed legislation is necessary to give DNR a little more time. The bill would grant DNR only until January 1, 1995 to adopt the forest site provision, and we believe that extra window is adequate.

Without the legislation, a cloud of legal uncertainty will descend on private forestry activities this season, as a new, duplicative regulatory program would overlie the FPA. And as earlier indicated, that regulatory overlap would be as unnecessary as it would be burdensome, since forest material sites are already subject to the stricter of the two laws.

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<sup>1/</sup> The legislature did not want to permanently exclude forest material sites from the coverage of the MRA. AS 27.19.040 requires large mines to post a reclamation bond, which may be done through contributing to a bond pool. The FPA has no corresponding bonding provision. Although there will be very few forest material sites large enough to require a bond, the legislature wanted to ensure that, should such a site exist, the mine would be required to post a bond (and hopefully thus participate in the bond pool). DNR's originally-proposed forest material site provision, as well as the draft regulation enclosed, would defer to the FPA in every respect *other than* the MRA's bond requirement. As a result, the legislature preferred the regulatory approach (rather than a statutory exclusion from the MRA), since it at once: (1) avoided regulatory duplication: while (2) at the same time kept the MRA's bonding requirements intact.

Senator Mike Miller


March 29, 1994

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Alaska's forest industry therefore respectfully but urgently requests your assistance in this brief extension of DNR's statutory deadline. If you have any questions, or need our assistance, please don't hesitate to call.

Sincerely,

SEALASKA CORPORATION



Robert W. Loescher  
Executive Vice President  
Natural Resources

cc: Representative Bill Williams  
Mr. Sam Kito  
Mr. Richard Harris  
Mr. Jon K. Tillinghast, Esq.

***Proposed Mining Reclamation Regulations Amendment***

11 AAC 97.250 is amended to by adding a new subsection to read:

(g) *Material used in forestry operations.* This subsection applies to material sites regulated under AS 41.17 (Forest Resources and Practices Act) and that chapter's implementing regulations (11 AAC 95).

(1) If an individual material site will be within the limits set by AS 27.19.050(a)(2), then, for that material site:

(A) submission of a plan of operations in compliance with 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) of a letter of intent;

(B) inspection under 11 AAC 95.245 satisfies the requirement of AS 27.19.050(c) of an annual reclamation statement; and

(C) compliance with 11 AAC 95.325 satisfies all other requirements of AS 27.19 and this chapter.

(2) If an individual material site will exceed the limits of AS 27.19.050(a)(2), the miner must comply with the bonding requirement of AS 27.19.040 in one of the ways set out in 11 AAC 97.400--11 AAC 97.450. However:

(A) submission of a plan of operations in compliance with 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 of a reclamation plan;

(B) this subparagraph constitutes approval of the reclamation plan under AS 27.19.030(a), but only if:

(i) the submitted plan of operations complies with the requirements of AS 41.17.090, or, as the case may be, an operation on state land complies with the terms of an adopted site-specific forest land use plan; and

(ii) the material site is not in noncompliance with a directive or stop work order issued by the division of forestry based on the material site's noncompliance with 11 AAC 95.325; and

(C) compliance with 11 AAC 95.325 satisfies all other requirements of AS 27.19 and this chapter.

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF MINING

P.O. BOX 10701A  
ANCHORAGE, ALASKA 98510-701A  
PHONE: (807) 782-2170

3700 AIRPORT WAY  
FAIRBANKS, ALASKA 99708  
PHONE: (807) 451-2700

April 13, 1994

RE: Proposed Changes in Mining Reclamation Regulations

Dear Alaskan:

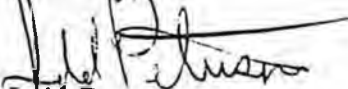
This letter is to provide notice that the Department of Natural Resources, Division of Mining proposes to amend 11 AAC 97 (Mining Reclamation Regulations) concerning management of material sites on forest lands and, in addition, specify a date as to when reclamation bond payments are due.

In 1992, the legislature passed a special exemption for material sites used for timber operations from being subject to the reclamation act. This exemption expires July 1, 1994. In the proposed changes to the regulations, 11 AAC 97.250 is amended by adding a new section which specifies that the reclamation of material sites managed under AS 41.17 (Forest Resources and Practices Act) satisfies the requirements of AS 27.19 (Reclamation Act). Reclamation bonding is still required if the yardage mined is greater than 50,000 cubic yards or the mined area is five acres or greater in size.

In addition, 11 AAC 97.425 is amended to specify that the annual nonrefundable bond fee for bonded operations participating in the state wide bond pool is due by April 1st of each year. As presently written, the regulation states that the annual fee is due before mining begins. This has been interpreted by some miners to mean that if no mining is to be conducted, the fee is not due. The reclamation act, AS 27.19.040 specifies, that the fee is an annual fee. This fee is due each year until the mined area is reclaimed.

A copy of the public notice, additional regulations notice information, and proposed changes are enclosed. Comments, objections, or expressions of interest pertaining to the proposed changes must be received in writing by 5:00 PM, May 25, 1994.

Sincerely,



Judd Peterson

Chief, Permitting/Field Operations

#### Enclosures

1. Public Notice
2. Additional Regulations Notice Information
3. Proposed Changes

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

Notice is hereby given that the Department of Natural Resources, under the authority of Sec. 2, ch. 92, SLA 1990 proposes to amend certain regulations in Title 11 of the Alaska Administrative Code, dealing with mining reclamation of material sites to implement AS 27.19.010, 27.19.030, and 27.19.050 and dealing with the annual nonrefundable fees due on mining reclamation bonds to make specific AS 27.19.040. The proposed changes are as follows:

11 AAC 97.250 is proposed to be amended by adding a new subsection dealing with reclamation of material sites utilized for timber development. Such sites are regulated under AS 41.17 (Forest Resources and Practices Act). To avoid duplicative regulation, the proposed amendment provides that satisfying the Forest Practices Act requirements will also satisfy 11 AAC 97. However, if the yardage mined is greater than 50,000 cubic yards or the mined area is a cumulative five acres or greater in size, then the site must be bonded for reclamation in accordance with the requirements of the reclamation act.

11 AAC 97.425 is proposed to be amended to specify the date on which the annual nonrefundable bond fees are due. As presently written, the regulation states that the annual fee is due before mining begins each year. This has been misinterpreted by some miners to mean that if mining does not begin, then the non-refundable fee is never due. This proposed change in the regulations makes the fee due no later than April 1st each year that the mined area remains unreclaimed.

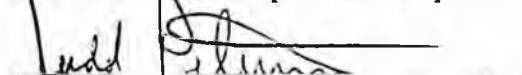
Notice is also given that any person interested may present written statements or arguments relevant to the proposed actions by writing to Alaska Division of Mining, P.O. Box 107016, Anchorage, Alaska 99510-7016. Comments must be received no later than 5:00 P.M., May 25, 1994.

Copies of the proposed revisions may be obtained by calling or writing the Division of Mining at the above address, or may be picked up at 3601 C Street, Suite 880 in Anchorage, or 3700 Airport Way in Fairbanks, Alaska. The phone number in Anchorage is (907) 762-2163 and in Fairbanks is (907) 451-2790.

If you are a person with a disability who may need a special modification in order to comment on the proposed regulations, please contact Judd Peterson at 762-2163 no later than 5:00 P.M., May 20, 1994 to make any necessary arrangements.

The Department of Natural Resources, after the deadline stated above, will either adopt these or other proposals dealing with the same subject, without further notice, or decide to take no action on them.

This action is not expected to require an increased appropriation.

  
\_\_\_\_\_  
Judd Peterson  
Chief, Permitting/Field Operations

Publish Date: April 24, 1994

ADDITIONAL REGULATIONS NOTICE INFORMATION  
(AS 44.62.190 (d))

1. Adopting Agency: Department of Natural Resources
2. General subject of regulation: Mining Reclamation
3. Citation of regulation (may be grouped): 11 AAC 97
4. Reason for the proposed action:
  - compliance with federal law
  - compliance with new, or changed, state statute
  - compliance with court order
  - development of program standards
  - other: (please list)Clarification of management of material sites on forest lands and the due date of non-refundable bond pool fees.
5. Program category and BRU affected:  
Mining Industry Development & Technical Support -  
Resource Development
6. Cost of implementation to the state agency and available funding (in thousands of dollars)

	Initial Year FY 94	Subsequent Years
Cost	\$ <u>-0-</u>	\$ <u>-0-</u>
General funds	\$ <u>-0-</u>	\$ <u>-0-</u>
Federal funds	\$ <u>-0-</u>	\$ <u>-0-</u>
Other funds (specify)	\$ <u>-0-</u>	\$ <u>-0-</u>

7. The name of the contact person for the regulations:  
Judd Peterson, Chief, Permitting/Field Operations  
Phone: 907-762-2160
8. The origin of the proposed action:

<input type="checkbox"/>	public private working group
<input checked="" type="checkbox"/>	staff of state agency
<input type="checkbox"/>	federal government
<input type="checkbox"/>	general public
<input type="checkbox"/>	petition for regulation change
<input checked="" type="checkbox"/>	other (please list)

Legislature excluded forest practice material sites from act until regulations could be amended.

Date: April 13, 1994

Prepared by:

Judd Peterson  
Judd Peterson  
Chief, Permitting/Field  
Operations

**11 AAC 97.250 is amended to by adding a new subsection to read:**

(g) Material used in forestry operations. This subsection applies to material sites regulated under AS 41.17 (Forest Resources and Practices Act) and its implementing regulations, 11 AAC 95.

(1) If an individual material site will be within the limits set by AS 27.19.050(a)(2), then, for that material site:

(A) submission of a plan of operations in compliance with 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) of a letter of intent;

(B) inspection under 11 AAC 95.245 satisfies the requirement of AS 27.19.050(c) of an annual reclamation statement; and

(C) compliance with 11 AAC 95.325 satisfies all other requirements of AS 27.19 and this chapter.

(2) If an individual material site will exceed the limits of AS 27.19.050(a)(2), the miner must comply with the bonding requirement of AS 27.19.040 in one of the ways set out in 11 AAC 97.400-11 AAC 97.450. However:

(A) submission of a plan of operations in compliance with 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 of a reclamation plan;

(B) this subparagraph constitutes approval of the reclamation plan under AS 27.19.030(a), but only if:

(i) the submitted plan of operations complies with the requirements of AS 41.17.090, or, as the case may be, an operation on state land complies with the terms of an adopted site-specific forest land use plan; and

(ii) the material site is not in noncompliance with a directive or stop work order issued by the division of forestry based on the material site's noncompliance with 11 AAC 95.325; and

(C) compliance with 11 AAC 95.325 satisfies all other requirements of AS 27.19 and this chapter. (Eff. 7/30/92, Register 123 ; am / / , Register )

Authority: Sec. 2, ch. 92, SLA 1990

AS 27.19.020  
AS 27.19.030  
AS 27.19.040  
AS 27.19.050  
AS 27.19.100  
AS 41.17.090

11 AAC 97.425 (d) is amended to read:

(d) No reclamation plan approval goes into effect until the bonding pool deposit and annual nonrefundable fee are paid. The annual nonrefundable fee for the first year of a reclamation plan may not be prorated or reduced. Subsequent annual nonrefundable fees for unreclaimed ground [A MULTI-YEAR PLAN] are due by April 1 of each year that the reclamation is not completed or before the mining operation begins in each calendar year, whichever is earlier. 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 when required, each year. If the acreage decreases, the mine may apply, under 11 AAC 97.435, for a refund of the excess deposit. The miner must pay the annual nonrefundable fee, and the increased deposit when required by the reclamation plan, without billing from the department. A late payment automatically suspends approval of the reclamation plan until full payment, including the late payment fee set out in 11 AAC 05.010, is received, at which time the reclamation plan is automatically reinstated. During such a suspension, the miner may not engage in a mining operation. (Eff. 7/30/92, Register 123 ; am / / , Register )

Authority: Sec. 2, ch. 92, SLA 1990  
AS 27.19.030  
AS 27.19.040

*Note: In the above section, the underlining shows words being added. Words typed in [CAPITAL LETTERS AND ENCLOSED IN BRACKETS] are being deleted from the current regulation*