

**SB**

**374**



**Sealaska**

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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.

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.

# FISCAL NOTE

STATE OF ALASKA

BILL NO. SB374

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>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
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**FUND SOURCE**

(Thousands of Dollars)

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

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: [Signature] Date: 12-Apr-94  
 Agency: Natural Resources

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