

## Mine Permitting Background for Initiatives

Alaska Department of Natural Resources  
Alaska Department of Environmental Conservation

This document contains information on mine permitting relevant to Ballot Measure #4, and the State's position on how it could affect existing and future mining operations in Alaska. Ballot Measure #4 will be on the August 26, 2008 primary election ballot, and seeks to prevent mining discharges to water that adversely affect human health or salmon. (For the full text of the ballot measure and other information, please visit the Division of Elections website. [<http://www.elections.alaska.gov/>])

### OVERVIEW

- There are existing federal and state laws that prohibit discharges and other activities that would adversely affect salmon and human health. State water quality standards specifically prohibit discharges and other activities that could cause adverse effects on aquatic life, including salmon. The standards also protect water quality for drinking water use.
- In the event that new science suggests that water quality standards need to be changed to fully protect salmon, human health, or other uses, the standards must be modified so that they are fully protective. State water quality standards must be reviewed at least every three years to ensure they stay current.
- By introducing new terminology, the Ballot Measure creates room for differing legal interpretations. The Ballot Measure's language is general and less precise than language used in current federal and state law. For example, it uses but does not define terms such as "releases" or "discharges." In contrast, these terms are specifically defined within the existing body of water quality law. The initiative's terminology leaves room for differing interpretations that will likely have to be resolved by the courts. The Alaska Supreme Court has ruled that the initiative's use of the term "effect" should be interpreted as meaning "adversely affect."
- Section 3 of Ballot Measure 4 describes the measure's scope, and states: "Section 2 of this Act does not apply to existing large scale metallic mineral mining operations that have received all required federal, state, and local permits, authorizations, licenses, and approvals on or before the effective date of this Act or to future operations of existing facilities at those sites." The Ballot Measure exempts existing large-scale metallic mines that have all their permits. New facilities or development of new sites at existing mines may fall under the initiative.
- This Ballot Measure would apply to all new large-scale metallic mines (disturbing over 640 acres), not just the proposed Pebble mine.

### BACKGROUND

**Ballot Measure 4** is an initiative which seeks to prevent mining discharges to water that would adversely affect human health or salmon. This document summarizes current laws for protecting water quality and provides factual information on the likely impacts of the initiative if it were voted into law. It is intended to be an objective assessment and does not advocate for or against the initiative. Anyone interested in the initiative or its potential effects is encouraged to read the language of the initiative, become familiar with existing state and federal laws pertaining to water quality and mine permitting, and take whatever additional steps they need to understand how the initiative might change existing laws and what the effects of the changes might be..

Ballot Measure 4 would apply on a statewide basis to new mines extracting metallic minerals, but only those mines that use or disturb more than 640 acres (including disturbance of land and water as well as underground activities and infrastructure such as roads). For purposes of comparison, there are currently three metal mines in Alaska exceeding 640 acres: the Red Dog, Fort Knox and Pogo mines. Also, there are currently two proposed mines in Alaska, Donlin Creek and Pebble, that would exceed 640 acres. The Greens Creek and Kensington mines are less than 640 acres.

## **CURRENT REGULATION OF MINES**

There are currently state and federal laws that apply to mines. The federal Clean Water Act and state laws make it illegal for mining and other activities to adversely impact water quality and the beneficial uses of the nation's and state's waters. These laws prohibit or limit activities that could pollute water.

Anyone wishing to discharge wastewater to a surface or underground water must first obtain a permit or other form of approval from the federal and/or state government. These permits or approvals prohibit discharges that have the potential to exceed water quality standards. These standards are set by the State to protect water quality for all fish and other aquatic life, for recreation, and for drinking and other human uses. As regulations, adopting and amending state water quality standards require public notice and comment and opportunity for amendment. The Clean Water Act requires that states review their water quality standards at a minimum of once every three years to help assure that standards stay current with the latest science. Changes in the state standards require the approval of the U.S. Environmental Protection Agency (EPA). In approving state standards, EPA is required to consult with other agencies and tribal governments. EPA cannot approve state water quality standards that are not protective of aquatic life (including salmon) and human uses.

In addition to protecting water quality, state law also includes provisions for such matters as restoring lands disturbed by mining activities, for monitoring of permitted discharges and downstream water quality, for protecting fish habitat and passage, for preventing spills of fuels and other hazardous substances, for air emissions, for dam safety, for protecting wetlands, for waste disposal, and for penalizing violations of the law.

Federal agencies also have significant permitting authority and regulatory oversight of mine projects in Alaska. The National Environmental Policy Act requires that an Environmental Impact Statement be prepared for virtually all new large mines. Discharges to surface waters require permits from the EPA. Building dams or storing mine wastes in wetlands require a permit from the U.S. Army Corps of Engineers. The National Marine Fisheries Service and U.S. Fish and Wildlife Service must be consulted on matters of fish habitat and activities that could affect endangered species.

All mines need approved monitoring plans that include monitoring for air, surface water, and ground water quality. For purposes of monitoring whether compliance with permits has occurred, typically samples are collected by the mine operator, and are sent to a certified lab. Lab reports are then sent to the agencies.

Agencies can also conduct independent monitoring, and also conduct regular inspections of minesites. State and federal environmental agencies have enforcement authority to ensure compliance with their permits.

Information on the state water quality criteria, protected water uses, a summary of the state water quality standards, and other provisions of the state water quality regulations is available at:

[http://www.dec.state.ak.us/water/wqsar/wqs/pdfs/18%20AAC 70 WQS Amended July 1 2008.pdf](http://www.dec.state.ak.us/water/wqsar/wqs/pdfs/18%20AAC%2070%20WQS%20Amended%20July%201%202008.pdf)

A summary of the state water quality standards is available at:

<http://www.dec.state.ak.us/water/wqsar/wqs/wqs.htm>

The state's process for updating Water Quality Standards is available at:  
[http://www.dec.state.ak.us/water/wqsar/trireview/pdfs/Triennial\\_Review\\_Process%203.pdf](http://www.dec.state.ak.us/water/wqsar/trireview/pdfs/Triennial_Review_Process%203.pdf)

The Alaska Water Quality Criteria Manual for Toxic and Other Deleterious Organic and Inorganic Substances is available at: <http://www.dec.state.ak.us/water/wqsar/wqs/pdfs/70wqsmanual.pdf>

A description of the permitting process and the major state and federal permits and approvals required for large mines can be found at: <http://www.dnr.state.ak.us/mlw/mining/largemine/index.htm>

## **BALLOT MEASURE 4 EFFECTS ON MINING REGULATION**

Ballot Measure 4 seeks to regulate the adverse effects of large mine activities on human health and salmon. It is difficult to assess what, if any, changes from the current regulatory regime might be required if the initiative is approved by the voters.

The difficulty in determining the impact of the Ballot Measure is that while it seeks to prevent mining discharges that would adversely affect human health or salmon, existing federal and state laws already do so. It is the opinion of the Alaska Department of Law that passage of the initiative would not require a change in either the rules or practices that apply to mines in Alaska.

There are two prohibitions at the heart of the initiative:

- The first prohibits release of a toxic pollutant, in a measurable amount that will adversely affect human health or salmon, into any surface or subsurface water or tributary that is utilized by humans for drinking water or by salmon.
- The second prohibits the storage or disposal of metallic mineral mining wastes in ways that could result in the release of pollutants that could adversely affect surface or subsurface water or tributaries used for human consumption or salmon.

However, water quality is already protected for human, salmon and other uses under the federal Clean Water Act and state water quality standards. If Ballot Measure 4 were to pass, the State would continue to permit discharges from, and otherwise regulate, large metallic mines as it does now, and provide the protections reasonable and necessary for human health, salmon and other protected uses. While the State does not see the initiative changing how mines are regulated, others apparently do.

One aspect of the initiative that remains unclear is its effect on large mines that are already authorized to operate. The initiative does not apply to existing mines or to future operations of existing facilities at existing mine sites. It appears, however, that development of new facilities at existing mines might be subject to the initiative. Any development of new sites or facilities at existing mines such as Red Dog, Fort Knox and Pogo could be subject to Ballot Measure 4's provisions.