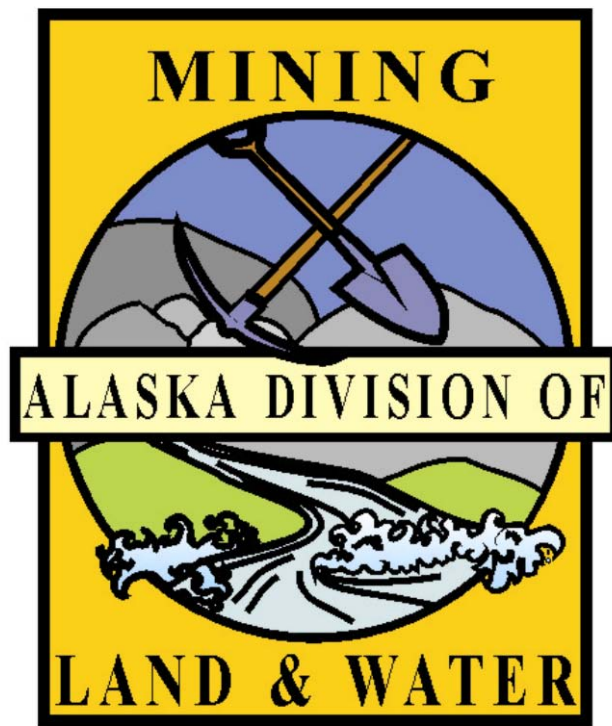


# MINING

## Laws and Regulations

*As Contained in the  
Alaska Statutes and Alaska Administrative Code*

*2009*



**DEPARTMENT OF NATURAL RESOURCES**

*Division of Mining, Land and Water*

*October 2009*

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# Section I. Mining Claims, Prospecting Sites, and Leases

## ALASKA STATUTES

### Sec. 38.05.185. Generally.

(a) The acquisition and continuance of rights in and to deposits on state land of minerals, which on January 3, 1959, were subject to location under the mining laws of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine that land from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, that land that shall be closed to location under AS 38.05.185 - 38.05.275. State land may not be closed to location under AS 38.05.185 - 38.05.275 except as provided in AS 38.05.300 and unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300.

(b) The failure on the part of a mining lessee or a locator to comply strictly with AS 38.05.185 - 38.05.275 and regulations adopted under those sections does not invalidate the rights of a mining lessee or a locator if it appears to the satisfaction of the commissioner that the mining lessee or the locator complied as nearly as possible under the circumstances of the case, and that no conflicting rights are asserted by any other person.

(c) Unless otherwise provided, the usages and interpretations applicable to the mining laws of the United States as supplemented by state law apply to AS 38.05.185 - 38.05.275.

### Sec. 38.05.190. Qualifications.

(a) The right to acquire exploration and mining rights under AS 38.05.185 - 38.05.275 may be acquired or held only by

(1) Citizens of the United States at least 18 years of age;

(2) Legal guardians or trustees of citizens of the United States under 18 years of age on behalf of the citizens;

(3) Persons at least 18 years of age who have declared their intention to become citizens of the United States;

(4) Aliens at least 18 years of age if the laws of their country grant like privileges to citizens of the United States;

(5) Corporations organized under the laws of the United States or of any state or territory of the United States and qualified to do business in this state;

(6) Associations of persons described in (1) - (5) of this subsection.

(b) An unqualified person who acquires an interest in exploration or mining rights by operation of law shall be allowed two years in which to become qualified or to dispose of the interest to a qualified person.

### Sec. 38.05.195. Mining claims.

(a) Rights to deposits of minerals subject to AS 38.05.185 - 38.05.275 in or on state land that is open to claim staking may be acquired by discovery, location, and recording as prescribed in AS 38.05.185 - 38.05.275. The locator has the exclusive right of possession and extraction of the minerals subject to AS 38.05.185 - 38.05.275 lying within the boundaries of the claim.

(b) The locator may locate a claim using one of the following methods:

(1) A locator may locate a claim based on the ground location of a complete quarter section or quarter-quarter section of a township on a rectangular survey system approved by the commissioner; a claim established in this manner may be known as the meridian, township, range, section, and claim system location, or MTRSC location; a locator using the MTRSC system to locate a claim shall in good faith mark the corners of a location as closely as practical to the existing quarter section or

quarter-quarter section of the rectangular survey system approved by the commissioner; the corners marked on the ground of a claim established in accordance with this paragraph and regulations of the commissioner control in the event of a conflict over boundaries for the quarter section or quarter-quarter section on the protracted or actual survey approved by the commissioner; or

(2) A locator may locate a claim based on the staking of a ground location in which the claim may not exceed 1,320 feet in its longest dimension; the boundaries of a claim based on staking and located after January 1, 1985, shall run in the four cardinal directions unless the claim is a fractional claim or the commissioner determines that staking in compliance with this paragraph is impractical because of local topography or because of the location of other claims; a claim established in this manner may be known as a non-MTRSC location.

(c) A location's corners shall be distinctly marked on the ground in the manner prescribed by the commissioner, and a notice of location shall be attached to a monument at the claim's northeast corner in the manner and containing the information required by the commissioner. Within 45 days after the date of attaching the notice of location on the monument, the locator shall record a certificate of location in the recording district where the claim is located. The certificate of location must contain the information required by the commissioner.

(d) Locations may be amended in the manner and with the effect prescribed in AS 38.05.200. Annual labor shall be performed and statements of annual labor recorded as prescribed in AS 38.05.210 - 38.05.235.

#### **Sec. 38.05.200. Changes in Locations & Amended Notices.**

Notices may be amended at anytime and monuments changed to correspond with the amended location but a change may not be made that interferes with the rights of others. Whenever monuments are changed or an error is made in the notice or in the certificate of location, an amended certificate of location shall be recorded in the same manner and with the same effect as the original certificate.

#### **Sec. 38.05.205. Mining leasing.**

(a) Prior discovery, location and recording shall initiate prior rights to mineral deposits subject to AS 38.05.185 - 38.05.275 in or on state land, other than submerged land, which is open to mining leasing. Locations shall be made and certificates of location recorded in accordance with AS 38.05.195. If the located land is available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the recording of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the located land is not available for leasing, notice shall be given the locator by the director and the locator's prior rights shall terminate. A mining lessee has the exclusive rights of possession and extraction of all minerals subject to AS 38.05.185 - 38.05.275 lying within the boundaries of the lease or location. Mining leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

(b) [Repealed, Sec. 10 Ch. 101 SLA 1989].

(c) A mining lease shall be for any period up to 55 years, and is renewable if requirements for the lease remain satisfied. Annual rental and production royalties shall be paid as required under AS 38.05.211 and 38.05.212. A valid mining claim, located and held under AS 38.05.195, may be converted to a lease at any time upon application by the owner, and issuance by the commissioner. Rights granted by a mining lease may not be exercised until the lease has been filed for record in the recording district where the land is located.

#### **Sec. 38.05.207. Production license.** [Repealed, Sec. 19 Ch 56 SLA 1997].

Repealed or Renumbered

#### **Sec. 38.05.210. Annual labor.**

(a) Labor shall be performed or improvements made annually on or for the benefit or development of each mining claim, leasehold location, and mining lease on state land except that, where adjacent claims, leasehold locations, or mining leases are held in common, the expenditure may be made on any one claim, leasehold location, or mining lease. The commissioner shall establish the date of the commencement of the year during which the labor or improvements are to be performed. Labor shall be performed at the following annual rates: (1) \$100 per claim, leasehold location, or lease if the claim, leasehold location, or lease is a quarter-quarter section MTRSC claim, leasehold location, or lease; (2) \$400 for each quarter section

MTRSC claim, leasehold location, or lease; and (3) \$100 for each partial or whole 40 acres of each mining claim, leasehold location, or lease not established using the MTRSC system. If more work is performed than is required by this section to be performed in any one year, the excess value may be applied against labor required to be done during the subsequent year or years, for as many as four years. Instead of performing annual labor, the holder of a claim, leasehold location, or mining lease may make a cash payment to the state equal to the value of the labor required by this subsection.

(b) During the year in which annual labor is required or within 90 days after the close of that year, the owner of the mining claim, leasehold location, or mining lease, or some other person having knowledge of the facts shall record with the recorder of the district in which the claim, leasehold location, or mining lease is located a signed statement setting out the information, as may be required by the commissioner, concerning the annual labor of the preceding year, any labor in excess of that required for the preceding year, and any payment of cash instead of annual labor. The statement, properly recorded, is prima facie evidence of the performance of the labor. The failure of one of several co-owners to contribute the proportion of the expenditures required for annual labor from the co-owner shall be treated in accordance with AS 38.05.215 - 38.05.235.

(c) The statement of annual labor required in (b) of this section may be amended within two years of the date by which the annual labor statement was required to be recorded. An amended statement shall be recorded for record in the same manner as the original statement. Additional labor claimed in an amended statement may not be applied against labor required to be done during a subsequent year.

(d) [Repealed, Sec. 10 Ch 101 SLA 1989].

**Sec. 38.05.211. Annual rental.**

(a) The holder of each mining claim, leasehold location, prospecting site, and mining lease, including a mining lease under AS 38.05.250, shall pay, in advance, rental for the right to continue to hold the mining claim, leasehold location, prospecting site, and mining lease, including a mining lease under AS 38.05.250. Rental is due and payable as follows:

(1) The rental amount for a prospecting site is fixed at \$200 for the two-year term of the site;

(2) Annual rental for a mining claim, leasehold location, or mining lease shall be based on the number of years since a mining claim, a leasehold location, or a mining lease's predecessor claim or leasehold location was first located; the annual rental amounts for a mining claim, leasehold location, or mining lease are as follows:

<b>Number of Years Since First Located</b>	<b>Rental Amount Per Acre For Mining Leases</b>	<b>Leasehold Location (Including Each Quarter-Quarter Section MTRSC System)</b>
<b>0 - 5</b>	<b>\$.50</b>	<b>\$20.00</b>
<b>6 - 10</b>	<b>\$1.00</b>	<b>\$40.00</b>
<b>11 - or more</b>	<b>\$2.50</b>	<b>\$100.00</b>

(3) The annual rental in any year for each quarter section claim, leasehold location, or lease based on the MTRSC system is four times the rental amount for a quarter-quarter section mining claim, leasehold location, or lease in that year.

(b) A claim, leasehold location, or mining lease located on or before August 31, 1989 is considered to have been first located on August 31, 1989 for purposes of determining the amount of rental under this section.

(c) The rental for each year shall be credited against the production royalty under AS 38.05.212 as it accrues for that year.

(d) The rental amount established under this section shall be revised by the commissioner as provided in this section based on changes in the Consumer Price Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average) compiled by the Bureau of Labor Statistics, United States Department of Labor, as revised, re-based, or replaced by that bureau. The reference base index is the index for January - June 1989, as revised or re-based by that bureau. The rental amount shall be increased or decreased, as appropriate, by an amount equal to the change in the index described in this subsection rounded to the nearest whole \$5 unit. The commissioner shall calculate the change in the rental amount each 10 years and, if the rental amount must be revised, shall adopt a regulation establishing the revised rental amount. A revised

rental amount applies to a rental payment if the regulation establishing the revised rental amount took effect at least 90 days before the date the rental payment is due.

(e) The locator of a new claim or leasehold location in accordance with the MTRSC system or the locator of a non-MTRSC location claim or leasehold location who amends the claim or leasehold location in accordance with the MTRSC system is entitled to a reduced rental under this section for the rental year following establishment of the new location or amendment of a non-MTRSC location. The reduced annual rental is 50 percent of the annual rental that would otherwise be due in the following rental year.

**Sec. 38.05.215. Notice to co-owners to contribute to cost of annual labor or improvements and forfeiture for failure to contribute.**

If one of several co-owners fails to contribute the proportion of the expenditures required for annual labor from the co-owner, the co-owners who have performed the labor or made the improvements may, at the expiration of the annual labor year, give the delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days. If at the expiration of 90 days after the service of the notice in writing, or 90 days after the completion of the publication the delinquent fails or refuses to contribute the required proportion of the expenditures, the interest of the delinquent co-owner in the claim is forfeited to the co-owners who have made the expenditures.

**Sec. 38.05.220. Recording the notice to contribute and affidavits.**

(a) Within 120 days after personal service, or within 120 days after the completion of publication of the notice provided for in AS 38.05.215, the co-owner who claims the forfeiture shall record in the office of the recorder of the recording district in which the claim is located a copy of the notice with the following affidavits attached:

(1) An affidavit of the person serving the notice giving the time, place and manner of service and by whom and upon whom the service was made or, if service was made by publication in a newspaper, an affidavit of the editor, publisher, printer or foreman of the newspaper giving the name of the newspaper, the place where, and the time during which the notice was published and the number of insertions;

(2) An affidavit of the co-owner who claims the forfeiture stating that neither the delinquent co-owner nor any person acting for the delinquent co-owner has paid or tendered to the affiant the delinquent's proportion of the expenditures for annual labor or improvements.

(b) The record of the notice and affidavits or a certified copy of it is prima facie evidence of the facts contained in it.

**Sec. 38.05.225. Lien-holder may perform the annual labor.**

A person who holds a claim to or lien upon an non-patented mining claim under a certificate of sale, mortgage, attachment, levy, judgment, or other lien may, when necessary for the protection of the lien or claim, go upon the mining claim and perform or cause to be performed the annual labor required by law to prevent forfeiture. Before performing the labor the claimant or lien holder shall mail a written notice of intent to perform the annual labor on the claim to the owner of the claim at the last known address of the owner of the claim.

**Sec. 38.05.230. Lien for performance of annual labor.**

(a) The person performing or causing to be performed annual labor upon an non-patented mining claim as provided in AS 38.05.225 shall have a lien upon the claim for the assessment work, including the reasonable cost of transportation to and from the claim incurred in doing the work. The lien is enforced either as in other suits for the foreclosure of liens upon real property or as supplemental accruing costs in an action, if any, then pending in which the claim has been levied upon by attachment, execution or other court process.

(b) A person claiming a lien under this section shall, within 90 days after the completion of the annual labor for which the lien is claimed, record in the office of the recorder of the recording district in which the property on which the lien is claimed is situated a notice of claim of lien, verified by the oath of the person claiming the lien or that of some other person having knowledge of the facts, and stating the name of the owner or reputed owner of the property, the amount of the claim, the time of the performance of the annual labor for which the lien is claimed, the nature of the labor done or improvements made, and the amount of the claim, including costs of transportation, after deducting all just credits and offsets.

(c) An independent suit or action brought to enforce a lien under this section shall be commenced within six months after the recording of the notice of claim of lien.

**Sec. 38.05.235. Lien for annual labor is independent of other liens.**

The lien given for the performance of annual labor by AS 38.05.230, if the work is done in good faith and necessarily for the protection either of possession under a certificate of sale or of an attachment, levy, mortgage, judgment or other lien, remains in effect notwithstanding the contemporaneous or subsequent vacation, dissolution, or setting aside of, or redemption from, the certificate of sale, attachment, levy, mortgage, judgment or other lien.

**Sec. 38.05.240. Labor defined for AS 38.05.210 - 38.05.235.**

In AS 38.05.210 - 38.05.235, "labor" includes geological, geo-chemical, geophysical, and airborne surveys conducted by qualified experts and verified by a detailed report filed in the recording district office in which the claim, leasehold location, or mining lease is located which sets out fully (1) the location of the work performed in relation to the point of discovery and boundaries of the claim, leasehold location, or mining lease, (2) the nature, extent, and cost of it, and (3) the name, address, and professional background of the person conducting the work. The commissioner, by regulation, shall define the nature of acceptable survey work and the qualifications of a person competent to perform this work. The airborne surveys, however, may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim, leasehold location, or mining lease, and each of those surveys shall be non-repetitive of any previous survey on the same claim, leasehold location, or mining lease.

**Sec. 38.05.242. Definitions for AS 38.05.210 - 38.05.240.**

In AS 38.05.210 - 38.05.240

(1) "Airborne survey" means a survey from the air for mineral deposits by the proper application of magnetometers, electromagnetic input systems, infrared detectors, side-looking radar, vertical and panoramic cameras, and other devices as they relate to the search for and discovery of mineral deposits;

(2) "Geochemical surveys," means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(3) "Geological surveys," means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(4) "Geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuances in geological formations;

(5) "MTRSC system" means the system described in AS 38.05.195 (b)(1) based on the ground location of a complete quarter section or quarter-quarter section of a township on a rectangular survey system;

(6) "Qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

**Sec. 38.05.245. Prospecting sites.**

(a) Before the discovery of valuable minerals, an exclusive right to prospect by geophysical, geo-chemical, and similar methods may be acquired by establishing a prospecting site in accordance with the MTRSC system and regulations prescribed by the commissioner. A certificate of location shall be recorded in the recording district where the prospecting site is located within 45 days after posting the notice of location. The locator of a prospecting site has the exclusive right to stake mining claims or leasehold locations within the boundaries of the site. In this subsection, "MTRSC system" means the system described in AS 38.05.195 (b)(1) based on the ground location of a complete quarter section or quarter-quarter section of a township.

(b) A prospecting site location may not include within its exterior boundaries, nor shall its boundaries be coincident with more than one boundary of any mining claim, mining leasehold location, or land under a mining lease, unless the locator of the prospecting site is also the owner, optionee or lessee of said mining property. If such mining property or area is so included or bounded, the prospecting site is void.



(c) A prospecting site remains in effect for two years after the notice of location is attached to a monument at the northeast corner of the site if the one-time rental payment is made within 45 days of location and the work requirements are met. The two-year term begins on the date the notice of location is attached to the monument and may not be extended. During each year, work of a type compatible with the purpose of this section and acceptable to the director shall be done. The minimum expenditure for the work shall be established by the commissioner uniformly for all prospecting sites. Where adjacent prospecting sites are held in common, the expenditure may be made on any one or more locations. If a prospecting site expires, neither the locator nor a successor in interest of the locator may again hold the same prospecting site or any portion of it, as a prospecting site, for a period of one year following the date of expiration or abandonment.

**Sec. 38.05.250. Prospecting permits and leases on tide and submerged land.**

(a) The exclusive right to prospect for deposits of minerals subject to AS 38.05.185 - 38.05.275 in or on tide and submerged state land may be granted by a permit issued by the director. Permits shall be granted to the first qualified applicant. A permit may not include an area larger than 2,560 acres, subject to the rule of approximation. Land subject to a prospecting permit shall be as compact in form as possible taking into consideration the area involved. The term of the permit shall be 10 years. Prospecting permits shall be conditioned upon payment of rental against which credit shall be given for useful expenditures on land covered by the permit or group of contiguous permits under common ownership or assignment. Excess expenditures may be applied against rentals due for the following four years. The rental shall be \$3 per acre for the first two-year period of the permit, payable on the second anniversary of the permit and \$3 per acre for each following year, payable annually on the anniversary date of the permit. Minerals from land under a prospecting permit may not be mined and marketed or used, except for limited amounts necessary for sampling or testing. A person may not take or hold prospecting permits for minerals on state land under this section exceeding in the aggregate 300,000 acres. A person may not take or hold leases for minerals on state land under this section exceeding in the aggregate 100,000 acres.

(b) A noncompetitive lease shall be granted to a holder of a prospecting permit for so much of the land subject to the permit as is shown to the satisfaction of the director to contain workable mineral deposits. Submerged land containing known deposits of minerals subject to AS 38.05.185 - 38.05.275 may, in the discretion of the director, be offered by competitive bid. The land shall be leased to the qualified person offering the highest amount of cash bonus.

(c) Each submerged land mining lease shall be for a period of up to 20 years and for so long as there is production in paying quantities from the leased area.

(d) The commissioner may, on the request of the lessee, assent to the suspension of operation and production under a lease whenever in the judgment of the commissioner the suspension is necessary to promote development of the lease or the lease cannot be successfully operated under its terms. The payment of acreage rental may be suspended during the period of suspension of operation and production. The suspension of the lease shall extend the term of the lease by adding the period of suspension to the lease. The commissioner may extend the term of a non-producing lease on an application by the lessee accompanied by a showing that the lessee is reasonably close to attaining production and that, despite diligent good faith efforts by the lessee, the lessee is not able to produce due to force majeure, depressed market conditions, or other situations beyond the reasonable control of the lessee.

A suspension or extension granted under this subsection may not exceed two years.

**Sec. 38.05.252. Extra lateral rights under shore, tide, and submerged land.**

(a) Extra lateral rights under shoreland, tideland, and submerged land are confirmed and granted to an owner of a lode-mining claim located before January 3, 1959 under the mining laws of the United States.

(b) In this section, "extra lateral rights" means rights given to an owner of a mining claim under 30 U.S.C. 26 to follow, and mine, any vein or lode the apex of which lies within the boundaries of the location of the surface of the mining claim, notwithstanding that the course of the vein or lode on its dip or downward direction may so far depart from the perpendicular as to extend beyond the planes which would be formed by the vertical extension downwards of the sidelines of the location.

**Sec. 38.05.255. Surface use of land or water.**

(a) Surface uses of land or water included within a mining property by the owners, lessees, or operators shall be limited to those necessary for the prospecting for, extraction of, or basic processing of minerals and shall be subject to reasonable concurrent uses. Leases for mill sites, tailings disposal, and other mine related facilities maybe issued by the director. The leases shall be conditioned upon payment of a reasonable annual rent for the lease and restricted to uses approved by the director. Timber from land open to mining without lease, except timberland, may be used by a mining claimant or prospecting site locator for the mining or development of the location or adjacent claims under common ownership. On other land, timber may be acquired as provided in this chapter. Use of water shall be made in accordance with AS 46.15.

(b) A lease issued under this section is exempt from the provisions of AS 38.05.075 - 38.05.080.

**Sec. 38.05.260. Water rights where claim includes both banks of a stream.** [Repealed, Sec. 2 Ch. 50 SLA 1966. For current law see AS 46.15].  
Repealed or Renumbered

**Sec. 38.05.265. Abandonment.**

Failure to properly record a certificate of location or a statement of annual labor, pay any required annual rental, or pay any required production royalty as required by AS 38.05.185 - 38.05.200, 38.05.210 - 38.05.245, 38.05.252 - 38.05.275, and by regulations adopted under these sections constitutes abandonment of all rights acquired under the mining claim, leasehold location, or prospecting site involved, and the claim, leasehold location, or prospecting site is subject to relocation by others, unless the failure constituting the abandonment is cured under (b) of this section. A locator or claimant of an abandoned location or a successor in interest may not relocate the claim, leasehold location, or prospecting site until one year after abandonment. The locator of an abandoned prospecting site may locate a claim or leasehold location on that site at any time. A statement of annual labor that does not accurately set out the essential facts is void and of no effect. If an annual rental or a royalty payment is deficient but is otherwise timely paid, abandonment does not result if full payment is made within

- (1) The period prescribed by a deficiency notice from the commissioner; or
- (2) 30 days after a final judgment establishing the amount due if the deficiency amount due was contested.

(b) Unless another person has located a mining claim or leasehold location that includes all or part of the mining claim or leasehold location abandoned under (a) of this section or the area is closed to mineral location under AS 38.05.185 - 38.05.275, a person may cure the failure to record or pay that constituted the abandonment and cure the abandonment by

- (1) properly recording a certificate of location or a statement of annual labor, paying any required annual rental, and paying any required production royalty; and
- (2) paying a penalty equal to the annual rent for the mining claim or leasehold location that was abandoned under (a) of this section.

**Sec. 38.05.270. Transfers.**

The sale, lease or other transfer of mining property or interest in mining property shall be recorded or shall be approved by the director in compliance with such regulations as the commissioner may adopt. The heirs and assigns of mining property or interest in mining property have the same rights and duties as their predecessors.

**Sec. 38.05.275. Recognition of locations.**

(a) Mining locations made on state land, including shore land, tideland or submerged land, or state selected land, under AS 38.05.185 - 38.05.275 or in the manner described in AS 27.10, acquire for the locator mining rights under AS 38.05.185 - 38.05.275, subject to existing claims and to any denial of or restriction in the tentative approval of state selection or patent of the land to the state. If shoreland, tideland, or submerged land is included in a mining location or within the projected boundaries of a mining location made in accordance with this section, the locator shall record a certificate of location under AS 38.05.195. The certificate of location must identify the position of the mining location in the system of rectangular or protracted surveys. If the mining location is made in the manner described in AS 27.10, the commissioner may require that the locator amend the mining location to conform with AS 38.05.185 - 38.05.275 and thereafter to comply with the requirements of AS 38.05.185 - 38.05.275.

(b) In this section, "state selected land"

(1) Means land for which the state has filed a selection application with the United States under Sec. 6 of the Alaska Statehood Act, as amended, regardless of the validity or effect of the application, if the selection described in the application has not been rejected or relinquished;

(2) Does not include land described in (1) of this subsection for which a regional corporation organized under 43 U.S.C. 1606(a), as amended, a village corporation organized under 43 U.S.C. 1607(a), as amended, a Native group corporation that qualifies for a land conveyance under 43 U.S.C. 1613(h)(2), as amended, or a Native urban corporation that qualifies for a

land conveyance under 43 U.S.C. 1613(h)(3), as amended, has filed a valid selection application with the United States under 43 U.S.C. 1601 - 1641, as amended, if the selection of the corporation or group has not been rejected or relinquished.

(c) Subsection (b) of this section may not be construed to limit the director in the exercise of authority granted by AS 38.05.035 (a)(12).

# ADMINISTRATIVE REGULATIONS

## GENERAL PROVISIONS

### 11 AAC 86.100 APPLICABILITY.

The provisions of this chapter apply to the acquisition of mineral rights under AS 38.05.185 - 38.05.280.

(Eff. 9/15/74, Register 51)  
Authority - AS 38.05.020 (b)

### 11 AAC 86.105 DISCOVERY DEFINED.

"Discovery" means a finding of valuable mineral as would justify an ordinarily prudent person in expending further time, labor, and money upon the property with a reasonable expectation of developing a paying mine.

(Eff. 9/5/74, Register 51)  
Authority - AS 38.05.020 (b) AS 38.05.185 (b)

### 11 AAC 86.107 PAYMENTS AND REFUNDS.

(a) All payments required under this chapter, except for production royalty payments described in 11 AAC 86.769, may be made either by mail or in person as provided in this section.

(b) The proper office for payment by mail is the financial office of the department. However, on or after June 1, 2002, the rental for a new mining claim, leasehold location, or prospecting site location, other than a converted MTRSC location established under 11 AAC 86.250, may be mailed to the applicable recording district office, if accompanied by the certificate of location to be recorded and by a completed rental payment worksheet provided by the department.

(c) The proper office for payment made in person is either the Anchorage or Fairbanks office of the department. However, on or after June 1, 2002, the rental for a new mining claim, leasehold location, or prospecting site

location, other than a converted MTRSC location established under 11 AAC 86.250, may be paid at the applicable recording district office, if accompanied by the certificate of location to be recorded and by a completed rental payment worksheet provided by the department.

(d) If a rental payment is received in an amount in excess of that due for a location, the department will credit the excess amount to rent that might become due for that location, unless a refund is requested. The department will refund the excess amount only if it receives a written request for the refund within 90 days after the date of payment.

(e) A rental payment received for a closed location does not convey mineral rights to that location. The department will refund a payment received for a closed location if it receives a written request for a refund within 90 days after the date of the payment.

(f) The department may not refund a rental payment except as provided in (d) and (e) of this section.

(g) The department may not make a refund of a cash payment of annual labor.

(Eff. 5/18/90, Register 114; am 8/26/98, Register 147; am 8/16/2000; Register 155; 1/19/2002, Register 161)

Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.210 AS 38.05.211

**Editor's Note:** The mailing address for payment by mail is: State of Alaska, Department of Natural Resource, Support Services Division, 550 West 7<sup>th</sup> Avenue, Suite 1410, Anchorage, Alaska 99501, Attention: Financial Services. The geographic address for payment in person in Anchorage is: Department of Natural Resources, Public Information Center, 550 West 7<sup>th</sup> Avenue, Suite 1260, Robert B Atwood Building, Anchorage, Alaska. The geographic address for payment in person in Fairbanks is: Department of Natural Resources, Public Information Center, 3700 Airport Way, Fairbanks, Alaska. The Internet site address for payment by credit card of annual rental billed by the department in a rental form is [www.dnr.state.ak.us/pic/](http://www.dnr.state.ak.us/pic/).

### 11 AAC 86.108 NOTICES.

(a) Any decision or deficiency notice given to a locator under the provisions of this chapter will be made in writing and delivered in person or mailed by certified mail, return receipt requested, to the address of the current owner of the location as shown on the records of the division of mining. Other notices and letters from the department will be delivered in person or sent by first class mail or certified mail to the locator's current address of record.

(b) For purposes of this chapter, the department will consider delivery by certified mail to occur when the receipt is signed. If the addressee neglects or refuses to sign for certified mail, the department will consider delivery to occur when the notice is deposited in a United States post office addressed to the person's current address of record with the department.



(c) A locator must inform the department of the locator's most recent, or permanent, mailing address. The department will make changes to a locator's address of record upon receipt of a written request by the locator.

(Eff. 5/18/90, Register 114; am 1/19/2002, Register 161)  
Authority - AS 38.05.020

**11 AAC 86.110 EXISTING MINING CLAIMS,  
FEDERAL LEASES AND PERMITS.**

Nothing in 11 AAC 86 and 11 AAC 88 adversely affects the continued validity of any lease, permit, license, location, or contract, or any rights arising thereunder, granted or issued by the United States, or any rights acquired or being exercised pursuant to the mining laws of the United States, before the land was acquired by the State of Alaska.

(Eff. 9/5/74, Register 51)  
Authority - AS 38.05.020

**11 AAC 86.115 LOCATIONS ON STATE-  
SELECTED LAND.**

(a) A location made on state-selected land that has not been conveyed to the state by the federal government through tentative approval or patent is made at the locator's risk. Because the state does not have management authority over the land unless the selection has been conveyed and cannot authorize exploration work or mining until that time, the locator is responsible for obtaining any necessary permits from the federal land manager and other permitting authorities.

(b) A location made on state-selected land in accordance with this chapter creates prior rights against subsequent locators and becomes a mining claim, leasehold location, or prospecting site when the federal government conveys the selection to the state through tentative approval or patent, whichever occurs first, unless the conveyance restricts or bars the location, or unless a state mineral closure is in effect on the date of the conveyance. If a state leasing restriction is in effect on the date of the conveyance, a location made before the conveyance is subject to that restriction. If the land is closed to mineral entry or restricted to leasing after the date of the conveyance, a valid location that was made before the conveyance is unaffected.

(c) If only a portion of the area of a mining location on state-selected land is conveyed to the state, only the portion of the mining location that is on the land conveyed becomes a mining claim, leasehold location, or prospecting site. The portion of the area of the location on the state-selected land that is not conveyed continues as a mining location on state-selected land without further action by the locator.

(d) The provisions of AS 38.05.210 - 38.05.240 do not apply to locations made on state-selected land until the state receives the conveyance of the selection from the

federal government. The first labor year for a mining claim or a leasehold location made on state-selected land begins at noon on the first September 1 after the date the federal government conveys the selection. For the purpose of determining the amount of annual rent, a location on state-selected land is considered to have been first located on the date the federal government conveys the selection through tentative approval or patent, whichever occurs first.

(e) The first annual rental year for a location made on state-selected land begins on the date of conveyance of the selection to the state by the federal government and ends at noon on the following September 1. The first annual rental payment is due on the date of conveyance and must be paid within 90 days after that date. It is the locator's responsibility to determine the date of conveyance. In accordance with 11 AAC 86.107 and 11 AAC 86.215(f), the locator may make a one-time, non-refundable deposit of \$25 for each location made on state-selected land. If the state receives conveyance to the selection, the department will credit the deposit to the first rental payment that becomes due for the location. In the event the rental deposit amount should ever change, the previous one-time nonrefundable deposit amount does not have to be adjusted so the amount is the same as the new rental deposit amount. A location made on state-selected land that is conveyed to the state by the federal government constitutes an abandonment of the location under AS 38.05.265 if the department has not received the rental payment or rental deposit for the location within 90 days after conveyance of the selection.

(Eff. 9/5/74, Register 51; am 5/30/85, Register 94; am 5/18/90, Register 114; am 8/26/98, Register 147; am 4/24/99, Register 150)

Authority - AS 38.05.020                      AS 38.05.185  
   AS 38.05.211                      AS 38.05.275

**11 AAC 86.125 FAILURE TO COMPLY.**

(a) The failure on the part of a mining lessee or locator to comply strictly with the provisions of this chapter and the applicable statutes does not invalidate the mining lessee's or locator's rights if it appears to the satisfaction of the director that the locator or lessee complied as nearly as possible under the circumstances and that conflicting rights are not asserted by another person. Upon written application, the director may issue a certificate of substantial compliance that sets out the specific failure on the part of the lessee or locator and the relief granted. The certificate does not cure any defect not specifically referred to in the certificate. The certificate becomes effective when recorded in the recording district where the located or leased land is located.

(b) An application for a certificate of substantial compliance must include the name and address of the mining lessee or locator, the name of the location or lease, any serial number assigned by the department to the location or lease, an application fee as set out in 11 AAC

05.010(a)(9)(G), a statement of the specific failure to comply the reasons for the failure, and any other information the director considers necessary to determine the circumstances of the case.

(Eff. 9/5/74, Register 51; am 5/30/85, Register 94; am 8/26/98, Register 147)  
Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.185

**11 AAC 86.135 MINERAL DEPOSITS OPEN TO LOCATION.**

(a) Rights in and to deposits of locatable minerals, except on tide and submerged land as specified in (c) of this section, may be acquired by making a mineral location in conformance with AS 38.05.185 - 38.05.275 and 11 AAC 86, unless the deposits are in or on state land that is closed to location. To constitute a valid location, both discovery and posting of the location notice must occur during a time when the land is open to location.

(b) This section constitutes the commissioner's finding, in accordance with AS 38.05.185 (a), that selling or leasing of land, or conveying land under AS 29.65.010 - 29.65.140 or AS 38.05.810, other than a locatable mineral interest, with the mineral rights reserved to the state, creates potential use conflicts requiring that mining be allowed only under written leases. If the land remains open to location, a location made on that land after the sale, lease, or conveyance is a leasehold location.

(c) Rights in and to deposits of locatable minerals on tide and submerged land may be acquired only under the provisions of AS 38.05.250 and 11 AAC 86.500 - 11 AAC 86.570, except that tide and submerged land may be included in a location under AS 38.05.195 if two corners are on or above the line of mean high tide.

(d) If the land upon which a location is made is restricted to mining under lease before the discovery date or the date the location notice was posted, the locator has prior rights only to a leasehold location under AS 38.05.205.

(e) Notice will be given under AS 38.05.945 before an order closing land to mining or mineral location or restricting it to mining under lease is issued, amended, or revoked.

(Eff. 9/5/74, Register 51; am 5/30/85, Register 94; am 5/18/90, Register 114; am 8/26/98, Register 147)  
Authority AS 38.05.020 AS 38.05.185  
AS 38.05.205 AS 38.05.275  
AS 38.05.300

**11 AAC 86.140 DRAWING OF PRIOR EXISTING LOCATIONS.**

The requirement under 11 AAC 86.210 (4), 11 AAC 86.215 (a)(6), 11 AAC 86.410(a)(4), and 11 AAC 86.410 (b)(6) That a locator show the relationship of his location to adjacent and contiguous mining claims, leasehold locations, and prospecting sites held by other parties is for

informational purposes only. It is not an admission by the locator of the proper location and maintenance, good standing, or validity of those other claims, locations, or sites.

(Eff. 9/5/74, Register 51; am 12/31/82, Register 84)  
Authority - AS 38.05.020 (b)

**11 AAC 86.145 SURFACE USE.**

(a) The following provisions apply to land for which the state owns the surface:

(1) A locator does not have exclusive use of the surface of the location. A locator may use the surface of the location only to the extent necessary for the prospecting for, extraction of, or basic processing of mineral deposits. A locator may not restrict public access to or other uses of the surface unless approved in writing by the director. The director may allow the locator to restrict public access or other surface uses of the location only to protect public safety or prevent unreasonable interference with the rights of the locator.

(2) The building, placing, or use of surface structures or other surface improvements, including airstrips and roads, within the boundaries of a mining property must be approved by the director in writing through a plan of operations, land use permit, or other written authorization. The director will only approve surface structures or other surface improvements that are necessary to carry out authorized operations. Factors to be used by the director in approving the surface structures, other surface improvements, or uses include: access to the property, remoteness of location, security of the operations, planned level of operations, existing authorized surface uses, and the current level of activity.

(3) A classification or designation indicating that timber and other forest products of significant value are included within a mining property is prima facie evidence that the land on which the property is located is considered to be "timberlands" for purposes of AS 38.05.255. The division of forestry must be contacted before using or clearing timber from timberlands.

(4) The director may require documentary evidence of mining activity to support a request for surface use. Failure to provide documentary evidence when required by the director is grounds for denial of the requested surface use. At the request of a person making a request for surface use, the department will keep confidential the cost data and financial information submitted by the person, but the person must clearly identify the cost data and financial information and separate it from information not qualifying under AS 38.05.035 (a)(9) for confidential treatment.

(b) If the surface estate or interests in the surface estate are owned by a third party with the minerals reserved to the state under AS 38.05.125, the locator must make provisions under AS 38.05.130 to pay the owner of the surface estate or surface interests for any damage that may be caused by the use or development of that location.

If the locator and the owner of the surface estate or interests are unable to reach agreement concerning the provision for payment of damages, the locator may enter the land in the exercise of the locator's right to use or develop the minerals reserved under AS 38.05.125 after a determination by the director that the proposed activities are necessary for the locator to exercise the rights reserved under AS 38.05.125, and after posting a surety bond determined by the director under AS 38.05.130. A locator who wishes to enter the land in this manner shall provide information requested by the director so that the director may make each of the determinations required by this subsection. The locator shall also comply with requirements for a reclamation plan and bond under AS 27.19.010 - 27.19.100 and 11 AAC 97.010 - 11 AAC 97.640.

(Eff. 5/30/85, Register 94; am 11/7/90, Register 116; am 8/26/98, Register 147)

Authority -AK. Const., Art. VIII, Sec. 11

AS 38.04.058	AS 38.05.020
AS 38.05.035	AS 38.05.125
AS 38.05.130	AS 38.05.255
AS 38.05.965	

#### **11 AAC 86.155 SALE, LEASE, OR OTHER TRANSFER.**

(a) The rights held under a mining location on state land, or any interest in an undivided location, may be sold, leased, or otherwise transferred without the approval of the director. The sale, lease, or other transfer document must be recorded in the district recorder's office for the recording district in which each transferred mining location is located, and the transfer document must include:

(1) For a sale, lease, or transfer that is made on or after 8/26/98, the word "mining" in the title of the document;

(2) The claim name of each location;

(3) The ADL number (if assigned) for each location;

(4) Every section, township, range, and meridian in which each transferred mining location is located;

(5) The current mailing address of each party to the transfer; the department will change the owner of record for a mining location on its records if a transfer document containing the information above is recorded.

(b) The failure to comply with the provisions of (a) of this section does not affect the validity or enforceability of the sale, lease, or transfer of a right or interest described in (a) of this section between the parties to the sale, lease, or transfer.

(c) Before a portion of a mining location may be sold or granted, the original location must be physically divided by amending it to reduce its size. A new location must be created on the remaining ground in accordance with this chapter. The original discovery and location dates apply only to the amended location and not to the newly created location. Any sale or grant of rights under either the

amended location or the new location must comply with (a) of this section.

(Eff. 9/5/74, Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94; am 5/18/90, Register 114; am 8/26/98, Register 147)

Authority - AS 38.05.020 AS 38.05.270  
AS 38.05.920

Editor's Notes -

11 AAC 86.155 replaces former 11 AAC 86.230 which was repealed 5/30/85, Register 94. The history note for 11 AAC 86.155 includes the history of the repealed section.

## **ARTICLE 02**

### **STAKING, RECORDING AND MAINTAINING CLAIMS AND LEASEHOLD LOCATIONS**

#### **11 AAC 86.200 DISCOVERY REQUIRED.**

No mining claim or leasehold location is complete until after the discovery, as defined in 11 AAC 86.105, of locatable minerals within the limits of the claim.

(Eff. 9/5/74, Register 51; am 1/19/2002, Register 161)

Authority - AS 38.05.020 AS 38.05.195

#### **11 AAC 86.202. MTRSC AND TRADITIONAL MINING CLAIMS AND LEASEHOLD LOCATIONS**

(a) An MRTSC claim is a claim located as provided in AS 38.05.195 (b)(1) and this chapter. An MTRSC leasehold location is a leasehold located as provided in AS 38.05.195 (b)(1), AS 38.05.205, and this chapter.

(b) A traditional mining claim is a claim located as provided in AS 38.05.195 (b)(2) and this chapter, and means the same as a non-MTRSC location, as that term is used in AS 38.05.195 (b)(2). A traditional leasehold location is a leasehold location located as provided in AS 38.05.195 (b)(2), AS 38.05.205, and this chapter.

(c) A traditional location is a traditional mining claim or traditional leasehold location.

(EFF. 1/12/2002, Register 161)

Authority - AS 38.05.020 AS 38.05.195  
AS 38.05.205 AS 38.05.211

#### **11 AAC 86.205 MARKING LOCATIONS.**

The locator of a mining claim or leasehold location shall designate the location by erecting at each corner of the location substantial monuments of stone or setting posts, not less than three feet in height, not less than two and one-half inches in diameter, and hewn and marked with the name of the location and the number of the monument, beginning with number 1 at the northeast corner and proceeding in a clockwise direction around the location. Where it is impracticable to place a monument

in its true position, a witness monument must be erected and marked so as to indicate the true position of the corner. Where locations under common ownership have common corners, a common corner monument may be used.

(Eff. 9/5/74, Register 51; 1/19/2002, Register 161)  
Authority - AS 38.05.020 AS 38.05.195  
AS 38.05.205

### **11 AAC 86.210 ATTACHING LOCATION NOTICE.**

The locator of a mining claim or leasehold location shall personally, or through an agent, attach or post a notice on the monument at the northeast corner of the location. The notice may be in any form, including as a metal tag. The notice must include

- (1) the name or number of the mining claim or leasehold location;
- (2) the date of posting the notice of location;
- (3) if the mining claim or leasehold location is
  - (A) a traditional location, the length and width of the mining claim or leasehold location in feet; or
  - (B) an MTRSC location, the meridian, township, range, section and quarter or quarter-quarter-section of the mining claim or leasehold location;
- (4) a sketch depicting, to the best of the locator's knowledge, the relationship of the mining claim or leasehold location to adjoining and contiguous mining claims, leasehold locations, and prospecting sites, and
- (5) the name and current mailing address of each locator.

Eff. (9/5/74, Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94; am 1/19/2002, Register 161)  
Authority - Art. VIII, sec. 11, Ak. Const.  
AS 38.05.020 AS 38.05.195  
AS 38.05.205

### **11 AAC 86.215 CERTIFICATE OF LOCATION AND FIRST RENTAL PAYMENT.**

(a) Within 45 days after the date of posting of the notice of location, a locator shall record a certificate of location in conformance with AS 38.05.195. The certificate of location must be recorded in the recording district in which the location is situated, on a form approved by the department or on a substantially similar form meeting the recording requirements of 11 AAC 06.040, and must include

- (1) the name or number of the location;
- (2) the date of the locator's discovery and the date of posting the notice of location;
- (3) for a traditional location, the length and width of the width of the location in feet, and each meridian, township, range, section, quarter-section, and quarter-quarter section in which the location is situated;

(4) for an MTRSC location, the meridian, township, range, section, quarter-section, and if applicable the quarter-quarter-section of the location.

(5) the name and current mailing address of each locator, and the signature of each locator or of the locator's agent;

(6) the name of the recording district in which the location is situated; and

(7) a map at an indicated scale of 1:63,360 (one inch = one mile) or a more detailed scale that shows the boundaries of the claim or leasehold location, the dominant physical features of the land, the protracted or surveyed section lines surrounding the location, and, to the best of the locator's knowledge, the relationship of the location to adjacent or contiguous mining claims, leasehold locations, mining leases, and prospecting sites; if more than one contiguous location is being recorded simultaneously, a single map showing all locations may be attached to one of the certificates of location if the document to which the map is attached is cross-referenced on each certificate of location.

(b) Failure to file for record a certificate of location within the time specified in (a) of this section, constitutes an abandonment of the claim or leasehold location.

(c) Repealed 5/30/85.

(d) Repealed 5/30/85.

(e) Repealed 5/30/85.

(f) The first annual rental payment for a new location on state land is due within 45 days after the date of posting of the notice of location. The first annual rental payment for a location on state-selected land is due on the date the federal government conveys all or a portion of the land within the location to the state, must be paid within 90 days after that date, and must be paid as provided in 11 AAC 86.107. A rental payment for a new location must be submitted as provided in 11 AAC 86.107 and must be accompanied by a copy of the certificate of location, whether or not it has been recorded. The first rental payment for a location on state land will be considered as rent for the period from the date of posting to noon of the following September 1. Before the date of conveyance, a locator may submit a payment and certificate of location for a location on state-selected land. As provided in 11 AAC 86.115, the payment will be considered a non-refundable deposit credited to the first rental payment if the selection is conveyed to the state.

(Eff. 9/5/74, Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94; am 5/18/90, Register 114; am 8/26/98, Register 147; am 1/19/2002, Register 161)  
Authority - AS 38.05.020 AS 38.05.195  
AS 38.05.205 AS 38.05.211  
AS 38.05.265

### **11 AAC 86.220 ANNUAL LABOR.**

(a) Except as provided in 11 AAC 86.115, the first labor year begins at noon on the first September 1 following the date a location notice is posted under 11 AAC 86.210.



Each subsequent annual labor year begins at noon on September 1. A location that is located on September 1 will be considered to have been located after noon on that day.

(b) Work performed outside the boundaries of the location must develop or benefit the location to qualify as annual labor. Transportation or workers or equipment to or from the location does not qualify as annual labor.

Drilling or excavating, including ore extraction, or geological, geochemical, geophysical, or airborne surveys, as provided for in AS 38.05.240, may qualify as annual labor.

(c) During each labor year in which the performance of annual labor is required, or within 90 days after the close of that annual labor year, the owner of each mining claim, leasehold location, or mining lease on state land or some other person having knowledge of the facts, shall make and file for record an affidavit. The affidavit must describe the performance of the labor or the making of improvements for the immediately preceding year and any cash payment made instead of performing labor. The affidavit must describe any labor in excess of that required for the preceding year that is to be applied to later years, and that excess labor may be applied to any or all of the next four consecutive labor years. The affidavit must contain the following essential facts:

(1) the name or number of the mining claim, leasehold location, or mining lease;

(2) every meridian, township, range, and section in which the location or locations are situated, and the recording district in which it is located;

(3) the name and current mailing address of each owner;

(4) the dates of performance of the labor and the character and value of the improvements made or labor performed, or the amount of cash payment made instead of annual labor; and

(5) the value of excess work to be applied from previous years.

(d) An affidavit required by this section may be made before any officer authorized to administer oaths, or, when no official empowered to administer oaths is available, in the manner provided by AS 09.63.020.

(e) Repealed 5/30/85.

(f) Repealed 5/30/85.

(g) An affidavit of annual labor may be amended under AS 38.05.210 (c). However, an affidavit that does not set

out the essential facts is void under AS 38.05.265 and may not be amended.

(h) A cash payment made instead of performing annual labor must be received by the department as provided in 11 AAC 86.107 and must be received by the department on or before September 1st of each year. The payment must be accompanied by a copy of the affidavit of annual labor or a statement containing the name and ADL number for the mining claim, leasehold location, or mining lease for which the payment is made. If cash payment is asserted in an affidavit of annual labor but is not paid by the end of the labor year, the mining claim or leasehold location will be considered abandoned under AS 38.05.265. A person may not make a cash payment instead of annual labor for more than five consecutive years at a time. A locator who makes a cash payment in lieu of annual labor for one or more years must also record an affidavit of annual labor under AS 38.05.210 and (c) of this section for each year for which a cash payment is made.

(Eff. 9/5/74, Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94; am 5/18/90, Register 114; am 8/26/98, Register 147)

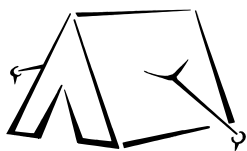
Authority - AS 27.05.010 AS 38.05.242  
AS 38.05.020 AS 38.05.265  
AS 38.05.210

**11 AAC 86.221 ANNUAL RENTAL.**

(a) A rental payment for a mining claim or leasehold location must be made in accordance with 11 AAC 86.107. The first rental payment for a new location must be made in accordance with 11 AAC 86.215(f). Each subsequent payment must be accompanied by a rental form provided by the department, a photocopy of that form, or a rental form approved by the director. The rental form must contain the name and address of the owner of record and the name and ADL number of the claim or leasehold location. The department will, in its discretion, refuse to accept a payment submitted without the required information.

(b) Except as provided in (f) of this section, the amount of the annual rental payment is based on the number of years since a mining claim or leasehold location was first located, as follows:

Number of Years Since First Located	Rental Amount for Each Qtr Section MTRSC Location	Rental Amount for Each Qtr-Section MTRSC Location	Rental Amount for Each Trad. Mining Claim or Leasehold Location
0 - 5	\$140.00	\$35.00	\$35.00
6 - 10	\$280.00	\$70.00	\$70.00
11 or +	\$680.00	\$170.00	\$170.00



(c) For purposes of determining the amount of annual rental, a claim or leasehold location located on state land on or before August 31, 1989, is considered to have been first located on August 31, 1989, and the first rental year for such a claim or leasehold location is considered to have begun at noon on September 1, 1989. The first rental year for a claim or leasehold location on or after September 1, 1989, begins on the date of posting location and ends at noon on the following September 1. The first rental year for a claim or leasehold location located on state-selected land begins on the date the federal government conveys the land to the state and ends at noon on the following September 1. A claim or leasehold location located on any September 1 will be considered to have been located after noon on that day.

(d) The rental payment for each subsequent rental year is due on September 1 and must be paid on or before November 30.

(e) If a locator fails to make a timely rental payment, the claim or leasehold location will be considered abandoned under AS 38.05.265. If a rental payment is timely submitted to the department, but the director determines that the payment is less than the amount due, the locator will be granted 30 days after a deficiency notice is delivered under 11 AAC 86.108 to submit the additional rental due. In the deficiency notice, the department will advise the locator that if full payment is not received within the 30-day period, the deficient payment will be applied until exhausted to the claims and leasehold locations with the lowest ADL numbers. The claims and leasehold locations with the remaining ADL numbers for which rent was due and full payment was not received will be considered abandoned without further notice.

(f) The following additional rules apply to a rental determination:

- (1) for the rental year following the year in which a new MTRSC location is established, the new MTRSC location is entitled to a 50 percent reduction in the rental that would otherwise be due based on the size of the new MTRSC location;
- (2) for the rental year following the year in which a traditional location is converted to an MTRSC location, the converted MTRSC location is entitled to a 50 percent reduction in the rental that would otherwise be due based on the size and rental age of the converted MTRSC location as determined under 11 AAC 86.260;
- (3) if a traditional location is converted into an MTRSC location, the annual rental for the converted MTRSC location is based on its size and its rental age as determined under 11 AAC 86.260;
- (4) the annual rental for a location established by a locator or a locator's successor in interest under the circumstance described in 11 AAC 86.223 (c) or (d) is based on the location's size and on the number of years since the relinquished or existing location was first located.

(Eff. 5/18/90, Register 114; am 8/26/98, Register 147; am 4/24/99, Register 150; am 1/19/2002, Register 161)

Authority -AS 27.05.020 AS 38.05.035  
AS 38.05.185 AS 38.05.211  
AS 38.05.265

**11 AAC 86.223 ABANDONMENT,  
RELINQUISHMENT, AND RELOCATION**

(a) For purposes of AS 38.05.265, a "successor in interest" to a locator or claimant means

- (1) the spouse, child, sibling, or parent of the locator or claimant;
- (2) a person or association described in AS 38.05.190 (a) that owned an interest in the locator's or claimant's location; or
- (3) a corporation or association that is described in AS 38.05.190 (a)(5) or AS 38.05.190 (a)(6) that owned an interest in the locator's or claimant's location, but only if a majority of the ownership of the corporation or association is held by a person or association described in (1) or (2) of this subsection.

(b) A locator may not include in a new location any part of a mining claim or leasehold location abandoned under AS 38.05.265 less than a year ago by that locator or by a person to whom the locator is a successor in interest, regardless of whether the abandoned location was an MTRSC or a traditional location.

(c) The posting date for a relinquished MTRSC or traditional location will be used as the date for determining the rental owed under 11 AAC 86.221 (b) for a new traditional location, a new MTRSC location, or a traditional location that is converted to an MTRSC location under 11 AAC 86.250 – 11 AAC 86.255 if

- (1) the relinquished location is relinquished under circumstances not constituting abandonment under AS 38.05.265;
- (2) within a year after relinquishing the relinquished location, its former owner or a successor in interest posts the new traditional location, the new MTRSC location, or the converted MTRSC location; and
- (3) the new traditional location, the new MTRSC location, or the converted MTRSC location includes any part of the relinquished location.

(d) If a locator posts an MTRSC location over an existing location, and is the locator of or a successor in interest to the locator of the existing location, the new location will be considered to be a converted MTRSC location that is subject to 11 AAC 86.250.

(Eff. 8/26/98, Register 147; 1/19/2002, Register 161)  
Authority - AS 38.05.020 AS 38.05.265

**11 AAC 86.225 SERVICE OF NOTICE ON CO-OWNERS.**

The service of written personal notice authorized by AS 38.05.215 shall be made by certified mail only.

(Eff. 9/5/74, Register 51)

Authority - AS 38.05.020 AS 38.05.215

**11 AAC 86.250 GENERAL PRINCIPLES FOR CONVERSION OF A TRADITIONAL LOCATION TO A CONVERTED MTRSC LOCATION**

One or more traditional mining claims or leasehold location may be amended at any time to establish one or more converted MTRSC locations. The following rules apply to a conversion:

- (1) all or part of a traditional location may be included in the converted MTRSC location; each converted MTRSC location must be supported by a discovery somewhere within its boundaries;
- (2) if only part of a traditional location is included in the converted MTRSC location, the remaining part may be either relinquished or relocated as an amended location;
- (3) a converted MTRSC location does not establish locatable mineral rights to an area outside the traditional location if that area is not open to location;
- (4) conversion of a traditional location to a converted MTRSC location is not complete unless the annual rental due on the traditional location for the year in which the conversion occurs is timely paid in full; the failure to timely pay the required rental on the traditional location results in abandonment of both converted MTRSC location and traditional locations under AS 38.05.265.

(Eff. 1/19/2002, Register 161)

Authority- AS 38.05.020 AS 38.05.035  
AS 38.05.195 AS 38.05.210  
AS 38.05.211 AS 38.05.265

**11 AAC 86.255 CERTIFICATE OF LOCATION FOR A CONVERTED MTRSC LOCATION**

In addition to marking the location as required by 11 AAC 86.205 and attaching a notice of location as required by 11 AAC 86.210, a locator establishing a converted MTRSC location must record a certificate of location within 45 days after posting the converted MTRSC location. The certificate of location must be recorded in the recording district in which the converted MTRSC location is situated, on a current form approved by the department for conversions or on a substantially similar form meeting the recording requirements of 11 AAC 06.040, and must include

- (1) the location name or number of the converted MTRSC location, and the meridian, township, range, section, and quarter- or quarter-quarter-section of the location;

- (2) for each traditional location being converted to the MTRSC location, the ADL number, if assigned, location name, discovery date, posting date, and
  - (A) original book and page of recording; or
  - (B) recording office serial number;

- (3) the name of the recording district in which the converted MTRSC location is situated;
- (4) the name and current mailing address of each locator, and the signature of each locator or of the locator’s agent;
- (5) a map at an indicated scale of 1:63,360 (one inch = one mile) or a more detailed scale that shows the boundaries of the converted MTRSC location and each existing location being converted, the dominant physical features of the land, the protracted or surveyed section lines surrounding the converted MTRSC and existing locations, and, to the best of the locator’s knowledge, the relationship of the locations to adjacent or contiguous mining claims, leasehold locations, mining leases, and prospecting sites; if the converted MTRSC location is being recorded simultaneously with one or more contiguous converted MTRSC or new locations, a single map showing all locations may be attached to one of the certificates of location if the document to which the map is attached is cross-referenced on each certificate of location; and
- (6) proof of ownership transfer, if the locator of the converted location is not the owner of record of each existing location being converted, that proof must be filed with the certificate of location.

(Eff. 1/19/2002, Register 161)

Authority- AS 38.05.020 AS 38.05.035  
AS 38.05.195 AS 38.05.210  
AS 38.05.211 AS 38.05.265

**11 AAC 86.260 RENTAL AGE OF A CONVERTED LOCATION**

For purposes of establishing the annual rental owed under 11 AAC 86.221, the rental age of a converted MTRSC location is the number of years since the first posting of the traditional location from which the MTRSC location was converted. If more than one existing traditional location is used to establish a converted MTRSC location, the rental ages of the converted location is the average of the rental ages of the existing traditional locations, then rounded to the nearest whole year. For purposes of calculating that average,

- (1) if a converted quarter-section MTRSC location includes fewer than four existing traditional locations, the department will count each existing location’s rental age as only 25 percent of the average; additional imaginary locations, each assumed to be one year old and each counting as 25 percent, will be added to the average to reach 100 percent; the average age will be rounded to the nearest whole year; and
- (2) the rental age of a relinquished location, as determined by that location’s posting date, will be

included in calculating a converted MTRSC location's rental age if the converted MTRSC location  
 (A) includes any part of the relinquished location;  
 (B) is established less than a year after the relinquishment; and  
 (C) is established by the locator of the relinquished location or by that locator's successor in interest under 11 AAC 86.223

(Eff. 1/19/2002, Register 161)  
 Authority- AS 38.05.020 AS 38.05.035  
 AS 38.05.195 AS 38.05.210  
 AS 38.05.211 AS 38.05.265

**11 AAC 86.265 CREDIT OR DEFICIENCY IN PAYMENT OF RENTAL ON A CONVERTED LOCATION**

(a) The annual rental paid in the year of conversion on an existing location included in whole or in part in a converted MTRSC location will be credited as a timely payment to the first-year rental owed on the converted MTRSC location. If parts of the existing location are included in more than one converted MTRSC location, the department will allocate the rental payment equally to the first-year rental owed on each converted MTRSC location. If a deficiency exists, the department will mail a deficiency notice to the locator as provided in 11 AAC 86.221 (e) to permit payment of the balance owed. If an excess exists, it will be credited to rent owed for the converted MTRSC location in the second and subsequent rental years until exhausted. If a deficiency is not cured in accordance with notice from the department, the

1. converted location will be considered abandoned under AS 38.05.265; and
2. department will consider the traditional location from which the abandoned location was converted to continue in force and be subject to this chapter as if the conversion had not occurred.

(b) The annual rental owed on a converted MTRSC location in the next and subsequent rental years following the year of conversion is due and payable in accordance with 11 AAC 86.221. From the rental owed on a converted MTRSC location in the rental year of conversion, the department will deduct the 50 percent discount described in 11 AAC 86.221 (f)(2), together with any credit for overpayment of first-year rental. The overpayment credit, if any, and the 50 percent rental discount are considered timely partial payment toward the second-year rental.

(Eff. 1/19/2002, Register 161)  
 Authority: AS 38.05.020 AS 38.05.035  
 AS 38.05.195 AS 38.05.210  
 AS 38.05.211 AS 38.05.265

**11 AAC 86.270 LABOR OBLIGATION ON A CONVERTED LOCATION**

The labor obligation required to be met in the year that an existing location is included in a converted MTRSC location must still be satisfied and is subject to AS 38.05.265 as if a conversion had not occurred.

(Eff. 1/19/2002, Register 161)  
 Authority: AS 38.05.020 AS 38.05.035  
 AS 38.05.195 AS 38.05.210  
 AS 38.05.211 AS 38.05.265

**11 AAC 86.290 Definitions**

In 11 AAC 86.250 – 11 AAC 86.290, unless the context requires otherwise,

- (1) "conversion" means the amendment of one or more traditional mining claims or traditional leasehold locations to establish an MTRSC location;
- (2) "converted MTRSC location" means an MTRSC location established by means of a conversion.

(Eff. 1/19/2002, Register 161)  
 Authority: AS 38.05.020 AS 38.05.035  
 AS 38.05.195 AS 38.05.210  
 AS 38.05.211 AS 38.05.265

**ARTICLE 03**

**UPLAND MINING LEASES**

**11 AAC 86.300 PREFERENCE RIGHT BY LEASEHOLD LOCATION.**

The preference right to a lease that is acquired by establishing and maintaining a leasehold location remains in existence until a lease is issued, the leasehold location is adjudicated and found invalid, or the leasehold location is abandoned.

(Eff. 9/5/74, Register 51; am 5/30/85, Register 94; am 5/18/90, Register 114)  
 Authority - AS 38.05.020 AS 38.05.205

**11 AAC 86.305 APPLICATIONS FOR LEASE.**

(a) When the division receives a copy of a certificate of location for a location on state land that is restricted to mining under lease, the division will notify the locator of the leasing requirement.

(b) The division will publish the notice required by AS 38.05.205 (a) and subsequently mail a lease application form to the locator only when

(1) the division learns that the locator is ready to begin production or, if authorized by sec. 5, ch. 108, SLA 1981, as amended by sec. 1, ch. 90, SLA 1985, the locator is already producing;

(2) the locator requests a lease application form; or

(3) the locator of a mining claim requests a lease application form.

(c) The lease application submitted by a person described in (b) of this section must include a sworn affidavit stating, for each mining claim or leasehold location,

(1) that discovery, location, and filing were performed as required by law;

(2) the type and nature of the mineral discovery; and

(3) the position of the discovery in relation to the northeast corner of the location.

(d) The division will reject a lease application and the location will be void if the director determines, after a review of all documents that are filed, a field examination, or analysis of other information, that

(1) the requirements of AS 38.05.185 - 38.05.275 have not been met;

(2) the land was not open to location when the mining claim or leasehold location was made; or

(3) the land is closed to mining.

(e) The division will reject a lease application received

(1) for a location on state-selected land that has not been conveyed to the state by the federal government; and

(2) for other land to which the state does not hold title to the locatable mineral estate.

(f) The director will send by certified mail a copy of the notice described in (b) of this section to the holders of apparent conflicting rights as shown on state land records. Any assertion of conflicting rights must be received by the director within 30 days of the date of the notice unless the director authorizes an extension of time. The assertion of conflicting rights must be in writing and must describe:

(1) the conflicting rights asserted; and

(2) any factual or legal basis for, and documents in support of, the conflicting rights.

(g) If conflicting rights are asserted by another locator and the director decides not to adjudicate the conflict, the division will reject the lease application and advise the parties to resolve the conflict. A person may file a new lease application after the conflict between the parties has been resolved.

(h) The division may not adjudicate a lease application that does not meet the requirements of this section, or that otherwise deviates from the form provided by the division. The division will return the application to the applicant with an explanation of the reason for its return. A new lease application may be filed later.

(Eff. 9/5/74, Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94; am 5/18/90, Register 114; am 8/26/98, Register 147)

Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.185 AS 38.05.205

### **11 AAC 86.309 SHOWING OF DISCOVERY.**

(a) The director will, in his or her discretion, at any time, require a showing of discovery for each mining claim or leasehold location included within a leasehold or listed in a lease application.

(b) The showing of discovery required of a lessee must relate to the discovery originally sworn to in the

application for a lease. However, the showing may be supported with subsequently acquired data.

(c) The statement of discovery sworn to in a lease application is not confidential, but any supplemental geological, geophysical, or engineering data supplied in support of a showing of discovery will, upon the lessee's request, be kept confidential by the state and by any agents or experts consulted or retained by the state to assist in the determination of the existence of a discovery.

(d) A mining claim or leasehold location determined by the director to lack a discovery is void and will be excluded or removed from the leasehold or the lease application.

(Eff. 5/30/85, Register 94)

Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.205

### **11 AAC 86.311 SURVEY OF EXTERIOR BOUNDARY.**

(a) Unless otherwise specified by the director, within 10 years after the effective date of the lease, the exterior boundary of the leasehold must be surveyed in accordance with 11 AAC 53 and instructions issued by the department.

(b) Repealed 1/19/2002

(Eff. 5/30/85, Register 94; am 5/18/90, Register 114; am 1/19/2002, Register 161)

Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.205

### **11 AAC 86.312 LEASE DURATION.**

A lease will be issued for a term of 20 years, subject to renewal as provided in AS 38.05.205 (c). However, the director will, in his or her discretion, set a different term if justified on the basis of the expected mine life.

(Eff. 5/30/85, Register 94)

Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.205

### **11 AAC 86.313 ANNUAL RENTAL.**

(a) The provisions of this section apply to rental payments for mining leases other than for leases under AS 38.05.250.

(b) A rental payment for a mining lease must be made in accordance with 11 AAC 86.107 and must be accompanied by a rental form provided by the department, a photocopy of that form, or a form approved by the director. The form must contain the name and address of the owner of record and the ADL number of the mining lease.

(c) The annual rental amount is based on the number of acres included in the lease and the number of years since

the predecessor claim or leasehold location of the mining lease was first located, as follows:

<b>Number of Years Since First Located</b>	<b>Rental Amount Per Acre</b>
0 - 5	\$0.88
6 - 10	\$1.75
11 - +	\$4.25

Before survey under 11 AAC 86.311, the rent will be based on the number of acres estimated in the lease document.

(d) If a mining lease contains more than one claim or leasehold location, the predecessor claim or leasehold location for determining the rental amount is the claim or leasehold location that was located first.

(e) For purposes of determining the amount of annual rental, a claim or leasehold location located on state land on or before August 31, 1989, is considered to have been first located on August 31, 1989, and the first rental year for such a claim or leasehold location is considered to have begun at noon on September 1, 1989. The first rental year for a claim or leasehold location located on or after September 1, 1989, begins on the date of posting location and ends at noon on the following September 1.

(f) The first annual rental payment for a mining lease that becomes effective after August 31, 1989 will be applied to the period from the effective date of the lease to the next September 1.

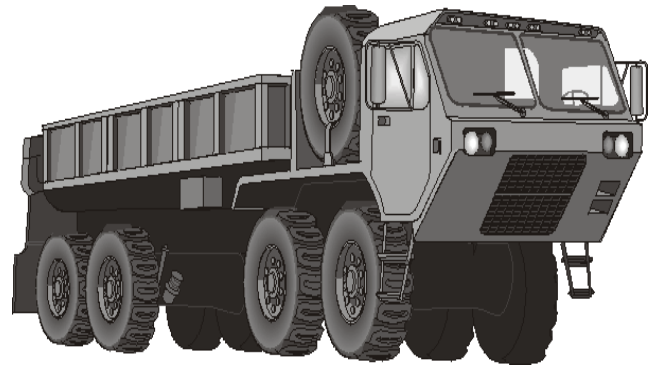
(g) A rental payment that was paid for a predecessor mining claim or leasehold location during the rental year in which a lease is issued will be credited toward the first annual rental payment under the lease.

(h) The rental payment for each subsequent rental year is due on September 1 and must be paid on or before November 30.

(i) If the lessee fails in whole or in part to make a timely rental payment, the mining lease will be considered in default and the department will supply the lessee a deficiency notice in accordance with 11 AAC 86.108, describing the lease in default by the lessee's ADL number. In the notice, the department will advise the lessee that the lease will be terminated without further notice if the department does not receive the required payment in full within 30 days after the lessee's receipt of the notice.

(Eff. 5/18/90, Register 114; am 8/26/98, Register 147; am 4/24/99, Register 150; am 1/19/2002, Register 161)

Authority - AS 38.05.020                      AS 38.05.035  
                   AS 38.05.185                      AS 38.05.205  
                   AS 38.05.211                      AS 38.05.265



**11 AAC 86.314 ANNUAL LABOR**

The annual labor requirements set out in 11 AAC 86.220 apply to a lease. If a lease includes multiple MTSRC locations, or a combination of traditional locations and MTRSC locations, the annual labor rate will be computed by the acreage method under AS 38.05.210 (a)(3).

(Eff. 1/19/2002, Register 161)  
 Authority- AS 38.05.020                      AS 38.05.035  
                   AS 38.05.210                              AS 38.05.265

**11 AAC 86.321 SURRENDER.**

Unless otherwise specified by the director, 11 AAC 82.635 applies to the surrender or relinquishment of an upland mining lease.

(Eff. 5/30/85, Register 94)  
 Authority - AS 38.05.020                      AS 38.05.035  
                   AS 38.05.205

**ARTICLE 04**

**PROSPECTING SITES**

**11 AAC 86.400 PURPOSE AND RIGHTS ACQUIRED.**

(a) A prospecting site may be located at the option of the prospector and nothing in this chapter requires that a prospecting site location must be made before any prospecting work may be done on state land.

(b) The holder of a prospecting site on state land has the exclusive right, subject to any prior rights, to use the surface within the boundaries of the location for performing work acceptable as prospecting work under 11 AAC 86.425 and also has the exclusive right to stake mining claims or leasehold locations within the boundaries of the prospecting site. The exclusive right begins when the corners and boundaries are marked and the location notice posted as required in 11 AAC 86.405 and 11 AAC 86.410 and terminates as provided in 11 AAC 86.420.

(Eff. 9/5/74, Register 51)  
Authority - AS 38.05.020 AS 38.05.245

### **11 AAC 86.405 BOUNDARIES AND CORNERS.**

Boundaries and corners of a prospecting site must be marked in accordance with 11 AAC 86.205.

(Eff. 9/5/74, Register 51; am 5/30/85, Register 94)  
Authority - AS 38.05.020 AS 38.05.245

### **11 AAC 86.410 PROSPECTING SITE LOCATION NOTICE AND CERTIFICATE OF LOCATION.**

(a) On a monument at the northeast corner of the prospecting site location, the locator shall attach or post a notice. The notice may be in any form, including as a metal tag. The notice must include

- (1) the name or number of the prospecting site location;
- (2) the date of posting the notice of location;
- (3) the meridian, township, range, section, and quarter-section of the prospecting site location;
- (4) a sketch depicting, to the best of the locator's knowledge, the relationship of the prospecting site to adjacent and contiguous prospecting sites, mining claims, and leasehold locations;
- (5) the name and current mailing address of each locator; and
- (6) the recording district in which the prospecting site is located.

(b) The holder of a prospecting site location shall, within 45 days after the date of posting the location notice, record a certificate of location in the recording district in which the location is situated using a form approved by the department, or a substantially similar form meeting the recording requirements of 11 AAC 06.040. The certificate of location must include

- (1) the name or number of the prospecting site location;
- (2) the date of posting the notice of location;
- (3) the meridian, township, range, section, and quarter-section of the prospecting site location.
- (4) the name and current mailing address of each locator, and the signature of each locator or of the locator's agent;
- (5) the name of the recording district in which the prospecting site is located; and
- (6) a map at an indicated scale of 1:63,360 (one inch = one mile) or a more detailed scale that shows the boundaries of the prospecting site, the dominant physical features of the land, the protracted or surveyed section lines surrounding the prospecting site, and, to the best of the locator's knowledge, the relationship of the prospecting site to adjacent and contiguous mining claims, leasehold locations, and prospecting sites;

(7) repealed 1/19/2002

(c) Failure to file for record a certificate of location within 45 days, as provided in (b) of this section, constitutes abandonment under AS 38.05.265 of all rights in the prospecting site location.

(d) Repealed 5/30/85.

(e) Repealed 5/30/85.  
(f) Repealed 5/30/85.

(Eff. 9/5/74, Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94; am 1/19/2002, Register 161)  
Authority - AS 38.05.020 AS 38.05.245  
AS 38.05.265

### **11 AAC 86.422 TERM AND RENTAL**

(a) The provision of AS 38.05.245 (c) set the term of a prospecting site located on or after August 20, 2000. Expenditures for prospecting work on a prospecting site location may not be credited toward expenditures for annual labor for a mining claim or leasehold location.

(b) The rental required for a prospecting site is set out in AS 38.05.211 (a) and must be paid in accordance with 11 AAC 86.107. The rental for a prospecting site located on state land is due within the time provided by AS 38.05.245 (c). The rental for a prospecting site located on state-selected land is due on the date the federal government conveys all or a portion of the land within the location to the state, and must be paid within 90 days after that date. Before the date of conveyance, a locator of a prospecting site on state-selected land may submit a \$255.00 payment with the certificate of location, as provided in 11 AAC 86.107. The payment will be considered a non-refundable deposit credited to the required rental payment if the selection is conveyed to the state.

(Eff. 1/19/2002, Register 161)  
Authority- AS 38.05.020 AS 38.05.245

### **11 AAC 86.425 PROSPECTING WORK.**

(a) During each year of the term of a prospecting site, acceptable work amounting to at least \$5 per acre for the area enclosed within the prospecting site location must be performed.

(b) The only prospecting work acceptable for holding prospecting sites is

- (1) drilling or excavating; or
- (2) geological, geophysical, or geochemical work by persons qualified to do the work.

(Eff. 9/5/74, Register 51; am 5/30/85, Register 94; am 1/19/2002, Register 161)  
Authority - AS 38.05.020 AS 38.05.245

### **11 AAC 86.430 PROSPECTING SITES LOCATED BEFORE AUGUST 20, 2000**

(a) A prospecting site located before August 20, 2000 may be extended once for a period of one year beyond the original expiration date by recording a notice of extension, in the recording district where the prospecting site is located, during the 90-day period before the prospecting site expires.

(b) The notice of extension for a prospecting site located before August 20, 2000 must meet the recording requirements of 11 AAC 06.040 and must

- (1) contain the name and current mailing address of the locator;
  - (2) contain the name and ADL number of the prospecting site being extended, and the
    - a. book and page number of the site's original recorded certificate of location; or
    - b. serial number of the site's original recorded certificate of location;
  - (3) state why an extension is needed;
  - (4) be signed by the locator or the locator's agent; and
  - (5) indicate each meridian, township, range, section, and quarter-section in which the prospecting site is situated and the recording district in which it is located.
- (c) A locator of a prospecting site located before August 20, 2000 may request further one-year extensions by submitting a written request to the director no later than 90 days before the expiration of the prospecting site. The request for extension must contain the information required under (b) of this section. The director may request that additional information be supplied to support the request for extension. The director will grant further extensions only under unusual circumstance.
- (d) If a further extension is granted by the director, the prospecting site locator shall, no later than 90 days after delivery of the notice of extension, record the notice in the recording district in which the site is located.
- (e) The amount of work required during the first year of extension of the prospecting site is \$5 per acre. During each subsequent year of extension, the required work is \$10 per acre.
- (f) If a prospecting site has been located before August 20, 2000 on state-selected land, and conveyance to the state occurs on or after that date, the rights, responsibilities, and conditions for acquisition and maintenance of the prospecting site are those applicable to sites located on and after August 20, 2000, as provided in AS 38.05.245, AS 38.05.265, and 11 AAC 86.422.

(Eff. 9/5/74, Register 51; am 5/30/85, Register 94; am 5/18/90, Register 114; am 1/19/2002, Register 161)  
Authority - AS 38.05.020 AS 38.05.245

#### **11 AAC 86.435 STAKING CLAIMS ON EXPIRED SITES.**

The expiration of a prospecting site does not prevent the locator from staking a mining claim or leasehold location in the area formerly covered by the prospecting site location.

(Eff. 9/5/74, Register 51; am 5/18/90, Register 114)  
Authority - AS 38.05.020 AS 38.05.245

## **ARTICLE 05**

### **OFFSHORE PERMITS AND LEASES**

#### **11 AAC 86.500 PERMIT APPLICATIONS.**

- (a) The procedures of 11 AAC 82.105, 11 AAC 82.110, 11 AAC 82.200, 11 AAC 82.205, 11 AAC 82.300, 11 AAC 82.305, and 11 AAC 82.500 - 11 AAC 82.540 apply to offshore prospecting permits.
- (b) An applicant may file for and be granted an offshore prospecting permit only on tide and submerged land that has been opened for offshore prospecting permits.
- (c) Notwithstanding (a) and (b) of this section and 11 AAC 86.565, all prospecting permit applications pending as of January 2, 1983, will be adjudicated without regard to whether the area applied for was open to filing at the time of application. This action is intended to preserve priority rights established by the applications' order of filing. The commissioner is exercising his authority under AS 38.05.020 and AS 38.05.035 (b)(2) to grant and preserve these priority rights in order to avoid inequitable detriment to diligent applicants due to situations over which the applicants had no control. The commissioner finds that this exercise of this authority under AS 38.05.035 (b)(2) is in the best interests of the state.
- (d) No person may file offshore prospecting permit applications that exceed, in the aggregate or in combination with offshore prospecting permits already held by that person, 300,000 acres.
- (e) Notwithstanding (d) of this section, any person who, as of January 2, 1983, has pending prospecting permit applications that exceed 100,000 acres, shall, within 24 months after January 1, 1983, reduce the acreage under prospecting permit application to 300,000 acres or less. The department will adjudicate and issue up to 100,000 acres of offshore prospecting permits according to a priority list established by the applicant to the extent administratively practicable. If excess applications are not relinquished, adjudication of pending applications will take place in an order determined by the department.
- (f) All tide and submerged land will be opened for offshore prospecting permit applications on June 30, 1984, unless the department finds that
  - (1) the land contains known mineral deposits that will be offered by competitive leasing;
  - (2) mining would be incompatible with significant surface uses; or
  - (3) adequate funding has not been appropriated for disposal of these minerals under the procedures provided by law.
- (g) Issuance of an offshore prospecting permit is subject to requirements of AS 38.05.035 (e), 38.05.830, 38.05.945, and 38.05.946.
- (h) The filing of an application for an offshore prospecting permit does not vest a property right but merely creates a priority right to any permit that may be issued. The filing of an application segregates the locatable minerals in that tract. Until the application is adjudicated, those minerals are unavailable for location



under AS 38.05.185 - 38.05.275. Prospecting permit applications filed will be shown as soon as possible on the department's land records and will immediately be entered on a list available by mail from the division.

(i) In deciding whether to approve an offshore prospecting permit, the director will prepare a written finding that considers the following:

- (1) property descriptions and locations;
- (2) the mineral potential of the application area, in general terms;
- (3) fish and wildlife species and their habitats in the application area;
- (4) the current and projected uses in the application area, including uses and value of fish and wildlife;
- (5) the governmental powers to regulate mineral exploration, development, production, and transportation;
- (6) the reasonably foreseeable cumulative effects of mineral exploration, development, production, and transportation on the application area, including effects on subsistence uses, fish and wildlife habitat and populations and their uses, and historic and cultural resources;
- (7) permit and lease stipulations and mitigation measures, including any measures to prevent and mitigate releases of metal and hazardous substances, to be included in the permit or lease, and a discussion of the protections offered by these measures;
- (8) the method or methods most likely to be used to mine the application area, and the advantages, disadvantages, and relative risks of each;
- (9) the reasonably foreseeable fiscal effects of the offshore prospecting permit and the subsequent activity on the state and affected municipalities and communities, including the explicit and implicit subsidies associated with the lease sale, if any;
- (10) the reasonably foreseeable effects of mineral exploration, development, production, and transportation on municipalities and communities within or adjacent to the application area; and
- (11) other factors considered relevant by the director.

(Eff. 9/5/74, Register 51; am 1/1/83, Register 85; am 5/30/85, Register 94; am 8/26/98, Register 147)  
Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.250

#### **11 AAC 86.505 EFFECTIVE DATE.**

The effective date of a permit or lease is as provided by 11 AAC 82.675.

(Eff. 9/5/74, Register 51)  
Authority - AS 38.05.020

#### **11 AAC 86.510 ACCEPTABLE PERMIT WORK.**

Only expenditures and labor on land covered by the permit or permits, which in the opinion of the commissioner develop or benefit the permits, are acceptable. The work must add to the knowledge of mineral deposits within the limits of the permit or permits

or must directly facilitate the acquisition of such information. Creditable work may include, but is not limited to, sampling and geological and geophysical surveys. General economic and feasibility studies, and work such as roads and other structures on adjacent upland, are not acceptable unless considered reasonably necessary by the commissioner for the development of the permit or group of permits. Work done in excess of minimum requirements in one year may be credited during the following two years.

(Eff. 9/5/74, Register 51; am 1/1/83, Register 85)  
Authority - AS 38.05.020 AS 38.05.250

#### **11 AAC 86.515 COMPLIANCE WITH PERMIT RENTAL REQUIREMENT.**

(a) On or before the second and each subsequent anniversary date of the offshore prospecting permit, the permittee shall pay rental, submit an affidavit of work creditable against the rental, or submit a combination of a partial rental payment and an affidavit of work creditable against rental, in the amount due. The affidavit of work must be filed with the department. The signing of the affidavit constitutes certification that, to the knowledge of the permittee, the work, or that portion of work claimed as an excess from a previous year, has not been previously credited to any rental or work requirement.

(b) The affidavit must be supported by substantiating evidence, as might be required by the commissioner. The affidavit must set out fully

- (1) the location of the work performed;
- (2) the nature, extent and cost of the work;
- (3) the general findings from the work; and
- (4) the name, address, and professional background of each person conducting the work.

(c) Failure to timely submit a rental payment or affidavit of work for an offshore prospecting permit is an abandonment under AS 38.05.265 and automatically terminates the offshore prospecting permit without prior notice.

(d) If any rental payment in combination with any work creditable against rental is less than the amount due, the permittee will be granted 30 days after receipt of a notice from the director to submit the additional rental due. If the permittee does not correct the default within the time allowed in the notice, the offshore prospecting permit automatically terminates without further notice.

(Eff. 9/5/74, Register 51; am 1/1/83, Register 85; am 5/30/85, Register 94)  
Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.250 AS 38.05.265

### **11 AAC 86.520 GROUPING OF PERMITS.**

Contiguous permits may be grouped for work requirement purposes if it is shown to the satisfaction of the commissioner on or before the time provided in 11 AAC 86.515 that the permits are and were held under common ownership or assignment. For purposes of grouping permits, work affidavits must be filed on a group basis and in accordance with 11 AAC 86.515.

(Eff. 9/5/74, Register 51; am 1/1/83, Register 85)  
Authority - AS 38.05.020 AS 38.06.250

### **11 AAC 86.528 PERMIT EXTENSION.**

An offshore prospecting permit will not be extended or renewed.

(Eff. 5/30/85, Register 94)  
Authority - AS 38.05.020 AS 38.05.250

### **11 AAC 86.530 CONVERSION OF AN OFFSHORE PROSPECTING PERMIT TO A MINING LEASE.**

(a) At any time while an offshore prospecting permit is in effect, the permittee is entitled to a noncompetitive mining lease on that part of the permit area that has been shown to the satisfaction of the director to contain workable mineral deposits. The leased land will be described by legal subdivision according to the official survey or to the official protraction diagram approved by the Bureau of Land Management or the Department of Natural Resources.

(b) An application to convert a permit to a noncompetitive mining lease must be filed in accordance with 11 AAC 88.105. If the application is filed before the permit expires, the permit's expiration is postponed while the application is being processed. Until processing is completed, the permittee retains all rights specified in the permit until otherwise notified by the department, and the locatable minerals in the land described in the conversion application remain segregated from filing under other offshore prospecting permit applications or as mining locations. There is no further rental obligation after the original expiration date. A decision denying conversion to a lease will be accompanied by a written explanation of the grounds for the denial.

(c) A permittee applying to convert the permit to an offshore mining lease has the burden of demonstrating to the director's satisfaction that each of the requirements for the issuance of a lease has been met, and shall provide sufficiently reliable and detailed economic, geophysical, geologic, and engineering data to enable the director to make a knowledgeable decision. The following information must be submitted in support of the lease application:

(1) an estimate of reserves, including a statement of whether these reserves are measured, indicated, or inferred, together with sufficient geologic, geophysical, and engineering data to substantiate the reserve estimates;

(2) the average grade of recoverable reserves, including a discussion of the sample density, sample collection technique, sample preparation, and analytical testing methods;

(3) topographic, geologic, or ocean floor maps that clearly show the location of all samples, trenches, drill holes, and geophysical surveys, and the outline of the ore body;

(4) a description of the probable mining and recovery methods;

(5) an economic appraisal of the proposed mining operation that estimates both the revenue from the sale of the ore and the costs of mine development and of extracting, milling, transporting, and marketing the ore;

(6) an evaluation of toxic materials that naturally occur in the proposed mining area and proposed methods to control the release of those materials;

(7) any additional documentation required by the director to assist in evaluating the conversion of a prospecting permit to a lease.

(d) Any financial information and geological, geophysical, engineering, and cost data supplied by the applicant as part of the application will be kept confidential at the applicant's request. Such data must be clearly identified by the applicant and separated from information not qualifying as confidential.

(e) In this section, "workable mineral deposit" means a locatable mineral deposit that has been shown by the applicant to have a reasonable prospect of developing into a successful mine, based on the presence of one or more locatable minerals of sufficient value and quantity to induce a prudent operator to pursue development under present conditions.

(Eff. 9/5/74, Register 51; am 1/1/83, Register 85; am 5/30/85, Register 94)

Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.250

### **11 AAC 86.532 DURATION OF "GRANDFATHER RIGHTS" LEASES.**

When an offshore lease that was issued before 1982 is renewed, the term of the new lease will be 10 years, subject to extension as provided in AS 38.05.250.

Eff. 5/30/85, Register 94  
Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.250

### **11 AAC 86.535 SURVEY.**

The provisions of 11 AAC 82.640 - 11 AAC 82.650 apply to offshore mining leases.

Eff. 9/5/74, Register 51; am 5/30/85, Register 94  
Authority - AS 38.05.020 AS 38.05.250

**11 AAC 86.541 OFFSHORE MINING LEASE**

**RENTAL.**

(a) A rental payment for a tide or submerged land mining lease must be made in accordance with 11 AAC 86.107. Each payment must be accompanied by a rental form provided by the department, a photocopy of that form, or a rental form approved by the director. The rental form must contain the name and address of the owner of record and the ADL number of the lease. The department will, in its discretion, refuse to accept a payment submitted without the required information.

(b) The amount of the annual rental payment is \$.88 per acre during the first five years of the lease, \$1.75 per acre during the next five years of the lease, and \$4.25 per acre after that. Payments made for an offshore prospecting permit will not be applied against the rent that becomes due after the permit is converted to a lease.

(c) The first rental year for a tide or submerged land mining lease that was issued on or before August 31, 1989 began at noon on September 1, 1989 and payment for that rental year must be made on or before June 29, 1990. The rental payment for each subsequent rental year is due on September 1 and must be paid on or before November 30.

(d) The first annual rental payment for a tide or submerged land mining lease issued after August 31, 1989 must be paid within 90 days after the effective date of the lease and will be applied to the period from the effective date of the lease to the following September 1. The rental payment for each subsequent rental year is due on September 1 and must be paid on or before November 30.

(e) If the lessee fails to make a timely rental payment, the lease will be considered abandoned under AS 38.05.265. If a rental payment is timely submitted to the department, but the director determines that the payment is less than the amount due, the lessee will be granted 30 days after a deficiency notice is delivered under 11 AAC 86.108 to submit the additional rental due. The deficiency notice will specify the ADL number of the lease that will be considered abandoned without further notice if full payment is not received within the 30-day period.

(Eff. 5/18/90, Register 114; am 4/24/99, Register 150)

Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.185 AS 38.05.211  
AS 38.05.250 AS 38.05.265

**11 AAC 86.545 LEASES GRANTED BY COMPETITIVE BIDDING.**

If the director offers tide and submerged lands containing known deposits of locatable minerals for lease, leases will be granted under the competitive bidding procedures of 11 AAC 82.400 - 11 AAC 82.475. Known deposits of locatable minerals are those determined by the director, after reviewing public information, to exist in sufficient quantity and quality to induce further development towards production of minerals for sale.

(Eff. 9/5/74, Register 51; am 5/30/85, Register 94)  
Authority - AS 38.05.020 AS 38.05.145  
AS 38.05.250

**11 AAC 86.561 SURRENDER.**

11 AAC 82.635 applies to the surrender or relinquishment of an offshore prospecting permit or offshore mining lease.

(Eff. 5/30/85, Register 94)  
Authority - AS 38.05.020 AS 38.05.250

**11 AAC 86.565 LAND IN TERMINATED PERMITS AND LEASES.**

The procedures of 11 AAC 82.500 - 11 AAC 82.540 pertaining to land in terminated permits and leases are applicable to land on which permits or leases under this chapter have terminated unless the land has been classified for competitive leasing.

(Eff. 9/5/74, Register 51; am 1/1/83, Register 85)  
Authority - AS 38.05.020 AS 38.05.035

**11 AAC 86.575 PRODUCTION AND LEASE EXTENSION.**

(a) To qualify for extension of an offshore mining lease for so long as production continues, production must be achieved by the end of the lease's stated term.

(b) Under the circumstances set out in AS 38.05.250 (d), the lessee may apply for a short-term extension of a lease that is not yet in production.

(Eff. 5/30/85, Register 94)  
Authority - AS 38.05.020 AS 38.05.205  
AS 38.05.250

**11 AAC 86.580 SUSPENSION.**

(a) An application for a suspension of operations and production under a lease must comply with 11 AAC 88.105 and must contain complete information showing the necessity or justification for the suspension.

(b) No lease expires because production or operations leading to production are suspended by order of or with the assent of the department. When a suspension is removed, the lessee will have a reasonable time, which will not be less than six months, to resume operations or production.

(Eff. 5/30/85, Register 94)  
Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.250

## **ARTICLE 06**

### **MILLSITES**

#### **11 AAC 86.600 MILLSITE PERMIT.**

(a) The director may grant the owner of a mining interest on federal, state, or private land a mill site permit for use of the state's surface estate for a mill site, tailings disposal, or another use necessary for the mineral development. The surface estate subject to the mill site permit must be on or near the owner's mining interest. The director will set the term of the mill site permit for a duration that is appropriate to the permittee's use of the site, and will condition the mill site permit upon payment of fair market rental value for the term of the permit.

(b) This section does not require an owner of a mineral location under AS 38.05.185 - 38.05.275 to obtain a mill site permit for use of the state's surface estate within the boundaries of the location.

(Eff. 9/5/74, Register 51; am 8/26/98, Register 147)

Authority - AS 38.05.020                      AS 38.05.255

## **Section II. Plans of Operation and Reclamation**

### **ADMINISTRATIVE REGULATIONS**

#### **11 AAC 86.150 PLAN OF OPERATIONS INSTEAD OF LAND USE PERMITS.**

A person intending to conduct mineral exploration or development activities that would require a land use permit under 11 AAC 96 may file a plan of operations for approval instead of applying for a land use permit. The plan of operations must meet the requirements of 11 AAC 86.800.

### **CHAPTER 096 MISCELLANEOUS LAND USE**

#### **ARTICLE 01**

#### **PROVISIONS FOR GENERAL LAND USE ACTIVITY**

##### **11 AAC 96.010 USES REQUIRING A PERMIT.**

(a) On state land, a permit or other written authorization is required for

- (1) activity requiring
  - (A) the use of explosives and explosive devices, except firearms;
  - (B) uses that are not listed in 11 AAC 96.020 as generally allowed uses;
  - (C) the use of hydraulic prospecting or mining equipment methods;
  - (D) drilling to a depth in excess of 300 feet, including exploratory drilling or stratigraphic test wells on state land not under oil or gas lease;
  - (E) geophysical exploration for minerals subject to lease or an oil and gas exploration license under AS 38.05.131 - 38.05.181;
  - (F) a commercial recreation camp or facility, whether occupied or unoccupied, that remains overnight; or
  - (G) an event or assembly of more than 80 persons; or
- (2) repealed 12/7/2002;
- (3) an activity on land subject to a mineral or land estate property interest by a person other than the holder of a property interest, or the holder's authorized representative, if the parties cannot agree on what constitutes reasonable concurrent use.
- (b) repealed 12/7/2002.

(Eff. 1/1/70, Register 32; am 3/2/81, Register 77; am 5/8/83, Register 86; am 9/22/95, Register 135)

Authority - AS 38.05.020	AS 38.05.035
AS 38.05.131	AS 38.05.133
AS 38.05.180	AS 41.20.020

##### **11 AAC 96.020 GENERALLY ALLOWED USES.**

(a) A permit or other written authorization is required for uses and activities not appearing on the list in this subsection. Unless otherwise provided in (b) of this section or in a special use land requirement in 11 AAC 96.014, the following land uses and activities, alone or in combination, are generally allowed uses on state-owned public domain land without any permit or other written authorization from the department, except that a land use or activity for a commercial recreation purpose requires prior registration under 11 AAC 96.018.

- (1) travel or travel-related activities, as follows:
  - (A) hiking, backpacking, skiing, climbing, or other foot travel;
  - (B) bicycling;
  - (C) travel by horse or dogsled or with pack animals;
  - (D) using a highway vehicle with a curb weight of up to 10,000 pounds, including a pickup truck and four-wheel-drive vehicle, on or off an established road easement, if the use off the road easement does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance or thermal erosion;
  - (E) using a recreation-type off-road or all-terrain vehicle with a curb weight of up to 1,500 pounds, including a snowmobile and four-wheeler, on or off an established road easement if use off the road easement does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance, or thermal erosion;
  - (F) landing an aircraft or using watercraft without damaging the land, including shoreland, tideland, and submerged land;
  - (G) driving livestock, including any number of reindeer or up to 100 horses, cattle, or other domesticated animals;

(2) access improvements, as follows:

- (A) brushing or cutting a trail less than five feet wide using only hand-held tools such as a chainsaw; making a trail does not create a property right or interest in the trail;
- (B) anchoring a mooring buoy in a lake, river, or marine waters, or placing a float, dock boat haulout, floating breakwater, or boathouse in a lake, river, or marine waters, for the personal, noncommercial use of the upland owner, if the use does not interfere with public access or another public use, and if the improvement is placed within the projected sidelines of the contiguous upland owners parcel or otherwise has the consent of the affected upland owner; in this subparagraph,
  - (i) "float" or "dock" means an open structure without walls or roof that is designed and used for access to and from the water rather than for storage, residential use, or other purposes;
  - (ii) "boat haulout" means either a rail system, at ground level or elevated with pilings, or a line attached from the uplands to an anchor or mooring buoy;

(iii) “floating breakwater” means a structure, including a log bundle, designed to dissipate wave or swell action;

(iv) “boathouse” means a structure designed and used to protect a boat from the weather rather than for other storage, residential use, or other purposes;

(3) removing or using state resources, as follows:

(A) hunting, fishing, or trapping, or placement of a crab pot, shrimp pot, erring pound, or fish wheel; nothing in this subparagraph relieves a person from complying with applicable state and federal statutes and regulations on the taking of fish and game;

(B) harvesting wild plants, mushrooms, berries, and other plant material for personal, noncommercial use; however, the cutting of trees is not a generally allowed use under this subparagraph;

(C) using dead and down wood for a cooking or warming fire, unless the department has closed the area to fires during the fire season;

(D) grazing no more than five domesticated animals;

(E) recreational gold panning;

(F) hard-rock mineral prospecting or mining using light portable field equipment, including a hand-operated pick, shovel, pan, earth auger, or a backpack power drill or auger;

(G) suction dredging using a suction dredge with a nozzle intake of six inches or less, powered by an engine of 18 horsepower or less, and pumping no more than 30,000 gallons of water per day;

(4) other improvements and structures on state land, as follows:

(A) setting up and using a camp for personal, noncommercial recreational purposes, or for any non-recreational purpose, including as a support camp during mineral exploration, for no more than 14 days at one site, using a tent platform or other temporary structure that can easily be dismantled and removed, or a floathouse that can readily be moved; the entire camp must be moved at least two miles before the end of the 14-day period; a cabin or other permanent improvement is not allowed, even if on skids or another nonpermanent foundation; the camp must be removed immediately if the department determines that it interferes with public access or other public uses or interests;

(B) brushing or cutting a survey line less than five feet wide using only hand-held tools, including a chainsaw, or setting a survey marker; however, a survey monument may not set without written survey instructions issued under 11 AAC 53.

(C) placing a residential sewer outfall into marine waters from a contiguous privately owned upland parcel, with consent of the affected parcel owners, if the outfall is within the projected sidelines of the contiguous upland parcel and is buried to the extent possible or, where it crosses bedrock, secured and covered with rocks to prevent damage; nothing in this subparagraph relieves a person from complying with state and federal statutes and regulations applicable to residential sewer outfalls;

(D) placing riprap or other suitable bank stabilization material to prevent erosion of a contiguous privately owned upland parcel if

(i) no more than one cubic yard of material per running foot is placed onto state shoreland; and

(ii) the project is otherwise within the scope of the United States Army Corps of Engineers Nationwide Permit 13 (Bank Stabilization), as set out in 67 Fed. Reg. 2,020 – 2,095, dated January 15, 2002 and adopted by reference;

(5) uses not listed in (1) – (4) of this subsection that

(A) are not conducted for a commercial recreational purpose;

(B) are not listed in 11 AAC 96.010;

(C) do not cause or contribute to significant disturbance of vegetation, drainage, or soil stability;

(D) do not interfere with public access or other public uses or interests; and

(E) do not continue for more than 14 consecutive days at a site; moving the use to another site at least two miles away starts a new 14-day period.

(b) the list of generally allowed uses in (a) of this section does not

(1) apply to land withdrawn from the public domain and no longer managed under AS 38, including a state park and land owned by the University of Alaska;

(2) exempt a user from complying with other applicable federal, state, or municipal statutes, ordinances, and regulations; or

(3) authorize a use if another person has already acquired an exclusive property right to undertake that use.

(c) in order to operate under a generally allowed use listed in this section, the user must comply with the conditions set out in 11 AAC 96.025

(d) if the department determines that, under the circumstances of a particular case, an otherwise generally allowed use interferes with public access or other public uses or interests, the use must cease.

(Eff. 1/1/70, Register 32; am 12/7/2002, Register 164)

Authority - AS 38.05.020

AS 38.05.035

AS 38.05.850

### **11 AAC 96.030 APPLICATION.**

(a) An application for a permit under 11 AAC 96.010 must be accompanied by the nonrefundable application fee required by 11 AAC 05.010 (a). The application must contain the following information in sufficient detail to allow evaluation of the planned activities’ effect on the land:

(1) a map at a sufficient scale showing the general location of all activities and routes of travel of all equipment for which a permit is required;

(2) a description of the proposed activity, any associated structures, and the type of equipment that will be used.

(b) Repealed 8/6/94.

(c) the department will give notice to an upland owner of an application involving shoreland, tideland, or submerged land adjacent to the upland owner’s property.

The department may give public notice of any application. As part of public notice, the department may include publication in a newspaper of local or statewide circulation or on the Alaska Online Public Notice System developed under AS 44.62.175. The applicant must pay any advertising costs for a published public notice.

(Eff. 1/1/70, Register 32; am 8/6/94, Register 131; am 12/7/2002, Register 164)

Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.850

### **11 AAC 96.040 TERM AND CONDITIONS.**

(a) Issuance of a permit under this chapter is not a disposal of an interest in land, and does not grant a preference right to a lease or other disposal. The permit is revocable for cause for violation of a permit provision or of this chapter, and is revocable at will if the department determines that the revocation is in the state's interest. The permit remains in effect for the term issued, unless revoked sooner. The department will give 30 days' notice before revoking a permit at will. A revocation for cause is effective immediately.

(b) Each permit issued is subject to any provisions the department determines necessary to assure compliance with this chapter, to minimize conflicts with other uses, to minimize environmental impacts, or otherwise to be in the interests of the state.

(c) A permit will be granted for a specified term of up to five years, unless revoked sooner. The permit may be extended for any number of consecutive periods, each period not to exceed one year. Proposed modifications to the issued permit must be submitted in writing and must be approved by the department before the permittee undertakes the modification. The department may modify existing provisions or require additional provisions in the approval of an extension or modification or during the term of the permit, if the department determines that the modification or additional provision is necessary to assure compliance with this chapter, to minimize conflicts with other uses, to minimize environmental impacts, or otherwise to be in the interests of the state.

(d) The department will not issue a permit that denies an upland owner reasonable access to navigable waters during or after the permit activities. If the application is for an excavation or fill that will alter the mean high water line or ordinary high water mark, the permit will not be issued until that line has been determined and accepted by the department.

(e) If the permit involves obtaining fill or other material from state land and placing it on the permit site, or removing material from the permit site for beneficial uses as determined by the department, the fill or other material must be purchased under 11 AAC 71 before being moved.

(f) A permit under this chapter does not authorize the placement of permanent improvements. Temporary improvements authorized by a permit under this chapter must be removed when the permit expires or is revoked, unless otherwise specified by the department. If the

permittee fails to remove the improvements in compliance with this requirement, the department may sell, destroy, or remove the improvements, whichever is most convenient for the department, at the permittees' expense, including the department's costs associated with restoration and expenses incurred in the performance of these duties.

(g) The permit will not be effective until executed by the department and the permittee has paid any applicable use fee required by 11 AAC 05.010 (e) and provided a certificate of insurance and security, if required under 11 AAC 96.060 and 11 AAC 96.065.

(h) The permittee must agree to indemnify and hold harmless, consistent with state law, the state and its officers, agents, and employees for any third party claims arising from the exercise of the privileges granted by the permit.

(Eff. 1/1/70, Register 32; am 8/6/94, Register 131; am 12/7/2002, Register 164)

Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.850

### **11 AAC 96.050 EFFECTIVE DATES.**

Repealed.

(Eff. 1/1/70, Register 32; repealed 12/7/2002, Register 164)

Authority - AS 38.05.020 AS 38.05.035

### **11 AAC 96.060 PERFORMANCT GUARANTY.**

(a) Unless the department waives the requirement after considering the applicant's history of compliance and the potential risk to the state, the applicant shall furnish security acceptable to the department. The department may accept as security

(1) a personal bond accompanied by

(A) an irrevocable letter of credit issued by a bank or other financial institution authorized to do business in the United States;

(B) a certificate of deposit in the amount of the bond issued in sole favor of the department by a bank or other financial institution authorized to do business in this state; or

(C) a cash deposit maintained in a depository account as directed by the commissioner;

(2) a corporate surety bond from a surety company authorized to do business in this state; or

(3) other security acceptable to the department.

(b) Security furnished in accordance with (a) of this section must be conditioned upon compliance with all terms of the permit. The department will determine the amount of the security, if required, based on the scope and nature of the activity planned and the potential cost of restoring the permit site. A permit that requires security will not be issued until acceptable security has been furnished.

(Eff. 1/1/70, Register 32; am 12/7/2002, Register 164)  
Authority - AS 38.05.020 AS 38.05.035  
AS 38.05.850

**11 AAC 96.070 ANNUAL REPORT; COMPLETION STATEMENT.**

(a) For a permit with a term of more than one year, the department may require

(1) the permittee to file information the department determines necessary to show compliance with the permit at the end of each year's authorized operating period; and

(2) operational information from the permittee, including the number of clients served, number of visitor days, and number of days in operation.

(b) in a permit, the department may require the permittee, upon completion of the operations under the permit, to file a completion statement, including a detailed description of cleanup and restoration work at the site. The department may also require the permittee to provide a map showing the location of all permit activities. The permittee shall complete any additional cleanup and restoration work that may be required.

(Eff. 1/1/70, Register 32; am 12/7/2002, Register 164)  
Authority - AS 38.05.020 AS 38.05.035  
AS 38-05-850

**11 AAC 96.110 APPEALS.**

An eligible person affected by a decision issued under this chapter may appeal that decision in accordance with 11 AAC 02.

(Eff. 1/1/70, Register 32; am 11/7/90, Register 116; am 9/19/2001, Register 159)  
Authority - AS 38.05.020 AS 38.05.035  
AS 44.37.011

**11 AAC 96.120 PURPOSE.**

Repealed.

(Eff. 1/1/70, Register 32; repealed 12/7/2002, Register 164)

**11 AAC 96.130 APPLICABILITY.**

Repealed.

(Eff. 1/1/70, Register 32; am 9/22/95, Register 135; repealed 12/7/2002, Register 164)

**11 AAC 96.140 GENERAL STIPULATIONS.**

Repealed.

(Eff. 1/1/70, Register 32; am 9/22/95, Register 135; repealed 12/7/2002, Register 164)



## ALASKA STATUTES

### Chapter 27.19. RECLAMATION

#### Sec. 27.19.010. Administration; applicability.

- (a) The commissioner of natural resources shall implement this chapter.
- (b) This chapter applies to state, federal, municipal, and private land and water subject to mining operations.
- (c) Except as provided in AS 27.19.040 (b), this chapter does not apply to an activity regulated under AS 27.21.
- (d) This chapter does not alter or diminish the authority of another state agency, a state corporation, the University of Alaska, or a municipality under its laws and regulations.
- (e) The owner of private land may establish requirements for reclamation in excess of those established by this chapter.
- (f) The commissioner may not require a miner to reclaim under this chapter that portion of a previously mined area that was a part of a mining operation activity occurring before October 15, 1991.

#### Sec. 27.19.020. Reclamation standard.

A mining operation shall be conducted in a manner that prevents unnecessary and undue 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.

#### Sec. 27.19.030. Reclamation plan.

- (a) Except as provided in AS 27.19.050, a miner may not engage in a mining operation until the commissioner has approved a reclamation plan for the mining operation.
- (b) In reviewing a reclamation plan for state, federal, or municipal land under (a) of this section, the commissioner may consider, after consultation with the commissioners of environmental conservation and fish and game and with the concurrence of the miner and landowner, uses to which the land may be put after mining has been completed, including trails, lakes, recreation sites, fish and wildlife enhancement, commercial, and agriculture uses.

#### Sec. 27.19.040. Reclamation financial assurance.

- (a) The commissioner shall require an individual financial assurance in an amount not to exceed an amount reasonably necessary to ensure the faithful performance of the requirements of the approved reclamation plan. The commissioner shall establish the amount of the financial assurance to reflect the reasonable and probable costs of reclamation. The assurance amount may not exceed \$750 for each acre of mined area, except that the \$750 an acre limitation does not apply to the assurance amount required for a lode mine.
- (b) The commissioner shall establish a statewide bonding pool for mining operations as an alternative to individual financial assurance. The commissioner may determine which mining operations are eligible to participate in the bonding pool based on the projected cost of reclamation in relation to the size of the bonding pool; however, a mining operation may not be allowed to participate in the bonding pool if the mining operation will chemically process ore or has the potential to generate acid. A miner participating in the bonding pool shall contribute an initial deposit not to exceed 15 percent of the financial assurance amount plus an additional nonrefundable annual fee not to exceed five percent of the financial assurance amount. The commissioner shall refund the 15 percent deposit upon satisfactory completion of the approved reclamation plan. If requested by the miner, the commissioner may apply the deposit to a new reclamation plan. In addition to its use for mining operations under this chapter, the commissioner shall allow the bonding pool to be used to meet the requirements of AS 27.21.160 . Income and other earnings on the bonding pool shall be added to the bonding pool.
- (c) If the commissioner determines that a miner has violated or permitted a violation of the approved reclamation plan and has failed to comply with a lawful order of the commissioner, the commissioner shall forfeit the financial assurance and deposit it in the statewide bonding pool. The commissioner shall use the reclamation and administrative costs recovered under AS 27.19.070 (a) to supplement the forfeited financial assurance deposited in the statewide bonding pool for

reclamation of the site subject to the forfeiture. If the commissioner is unable to recover the full cost of reclamation under AS 27.19.070(a), the commissioner may use the bonding pool to reclaim the site to the standards of this chapter, except that the commissioner may not use a deposit that is refundable under (b) of this section to fulfill another miner's reclamation obligation.

(d) A miner not required to post a financial assurance may submit a reclamation plan under AS 27.19.030 (a) and participate in the bond pool.

(e) A miner may satisfy the requirement under this section for an individual financial assurance by providing, in a form acceptable to and approved by the commissioner, any of the following:

- (1) a surety bond;
- (2) a letter of credit;
- (3) a certificate of deposit;
- (4) a corporate guarantee that meets the financial tests set in regulation by the commissioner;
- (5) payments and deposits into the trust fund established in AS 37.14.800; or

(6) any other form of financial assurance that meets the financial test or other conditions set in regulation by the commissioner.

**Sec. 27.19.050. Exemption for small operations.**

(a) AS 27.19.030 (a) and 27.19.040 do not apply to a mining operation

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

(2) where less than five acres and less than 50,000 cubic yards of gravel or other materials are disturbed or removed at one location in any year and there is a cumulative disturbed area of less than five acres at one location.

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

- (1) total acreage and volume of material to be mined;
- (2) total acreage to be reclaimed; and
- (3) reclamation measures to be used.

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

(d) A miner exempted from the requirements of AS 27.19.030 (a) and 27.19.040 under (a) of this section that fails to reclaim a mining operation to the standards of AS 27.19.020 is required for two consecutive years to conduct each subsequent mining operation, regardless of size, under an approved reclamation plan and to provide an individual financial assurance.

**Sec. 27.19.060. Cooperative management agreements.**

The commissioner, on a determination that an agreement is in the best interest of the state, may enter into a cooperative management agreement with the federal government or a state agency to implement a requirement of this chapter or a regulation adopted under it.

**Sec. 27.19.070. Violations.**

(a) A miner who violates or permits a violation of an approved reclamation plan and fails to comply with a lawful order of the commissioner forfeits the reclamation bond or a portion of the bond and is liable to the state in a civil action for the full amount of reclamation and administrative costs incurred by the state related to the action. A miner exempted under AS 27.19.050(a) is subject to civil action for the full amount of reclamation and administrative costs incurred by the state related to the action if the commissioner determines that reclamation was not conducted under AS 27.19.020.

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

(c) A miner who has forfeited a reclamation bond or has been held liable in a civil action under (a) of this section may conduct future mining operations only after posting a reclamation risk assessment fee equal to five times the bond liability for the proposed mining operation. The reclamation assessment fee shall be refunded after two consecutive years of operation consistent with this chapter.

**Sec. 27.19.080. Administrative Procedure Act.**

Except as provided in AS 44.37.011, AS 44.62 (Administrative Procedure Act) applies to this chapter.

**Sec. 27.19.100. Definitions.**

In this chapter,

(1) "materials" means sand, gravel, riprap, rock, limestone, slate, peat, and other substances from the ground that are not locatable or leasable under state law;

(2) "mined area"

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

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

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

(4) "mining operation"

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

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

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

(iii) each use reasonably incident to the development, extraction, and processing of a locatable or leasable mineral deposit or materials;

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

(5) "reclamation plan" means a plan submitted by a miner under regulations adopted by the commissioner for the reclamation of a proposed mining operation;

(6) "stable condition," means 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 processes.

(7) "State land" includes

(A) the land of the University of Alaska;

(B) the land of state corporations;

(8) "unnecessary and undue degradation"

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

(B) includes the failure to initiate and complete reasonable reclamation under the reclamation standard of AS 27.19.020 or an approved reclamation plan under AS 27.19.030 (a).

# ADMINISTRATIVE REGULATIONS

## CHAPTER 097

### MINING RECLAMATION

#### ARTICLE 01

#### APPLICABILITY

##### 11 AAC 97.100 APPLICABILITY.

(a) This chapter applies to the approval of reclamation plans, reclamation bonding, and enforcement of reclamation requirements under AS 27.19 for locatable mineral, leasable mineral, and material mining operations on state, federal, municipal, and private land. AS 27.19 and this chapter do not apply to a recreational placer mining operation using no mechanized earthmoving equipment other than a dredge with a suction hose six inches or less in diameter, powered by an engine of 18 or fewer horsepower.

(b) AS 27.19.020 sets the minimum standard for conduct of mining operations in Alaska, without regard to land ownership. Although nothing in AS 27.19 requires a miner to file a mining plan before beginning operations, most miners operating on public land are required to do so by other laws. Even where that is not the case, the department recommends that the miner develop a mining plan to help the miner meet the mining standard of AS 27.19.020 and to make the reclamation plan or reclamation letter of intent more effective.

(c) Nothing in AS 27.19 precludes a federal or state agency (including the Department of Natural Resources), a state corporation, the University of Alaska, a municipality, or a private landowner, acting under its own regulatory or proprietary authority, from establishing and enforcing additional requirements or higher standards for reclamation. Compliance with this chapter does not waive or excuse compliance with those additional requirements or higher standards.

(d) This chapter does not apply to:

(1) fuel spills, chemical neutralization, detoxification, or clean up of hazardous substances used in mineral processing facilities associated with mining operations;

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

(3) an area disturbed by a mining operation before October 15, 1991; however, if a mining operation disturbs a previously mined area after October 14, 1991, a miner must reclaim to the standards of AS 27.19 and this chapter; if only a portion of the previously mined area is disturbed after October 14, 1991, this chapter applies only to that disturbed portion.

(Eff. 7/30/92, Register 123)

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

AS 27.19.010

AS 27.19.020

AS 27.19.100

## ARTICLE 02

### RECLAMATION PERFORMANCE STANDARDS

#### 11 AAC 97.200 LAND RECLAMATION PERFORMANCE STANDARDS.

(a) A miner shall reclaim areas disturbed by a mining operation so that any surface that will not have a stream flowing over it is left in a stable condition.

(1) For the purposes of AS 27.19.100 (6) and this section, a stable condition that "allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes" means a condition that can reasonably be expected to return waterborne soil erosion to pre-mining levels within one year after the reclamation is completed, and that can reasonably be expected to achieve re-vegetation, where feasible, within five years after the reclamation is completed, without the need for fertilization or reseeded. If rehabilitation of a mined site to this standard is not feasible because the surface materials on the mined site have low natural fertility or the site lacks a natural seed source, the department recommends that the miner fertilize and reseed or replant the site with native vegetation to protect against soil erosion; however, AS 27.19 does not require the miner to do so. Rehabilitation to allow for the reestablishment of renewable resources is not required if that reestablishment would be inconsistent with an alternate post-mining land use approved under AS 27.19.030 (b) on state, federal, or municipal land, or with the post-mining land use intended by the landowner on private land.

(2) If topsoil from an area disturbed by a mining operation is not promptly redistributed to an area being reclaimed, a miner shall segregate it, protect it from erosion and from contamination by acidic or toxic materials, and preserve it in a condition suitable for later use.

(3) If the natural composition, texture, or porosity of the surface materials is not conducive to natural revegetation, a miner shall take measures to promote natural revegetation, including redistribution of topsoil, where available. If no topsoil is available, a miner shall apply fines or other suitable growing medium, if available. However, a miner may not redistribute topsoil and fines over surfaces likely to be exposed to annual flooding, unless the action is authorized in an approved reclamation plan and will not result in an unlawful point- or non-point-source discharge of pollutants.

(b) A miner shall reclaim an area disturbed by a mining operation so that the surface contours after reclamation is complete are conducive to natural revegetation or are consistent with an alternate post-mining land use approved under AS 27.19.030 (b) on state, federal, or municipal land, or with the post-mining land use intended by the landowner on private land. Measures taken to accomplish this result may include backfilling, contouring, and grading, but a miner need not restore the site's approximate original contours. A miner shall stabilize the reclaimed site to a condition that will retain sufficient moisture for natural revegetation or for an alternate post-mining land use approved under AS 27.19.030 (b) on state, federal, or municipal land, or for the post-mining land use intended by the landowner on private land.

(c) A pit wall, subsidence feature, or quarry wall is exempt from the requirements of (a) and (b) of this section if the steepness of the wall makes them impracticable or impossible to accomplish. However, a miner shall leave the wall in a condition such that it will not collapse nor allow loose rock that presents a safety hazard to fall from it.

(d) If a mining operation diverts a stream channel or modifies a flood plain to the extent that the stream channel is no longer stable, a miner shall reestablish the stream channel in a stable location. A miner may not place a settling basin in the way of the reestablished channel location unless the fines will be properly removed or protected from erosion.

(Eff. 7/30/92, Register 123)

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

AS 27.19.020

AS 27.19.030

AS 27.19.100

#### **11 AAC 97.210 DISPOSAL OF BUILDINGS, STRUCTURES, AND DEBRIS ON STATE LAND.**

A miner shall remove, dismantle, or otherwise properly dispose of buildings and structures constructed, used, or improved on state land unless the surface owner or manager authorizes that the buildings and structures may stay. A miner shall remove or otherwise properly dispose of all scrap iron, equipment, tools, piping, hardware, chemicals, fuels, waste, and general construction debris on state land.

(Eff. 7/30/92, Register 123)

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

AS 27.19.020

#### **11 AAC 97.220 UNDERGROUND MINES.**

A miner shall stabilize and properly seal the openings of all shafts, adits, tunnels, and air vents to underground mine workings after mine closure to ensure protection of the public, wildlife, and the environment.

(Eff. 7/30/92, Register 123)

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

AS 27.19.020

#### **11 AAC 97.230 HEAP LEACH OPERATIONS.**

After neutralization of heaps, pads, ponds, and other such facilities has been approved by the appropriate regulatory authority (the Environmental Protection Agency or the Department of Environmental Conservation), a miner shall reclaim the site of a heap leach operation to the standards of AS 27.19 and this chapter.

(Eff. 7/30/92, Register 123)

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

AS 27.19.020

#### **11 AAC 97.240 ACID ROCK DRAINAGE.**

A miner shall reclaim a mined area that has potential to generate acid rock drainage (acid mine drainage) in a manner that prevents the generation of acid rock drainage or prevents the offsite discharge of acid rock drainage.

(Eff. 7/30/92, Register 123)

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

AS 27.19.020

#### **11 AAC 97.250 MATERIAL SITES.**

(a) Continuous use; intermittent use of a material site. A miner shall reclaim a material site in accordance with AS 27.19.020, 11 AAC 97.200, 11 AAC 97.210, and this section as contemporaneously as practicable with the mining.

(1) If site conditions permit, a miner shall proceed cell by cell so that reclamation can and will occur immediately after each cell is mined. Mining by cell means dividing the material site into separate units and mining them in an orderly sequence so that topsoil removed from a newly opened unit can be placed on a unit already mined.

(2) If site conditions require that the entire material site be mined continuously, with the materials being removed layer-by-layer, a miner shall reclaim the site as soon as the mining is completed. However, the commissioner will allow the reclamation to be postponed if the commissioner finds that contemporaneous reclamation is impracticable, because the landowner plans to allow future intermittent mining of the material site by one or more miners over a period of more than one year. Before the commissioner allows such a postponement, the miner or landowner must

(A) submit a reclamation plan for the entire material site, including stockpiles;

(B) ensure that reclamation will occur no later than immediately after the material site is ultimately exhausted or to be abandoned; and

(C) provide for a bond for all mined areas at all times until the reclamation is ultimately completed.

(b) Extraction of materials from river beds (gravel bailing operations). If a miner extracts materials from the bed of a watercourse, the miner shall reestablish a stable bed and bank profile as contemporaneously as practicable with the extraction. A stable bed and bank profile is one that will not substantially alter river currents or change erosion and deposition patterns downstream. In reviewing a reclamation

plan for such an operation, the commissioner will use hydrologic information available to the department and other information the commissioner considers relevant.

(c) Peat and topsoil mines. A reclamation plan for a mine that produces peat, topsoil, or similar materials must provide that at least two inches of a suitable growing medium will be left or replaced on the mined land.

(d) Materials used for other mines. If the primary use of extracted materials is to assist another mining operation regulated under this chapter (such as gravel to build a road to a mining operation), the miner must include the reclamation plan or letter of intent for the material site operation as part of the reclamation plan or letter of intent for the primary mine.

(e) Exempt excavations. If materials are extracted primarily for a non-mining purpose and not part of a mining operation (such as when preparing a building site or highway cut, dredging a shipping channel, or drilling an access tunnel for a non-mining purpose), the requirements of this chapter do not apply even if the materials are sold commercially or used as fill.

(f) Stockpiles. The requirements of this chapter do not apply to materials stockpiled at a distribution point other than the mined area, nor to materials stockpiled at a mined area where no mining has taken place after October 14, 1991. A miner need not reclaim acreage on which materials are stockpiled at an active mine site until the stockpile is used up. However, a miner must locate the stockpile where it will not erode into a water-body. A stockpile is a storage pile of materials segregated as a commercial product for sale or distribution elsewhere and does not include non-commercial waste rock, overburden, or tailings. A stockpile associated with a mining operation other than for materials is not exempt from this chapter.

(g) Material used for logging. After December 31, 1994, this subsection applies as follows to the reclamation of material sites that are subject to AS 41.17 and 11 AAC 95:

(1) submission of a plan of operations under AS 41.17.090 (c) and 11 AAC 95.220, 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, if

(A) an individual material site operation is within the limits set out in AS 27.19.050 (a)(2); and

(B) the plan of operations or site-specific forest land use plan notifies the commissioner that

(i) the total acreage and volume to be mined are within the limits set out in AS 27.19.050 (a)(2);

(ii) the miner will reclaim all acreage required to be rehabilitated under 11 AAC 95.325 ; and

(iii) compliance with the rehabilitation measures required under 11 AAC 95.325 will constitute the reclamation measures to be used to reclaim the total acreage mined;

(2) a plan of operations under AS 41.17.090 (c) and 11 AAC 95.220, or a timber sale inspection report filed at the end of the operating season for an operation on state land, satisfies the requirement of AS 27.19.050(c) for an annual reclamation statement, if

(A) the miner annually certifies that the material site operation is within the limits set out in AS 27.19.050 (a)(2), and that the operation is in compliance with 11 AAC 95.325; and

(B) inspection under AS 41.17 verifies that the miner is in compliance with 11 AAC 95.325;

(3) submission of a plan of operations under AS 41.17.090 (c) and 11 AAC 95.220, 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, if

(A) an individual material site operation exceeds the limits set out in AS 27.19.050 (a)(2);

(B) the miner complies 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; and

(C) the commissioner does not disapprove the use of the plan of operations or site-specific forest land use plan as a means of satisfying the requirement of AS 27.19.030 for a reclamation plan;

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

(Eff. 7/30/92 Register 123; am 1/4/95, Register 133)

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

## **ARTICLE 03**

### **RECLAMATION PLAN**

#### **11 AAC 97.300 RECLAMATION PLAN APPROVAL, PROCEDURE.**

(a) At least 45 days before the proposed start of mining activities, a miner not exempted under AS 27.19.050 must submit to the department, or to the appropriate agency with which the department has entered into a cooperative management agreement, a proposed reclamation plan for approval.

(b) If a miner entitled to an exemption under AS 27.19.050 mistakenly files a proposed reclamation plan, the commissioner will, within 15 days after receipt,

(1) return any bond filed,

(2) notify the miner that no plan approval is necessary,

(3) accept the plan as a letter of intent under AS 27.19.050 (b), and

(4) remind the miner of the subsequent requirement to file an annual reclamation statement under AS 27.19.050 (c).

(c) If the commissioner determines that a proposed reclamation plan is complete, the commissioner will begin a review that will take no longer than 30 days. If the commissioner determines that the plan is incomplete, the commissioner will notify the miner that review is suspended pending receipt of the necessary information. The miner may request an extension of time to supply the information. Failure to supply the necessary information within 30 days after notification, or within a longer period

allowed by the commissioner, constitutes withdrawal of the proposed plan from consideration.

(d) The commissioner will approve, disapprove, or approve with conditions a proposed reclamation plan within 30 days after determining that the plan is complete. However, the plan approval does not take effect, and the mining operation may not begin, until the miner satisfies the bond requirement under 11 AAC 97.400 - 11 AAC 97.450.

(e) If the commissioner determines 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 an alternative review schedule.

(f) If a state or federal agency or a municipality 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 or municipality's applicable review schedule. If a mining 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.

(g) If a miner objects to the plan as approved, the miner may give the commissioner written notice of that objection within 30 days and request reconsideration or propose a modification of the plan for the commissioner's review. If, after that reconsideration or review, the miner continues to object to the plan as approved, the miner may file a statement of issues that meets the standard of AS 44.62.370.

(h) If the approved reclamation plan is for an alternate post-mining land use under AS 27.19.030 (b) that was proposed by the commissioner, the Department of Fish and Game, the Department of Environmental Conservation, or the landowner rather than by the miner, the miner shall notify the department within 30 days after approval if he or she does not concur. However, a mining locator or material purchaser on public land may not control or determine how the land will be used after a mining operation is completed. The commissioner will, in his or her discretion, modify an approved reclamation plan for a post-mining land use under AS 27.19.030 (b) if the miner shows to the commissioner's satisfaction that reclamation for the proposed use would cost the miner more, in time, equipment, or material than reclamation to the basic standard required by AS 27.19.020.

(i) The commissioner may not impose an alternate post-mining land use under AS 27.19.030 (b) if the land is privately owned and the state or federal government owns only the reserved minerals. If the state owns both the land estate and the mineral estate, the commissioner will not approve an alternate post-mining land use that is inconsistent with a state land use plan adopted under AS 38.04.065.

(Eff. 7/30/92, Register 123)

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

AS 27.19.030 AS 27.19.060

AS 27.19.080 AS 27.19.100

## **11 AAC 97.310 RECLAMATION PLAN.**

(a) Before a miner starts a mining operation subject to AS 27.19.030, or if an exempt miner wishes to operate under the provisions of AS 27.19.040 (d), the miner must submit a proposed reclamation plan. 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) A reclamation plan not submitted on a form provided by the commissioner must include the following:

(1) the name, address, and telephone number of the miner or other person who will serve as agent to receive any notice that is required under this chapter, and the names, addresses, and telephone numbers of all other owners, operators, or leaseholders of the mining operation;

(2) a list of all properties, mining locations, or leases on which the mining operation is to be conducted, including the state or federal case file number, and the legal description of the land on which the mining operation will be conducted, described by legal subdivision, section, quarter-section, township, range, and meridian;

(3) a map (United States Geological Survey topographic map or the equivalent) at a scale no smaller than 1:63,360 (inch to the mile) showing the general vicinity of the mining operation and the specific property to be worked;

(4) a general description and diagram of the mining operation and the mined area that shows and states the number of acres to be mined during 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 spoil disposal areas, and the areas otherwise affected by the operation; the information furnished must be reasonably appropriate to the scale and complexity of the mine;

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

(6) a description of the reclamation measures that will be taken to comply with AS 27.19.020 and 11 AAC 97.200 - 11 AAC 97.250, including the equipment to be used; a time schedule for the reclamation measures; and, if the miner proposes to reclaim the land to an alternate post-mining land use under AS 27.19.030 (b) on state, federal, or private land or to an alternate post-mining land intended by the landowner on private land, a statement of that proposed or intended use; the description must include:

(A) measures for topsoil removal, storage, protection, and replacement;

(B) measures for reclamation of tailings impoundments, settling ponds, reservoirs, heaps, open pits and cuts, shafts, adits, tunnels, portals, overburden, waste rock storage areas, and all other affected areas;

(C) measures for stream placement and reclamation at the end of mining; and

(D) a proposal for reclamation or post-mining conversion of access roads leading to the mining operation, airstrips, and other associated facilities;



(7) if on private land, a signed and notarized statement by the landowner that the miner has the landowner's permission to operate throughout the period covered by the proposed reclamation plan; however, this statement is not required if the miner is the landowner, or if the mining operation is on a prior federal mining location and the private landowner received title subject to that location under sec. 22(c) of PL 92-203, the Alaska Native Claims Settlement Act (43 U.S.C. 1621(c)); 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; for the purposes of this paragraph, the landowner means the owner of the estate that includes the mineral or material to be mined.

(c) If a mining operation is a public project for which the successful bidder has not yet been determined, the agency responsible for the project, the landowner, or another third party may submit a proposed reclamation plan on behalf of the successful bidder. The proposed plan must be complete except for the miner's name, address, and telephone number. Before the plan approval takes effect, the miner must provide his or her name, address, and telephone number, sign the plan, and satisfy the bond requirement.

(Eff. 7/30/92, Register 123)

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

AS 27.19.020                      AS 27.19.030  
AS 27.19.040                      AS 27.19.100

**11 AAC 97.320 TERM; CONDITIONAL APPROVAL; RENEWAL.**

(a) The commissioner will, in his or her discretion, approve a reclamation plan for any term not to exceed 10 years. If the plan is for more than one year, the commissioner will, in his or her discretion, require the miner to file an annual report that includes the total acreage and volume of material mined in that year, the total acreage reclaimed in that year, and a statement as to whether the reclamation plan is on schedule.

(b) If the commissioner is not satisfied that the plan complies with AS 27.19 and this chapter, the commissioner will, in his or her discretion, approve the reclamation plan only after inclusion of reclamation-specific monitoring, reporting, or performance conditions.

(c) The commissioner will, in his or her discretion, renew a plan upon written request and demonstration that the miner has complied with the approved reclamation plan and the requirements of AS 27.19 and this chapter, if the commissioner determines that the plan is adequate to cover the renewal period.

(Eff. 7/30/92, Register 123)

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

AS 27.19.030                      AS 27.19.100

**11 AAC 97.330 AMENDMENT OF RECLAMATION PLAN.**

(a) A miner shall ensure that reclamation work complies with an approved reclamation plan. If changing product prices, economics, financing, unanticipated conditions, or suspension of mining operations necessitates a change in the reclamation plan, the miner shall submit an amended reclamation plan for approval before modifying the approved reclamation work.

(b) If new or changed statutory or regulatory requirements affect reclamation under an approved reclamation plan, the miner must submit an amended reclamation plan for approval to demonstrate that reclamation occurring after the effective date of the new requirements will comply with those new requirements.

(Eff. 7/30/92, Register 123)

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

AS 27.19.030                      AS 27.19.070  
AS 27.19.100

**11 AAC 97.340 RECORD KEEPING AND INSPECTION; NOTICE ADDRESS.**

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

(b) A miner shall allow access to the mining operation to an authorized representative of the commissioner at reasonable times for the purpose of inspecting or monitoring compliance with the reclamation plan.

(c) A miner shall keep the department informed of the miner's correct address until the reclamation is approved as complete.

(Eff. 7/30/92, Register 123)

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

AS 27.19.030                      AS 27.19.070  
AS 27.19.100

**11 AAC 97.350 SUCCESSOR IN INTEREST.**

If an interest in a mining operation is transferred from one miner to another by sale, assignment, lease, or otherwise before completion of reclamation and approval by the commissioner, the plan must be amended as provided in 11 AAC 97.330 to reflect the transfer. The commissioner will approve the amendment and will release the predecessor in interest from the reclamation obligations, if

(1) the operation is in compliance with the reclamation plan,

(2) the successor assumes full responsibility and liability under the approved reclamation plan, and

(3) the bonding requirements are met.

(Eff. 7/30/92, Register 123)

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



## **ARTICLE 04**

### **RECLAMATION BONDING**

#### **11 AAC 97.400 BONDING REQUIRED.**

A miner who is not exempt under AS 27.19.050 (a) shall either

(1) participate in the statewide bonding pool under 11 AAC 97.425;

(2) post a performance bond with the commissioner to ensure complete compliance with AS 27.19, this chapter, and the approved reclamation plan, consisting of either

(A) a corporate surety bond under 11 AAC 97.405; or

(B) a personal bond accompanied by a letter of credit, by a certificate of deposit, or by a deposit of cash or gold, under 11 AAC 97.410;

(3) post a bond or financial guarantee with another government agency to satisfy that agency's reclamation-related bond requirements if, in a cooperative management agreement with that agency, the commissioner has determined that the agency's bond requirements are at least as effective as those of AS 27.19 and that requiring another bond would be unnecessary; or

(4) post a general performance bond that

(A) is written in favor of an agency of the State of Alaska;

(B) requires reclamation to standards no less effective than those of AS 27.19 and this chapter;

(C) is in an amount no less than \$750 per acre of mined area or area to be mined;

(D) remains in effect until the mined area is reclaimed to standards no less effective than those of AS 27.19 and this chapter; and

(E) requires that, if the bond is liquidated, proceeds in the amount of \$750 per acre of mined area will be paid or reserved exclusively for the purpose of reclamation until all mined areas are reclaimed to standards no less effective than those of AS 27.19 and this chapter.

(Eff. 7/30/92, Register 123)

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

AS 27.19.040

#### **11 AAC 97.405 CORPORATE SURETY BOND.**

A corporate 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. 7/30/92, Register 123)

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

AS 27.19.040

#### **11 AAC 97.410 PERSONAL BOND AND LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR DEPOSIT OF CASH OR GOLD.**

(a) A personal bond must be submitted on a form prescribed by the commissioner and must be accompanied by

(1) an irrevocable letter of credit issued by a bank or other financial institution authorized to do business in the United States;

(2) a certificate of deposit in the amount of the bond issued in sole favor of the department by a bank or other financial institution authorized to do business in this state;

(3) a cash deposit maintained in a depository account as directed by the commissioner; or

(4) a deposit of gold held in escrow by a bank or other financial institution, payable to the State of Alaska if the bond is forfeited, and with a value of 25 percent more than the bond obligation, to allow for potential decreases in gold prices.

(b) A personal bond and letter of credit, certificate of deposit, or deposit of cash or gold must 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 their release is approved by the commissioner.

(Eff. 7/30/92, Register 123)

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

AS 27.19.040

#### **11 AAC 97.415 ACREAGE TO BE BONDED.**

(a) Acreage that must be bonded before a mining operation begins in any calendar year is limited to any area to be mined during that calendar year, plus any mined area (as that term is defined in 11 AAC 97.990) mined in a previous year for which reclamation must be completed under this chapter; it is not necessarily the same as the entire acreage of the mining operation. For an underground mine, only the surface acreage disturbed by the operation constitutes "mined area" for purposes of the bond requirement.

(b) After a multi-year reclamation plan goes into effect, the miner shall ensure that the bond amount is sufficient at all times to cover any area to be mined during the current calendar year, plus any area mined in a previous year that has not yet been reclaimed.

(c) Any previously reclaimed area that is to be mined again is subject to the bond requirement in the year that mining resumes and until it is reclaimed.

(d) In calculating the number of acres that must be bonded, a miner must round up to the next whole number.

(Eff. 7/30/92, Register 123)  
Authority - Sec. 2, ch. 92, SLA 1990  
AS 27.19.040

#### **11 AAC 97.420 AMOUNT OF BOND.**

(a) The amount of the performance bond required by 11 AAC 97.400 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 97.415.

(b) If a miner shows to the commissioner's satisfaction that the reasonable and probable costs of reclamation under an approved reclamation plan are less than \$750 per acre, the commissioner will reduce the bond to those costs. The miner's showing must be submitted along with the proposed reclamation plan and must include an estimate of the labor and equipment costs that would be incurred to hire a third-party contractor to perform the reclamation in accordance with the plan. In evaluating a miner's proposal for reduction of the bond amount, the commissioner will consider the nature of the surface, its uses, improvements in the vicinity of the land, the degree of risk involved in the mining operation, and all other relevant factors. The commissioner will make a determination on this request of bond reduction in the time schedules set out in 11 AAC 97.300.

(c) A miner may provide a bond for more than the amount required by (a) and (b) of this section.

(Eff. 7/30/92, Register 123)  
Authority - Sec. 2, ch. 92, SLA 1990  
AS 27.19.040

#### **11 AAC 97.425 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 each year, the miner shall pay into the pool a deposit of 15 percent of the miner's total bond amount determined under 11 AAC 97.420 (a) for that year, plus an annual nonrefundable fee of five percent of the total bond amount for that year. These percentages are the same for all operations.

(c) Except for an operation whose bond amount is reduced below \$750 per acre under 11 AAC 97.420 (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 per acre.

(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 any unreclaimed acreage 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 miner 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.

(e) If the commissioner, in his or her discretion, allows a miner who is subject to the bonding requirement of AS 27.21.160 to participate in the bonding pool, the bonding pool is not obligated for an amount exceeding \$750 per acre. Any additional bond amount required under AS 27.21.160 must be provided under one of the mechanisms allowed under AS 27.21.160 and 11 AAC 90.

(Eff. 7/30/92, Register 123; am 1/4/95, Register 133)  
Authority - Sec. 2, ch. 92, SLA 1990  
AS 27.19.030 AS 27.19.040

#### **11 AAC 97.430 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 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. 7/30/92, Register 123)  
Authority - Sec. 2, ch. 92, SLA 1990  
AS 27.19.030 AS 27.19.040  
AS 27.19.070

#### **11 AAC 97.435 RELEASE OR DECREASE OF BOND, AND REFUND OF BONDING POOL DEPOSIT.**

(a) An application for release or decrease of the amount of a performance bond, or for refund of 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.

(b) Before authorizing release of or decrease in the amount of the bond, or refund of a deposit paid into the bonding pool, the commissioner will inspect or review actions taken under the approved reclamation plan, and will make a written finding that each applicable requirement of the approved reclamation plan has been completed. The commissioner will, in his or her discretion, require the miner to submit photographs or other information documenting the reclamation, and, if no inspection takes place, the commissioner will base his or her finding and bond release on the miner's documentary evidence and sworn statement. If reclamation was done in accordance with the plan and with the miner's sworn statement, the commissioner's finding constitutes approval of the reclaimed area and releases the miner from liability under AS 27.19. If reclamation was not done in accordance with the plan and with the miner's sworn statement, the miner remains liable under AS 27.19, notwithstanding the commissioner's finding.

(c) If another agency with jurisdiction over the mining operation agrees to accept the miner's posting of a bond or bond pool deposit with the commissioner as satisfying its own bond requirement, and has filed a written request or entered into a cooperative management agreement under AS 27.19.060 to be notified before the commissioner releases or reduces the bond or bond pool deposit, the commissioner will give the other agency reasonable notice.

(d) 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. 7/30/92, Register 123)

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

AS 27.19.040

AS 27.19.060

### **11 AAC 97.440 INTEREST; USE OF BONDING POOL.**

(a) No miner or surety is entitled to receive interest on any sum deposited into the bonding pool.

(b) The bonding pool, including any accrued interest, 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 97.200 - 11 AAC 97.250. The commissioner will, in his or her discretion, use money in the bonding pool for reclamation in accordance with AS 27.19, except that the commissioner will not use a refundable deposit to fulfill another miner's reclamation obligation. The commissioner has no obligation or authority under AS 27.19 to undertake reclamation expenditures beyond the disburseable balance of the bonding pool.

(Eff. 7/30/92, Register 123)

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

AS 27.19.040

### **11 AAC 97.445 ASSIGNMENT.**

If a miner assigns his or her interest in any uncompleted mining operation, and the commissioner has amended the reclamation plan to reflect the transfer and released the assignor in accordance with 11 AAC 97.350, 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. 7/30/92, Register 123)

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

AS 27.19.040

### **11 AAC 97.450 EXCEPTION TO BONDING REQUIREMENT.**

No bond is required under AS 27.19.040 and 11 AAC 97.400 if the miner is an agency of the State of Alaska or federal government or is a municipality.

(Eff. 7/30/92, Register 123)

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

AS 27.19.040

## **ARTICLE 05**

### **EXEMPTIONS FOR SMALL OPERATIONS**

#### **11 AAC 97.500 LETTER OF INTENT.**

(a) The letter of intent required by AS 27.19.050 (b) must be filed annually on a form provided by the department before the mining begins. The following information must be provided:

(1) the name, address, and telephone number of the miner or other person who will serve as agent to receive any notice that is required by this chapter, and the names, addresses, and telephone numbers of all other owners, operators, or leaseholders of the mining operation;

(2) a list of all properties, mining locations, or leases on which the mining operation is to be conducted, including the state or federal case file number, and the legal description of the land on which the mining operation is to be conducted, described by legal subdivision, section, quarter-section, township, range and meridian;

(3) a map (United States Geological Survey topographic map or the equivalent) at a scale no smaller than 1:63,360 (inch to the mile) showing the general vicinity of the mining operation and the specific property to be worked; for a material mining operation adjacent to an airport or a public road, the commissioner will, in his or her discretion, waive this requirement and allow the location to be specified by the name of the airport or by the road milepost;

(4) a diagram of the mining operation and the mined area that shows and states the number of acres to be mined during the year and that shows the location corners or property boundaries and their relationship to the

reclamation work, the tailings or spoil 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;

(5) total acreage and volume of material to be mined, and the existing acreage of mined area;

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

(7) a description of the reclamation measures that will be taken to comply with AS 27.19.020 and 11 AAC 97.200 - 11 AAC 97.250;

(8) if on private land, a signed and notarized statement by the landowner that the miner has the landowner's permission to operate throughout the period covered by the letter of intent; however, this statement is not required if the miner is the landowner, or if the mining operation is on a prior federal mining location and the private landowner received title subject to that location under sec. 22(c) of PL 92-203, the Alaska Native Claims Settlement Act (43 U.S.C. 1621(c)); 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. For the purposes of this paragraph, the landowner is the owner of the estate that includes the mineral or material to be mined.

(b) The miner shall keep the department informed of the miner's correct address until the reclamation is completed.

(Eff. 7/30/92, Register 123)

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

AS 27.19.050

### **11 AAC 97.510 ANNUAL RECLAMATION STATEMENT.**

(a) The annual reclamation statement required by AS 27.19.050 (c) must be filed on a form provided by the department and must include photographs or videotapes dated and described as to location, or other information acceptable to the commissioner, documenting that the reclamation was completed. It must also state the cumulative total of unreclaimed acreage.

(b) The annual reclamation statement must be filed or postmarked by December 31 for each calendar year.

(c) A miner who files a letter of intent must file an annual reclamation statement, even if no mining took place during that year.

(Eff. 7/30/92, Register 123)

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

AS 27.19.050

## **ARTICLE 06**

### **VIOLATIONS AND PENALTIES**

#### **11 AAC 97.600 FAILURE TO FILE RECLAMATION STATEMENT.**

A miner who fails to file an annual reclamation statement in accordance with 11 AAC 97.510 may not continue or resume that mining operation without an approved reclamation plan and a bond. The miner may restore the exemption by fully complying with 11 AAC 97.510 (a) and (c). Until the miner supplies the documentation required by those subsections, a rebuttable presumption is established that the miner has failed to reclaim the mining operation to the standards of AS 27.19 and this chapter.

(Eff. 7/30/92, Register 123)

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

AS 27.19.050

#### **11 AAC 97.610 FAILURE TO MEET REQUIREMENTS OR RECLAIM SMALL OPERATION.**

The penalties stated in AS 27.19.050 (d) apply if a miner who obtained an exemption under AS 27.19.050 (a) exceeds the acreage or cubic yardage limits of that subsection, or if the commissioner determines that the miner has failed to reclaim the mining operation to the standards of AS 27.19 and this chapter. These penalties apply regardless of where the miner's subsequent mining operation occurs.

(Eff. 7/30/92, Register 123)

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

AS 27.19.050

AS 27.19.070

#### **11 AAC 97.620 VIOLATION OF RECLAMATION PLAN.**

AS 27.19.040 (c) applies to a participant in the statewide bonding pool in the same way as to a miner who has filed an individual performance bond. Under the circumstances set out in AS 27.19.040 (c), a statewide bonding pool participant's bonding pool deposit will become nonrefundable.

(Eff. 7/30/92, Register 123)

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

AS 27.19.030

AS 27.19.040

AS 27.19.070

#### **11 AAC 97.630 ADMINISTRATIVE DETERMINATION OF VIOLATION.**

If, after the commissioner issues a written order to a miner, the miner fails to correct a violation of AS 27.19 or this chapter within the period set by the commissioner, the commissioner will, in his or her discretion, serve an accusation in accordance with AS 44.62.360, and 44.62.380 and will conduct further proceedings in accordance with AS 44.62.330 - 44.62.650.

(Eff. 7/30/92, Register 123)

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

AS 27.19.070

AS 27.19.080

**11 AAC 97.640 RECLAMATION RISK ASSESSMENT FEE.**

(a) The reclamation risk assessment fee required by AS 27.19.070 (c) applies to a miner who has had any portion of his or her bonding pool deposit become nonrefundable, in the same way as it applies to a miner who has forfeited a reclamation bond or has been held liable in a civil action. The requirement applies to any future mining operation by that miner, regardless of location, for the period set out in (d) of this section.

(b) The reclamation risk assessment fee required by AS 27.19.070 (c) must be tendered to the department in the form of a performance bond meeting the requirements of 11 AAC 97.405 or 11 AAC 97.410. The miner may not participate in the statewide bonding pool to meet this requirement.

(c) The reclamation risk assessment fee is required in addition to, not instead of, the bonding requirements of this chapter.

(d) The reclamation risk assessment fee will be refunded 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) If a miner who has posted a reclamation risk assessment fee is determined to be in violation of AS 27.19, this chapter, or an approved reclamation plan, the reclamation risk assessment fee will be forfeited to the statewide bonding pool.

(Eff. 7/30/92, Register 123)  
Authority - Sec. 2, ch. 92, SLA 1990  
AS 27.19.070

**ARTICLE 07**

**COOPERATIVE MANAGEMENT AGREEMENTS**

**11 AAC 97.700 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 management agreement with a federal or state agency under AS 27.19.060, or with a municipality under art. X, sec. 13 of the Alaska Constitution, to implement AS 27.19 and this chapter. Except as provided in (b) of this section, the cooperative agreement will, in the commissioner's discretion, provide

(1) that the federal or state agency will implement AS 27.19 and this chapter with respect to the land that it manages, or that the municipality will implement AS 27.19 and this chapter with respect to the land that it owns; or

(2) that the department and the federal or state agency or the municipality will implement both its own and the other's reclamation authority on a reciprocal basis.

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

(c) For purposes of 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.

(Eff. 7/30/92, Register 123)  
Authority - Art. X, sec. 13, Alaska Const.  
Sec. 2, ch. 92, SLA 1990

AS 27.19.010	AS 27.19.060
AS 27.19.100	AS 38.05.020
AS 44.62.340	AS 44.62.640

**ARTICLE 08**

**GENERAL PROVISIONS**

**11 AAC 97.900 BOUNDARY MAINTENANCE.**

In order to provide an accurate reference for the location of the reclaimed area, a miner must maintain or reestablish all location corners or property boundaries described in the reclamation plan until the commissioner inspects the site or reviews it for reclamation approval or bond release under 11 AAC 97.435.

(Eff. 7/30/92, Register 123)  
Authority - Sec. 2, ch. 92, SLA 1990  
AS 27.19.020 AS 38.05.020

**11 AAC 97.910 MULTIPLE MINERS; LIABILITY.**

(a) If more than one miner is involved in a mining operation, the commissioner will consider the miner or other person identified as the agent in the letter of intent or reclamation plan to be the miners' agent for purposes of any notice under this chapter until the department is otherwise notified. All notices provided by the department to the miners' agent constitute notice to all miners involved in a mining operation.

(b) All miners involved in a mining operation are jointly and severally liable for any penalty for failure to comply with AS 27.19 and this chapter.

(Eff. 7/30/92, Register 123)  
Authority - Sec. 2, ch. 92, SLA 1990  
AS 27.19.020 AS 27.19.070  
AS 27.19.100

**11 AAC 97.990 DEFINITIONS.**

In this chapter:

(1) "commissioner" means the commissioner of natural resources;

(2) "mined area" has the same meaning as in AS 27.19.100 (2); however, that definition applies only if the mining occurred after October 14, 1991;

(3) "miner" has the same meaning as in AS 27.19.100 (3); however, "miner" does not include a state, federal, or municipal landowner, regardless of whether that landowner retains a royalty interest as lessor, unless it owns or operates the mining operation; nor does "miner" include any other landowner, unless the landowner has a managing interest or working interest in the mining operation;

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

Eff. 7/30/92, Register 123

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

AS 27.19.100

## **Section III. Exploration Incentive Credits**

### **ALASKA STATUTES**

#### **Chapter 27.30. EXPLORATION INCENTIVE CREDITS**

##### **Sec. 27.30.010. Exploration incentive credits authorized.**

(a) The commissioner shall grant to a person described in (d) of this section an exploration incentive credit for the eligible costs of each of the following exploration activities that are performed on or for the benefit of land in the state for the purpose of determining the existence, location, extent, or quality of a locatable or leasable mineral or coal deposit, regardless of whether the land is state-owned land:

(1) surveying by geophysical or geochemical methods;

(2) drilling exploration holes;

(3) conducting underground exploration;

(4) surface trenching and bulk sampling; or

(5) performing other exploratory work, including aerial photographs, geological and geophysical logging, sample analysis, and metallurgical testing.

(b) Except as provided in (c) of this section, an exploration incentive credit may not be granted under (a) of this section for exploration activity described in that subsection that occurs after the mine construction commencement date of a new mine. In this subsection, "mine construction commencement date of a new mine" means the date no later than which all of the following have occurred:

(1) there has been issued to the owner or an agent of the owner permits, leases, and title and other rights in land, and other approvals, permits, licenses, and certificates, by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence construction of a mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;

(2) all approvals, permits, licenses, and certificates are in full force and effect, unrevoked and without any modification that might jeopardize the completion or continued construction of the mine; and

(3) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the construction or the continuation of construction of the mine is not in effect.

(c) In addition to the grant of an exploration incentive credit for a new mine under (b) of this section, an exploration incentive credit may be granted under (a) of this section for exploration activity described in that subsection for a mine that had previously operated, has ceased to operate, and for which all previous mining approvals, permits, licenses, and certificates that allowed the previous operation are no longer in effect. However, under this subsection, an exploration incentive credit may not be granted under (a) of this section for exploration activity that occurs after the mine reopening date. In this subsection, "mine reopening date" means the date not later than which all of the following have occurred:

(1) there has been issued to the owner or an agent of the owner permits, leases, and title and other rights in land, and other approvals, permits, licenses, and certificates, by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence operation of the former mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;



(2) all approvals, permits, licenses, and certificates for the reopened mine are in full force and effect, unrevoked, and without any modification that might jeopardize the reopening of the former mine; and

(3) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the reopening of the former mine is not in effect.

(d) An exploration incentive credit may be granted under this chapter only to

(1) a natural person who is at least 18 years of age;

(2) a partnership qualified to do business in the state;

(3) a corporation qualified to do business in the state;

(4) a limited liability company qualified to do business in the state;

(5) a legal guardian or trustee of a qualified natural person described in (1) of this subsection; or

(6) any association of persons listed in (1) - (5) of this subsection.

**Sec. 27.30.020. Procedure for requesting and taking the credit.**

To obtain the credit authorized by this chapter,

(1) a person shall submit a request for the credit as follows:

(A) the person may submit a request and a statement of expenditures

(i) whenever the amount of credit certified in the request totals at least \$250,000 and the period covered is at least one year; or

(ii) when the person is ready to take the entire balance of the credit, regardless of the total amount of the credit;

(B) the request must be on a form provided by the department and

(i) describe the work accomplished during each year of the period covered by the request, the number of employees, and the names and number of consultants;

(ii) provide a detailed list or ledger of expenditures of the accomplishments described in (i) of this subparagraph and a list of exploration activity data that will be provided to the department; and

(iii) provide a statement by a certified public accountant that expenditures are supported by receipts for all activities eligible for the credit under AS 27.30.010 (a) for each calendar year that these expenditures for a single mining operation equal or exceed \$40,000;

(C) the person submitting the request is not required to transmit copies of receipts with the request, but the statement of expenditures is subject to audit in the discretion of the commissioner;

(D) if the commissioner determines to audit the statement of expenditures, the commissioner may require the person submitting the request to justify claims of expenditures with receipts and other reliable information;

(E) the commissioner shall respond to the request within six months of the date of submission of the request by certifying or not certifying the person's expenditures; if the commissioner

(i) does not certify all of the expenditures, the commissioner shall state the reasons for denial of certification of the expenditures not certified and give the person making the request an opportunity to correct any problems or to provide additional information;

(ii) certifies expenditures, the commissioner shall specify the exploration activity data requirements that must be presented to the department at the time of the taking of the credit;

(F) if the commissioner neither certifies nor denies certification of expenditures within six months of the date of submission of the request, the expenditures are certified as submitted;

(2) the person whose expenditures have been certified under (1) of this subsection may thereafter request the taking of the credit for the certified expenditures as follows:

(A) the person shall deliver to the commissioner the exploration activity data identified by the commissioner under (1)(E)(ii) of this section and shall request the commissioner's approval of the taking of the credit;

(B) the commissioner shall approve or disapprove the taking of the credit within 60 days after receipt of the request for taking of the credit; if the

(i) exploration activity data complies with the requirements identified by the commissioner under (1)(E)(ii) of this section, the commissioner shall approve the taking of the credit and shall, within 30 days, notify the Department of Revenue that the taking of the credit has been approved;

(ii) request is disapproved, the commissioner shall state the reasons for disapproval and offer the person seeking to take the credit an opportunity to correct any problems or to provide additional exploration activity data or other information;

(C) if the commissioner neither approves nor disapproves the request to take the credit within 60 days after submission of the request, the taking of the credit is approved; the commissioner shall, within 30 days, notify the Department of Revenue that the taking of the credit has been approved under this subparagraph.

**Sec. 27.30.025. Conditional certification.**

(a) A person may submit a request for conditional certification for the credit when

(1) the person has conducted or intends to conduct exploration activities using an innovative technique;

(2) there exists a substantial question regarding the nature of the exploration data that will be delivered to the department; or

(3) the person contemplates assigning a credit under AS 27.30.060 and there exists a substantial question regarding whether the expenditures will be certified.

(b) A person shall submit a request for conditional certification on a form provided by the department.

(c) The commissioner shall respond to the request within six months from the date of the submission of the request for conditional certification by issuing a letter stating that

(1) under the specific facts and circumstances proposed by the person, the proposed expenditures and data appear eligible for a credit;

(2) there is not adequate information to determine whether the proposed expenditures and data appear to be eligible for a credit; or

(3) the expenditures and data as presented do not appear to be eligible for a credit.

(d) Approval of conditional certification under (c)(1) of this section does not relieve a person from obtaining certification of the credit under AS 27.30.020.

**Sec. 27.30.030. Application of the credit.**

(a) In a tax year or royalty payment period, subject to (c) of this section and the respective limitations of this subsection, the person may apply the credit, the taking of which was approved under AS 27.30.020(2), against

(1) taxes payable by the person

(A) under AS 43.65; application of the credit under this subparagraph may not exceed the lesser of

(i) 50 percent of the person's tax liability under AS 43.65 for the tax year that is related to production from the mining operation at which the exploration activities occurred, as shown under (b) of this section; or

(ii) 50 percent of the person's total tax liability under AS 43.65 for the tax year;

(B) under AS 43.20; application of the credit under this subparagraph may not exceed the lesser of

(i) an amount equal to the amount determined under (A)(i) of this paragraph; or

(ii) 50 percent of the person's total tax liability under AS 43.20 for the tax year; and

(2) mineral production royalty payments payable by the person under AS 38.05.135 - 38.05.175 and 38.05.212 for production from the mining operation at which the exploration activities occurred; application of the credit under this paragraph may not exceed 50 percent of the person's mineral production royalty payment liability from the mining operation at which the exploration activities occurred.

(b) If the person applies the credit against the person's tax liability under (a)(1)(A)(i) or (a)(1)(B)(i) of this section, the commissioner of revenue shall disallow application of the credit under that provision unless the person files with the person's tax return an accounting of the person's mining operation activities for each mining operation that is included in the tax return and as to which the credit is being applied. The accounting of mining operation activities required by this subsection shall be made

(1) on a form prescribed by the Department of Revenue; on the form, the person shall

(A) identify the mining operations for which the credit is claimed; and

(B) set out the gross income attributable to the mining operations and other information about the mining operations that the Department of Revenue may require;

(2) without regard to an exemption to which the person may be entitled under AS 43.65.010 (a).

(c) The person may not apply the credit under this section if the application would exceed the total amount of the credits approved under AS 27.30.020 (2).

#### **Sec. 27.30.040. Credit may be carried forward.**

Except as its application is limited by AS 27.30.030 and 27.30.050, a portion of a credit that is not applied under AS 27.30.030 during a tax year or royalty payment period may be carried forward to and applied during a subsequent tax year or royalty payment period.

#### **Sec. 27.30.050. Limit on application of credit.**

An exploration incentive credit for a mining operation may not exceed \$20,000,000 and must be applied within 15 tax years or royalty payment periods after the taking of the credit is approved under AS 27.30.020(2), but the tax years or royalty payment periods in which the credit is applied need not be

(1) the tax year or royalty payment period in which the person first incurs liability for payment of tax or royalty based on the person's activity that is the basis of the claim of the exploration incentive credit; or

(2) consecutive periods.

#### **Sec. 27.30.060. Assignment of credit.**

A person may assign an exploration incentive credit to the person's successor in interest for the mining operation at which the exploration activities occur, but only if the successor in interest is a person qualified to obtain the credit under AS 27.30.010 (d). An exploration incentive credit may not be assigned except as permitted in this section.

#### **Sec. 27.30.070. Responsibility for record of use of credit.**

For each mining operation, the commissioner may require each person who proposes to take the credit under AS

27.30.020 (2) to provide with the request to take the credit a record of

(1) the person's past use of credits taken under AS 27.30.020 (2) and 27.30.030; and

(2) other information that the commissioner requires to determine if approval of the taking of the credit by the person would exceed the limits on use of the credit under this chapter.

**Sec. 27.30.080. Relationship to other funds.**

Amounts due the permanent fund under AS 37.13.010 shall be calculated before the application of a credit extended under this chapter.

**Sec. 27.30.090. Confidentiality of data.**

(a) The commissioner shall keep the exploration activity data provided under AS 27.30.020 confidential for 36 months after receipt by the department.

(b) The department is liable in damages to a person who provided the exploration activity data under AS 27.30.020 if the data is disclosed in violation of (a) of this section.

**Sec. 27.30.095. Fees.**

The commissioner may charge a fee for the direct costs incurred by the department and the Department of Revenue for evaluating or auditing an application to certify the credit authorized under AS 27.30.010, including the cost of contractors selected by the commissioner to assist in the evaluation or audit. The fee may not exceed

(1) \$500 for each application covering one or more years if the amount claimed in the application is \$1,000,000 or less;

(2) \$1,000 for each application covering one or more years if the amount claimed is more than \$1,000,000.

**Sec. 27.30.099. Definitions.**

In this chapter,

(1) "credit" means the exploration incentive credit for activities involving locatable and leasable mineral and coal deposits authorized by this chapter;

(2) "eligible costs" mean the costs incurred for activities in direct support of exploration activity conducted at the mining operation of the exploration activity for the purpose of determining the existence, location, extent, or quality of a mineral or coal deposit; the term

(A) Includes

(i) the costs of obtaining the approvals, permits, licenses, and certificates for an exploration activity set out in AS 27.30.010 (a)(1) - (5);

(ii) direct labor costs and the cost of benefits for employees directly associated with work described in AS 27.30.010 (a)(1) - (5);

(iii) the cost of renting or leasing equipment from parties not affiliated with the person requesting and taking the credit;

(iv) the reasonable costs of owning, maintaining, and operating equipment;

(v) insurance and bond premiums associated with the activities set out in (i) - (iv) of this subparagraph;

(vi) payments to consultants and independent contractors; and

(vii) the general expense of operating the person's business, including the costs of materials and supplies, if those expenses and costs are directly attributable to the work described in AS 27.30.010(a)(1) - (5);

(B) does not include return on investment, insurance or bond premiums not covered under (A)(v) of this paragraph, or any other expense that the person has not incurred to complete work described in AS 27.30.010 (a)(1) - (5);

(3) "exploration activity data" includes, as applicable,

(A) a representative skeleton core for each hole cored or a representative set of cuttings for each hole rotary drilled;

(B) chemical analytical data and noninterpretive geophysical data;

(C) aerial photographs or a topographic or geologic map showing the location of the drill holes, sample locations, or the other exploration activities undertaken;

(4) "geochemical methods" means soil, rock, water, air, vegetation, and similar samples collected and their chemical analyses;

(5) "geophysical methods" means all geophysical data gathering methods used in mineral or coal exploration, including seismic, gravity, magnetic, radiometric, radar, and electromagnetic and other remote sensing measurements;

(6) "mining operation" includes all operating and nonoperating activities related to a mineral deposit interest, and may be comprised of one or more mining properties; in determining whether mining properties are part of the same mining operation, the commissioner may consider whether the operation, in conducting mining activities on several mining properties, uses common personnel, supply, and maintenance facilities, mining-related treatment processes, storage facilities, roads, pipelines and transportation equipment, and mining techniques and technology, and may also consider the extent to which the mineral deposit interest comprises a common mining property;

(7) "person" means only those persons listed in AS 27.30.010 (d).

# Section IV. Mining License Tax and Production Royalty

## ALASKA STATUTES

### Chapter 43.65. MINING LICENSE TAX

#### Sec. 43.65.010. Mining license.

(a) A person prosecuting or attempting to prosecute, or engaging in the business of mining in the state shall obtain a license from the department. All new mining operations are exempt from the tax levied by this chapter for three and one-half years after production begins. The tax exemption granted to new mining operations does not extend or apply to the mining of sand and gravel.

(b) The Department of Natural Resources shall certify to the department the date upon which production begins, and the department shall issue a certificate of exemption to the producer accordingly.

(c) The license tax on mining is as follows: upon the net income of the taxpayer from the property in the state, computed with allowable depletion, plus royalty received in connection with mining property in the state

over \$40,000 and not over \$50,000	3 %
over \$50,000 and not over \$100,000	\$1,500 plus 5 % of the excess over \$50,000 over
\$100,000	\$4,000 plus 7 % of the excess over \$100,000

(d) Where mining operations are conducted in two or more places by one person the operations are considered a single mining operation and the tax under this chapter is computed upon the aggregate income derived from all the mining operations. The lessor of a mine operated under a lease is considered to be engaged in mining within this chapter, and the royalties received by the lessor are considered to be the net income of the lessor's mining operations. If the lessor receives royalties from more than one mine or mining operation, the tax payable under this chapter by the lessor is computed upon the aggregate royalties received by the lessor from all the mines or mining operations as though they were a single mining operation.

(e) The allowance for depletion included as an allowable deduction from gross income is a percentage of the gross income from the property during the taxable year, excluding from the gross income an amount equal to the rents or royalties paid by the taxpayer in respect to the property, as follows:

- (1) coal mines: 10 percent;
- (2) metal mines, fluorspar, flake graphite, vermiculite, beryl, feldspar, mica, talc, lepidolite, spodumene, varite, ball and sagger clay, or rock asphalt mines and potash mines or deposits: 15 percent; and
- (3) sulphur mines or deposits: 23 percent.

(f) The allowance for depletion may not exceed 50 percent of the net income of the taxpayer, computed without allowance for depletion, from the property, except that in no case may the depletion allowable be less than it would be if computed on a reasonable cost basis.

(g) Deductions that are not directly attributable to particular properties or processes shall be fairly allocated. To illustrate: If the taxpayer engages in activities in addition to mineral extraction in the state and to ordinary treatment processes, deductions for depreciation, taxes, general expenses, and overhead, which cannot be directly attributed to a specific activity, shall be fairly apportioned between (1) the mineral extraction and ordinary treatment processes, and (2) the additional activities, taking into account the ratio which the operating expenses directly attributable to the mineral extraction and ordinary treatment processes bear to the operating expenses directly attributable to the additional activities. If more than one mineral property is involved, the deductions apportioned to the mineral extraction and ordinary treatment processes shall, in turn, be fairly apportioned to the several properties taking into account their relative production.

(h) Taxes upon royalties shall be paid by the taxpayer receiving the royalties and no deduction, excepting depletion, is allowed.

- (i) A license issued under this section must include

- (1) the name and address of the licensee;
- (2) the nature or type of mining activity to be conducted; and
- (3) the year for which the license is issued.

**Sec. 43.65.018. Mining business education credit.**

(a) For cash contributions accepted for direct instruction, research, and educational support purposes, including library and museum acquisitions, and contributions to endowment, by an Alaska university foundation or by a nonprofit public or private, Alaska two-year or four-year college accredited by a regional accreditation association, a person engaged in the business of mining in the state is allowed as a credit against the tax due under this chapter

(1) 50 percent of contributions of not more than \$100,000; and

(2) 100 percent of the next \$100,000 of contributions.

(b) [Repealed, Sec. 12 ch 71 SLA 1991].

(c) Each public college and university shall include in its annual operating budget request contributions received and how the contributions were used.

(d) A contribution claimed as a credit under this section may not

(1) be claimed as a credit under another provision of this title; and

(2) when combined with credits taken during the taxpayer's tax year under AS 21.89.070, AS 43.20.014, AS 43.55.019, AS 43.56.018, AS 43.75.018, or AS 43.77.045, exceed \$150,000.

**Sec. 43.65.020. Taxpayer's duties.**

(a) A person subject to tax under this chapter shall make a return stating specifically the items of gross income from the property, including royalty received and the deductions and credits allowed by this chapter and the exploration incentive credit authorized by AS 27.30, and other information for carrying out this chapter that the department prescribes. The return must show the mining license number and must be signed by the taxpayer or an authorized agent of the taxpayer, under penalty of unsworn falsification. If receivers, trustees, or assigns are operating the property or business, they shall make returns for the person engaged in mining, or the recipient of royalty in connection with mining property. The tax due on the basis of the returns shall be collected in the same manner as if collected from the person of whose business they have custody and control. In a tax year in which a taxpayer applies against the tax levied under this chapter the exploration incentive credit authorized by AS 27.30, the commissioner shall require the taxpayer to submit the accounting of mining operation activities form required by AS 27.30.030 (b).

(b) A return made on the basis of the calendar year shall be made before May 1 of the next year. A return made on the basis of a fiscal year shall be made before the first day of the fifth month of the next fiscal year.

(c) The department may grant a reasonable extension of time for filing returns, under regulations adopted by it. Except in the case of a taxpayer going abroad, an extension may not be made for more than six months.

(d) A taxpayer's return shall be made to the department at Juneau. A taxpayer shall make a return either on a calendar year or fiscal year basis, in conformance with the basis used in making the taxpayer's return for federal income tax purposes.

(e) The total amount of tax imposed by this chapter shall be paid on the 30th day of April of the next calendar year, or, if the return is made on the basis of the fiscal year, then on the last day of the fourth month of the next fiscal year.

(f) Every person prosecuting or attempting to prosecute or engaging in the business of mining in the state shall comply with the department's regulations and shall keep such records, give such statements under oath, and make such returns as the department prescribes.

(g) When the department considers it necessary, it may require a person, by notice served upon the person, to make a return, give statements under oath, or keep records, as it considers sufficient to show whether or not the person is liable to tax

under this chapter. If a person fails to file a return at the time prescribed by law or regulation, or makes, willfully or otherwise, a false or fraudulent return, the department shall make the return from its own knowledge and from such information as it can obtain through testimony or otherwise. A return so made and subscribed by the department is prima facie good and sufficient for all legal purposes.

**Sec. 43.65.060. Definitions.**

In this chapter, unless the context otherwise requires,

(1) "gross income from property" means the gross income from mining in the state;

(2) "mining" means an operation by which valuable metals, ores, minerals, asbestos, gypsum, coal, marketable earth, or stone, or any of them are extracted, mined, or taken from the earth; "mining" includes the ordinary treatment processes normally applied by mine owners or operators to obtain the commercially marketable product, but does not include the extraction or production of oil and gas;

(3) "net income of the taxpayer (computed without allowances for depletion) from the property" means the gross income from the property, less allowable deductions attributable to the mineral property upon which the depletion is claimed and the allowable deductions attributable to ordinary treatment processes insofar as they relate to the product of the property, including overhead and operating expenses, development costs properly charged to expense, depreciation, taxes, losses sustained, etc., but excluding allowances for depletion, and deductions for federal income taxes, or for the tax imposed by this chapter;

(4) "new mining operations" means mining operations which began production after January 1, 1953, or which have not been liable to pay a mining license tax under this chapter on net income since January 1, 1948;

(5) "ordinary treatment processes" includes

(A) in the case of coal: cleaning, breaking, sizing, and loading for shipment,

(B) in the case of sulphur: pumping to vats, cooling, breaking and loading for shipment,

(C) in the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and minerals which are customarily sold in the form of crude mineral product: sorting, concentrating and sintering to bring to shipping grade and form, and loading for shipment, and

(D) in the case of lead, zinc, copper, gold, silver, platinum metals or fluorspar ores, potash and ores which are not customarily sold in the form of the crude mineral product: crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but excluding electrolytic deposition roasting, thermal or electric smelting or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of a product from the ore, including the furnacing or quicksilver ore;

(6) "production" means the date on which the initial shipment of products from mining operations is made.

**Sec. 38.05.212. Production royalty.**

(a) In exchange for and to preserve the right to extract and possess the minerals produced, the holder of a mining claim, leasehold location, or mining lease, including a mining lease under AS 38.05.250, shall pay a royalty on all minerals produced from land subject to the claim, leasehold location, or mining lease during each calendar year.

(b) The production royalty

(1) is three percent of net income as determined under AS 43.65; and

(2) is subject to the exploration incentive credit authorized by AS 27.30.

(c) The commissioner shall adopt regulations to implement this section and to provide for combined reporting and paying of production royalties for mining operations that include more than one mining claim, leasehold location, or mining lease.



**ADMINISTRATIVE  
REGULATIONS**

**CHAPTER 065**

**MINING LICENSE TAX**

**ARTICLE 01**

**LICENSING AND FILING  
REQUIREMENTS**

**15 AAC 65.010 WHEN LICENSE IS REQUIRED.**

(a) Except as provided in (b) of this section, a person engaged in one or more of the following activities in the state is in the business of mining and shall obtain a mining license:

- (1) a person owning and operating a mining property;
- (2) a person owning a mining property and receiving lease or royalty payments based on production from the property;
- (3) a person leasing a mining property from another person and operating the property;
- (4) a person possessing a mineral interest, whether an economic or a production interest, in a producing property, including royalty, working or operating interests, net profits, overriding royalties, carried interests, and production payments;
- (5) a person who is temporarily exempt from taxation under AS 43.65.010 (a).

(b) The following persons are not in the business of mining and are not required to obtain a mining license:

- (1) a person whose mining activities are restricted to the holding of property for exploration to locate and delineate mineral deposits or for future development;
- (2) a person who holds mineral interests described in (a)(4) of this section in undeveloped and non-producing properties;
- (3) a person whose sole mining activity in the state consists of extracting sand, gravel, rock, or fill material from federal, state, or municipal land, if the material is to be used exclusively by that person for public construction projects or for personal use, and is not held for resale.

(c) A mining license must be obtained for each mining operation conducted in this state. A person owning several mining properties that constitute a single mining operation may apply for one license.

(d) The following examples illustrate when a mining license is required:

(1) Individuals "A" and "B" form a partnership, AB Company, to develop and mine properties P1, P2, and P3. Property P1 is a fully developed and operating placer mine. Property P2 is a non-producing patented mining claim that the company intends to explore, and property P3 will be a dredging operation but is currently in the developmental stage. "A" and "B", as individuals, are not required to obtain separate licenses so long as neither is

receiving a royalty from the producing property. AB Company must obtain separate mining licenses for properties P1 and P3. A license is not required for property P2 because it is not in the developmental or operational stages.

(2) Corporation D has acquired operating interests in 16 coal leases in various stages of development. All leases are connected geographically and the company produces coal from several of the leases. Individual "E" possesses a royalty interest in one of the producing leases and receives an annual payment from Corporation D. Individual "F" possesses a royalty interest in a non-producing lease that is currently not being developed. Individual "F" receives an advance royalty from this lease. Corporation D may apply for one mining license to apply to all producing coal leases. Individual "E" must apply for a mining license because "E" is receiving royalties from a producing mining property in the state. Individual "F" must apply for a license when production begins from mining property in which "F" holds an economic interest.

(3) Individual "G" owns and operates property P4, a producing placer mine in southeast Alaska, receives a royalty from property P5, a mineral interest "G" leased to another company, is exploring for minerals on property P6, unpatented state land near Fairbanks, and is developing property P7, a potential placer mine near Anchorage. Individual "G" must obtain a separate license for properties P4, P5, and P7 because each is a separate mining operation and is in either the developmental or operational phase. A license is not required for property P6 because it is in the exploratory phase of development.

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080

AS 43.65.010

**15 AAC 65.020 MINING LICENSE APPLICATION  
AND RENEWAL.**

(a) A person required to obtain a license by AS 43.65.010 and 15 AAC 65.010 shall file an application for a license on a form provided by the department, except that a placer miner may file the annual Placer Mining Application. The following information must be provided:

- (1) applicant's name;
- (2) mailing address;
- (3) federal employer identification number (EIN) or social security number (SSN);
- (4) year for which the license is requested;
- (5) location of operation, i.e., creek, property, recording district;
- (6) the date on which production first began;
- (7) the name and address of the owner of the property, if the property is being leased by the applicant;
- (8) the serial number of the lease or sale, if applicable, as assigned by the Department of Natural Resources;
- (9) the nature or type of mining activity to be conducted; and
- (10) other information required by the department.

(b) Application for an initial mining license must be made on or before the time the mining operation enters the developmental phase.

(c) A license expires on April 30 of each year and must be renewed by filing a renewal application before May 1, on a form provided by the department.

(d) Upon receipt of an application, the department will issue a mining license to the applicant.

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080 AS 43.65.010  
AS 43.65.030

### **15 AAC 65.030 RETURNS.**

(a) Except as provided in (c) of this section, each license holder, including a license holder temporarily exempt from taxation under AS 43.65.010 (a), shall file a mining license return on a form provided by the department. A person receiving gross income from more than one licensed mining property shall report that income on a single return.

(b) For each person required to file a return, the mining license tax year is the same as that person's tax year for federal income tax purposes. The mining license return must be filed before the first day of the fifth month following the end of the applicable tax period.

(c) Each joint venture member which was elected not to be treated as a partnership for purposes of sec. 761 of the Internal Revenue Code 26 U.S.C. 761 may include its share of joint venture income and expenses on its separate mining license return.

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080 AS 43.65.020

### **15 AAC 65.040 EXTENSIONS.**

(a) Upon application, the department will, in its discretion, grant an extension of time to file a mining license return.

(b) An application for an extension of time for filing a return must be filed with the department no later than the date the return is due, and must include a complete statement of the reasons for the request for an extension. A copy of the approved extension request must be filed with the mining license tax return.

(c) An extension of time for filing the return does not extend the time for payment of the total amount of tax due.

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080 AS 43.65.020

## **ARTICLE 02**

### **COMPUTATION OF TAX**

#### **15 AAC 65.100 TAXABLE INCOME.**

For the purpose of computing the mining license tax due, taxable income is gross income as defined by 15 AAC 65.110 less deductible mining expenses as defined by 15 AAC 65.120 and 15 AAC 65.125.

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080 AS 43.65.010  
AS 43.65.060

#### **15 AAC 65.110 GROSS INCOME.**

(a) A person's gross income from a mining property in the state equals the sum of

(1) sale price or value actually received, including cash, credits, in-kind exchanges, and other valuable consideration for the mined materials;

(2) advance royalty payments received; however, advance payments may not be included in gross income until the tax year in which the mined material to which the payments relate is actually extracted;

(3) production payments retained in a lease; and

(4) other royalty payments received from mining properties in the state, including royalty payments received in kind; if the payment is in kind, gross income includes the fair market value of the mined material on the date that payment is received.

(b) For the purposes of this section, the sales price of

(1) mined material sold in the state to an affiliate of the person is the greater of

(A) the cash value of the consideration given for the materials sold;

(B) the price attributable to the sale as entered on the person's books and records in accordance with generally accepted accounting principles; or

(C) fair market value;

(2) the person's inventory of mined material, retained by and put to personal use by the person, or transferred from the mining division to another division within the same corporate entity, is the greater of

(A) the price attributable to the mining division for the material as entered on the person's books and records in accordance with generally accepted accounting principles, or

(B) fair market value.

(c) If a person is engaged in a mining operation in the state and mined materials are commingled with non-mining materials to form a refined product such as asphalt paving, concrete, or jewelry, gross income includes the fair market value of the mined materials after they are mined and subjected to ordinary treatment processes but before incorporation into the finished product.

(d) If a person transports mined materials and products containing mined materials out of state before sale of the materials or products, gross income includes the fair market value of the materials before their exportation in

the tax year exported, whether or not the mined materials are sold during that tax year.

(e) For the purpose of this section, "fair market value" must be determined by one of the following methods, except that, if fair market value cannot be fairly determined by the use of these methods, the person may request, or the commissioner will, in his or her discretion, require, the use of another method acceptable to the commissioner:

(1) Fair market value may be computed by using the representative market or field price of materials after they are mined and subjected to ordinary treatment processes. "Representative market or field price" is the competitive sales price for ores or minerals of like kind and grade. If no Alaska market exists for a mined material, the representative market or field price is the United States or world market price for a similar kind and grade of resource.

(2) Fair market value may be computed by deducting from the out-of-state sales price of Alaska mined materials the

(A) ordinary and necessary costs incurred to apply non-mining processes to the mined materials before sale;

(B) ordinary and necessary costs incurred to transport the mined materials from the point of completion of ordinary treatment processes to its destination before sale;

(C) ordinary and necessary costs incurred out-of-state in further processing the mined materials to produce a marketable product; and

(D) out-of-state sales expense and other administrative costs incurred to bring the mined materials to the point of sale.

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080

AS 43.65.010

AS 43.65.060

### **15 AAC 65.120 DEDUCTIBLE MINING EXPENSES; INVENTORY COSTS.**

(a) Except for a person permitted to compute federal net income using the cash basis method, a person shall inventory the costs of production in the state and deduct those costs at the time of sale, the time of export, or the time when the value of the mineral product is included in gross income for the purpose of calculating the mining license tax.

(b) In order to reflect mining net income accurately, both direct and indirect mining expenses must be included in the computation of costs to be inventoried, in a manner consistent with the person's federal income tax records, if the records are kept in a method consistent with generally accepted accounting principles and are consistent from year to year. Mining costs must be allocated to the product extracted during the tax year, whether sold during the tax year or in inventory at the close of the taxable year. Costs that must be accounted for in inventory include:

(1) direct mining expenses that are costs incident and necessary to the extraction of mined materials and ordinary treatment processes, including

(A) direct labor costs that are specifically identified or associated with particular units of mined materials;

(B) mine costs incurred in severing and extracting the materials from the mine, pit, or ground;

(C) maintenance and repair of mining equipment and facilities directly associated with the mine operation and ordinary treatment processes;

(D) supplies used in the mining operation and ordinary treatment processes;

(E) payments made to holders of economic interests in the mining property, including royalties, production payments and net profits;

(F) depreciation on mining equipment, buildings, and other facilities engaged directly in extraction and ordinary treatment processes, computed in accordance with 15 AAC 65.125 (f);

(G) depletion as calculated in accordance with 15 AAC 65.125 (d) and (e);

(H) costs associated with transporting the mined materials through completion of ordinary treatment processes, except transportation costs to transport the resource out of the state.

(2) indirect mining expenses that are costs incident and necessary to extraction and ordinary treatment processes other than direct mining costs, including:

(A) insurance;

(B) general administrative and office expenses;

(C) rent;

(D) utilities;

(E) repair expenses;

(F) losses relating to casualty or theft to the extent uncompensated by insurance;

(G) employee benefits;

(H) taxes paid on Alaska operations, including severance, property, sales, use, and excise taxes.

(c) If two or more properties are involved, indirect expenses allowed under 15 AAC 65.120 (b)(2) must be allocated between the properties, based upon the ratio of each property's production during the tax year to the person's total production from the properties.

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080

AS 43.65.010

AS 43.65.060

### **15 AAC 65.125 DEDUCTIBLE MINING EXPENSES; OTHER EXPENSES; DEPLETION.**

(a) Other expenses that cannot be inventoried are deductible when paid or accrued. These expenses must be allocated in accordance with (b) of this section, and include:

(1) except as provided in (2) and (3) of this subsection, interest expense paid or accrued in connection with the mining operation is deductible as a current operating expense;

(2) construction period interest expense, including all interest paid or accrued in connection with depreciable property to be used in the mining operation in the state, is to be capitalized and recovered through depreciation or amortization in accordance with the person's election for federal income tax purposes;

(3) interest expense paid or accrued by a consolidated business in connection with the mining operation in the state is deductible as follows:

(A) 100 percent of the interest on specific new borrowings made with the purpose, expressed at the time of the borrowing, of financing the mining operation in the state; specific new borrowings may not exceed the amount of accumulated expenditures made for fixed capital and working capital to finance the mining operation in the state;

(B) if no specific new borrowing is made to finance the mining operation in the state, the interest deduction may not exceed a portion of the total interest paid or accrued by the consolidated business; that portion is determined by multiplying the total interest by a fraction, the numerator of which is the cost of the taxpayer's real and tangible personal property in the state and the denominator of which is the cost of all real and tangible personal property of the business; in this subparagraph, "total interest paid or accrued by the consolidated business" does not include interest expense arising from intercompany obligations within the consolidated business except to the extent that the interest expense reflects a pass-through of interest on a third-party borrowing by the parent or other member of the consolidated business;

(4) advertising expenses;

(5) Alaska corporate net income tax;

(6) salaries paid to officers and others for the performance of services that are incident and necessary to the person's business activities as a whole rather than to extraction and ordinary treatment processes;

(7) other expenses that are incident and necessary to the person's business activities as a whole rather than to extraction and ordinary treatment processes.

(b) For the purpose of expense allocation under (a) of this section,

(1) interest expense and taxes allowed under (a)(1) of this section are deductible to the extent that they relate to a person's mining activity in the state and are determined by multiplying total expenses by a fraction, the numerator of which is the person's direct mining expenses in the state and the denominator of which is the person's total direct expenses related to both mining and non-mining activities in the state;

(2) the expenses allowed under (a)(4) - (7) of this section are deductible to the extent they relate to mining activities in the state and are determined by multiplying the total expenses by a fraction, the numerator of which is the person's direct mining expenses in the state and the denominator of which is the person's total direct expenses related to both mining and non-mining activities.

(c) While a mining property is in the development stage, all development expenditures in excess of net income from the sale of mined materials must be included in the mine's basis and are recoverable through the depletion allowance. Development expenses incurred after the mine has reached the production stage are deductible as a current operating cost. The mine is considered to have passed from a development to a production stage when

the principal activity of the mining property becomes the production of ore from the property rather than the development of the ore body before production.

(d) A deduction for depletion may be taken by a person for each economic interest held in an Alaska mining property; an economic interest is held when a person has acquired by investment any interest in a mineral in place and that person derives, under any form of legal relationship, income from the extraction of the mineral, to which the person must look for a return of capital.

(e) A percentage depletion allowance is permitted for each property described in AS 43.65.010 (e), if the allowance is not less than if it were computed on a cost basis. If computed on a percentage basis, the depletion allowance may not exceed 50 percent of the person's mining net income as computed without the allowance for depletion. Cost depletion must be used for all other mineral types not described in AS 43.65.010 (e), including sand and gravel.

(f) In computing mining taxable income, depreciation expense on all mining equipment, buildings, and other facilities located in Alaska, is allowed as a deduction. A property's basis for computing depreciation is the adjusted basis of the asset for federal income tax purposes on the date the asset is placed in service in Alaska. Depreciation on mining assets may be computed using any of the methods allowed under secs. 167 and 168 of the Internal Revenue Code (26 U.S.C. 167 and 168). In place of the depreciation expense deduction, a person may elect to amortize the cost of pollution control facilities used in the mining operation in accordance with sec. 169 of the Internal Revenue Code (26 U.S.C. 169).

(g) Exploration costs, federal income taxes, taxes under this chapter, losses on the sale of mining equipment or properties, net operating losses and other capital losses are not deductible.

(h) If the allocation provisions of this section do not fairly represent the amount of the person's expenses paid or accrued in connection with the mining operation in the state, the person may petition the commissioner for the use of another method to effectuate an equitable allocation of the person's expenses.

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080

AS 43.65.010

AS 43.65.060

### **15 AAC 65.130 TAX RATE.**

The following rates are applicable to the taxable income of a person subject to the mining license tax:



## TAXABLE INCOME TAX RATE

\$40,000 and under	no tax
Over \$40,000 and not over \$50,000	3 % of the entire taxable income
Over \$50,000 and not over \$100,000	\$1,500 plus 5 percent of the excess over \$50,000
Over \$100,000	\$4,000 plus 7 percent of the excess over \$100,000

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080

AS 43.65.010

## ARTICLE 03

### EXEMPTION FROM TAX

#### 15 AAC 65.200 TEMPORARY EXEMPTION FOR NEW MINING OPERATION.

(a) As provided in AS 43.65.010 (a), a new mining operation is exempt from the tax under AS 43.65 for three and one-half years after production begins. The department will, in its discretion, suspend passage of the exemption period if mine production ceases for other than seasonal or ordinary shutdowns. Under AS 43.65.010 (a), the tax exemption granted to new mining operations does not apply to the mining of sand and gravel.

(b) As provided in AS 43.65.010 (b) and 15 AAC 65.210, the Department of Natural Resources will notify the department of the date on which production begins for each new mining operation. If the department determines that an operation qualifies as a new mining operation, the department will issue a certificate of exemption in accordance with 15 AAC 65.220.

(c) The department will consider the following factors in determining whether a person's operation is a new mining operation eligible for the three and one-half year exemption:

(1) whether the person or a prior owner or operator of the property was liable to pay the mining license tax on net income from the property after January 1, 1948;

(2) the location of the operation in relation to other properties being operated by the person;

(3) the geological structure of the ore body in relation to other ore bodies the person mines;

(4) the mining techniques and technology used; and

(5) the extent to which the person is required to invest new capital, employ different personnel and use additional facilities to exploit the resource.

(d) A temporary exemption will be granted to a person making extensive capital additions or improvements, and to a person applying new mining methods and techniques to a property previously owned and operated by another person, but only if the previous mining operation has been closed, shut down, or abandoned for more than one mining season. An exemption will not be granted

(1) to a person who merely extends or expands an operation onto previously un-mined properties, or

(2) when changes in ownership of an existing operation take place.

(e) The following examples illustrate eligibility for the three and one-half year tax exemption:

(1) Mining Company A has been a gold dredging operator for more than three and one-half years on three properties, which it owns or leases. The properties are joined contiguously and lie within a single river valley. To extend its current operation, Company A acquires an additional lease, which shares a common boundary with the other properties. Expanding the operation by developing and mining the additional leased property does not create a new mining operation eligible for the exemption.

(2) Company B has been conducting mining operations on 15 coal leases for 20 years. In 1985, the company sells the entire operation to Company C. Company C continues to operate on the properties and expands the operation by adding new equipment, including dredges, crushers, and bulldozers. Company C is not entitled to an exemption. A change in ownership of existing mining properties does not create a new mining operation.

(3) Company D owns and operates a hard rock gold mining operation on the southern side of Hurricane Ridge. This mine has been in production for 10 years. Company D acquired a lease for undeveloped gold mining properties on the northern side of Hurricane Ridge, completed development of the property, and began production on June 1, 1985. In anticipation of this new development, Company D made extensive capital expenditures, leased additional mining equipment and hired additional mining personnel. A geologist's study indicated that the gold bearing ore bodies on the north side of the hill are not part of a geological structure having any correlation with or similarity to the ore bodies on the south side. The distance between the two properties is 40 miles and is linked by a company-owned haul road. Although there is a road link and close proximity between the northern and southern properties, Company D is eligible for the exemption on the northern mining property because it made extensive capital expenditures for an operation on previously unmined property and hired additional personnel to operate the mine. The operation is not merely an extension of another ongoing operation.

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080

AS 43.65.010

AS 43.65.060

#### 15 AAC 65.210 AFFIDAVIT OF INITIAL PRODUCTION.

(a) In order to be granted a certificate of exemption by the department, the owner or operator of a new mining operation shall record, in the recording district in which the operation is located, a sworn affidavit of initial production showing the location of the new mining

operation, the commodities produced, the names of the operators, and the new mining operation's date of initial production. The affidavit must be recorded on a form provided by the Department of Natural Resources, or on a substantially similar form, and must be recorded within 90 days after the date of initial production. Failure to record the affidavit timely may result in forfeiture of any right to the three and one-half year exemption from the mining license tax.

(b) For the purpose of determining the date of initial production, the Department of Natural Resources may examine the mining property and books, papers, records, and other documents relevant or material to initial production.

(c) Upon determination that production has begun on a new mining property, the Department of Natural Resources shall notify the department of:

(1) the date of initial production;

(2) the name of the person operating the mining property;

(3) the type of metal, mineral, or other resource being extracted from the mining property; and

(4) a legal description, lease number or other identifying name or characteristic of the property.

(d) For purposes of this section, the date of initial production is generally considered the date initial shipment of mined materials is transported from the mine for sale or additional non-mining processing. Also, production is considered to begin on the date that the mined product is first exported outside this state. However, the transport and sale of a bulk sample does not in and of itself constitute the beginning of production.

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080

AS 43.65.010

AS 43.65.060

#### **15 AAC 65.220 CERTIFICATE OF EXEMPTION.**

(a) Upon receipt of notification of initial production from the Department of Natural Resources, the department will issue a certificate of exemption to a new mining operation, unless it determines, as provided by 15 AAC 65.200, that the operation does not qualify for the exemption.

(b) A certificate of exemption will be issued for a single mining operation. A certificate issued for a single mining operation will not exempt a person from tax on income received from other mining operations.

(c) A certificate of exemption issued for a mining operation temporarily exempts from the mining tax all persons receiving income from the property. For example, both the operator of a mining property and a royalty recipient are exempt from mining tax for the three and one-half year period.

(d) If the department determines that it will not issue a certificate of exemption, it will inform the applicant of its decision and the reason for making that decision. An applicant who disagrees with the decision may appeal that

decision in accordance with AS 43.05.240 and 15 AAC 05.001 - 15; AAC 05.050.

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080

AS 43.65.010

AS 43.65.020

#### **15 AAC 65.230 COMPOSITION OF A MINING OPERATION.**

(a) A mining operation consists of all operating and non-operating mineral deposit interests and may be comprised of one or more mining properties.

(b) In determining whether mining properties are part of the same mining operation, the department will consider whether the operation, in conducting mining activities on several mining properties, uses common personnel, supply and maintenance facilities, mining-related treatment processes, storage facilities, roads, pipelines and transportation equipment, and mining techniques and technology. The department will also consider the extent to which the mineral deposit interests comprise a common mining property.

(Eff. 8/9/86, Register 99)

Authority - AS 43.05.080

AS 43.65.010

#### **15 AAC 65.240 TRANSITION RULES.**

(a) The calendar or fiscal year tax period during which the exemption period described in 15 AAC 65.200 expires is the transition year.

(b) Mining net income subject to tax in a transition year is to be computed by an allocation formula. To determine taxable income, the entire taxable income in the transition year is multiplied by a fraction, the numerator of which is the number of days in the transition year falling outside the exemption period, and the denominator of which is the total number of days in the transition year.

(c) A mining operation that commenced production within three and one-half years before April 1, 1986 has 120 days after August 9, 1986 to record the affidavit required by 15 AAC 65.210. If a certificate of exemption is granted, the exemption period begins on the date of initial production.

(Eff. 8/9/86, Register 89)

Authority - AS 43.05.080

AS 43.65.010

AS 43.65.020

**ARTICLE 04**

**GENERAL PROVISIONS**

**15 AAC 65.990 DEFINITIONS.**

In this chapter, unless the context requires otherwise,

- (1) "bulk sample," means the quantity of resource mined, gathered, taken, or otherwise accumulated as a specimen for the purpose of testing and analyzing the ore body before its development;
- (2) "consolidated business," means a corporation or group of corporations having more than 50 percent common ownership, direct or indirect;
- (3) "department" means the Department of Revenue;
- (4) "development expense" includes expenses paid or incurred after the determination that a deposit of mineral or ore is shown to exist in sufficient quantity and quality to reasonably justify commercial exploitation;
- (5) "exploration expense" includes those expenses incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral paid or incurred before the beginning of development of the mine or other deposit;
- (6) "gravel" means a mixture of small stones and pebbles or pebbles and sand that will pass through a three-inch, and be retained on a No. 4 United States standard, sieve;
- (7) "mining operation" means a business enterprise associated, directly or indirectly, with developing, removing, extracting, moving, or taking from the earth, water, or under water, metals, ores, minerals, asbestos, gypsum, coal, marketable earth, sand, gravel, and any other mineral deposit, including the treatment processes described in sec. 63(c)(4) of the Internal Revenue Code (26 U.S.C. 613), and such treatment processes normally applied by mine owners or operators to obtain a commercially marketable product, but not including the extraction or production of oil and natural gas, or the harvesting of trees or other natural living, organic resources;
- (8) "mining property," means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land;
- (9) "person" means an individual, trust, estate, partnership, corporation, joint venture, or group or combination of these acting as a unit;
- (10) "place" means each geographically separate mining operation not aggregated with another;
- (11) "prosecute" means to begin to carry on, to undertake, or to institute an action;
- (12) "sand" means separate gains or particles of disintegrated rock, easily distinguished by the unaided eye, which is finer than gravel and coarser than dust but not large enough to constitute pebbles.

(Eff. 8/9/86, Register 99)  
Authority - AS 43.05.080 AS 43.65.060

**ARTICLE 08**

**MINING PRODUCTION ROYALTY**

**11 AAC 86.760 PRODUCTION ROYALTY.**

As required by AS 38.05.212, the holder of a mining claim, leasehold location, or mining lease, including a mining lease under AS 38.05.250, shall pay a royalty of three percent of net income, as determined under AS 43.65 and 15 AAC 65, on all minerals produced from land subject to the claim, leasehold location, or mining lease, subject to the following exceptions:

- (1) If the holder segregates its gross income, deductions, and expenses under 11 AAC 86.766, the holder's gross income, deductions, and expenses attributable to minerals produced from land owned by the federal government, a borough or municipality, a native corporation, or a private party shall be omitted from the calculation of net income.
- (2) Net income must be determined and reported, and the production royalty must be paid, for each calendar year rather than each tax year.
- (3) Credit will be given for annual rental paid on a mining claim, leasehold location, or mining lease in production that year. A refund may not be made if the amount of annual rental due and paid exceeds the amount of the production royalty.
- (4) A new mining operation is not exempt from production royalties.

(Eff. 7/26/91, Register 119; am 8/26/98, Register 147)  
Authority - AS 38.05.211 AS 38.05.212

**11 AAC 86.763 HOLDER DEFINED.**

(a) As used in 11 AAC 86.760 - 11 AAC 86.796, a "holder" or a "holder of a mining claim, leasehold location, or mining lease" is a person engaged in one or more of the following activities in the state, and includes a person who is temporarily exempt from taxation under AS 43.65.010(a):

- (1) owning and operating a mining property;
- (2) owning a mining property and receiving lease or royalty payments based on production from the property;
- (3) leasing a mining property from another person and operating the property;
- (4) possessing a mineral interest, whether an economic or a production interest, in a producing property, including royalty, working or operating interests, net profits, overriding royalties, carried interests, and production payments.

(b) There may be more than one holder of a mining claim, leasehold location, or mining lease. For example, if the owner of a mining claim leases the mining claim to another person, both the owner and lessee are holders under this section.

(Eff. 7/26/91, Register 119)  
Authority - AS 38.05.212

### **11AAC 86.766 SEGREGATION.**

(a) The holder may segregate gross income, deductions, and expenses using any of the three methodologies described in (b) – (d) of this section.

(b) Separate or Traced Accounting of Minerals, Income, Deductions, and Expenses. If the holder traces every item of income, deductions, and expenses to either minerals produced from state land or minerals produced from non-state land, then only income, deductions, and expenses traced to the minerals produced from state land shall be used in calculating the production royalty. If the holder mines the same mineral from both state and non-state land, income will be treated as traced income only if the holder:

(1) maintains separate operations and separate books, maintained in conformance with generally accepted accounting principles, for mining on state land and on non-state land: or

(2) contemporaneous with mining, records the amount of raw material mined from state land, the amount of raw material mined from non-state land and the corresponding grades of such raw material, and, contemporaneous with sale, records the corresponding income from the minerals mined.

(c) Actual Income with Proportionate Deductions and Expenses. If the holder has jointly developed state land and non-state land as a single mining operation and, contemporaneous with mining, records the amount of raw mineral mined from state land, the amount of raw mineral mined from non-state land, and the corresponding grades of such raw material and, contemporaneous with sale, records the corresponding income from the minerals mined, then the holder may segregate income from state land and non-state land on this basis. For purposes of calculating production royalties under this subsection, deductions and expenses shall be proportionate to income. Deductions for state land shall equal gross income from state land multiplied by total deductions for both state and non-state land, then divided by gross income from both state and non-state land. Expenses for state land shall equal gross income from state land multiplied by total expenses for both state and non-state land, then divided by gross income from both state and non-state land.

(d) Apportionment of Gross Income, Deductions, and Expenses Based on Volume or Tonnage. If the holder has jointly developed state land and non-state land as a single mining operation, gross income, deductions, and expenses may be apportioned on the basis of the gross income per cubic yard or ton of ground mined that calendar year. Gross income from state land shall equal the number of cubic yards or tons of state ground mined multiplied by the gross income from both the state and non-state land, and then divided by the number of cubic yards or tons of both state and non-state ground mined. Deductions for state land shall equal the number of cubic yards or tons of state ground mined multiplied by the deductions for both the state and non-state land, and then divided by the number of cubic yards or tons of both state and non-state ground mined. Expenses for state land shall equal the

number of cubic yards or tons of state ground mined multiplied by the expenses for both the state and non-state land, and then divided by the number of cubic yards or tons of both state and non-state land ground mined.

(e) Repealed 8/26/98.

(f) A holder of separate mining operations may select any one of the methodologies set out in (b) - (d) of this section for each mining operation.

(g) A holder who elects to segregate income using one of the methodologies described in this section may not change methodologies after May 1, 1992 without the written consent of the director. Consent may not be given without an extraordinary change in circumstances, which makes the methodology initially selected wholly inappropriate or impossible to use. An application for consent to change methodologies must be filed before the last day of the calendar year for which the change is sought. The director shall grant, modify, or deny the application within 90 days after filing.

(Eff. 7/26/91, Register 119; am 8/26/98, Register 147; am 1/19/2002, Register 161)

Authority - AS 38.05.212

### **11 AAC 86.769 PRODUCTION ROYALTY PAYMENTS AND RETURNS.**

(a) Production royalty returns must be prepared and submitted on forms available from the division. Completed returns and payments must be submitted to the department office in Anchorage or Fairbanks.

(b) Production royalty returns must be filed for each year after 1989 in which production occurs, or minerals produced from state land are sold, exchanged, or otherwise disposed of; returns are not otherwise required.

(c) Production royalty returns and payments are due every year on May 1 for the preceding calendar year.

(d) Upon written request, the division may grant an extension of time to file a production royalty return and to pay the royalty payment. The written request must be received by the division no later than 10 days before the due date set in (c) of this section. The written request must include a complete statement of the reasons for the request. An extension of time may not exceed 120 days. Interest accrues on the unpaid balance of a royalty payment during the term of an extension.

(Eff. 7/26/91, Register 119; am 8/26/98, Register 147; am 1/19/2002, Register 161)

Authority - AS 38.05.212

Editor's Notes -

The mailing and geographic addresses for submission of production royalty returns described in 11 AAC 86.769 (a) are the following: for Anchorage: State of Alaska, Department of Natural Resources, Division of Mining, Land and Water, 550 West 7<sup>th</sup> Avenue, Suite 900, Robert B. Atwood Building, Anchorage, Alaska 99501; for Fairbanks: State of Alaska, Department of Natural



Resources, Division of Mining and Water, 3700 Airport Way, Fairbanks, Alaska 99709.

**11 AAC 86.772 INTEREST ON UNPAID ROYALTIES; DEFICIENT PAYMENTS.**

(a) Interest accrues from the due date set in 11 AAC 86.769 (c) on the outstanding balance of any production royalty not paid in full when due. This interest accrues at the legal rate of interest in the State of Alaska, as specified in AS 45.45.010 (a), until the outstanding balance is paid in full.

(b) If the division discovers that a production royalty payment is deficient, the division shall send the holder of a mining claim, leasehold location, or mining lease a deficiency notice by certified mail, return receipt requested. The deficiency notice must comply with 11 AAC 88.140, and must

(1) State the amount of the deficiency, if known;

(2) State the rate at which interest accrues on the deficiency;

(3) inform the holder that it has 60 days after the date on the notice to pay in full the total of the deficiency plus interest; and

(4) inform the holder that failure to pay the total of the deficiency plus interest within 60 days is an abandonment of the holder's claim, leasehold location, or mining lease unless the holder, under 11 AAC 86.778, contests the deficiency notice before expiration of the 60-day period.

(Eff. 7/26/91, Register 119)

Authority - AS 38.05.212

AS 38.05.265

**11 AAC 86.775 BOOKS AND RECORDS.**

The holder must keep its books and records pertaining to mining income, expenses, and deductions for no less than six years after the calendar year to which they relate. Books and records for both mining on state land and mining in Alaska on non-state land must be kept as required by this section. The books and records must be available for inspection and copying by authorized representatives of the state. If the office in which the books and records are kept and maintained is not readily accessible to the authorized representatives of the state, the books and records, upon request, must be produced at the state office designated by the state representative.

(Eff. 7/26/91, Register 119)

Authority - AS 38.05.212

**11 AAC 86.776 CONFIDENTIALITY.**

The financial information contained in the production royalty returns filed by a holder, and the books and records produced by the holder, shall be held confidential upon the written request of the holder, except that the following information may be made available to the public:

(1) the holder's name;

(2) the quantity of mineral mined from each location;

(3) the net income reported, or which should have been reported, by ADL number or in total;

(4) the existence and nature of a dispute between a holder and the division over production royalty accounting or payment; and

(5) information relevant to litigation in which the state claims underpayment or nonpayment of production royalties.

(Eff. 7/26/91, Register 119)

Authority - AS 38.05.035

AS 38.05.212

AS 43.05.230

**11 AAC 86.778 CONTESTING NOTICE OF DEFICIENCY.**

(a) A holder who wishes to protest a deficiency notice issued under 11 AAC 86.772(b) shall file a written protest with the department. To preserve the holder's rights and to receive consideration by the department, this written protest must

(1) be personally delivered or mailed by certified mail, return receipt requested, to either the Anchorage or Fairbanks office of the department

(2) be received by the department within 60 days after the date on the notice of deficiency;

(3) State the departmental action the holder is protesting, the relief sought, and the ADL numbers affected;

(4) State the grounds for the holder's protest, including the facts at issue, the legal authority relied upon, and any generally accepted accounting principles that support the holder's protest; and

(5) State whether the holder wants an informal conference or waives that right in favor of a formal hearing.

(b) A holder may be represented or assisted by an attorney, certified public accountant, or other representative at the informal conference and the formal hearing.

(Eff. 7/26/91, Register 119)

Authority - AS 38.05.212

AS 38.05.265

Editor's Notes: The mailing and geographic addresses for the department's Anchorage and Fairbanks offices are the following: for Anchorage: Department of Natural Resources, Division of Mining, Land and Water, 550 West 7<sup>th</sup> Avenue, Suite 900, Robert B. Atwood Building, Anchorage, Alaska 99501; for Fairbanks: Department of Natural Resources, Division of Mining, Land and Water, 3700 Airport Way, Fairbanks, Alaska 99709.

**11 AAC 86.781 INFORMAL CONFERENCES.**

(a) Unless the holder waives the right to an informal conference, upon receipt of the holder's written protest under 11AAC 86.778 the department will designate a conference officer who will promptly schedule the

informal conference with the holder. A holder wishing to present facts and financial information in support of its position must bring all pertinent books, records, and other documents to the conference or must make them readily available for examination by the conference officer. The conference officer may copy any of the books, records, and other documents brought to the conference or made available for the conference officer's examination.

(b) A holder whose protest turns solely on one or more findings of material fact and who has waived its right to an informal conference in favor of a formal hearing, may be required to attend an informal conference before going to a formal hearing if the department believes the disagreement over material facts can be resolved at the conference level.

(c) After considering the facts, financial information, and arguments presented by the holder at the informal conference, the officer will make a recommendation to the department. The conference officer is not authorized to compromise or waive the production royalty payment that is protested by the holder; however, upon a conference officer's recommendation that a correction of the department's original action is warranted, the department will make the recommended correction if it decides that the action is appropriate and will promptly notify the holder in writing of its decision and of the correction. In all other cases, the department will make a decision on the conference officer's recommendation and will notify the holder in writing of the decision.

(d) A holder who is dissatisfied with the department's decision under (c) of this section and who wishes to continue its protest in the matter shall, within 30 days after the date on the department's notice of its decision on the conference officer's recommendation, file a written request, as described in 11 AAC 86.784 (b), for a formal hearing before the department. Failure to timely file a request waives the holder's right to further consideration of its protest before the department.

(e) A decision under (c) of this section is not a final administrative determination of the holder's protest by the department.

Eff. 7/26/91, Register 119

Authority - AS 38.05.212

### **11 AAC 86.784 FORMAL HEARINGS.**

(a) The department will hold a formal hearing for a holder if

(1) the holder timely files a protest fulfilling the requirements of 11 AAC 86.778 (a), waiving the right to an informal conference in favor of a formal hearing;

(2) within 30 days after the date on the department's notice under 11 AAC 86.781(c) of its decision on the conference officer's recommendation regarding that holder's protest, the holder files a written request for a formal hearing which fulfills the requirements of (b) of this section; or

(3) under the facts and circumstances of a particular case it appears appropriate to the department to conduct a formal hearing.

(b) A holder's request to continue its protest at a formal hearing after the department's decision under 11 AAC 86.781 (c) regarding that protest must be in writing and must

(1) be personally delivered or mailed by certified mail, return receipt requested, either the Anchorage or Fairbanks office of the department

(2) State the nature of the holder's continuing protest and the relief sought; and

(3) State the grounds for the holder's protest, including the facts remaining at issue, the legal authority relied upon, and any generally accepted accounting principles that support the holder's protest.

(c) Following receipt of the holder's request for a formal hearing, the department will appoint a hearing officer to preside over that hearing. Notice of the appointment of the hearing officer will be mailed to the holder by certified mail.

Within 15 days after the date on the notice, the holder may reject the hearing officer. A holder may exercise its right to reject a hearing officer only once.

(d) On the hearing officer's own motion or at the request of the holder or of the division, the hearing officer may order that a prehearing conference be scheduled for the purpose of narrowing issues or establishing a schedule for the discovery or production of evidence, for submission of briefs, or for stipulation of facts.

(e) The formal hearing will be scheduled as early as possible at an office of the department nearest the holder's place of business or at another time and place acceptable to the department and the holder.

(f) At the hearing, the holder has the burden of proving its protest by a preponderance of the evidence. At the hearing, both the holder and the department's representative may introduce into evidence materials relevant to a determination of the merit of the protest; however, redundant materials, even though relevant, may be excluded by the hearing officer.

(g) After the hearing, the hearing officer shall prepare a written recommendation, specifying the hearing officer's findings of fact and conclusions of law. Upon approval by the commissioner, the written recommendation of the hearing officer becomes the final decision of the department. If the commissioner disagrees with the recommendation of the hearing officer, the commissioner will issue a decision, supported by findings of fact and conclusions of law, which includes a discussion of the reasons the hearing officer's recommendation is not acceptable.

(Eff. 7/26/91, Register 119; am 8/16/2000, Register 155)

Authority - AS 38.05.212

Editor's note: The mailing and geographic addresses for the Anchorage and Fairbanks offices are the following: for Anchorage: Department of Natural Resources, Division of Mining, Land and Water, 500 West 7<sup>th</sup>

Avenue, Suite 900, Robert B. Atwood Building, Anchorage, Alaska 99501; for Fairbanks: Department of Natural Resources, Division of Mining, Land and Water, 3700 Airport Way, Fairbanks, Alaska 99709.

### **11 AAC 86.787 APPEALS.**

The commissioner's decision under 11 AAC 86.784 is a final administrative order for purposes of appeal to court. No further appeal to the commissioner or petition for the commissioner's reconsideration is available. A holder who disagrees with the decision of the commissioner under 11 AAC 86.784 may appeal the decision to a court having jurisdiction to hear such appeals as provided in AS 44.62.560 and AS 44.62.570.

(Eff. 7/26/91, Register 119; am 9/19/2001, Register 159)  
Authority - AS 38.05.212 AS 44.37.011

### **11 AAC 86.790 ABANDONMENT; SUIT TO COLLECT PAYMENT.**

(a) The department will consider that the holder of a mining claim, leasehold location, or mining lease has abandoned to the state all rights acquired under that state mining claim, leasehold location, or mining lease if the holder

(1) fails to file a production royalty return when due; or

(2) does not pay a portion of the production royalty when the payment is due and thereafter does not, within 30 days of receipt of a certified notice of abandonment, pay the total amount that is due.

(b) If the holder of more than one state mining claim, leasehold location, or mining lease timely files a production royalty return and timely pays in full a production royalty payment for one or more but not all of that holder's mining claims, leasehold locations, or mining leases, only those mining claims, leasehold locations, and mining leases for which the holder failed to timely file a production royalty report or failed to timely pay at least a portion of the production royalty payment are subject to abandonment under this section. If the division cannot readily determine the allocation of a production royalty payment to the holder's various mining claims, leasehold locations, or mining leases on which the holder failed to report or pay, all the holder's mining claims, leasehold locations, and mining leases in production during that calendar year are considered abandoned.

(c) If a production royalty payment is deficient but is otherwise timely paid, the holder of a mining claim, leasehold location, or mining lease is considered to have abandoned the mining claim, leasehold location, or mining lease unless

(1) the holder pays the deficiency, plus interest, within 60 days after the date on the deficiency notice required by 11 AAC 86.772 (b);

(2) the holder, after protest of the deficiency under 11 AAC 86.778, pays the amount determined to be due at the conclusion of an informal conference conducted under 11 AAC 86.781 or, if the protest was continued, within 30

days after the date on the notice of the department's decision under 11 AAC 86.784 (g); or

(3) the holder, after appeal under 11 AAC 86.787, pays the amount adjudicated to be due within 30 days after final non-appealable judgment.

(d) If an abandonment is considered to have occurred under this section, the division shall post at the Anchorage and Fairbanks offices of the division, and record in the recording district in which the mining claim, leasehold location, or mining lease is located, a notice of abandonment. This notice must

(1) identify the mining claim, leasehold location, or mining lease;

(2) State the basis on which the mining claim, leasehold location, or mining lease is considered abandoned; and

(3) be signed by a representative of the division.

(e) For purposes of abandonment of any mining claim, leasehold location, or mining lease, the owner of record with the division as of the last day of the calendar year has the primary responsibility of assuring that all holders with interests in the mining claim, leasehold location, or mining lease at any time during that calendar year timely report and pay in full the production royalties due. Should any holder of an interest in that mining claim, leasehold location, or mining lease fail to timely file its production royalty report and pay in full the production royalties when due, all interests in the mining claim, leasehold location, or mining lease, except those of the state, are subject to abandonment to the state under 11 AAC 86.760 - 11 AAC 86.796. To avoid abandonment, the owner of record or any other holder may timely file and pay in full the production royalties due from a holder of an interest in the mining claim, leasehold location, or mining lease.

(f) In addition to considering a mining claim, leasehold location, or mining lease to be abandoned, the division may file suit to collect a production royalty payment, if the production royalty payment was not paid or was deficient or a production royalty return was not filed when due.

(Eff. 7/26/91, Register 119; am 8/26/98, Register 147)  
Authority - AS 38.05.212 AS 38.05.265

### **11 AAC 86.793 RELOCATION.**

(a) A mining claim, leasehold location, or mining lease that has been abandoned under 11 AAC 86.790 is subject to relocation by another after the date on which notice of abandonment is posted at both the Anchorage and Fairbanks offices of the division under 11 AAC 86.790.

(b) A holder or locator of an abandoned mining claim, leasehold location, or mining lease may not relocate the abandoned location until one year after notice of abandonment is posted at both the Anchorage and Fairbanks offices of the division under 11 AAC 86.790

(Eff. 7/26/91, Register 119)  
Authority - AS 38.05.212 AS 38.05.265

**11 AAC 86.796 DEFINITIONS.**

As used in 11 AAC 86.760 - 11 AAC 86.796,

(1) "ADL" means the Alaska Division of Lands in the department;

(2) "department" means the Department of Natural Resources;

(3) "director" or "division" means the director or division delegated the authority of the director of lands in the Department of Natural Resources;

(4) "gross income" means gross income as defined in 15 AAC 65.110;

(5) "person" means the same as in AS 01.10.060;

(6) "produced mineral" or "mineral produced" means any mineral or raw material extracted or leached in-situ from the surface or subsurface and removed from the mining claim, leasehold location, or mining lease from which it was extracted or leached in-situ; "produced mineral" or "mineral produced" does not include any mineral produced as a result of taking a sample or bulk sample; for purposes of this paragraph, "bulk sample" has the meaning given in 15 AAC 65.990. and the definition of "bulk sample" in that section, as revised as of August 1, 2001, is adopted by reference;

(7) "ton" means 2,000 pounds.

(Eff. 7/26/91, Register 119; 1/19/2002)

Authority - AS 38.05.212

Editor's Notes -

Other definitions applicable to 11 AAC 86.760 - 11 AAC 86.796 appear in 11 AAC 88.185.

# Section V. Appeals

## CHAPTER 002

### APPEALS

#### 11 AAC 02.010 APPLICABILITY AND ELIGIBILITY

(a) This chapter sets out the administrative review procedure available to a person affected by a decision of the department. If a statute or a provision of this title prescribes a different procedure with respect to a particular decision, that procedure must be followed when it conflicts with this chapter.

(b) Unless a statute does not permit an appeal, an applicant is eligible to appeal or request reconsideration of the department's decision on the application. An applicant is eligible to participate in any appeal or request for reconsideration filed by any other eligible party.

(c) If a statute restricts eligibility to appeal or request reconsideration of a decision to those who have provided timely written comment or public hearing testimony on the decision, the department will give notice of the eligibility restriction as part of its public notice announcing the opportunity to comment.

(d) If the department gives public notice and allows a public comment period of at least 30 days on a proposed action, and if no statute requires opportunity for public comment, the department may restrict eligibility to appeal or request reconsideration to those who have provided timely written comment or public hearing testimony on the proposed action by including notice of the restriction as part of its public notice announcing the opportunity to comment.

(e) An eligible person affected by a decision of the department that the commissioner did not sign or cosign may appeal the decision to the commissioner within the period set by 11 AAC 02.040.

(f) An eligible person affected by a decision of the department that the commissioner signed or cosigned may request the commissioner's reconsideration within the period set by 11AAC 02.040.

(g) A person may not appeal and request reconsideration of a decision.

(Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority - AS 03.05.010	AS 03.10.020
AS 29.65.120	AS 38.04.900
AS 38.05.020	AS 38.08.110
AS 38.09.110	AS 41.15.020
AS 41.17.055	AS 41.21.020
AS 46.15.020	AS 46.17.030

#### 11AAC 02.015 COMBINED DECISIONS.

(a) When the department issues a combined decision that is both a final disposal decision under AS 38.05.035 (e) and any other decision, including a disposal decision combined with a land use plan decision, or a disposal decision to grant certain applications combined with a

decision to deny others, the appeal process set out for a disposal decision in AS 38.05.035(i) – (m) and this chapter applies to the combined decision.

(b) A decision of the department may include a statement that a final consistency determination under AS 46.40 (Alaska Coastal Management Program) has been rendered in conjunction with the decision. A person may not, under this chapter, appeal or request reconsideration of the final consistency determination, including a requirement necessary solely to ensure the activity is consistent with the Alaska Coastal Management Program as approved under AS 46.40.

(Eff.9/19/2001, Register 159)

Authority - AS 29.65.050	AS 29.65.120
AS 38.04.900	AS 38.05.020
AS 38.05.035	AS 38.08.110
AS 38.09.110	AS 38.50.160

#### 11 AAC 02.020 FINALITY OF A DECISION FOR PURPOSES OF APPEAL TO COURT.

(a) Unless otherwise provided in a statute or a provision of this title, an eligible person must first either appeal or request reconsideration of a decision in accordance with this chapter before appealing a decision to superior court.

(b) The commissioner's decision on appeal is the final administrative order and decision of the department for purposes of appeal to the superior court.

(c) The commissioner may order or deny a request for reconsideration within 30 calendar days after issuance of the decision, as determined under 11 AAC 02.040 (c) - (e). If the commissioner takes no action during the 30-day period, the request for reconsideration is considered denied. Denial of a request for reconsideration is the final administrative order and decision of the department for the purpose of appeal to the superior court.

(d) If the commissioner timely orders reconsideration of the decision, the commissioner may affirm the decision, issue a new or modified decision or remand the matter to the director for further proceedings. The commissioner's decision, other than a remand decision, is the final administrative order and decision of the department for purpose of appeal to the superior court.

(Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority - AS 03.05.010	AS 03.10.020
AS 29.65.120	AS 38.04.900
AS 38.05.020	AS 38.08.110
AS 38.09.110	AS 38.50.160
AS 41.15.020	AS 41.17.055
AS 41.21.020	AS 46.15.020
AS 46.17.030	

#### 11 AAC 02.030 FILING AN APPEAL OR REQUEST FOR RECONSIDERATION.

(a) An appeal or request for reconsideration under this chapter must:

(1) be in writing;

(2) be filed by personal service, mail, fax, or electronic mail;

(3) be signed by the appellant or the appellant's attorney, unless filed by electronic mail; an appeal or request for reconsideration filed by electronic mail must state the name of the person appealing or requesting reconsideration and a single point of contact to which any notice or decision concerning the appeal or request for reconsideration is to be sent;

(4) be correctly addressed;

(5) be timely filed in accordance with 11 AAC 02.040;

(6) specify the case reference number used by the department, if any;

(7) specify the decision being appealed or for which reconsideration is being requested;

(8) specify the basis upon which the decision is challenged;

(9) specify any material facts disputed by the appellant;

(10) specify the remedy requested by the appellant;

(11) state the address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed; an appellant may also provide a telephone number where the appellant can be reached during the day or an electronic mail address; an appeal or request for reconsideration filed electronically must state a single address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed;

(12) identify any other affected agreement, contract, lease, permit, or application by case reference number, if any; and

(13) include a request for an oral hearing, if desired; in the appeal or request for reconsideration, the appellant may include a request for any special procedures to be used at the hearing; the appeal or request for reconsideration must describe the factual issues to be considered at the hearing.

(b) At the time an appeal is filed, and up until the deadline set out in 11 AAC 02.040(a) to file the appeal, an appellant may submit additional written material in support of the appeal, including evidence or legal argument.

(c) If public notice announcing a comment period of a least 30 days was given before the decision, an appellant may not submit additional written material after the deadline for filing unless the appeal meets the requirements of (a) of this section and includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

(1) comments already received from the appellant and others;

(2) whether the additional material is likely to affect the outcome of the appeal;

(3) whether the additional material could reasonably have been submitted without an extension;

(4) the length of the extension requested;

(5) the potential effect of delay if an extension is granted.

(d) If public notice announcing a comment period of at least 30 days was not given before the decision, an

appellant may submit written material after the deadline for filing the appeal, if the appeal meets the requirements of (a) of this section and includes a notice of intent to file the additional written material. The department must receive the additional written material within 20 days after the appeal, unless the appeal also includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

(1) comments already received from the appellant and others;

(2) whether the additional material is likely to affect the outcome of the appeal;

(3) whether the additional material could reasonably have been submitted without an extension;

(4) the length of the extension requested;

(5) the potential effect of delay if an extension is granted.

(e) At the time a request for reconsideration is filed, and up until the deadline to file a request for reconsideration, an appellant may submit additional written material in support of the request for reconsideration, including evidence or legal argument. No additional written material may be submitted after the deadline for filing the request for reconsideration.

(f) If the decision is one described in 11 AAC 02.06(c), an appellant may ask for a stay as part of the appeal or request for reconsideration. The appellant must include an argument as to why the public interest requires a stay.

(Eff. 11/7/90, Register 116; am9/19/2001, Register 159)

Authority - AS 03.05.010	AS 03.10.020
AS 29.65.120	AS 38.04.900
AS 38.05.020	AS 38.08.110
AS 38.09.110	AS 38.50.160
AS 41.15.020	AS 41.17.055
AS 41.21.020	AS 46.15.020
AS 46.17.030	

Editor's note: The address for an appeal or request for reconsideration by personal service and by mail is: Department of Natural Resources, Commissioner's Office, 550 W. 7<sup>th</sup> Avenue, Suite 1400, Anchorage, Alaska 99501-3561. The number for an appeal or request for reconsideration by fax is 1-907-269-8918. The electronic mailing address for an appeal or request for reconsideration by electronic mail is: [dnr=hrzappeals@dnr.state.ak.us](mailto:dnr=hrzappeals@dnr.state.ak.us).

### **11 AAC 02.040 TIMELY FILING; ISSUANCE OF DECISION.**

(a) To be timely filed, an appeal or request for reconsideration must be received by the Commissioner's office within 20 calendar days after issuance of the decision, as determined under (c) or (d) of this section, unless another period is set by statute, regulation, or existing contract. If the 20th day falls on a day when the

department is officially closed, the appeal must be filed by the next working day.

(b) An appeal or request for reconsideration will not be accepted if it is not timely filed.

(c) If the appellant is a person to whom the department delivers a decision by personal service or by certified mail, return receipt requested, issuance occurs when the addressee or the addressee's agent signs for the decision. If the addressee or the addressee's agent neglects or refuses to sign for the certified mail, or if the address that the addressee provided to the department is not correct, issuance by certified mail occurs when the decision is deposited in a U.S. general or branch post office, enclosed in a postage-paid wrapper or envelope, addressed to the person's current address of record with the department, or to the address specified by the appellant under 11 AAC 02.03 (a)(11).

(d) If the appellant is a person to whom the department did not deliver a decision by personal service or certified mail, issuance occurs

(1) when the department gives public notice of the decision; or

(2) if no public notice is given, when the decision is signed; however, the department may state in the decision a later date of issuance and the corresponding due date for any appeal or request for reconsideration.

(e) The date of issuance constitutes delivery or mailing for purpose of a reconsideration request under AS 44.37.011(d) or AS 44.62.540(a).

(Eff. 11/7/90, Register 116;am 9/19/2001, Register 159)

Authority - AS 03.05.010	AS 03.10.020
AS 29.65.120	AS 38.04.900
AS 38.05.020	AS 38.08.110
AS 38.09.110	AS 38.50.160
AS 41.15.020	AS 41.17.055
AS 41.21.020	AS 46.15.020
AS 46.17.030	

**11 AAC 02.050 HEARINGS.**

(a) The department will, in its discretion, hold a hearing when questions of fact must be resolved.

(b) The hearing procedure will be determined by the department on a case-by-case basis. As provided in 11 AAC 02.030 (a)(13), any request for special procedures must be included with the request for a hearing.

(c) In a hearing held under this section

(1) formal rules of evidence need not apply; and

(2) the hearing will be recorded, and may be transcribed at the request and expense of the party requesting the transcript.

(Eff. 11/7/90, Register 116)

Authority -AS 03.05.010	AS 03.10.020
AS 29.65.120	AS 38.04.900
AS 38.05.020	AS 38.08.110
AS 38.09.110	AS 38.50.160
AS 41.15.020	AS 41.17.055
AS 41.21.020	AS 46.15.020

AS 46.17.030

Editor's note: As of Register 159 (October 2001), the regulations attorney made a technical revision under AS 44.62.125 (b)(6), to 11 AAC 02.050 (b).

As of Register 160 (January 2002), the regulations attorney made a technical revision under AS 44.62.125 (b)(6), to the authorities citation in 11 AAC 02.050, to reflect the enactment of sec. 2, ch. 81, SLA 2000, transferring regulatory authority in AS 03.10.020 from the Department of Natural Resources to the Board of Agriculture and Conservation.

**11 AAC 02.060 STAYS; EXCEPTIONS.**

(a) Except as provided in (c) and (d) of this section, timely appealing or requesting reconsideration of a decision in accordance with this chapter stays the decision during the commissioner's consideration of the appeal or request for reconsideration. If the commissioner determines that the public interest requires removal of the stay, the commissioner will remove the stay and allow all or part of the decision to take effect on the date set in the decision or a date set by the commissioner.

(b) Repealed 9/19/2001

(c) Unless otherwise provided in a statute or a provision of this title, a decision takes effect immediately if it is a decision to

(1) issue a permit, that is revocable at will;

(2) approve surface operations for a disposal that has already occurred or a property right that has already vested; or

(3) administer an issued oil and gas lease or license, or an oil and gas unit agreement.

(d) Timely appealing or requesting reconsideration of a decision described in (c) of this section does not automatically stay the decision. However, the commissioner will impose a stay, on the commissioner's own motion or at the request of an appellant, if the commissioner determines that the public interest requires it.

(e) A decision takes effect immediately if no party is eligible to appeal or request reconsideration and the commissioner waives the commissioner's right to review or reconsider the decision.

(Eff. 11/7/90, Register 116;am 9/19/2001, Register 159)

Authority - AS 03.05.010	AS 03.10.020
AS 29.65.120	AS 38.04.900
AS 38.05.020	AS 38.08.110
AS 38.09.110	AS 38.50.160
AS 41.15.020	AS 41.17.055
AS 41.21.020	AS 46.15.020
AS 46.17.030	

**11 AAC 02.070 WAIVER OF PROCEDURAL VIOLATIONS.**

The commissioner may, to the extent allowed by applicable law, waive a requirement of this chapter if the public interest or the interests of justice so require.

(Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

Authority - AS 03.05.010 AS 03.10.020  
AS 29.65.120 AS 38.04.900  
AS 38.05.020 AS 38.08.110  
AS 38.09.110 AS 38.50.160  
AS 41.15.020 AS 41.17.055  
AS 41.21.020 AS 46.15.020  
AS 46.17.030

AS 29.65.120 AS 38.04.900  
AS 38.05.020 AS 38.05.035  
AS 38.08.110 AS 38.09.110  
AS 38.50.160 AS 41.15.020  
AS 41.17.055 AS 41.21.020  
AS 44.37.011 AS 44.62.540  
AS 46.15.020 AS 46.17.030

Editor’s note: The subject matter of 11 AAC 02.900 was formerly located at 11 AAC 02.080. The history note for 11 AAC 02.900 does not reflect the history of the earlier section.

Editor’s note: As of Register 160 (January 2002), the regulations attorney made a technical revision under AS 44.62.125 (b)(6), to the authorities citation in 11 AAC 02.070, to reflect the enactment of sec. 2, ch. 81, SLA 2000, transferring regulatory authority in AS 03.10.020 from the Department of Natural Resources to the Board of Agriculture and Conservation.

**11 AAC 02.080 DEFINITIONS.**

Repealed. (Eff. 11/7/90, Register 116;am 9/19/2001, Register 159)

Editor’s note: The subject matter formerly set out at 11 AAC 02.080 has been moved to 11 AAC 02.900.

**11 AAC 02.900 DEFINITIONS.**

In this chapter,

- (1) “appeal” means a request to the commissioner to review a decision that the commissioner did not sign or cosign;
- (2) “appellant” means a person who files an appeal or a request for reconsideration.
- (3) “commissioner” means the commissioner of natural resources;
- (4) “decision” means a written discretionary or factual determination by the department specifying the details of the section to be allowed or taken;
- (5) “department” means depending of the particular context in which the term is used, the Department of Natural Resources, the commissioner, the director of the division within the Department of Natural Resources, or an authorized employee of the Department of Natural Resources;
- (6) “request for reconsideration” means a petition or request to the commissioner to review an original decision that the commissioner signed or cosigned.

(Eff. 11/7/90, Register 116;am 9/19/2001, Register 159)

Authority - AS 03.05.010 AS 29.65.050



# Section VI. General Application and Practice and Procedure Requirements

## ADMINISTRATIVE REGULATIONS

### CHAPTER 088

#### PRACTICE AND PROCEDURE

Editor's Notes -

The mineral-leasing regulations in 11 AAC 82, 11 AAC 83, 11 AAC 84, 11 AAC 86, and 11 AAC 88, History - effective September 5, 1974, and distributed in Alaska Administrative Register 51, constitute a comprehensive reorganization and revision of this material, and thus a history line at the end of each section does not reflect the history of the provision before September 5, 1974, and the section numbering may or may not be related to the numbering before that date.

#### 11 AAC 88.100 APPLICABILITY.

This chapter applies to 11 AAC 82 - 11 AAC 86 unless specifically provided otherwise by the sections dealing with the subject of the application, filing or payment.

(Eff. 9/5/74, Register 51)  
Authority - AS 38.05.020

#### 11 AAC 88.105 APPLICATIONS.

All applications filed under 11 AAC 82 - 11 AAC 86 must comply with any requirements imposed by the regulations dealing with the subject of the applications, and must

- (1) be typewritten or printed in ink;
- (2) be signed by the applicant;
- (3) be filed by mail or personal delivery at any filing office of the division;
- (4) identify any affected lease, permit, or application by serial number or date of filing;
- (5) describe the land affected by the application;
- (6) State the address to which any notice concerning the application may be mailed; and
- (7) be accompanied by the filing fee or fees prescribed by 11 AAC 05.010; this filing fee is retained as a service charge in all cases, including cases in which the application is rejected, denied, or withdrawn in whole or in part.

(Eff. 9/5/74, Register 51; am 1/1/86, Register 96; am 7/1/89, Register 110)  
Authority - AS 38.05.020

#### 11 AAC 88.110 WITHDRAWAL OF APPLICATIONS.

At any time before a lease or permit is issued, the application may be withdrawn in whole or in part. If withdrawn in part, the application as modified must meet all the requirements of the applicable laws and regulations.

(Eff. 9/5/74, Register 51)  
Authority - AS 38.05.020

#### 11 AAC 88.115 ADDITIONAL INFORMATION.

The director may require any additional information regarding an applicant's, claimant's, permittee's or lessee's compliance with the statutes and regulations except proprietary data not specifically authorized by other regulation or statute. Failure to comply results in rejection of the application and is a default under the terms of the permit or lease and the regulations applicable to it.

(Eff. 9/5/74, Register 51)  
Authority - AS 38.05.020 AS 38.05.035

#### 11 AAC 88.120 DEFICIENT FILINGS.

(a) Applications and documents filed with omissions or errors give the applicant no priority if

(1) the land description is insufficient to identify the land or the description does not comply with the compactness requirements;

(2) the total acreage exceeds the maximum established by law or regulation, except where the rule of approximation applies;

(3) the total acreage is less than the minimum established by law or regulation;

(4) the full filing fee and the first year's rental, where required, is not filed; and

(5) the application is not signed by or on behalf of each person having an interest in the application whether by written or oral agreement or contract.

(b) Applications with the defects listed in (a) of this section may be corrected without loss of filing fee if done within 15 days of receipt of notice of the defect, but the time of filing is the date of the receipt of the correct information.

(c) The director may allow the correction of any other omission or error in an application or document other than those listed in (a) of this section without affecting the original filing time if he determines that the omission or error is immaterial or due to excusable inadvertence.

(Eff. 9/5/74, Register 51)  
Authority - AS 38.05.020

**11 AAC 88.125 TIME FOR FILING.**

(a) Filing hours for payments and applications are from 10:00 a.m. to the end of posted office hours on business days, which are Mondays through Fridays, holidays excepted.

(b) Filing hours for all documents to be filed for record in the recording district in which the claim or site is located are from 8:30 a.m. to the end of posted office hours from Monday through Friday, holidays excepted.

(c) All documents, including payments and applications, received during filing hours on business days are stamped with the exact date and time of filing.

(d) Payments and applications received at any other time are filed at 10:00 a.m. on the next business day.

(e) Documents to be filed under (b) of this section received at any other time are considered to be filed at 8:30 a.m. on the next business day.

(f) Applications and documents showing the same time stamp are considered to have been filed simultaneously.

(Eff. 9/5/74, Register 51; am 12/31/82, Register 84)  
Authority - AS 38.05.020

**11 AAC 88.130 TIMELY FILING.**

(a) Payments are timely if an affected lease or permit is identified by an Alaska Division of Lands' serial number, and is either (1) delivered at any of the division offices designated by the director as "filing offices" during filing hours within the time allowed by any notice, decision, regulation or law, or (2) mailed on or before the due date provided by any notice, decision, regulation or law and the mailing date can be verified by postmark or other post office record or notation.

(b) If the serial number is not identified, as required in (a) of this section, the time of filing is the time of receipt of correct information unless the director determines that the lack of such information is immaterial or due to excusable inadvertence.

(c) All other documents are timely filed if received during filing hours within the time allowed by any notice, decision, regulation, or law at any office designated by the director and posted in the office as a filing office.

(d) When the last day of the time for filing or payment falls on a day the designated filing office is officially closed, the time for filing is extended to the next day the office is open to the public.

(Eff. 9/5/74, Register 51; am 12/31/82, Register 84)  
Authority - AS 38.05.020

**11 AAC 88.135 MEANS OF FILING.**

Filings and payments may be made by mail or personal delivery, unless provided otherwise by the section dealing with the subject of the filing or payment.

(Eff. 9/5/74, Register 51)  
Authority - AS 38.05.020

**11 AAC 88.140 NOTICES.**

(a) Any notice which the director gives to any person must be in writing and must be delivered in person or mailed by registered or certified mail, return receipt requested, to the person at his current address of record with the division.

(b) Any person may file his current mailing address with the division in writing and may change his address of record by written notice filed with the division at any time. "Current mailing address" is the most recent or permanent legal address of an applicant, permittee, lessee or claimant. It is the responsibility of any person doing business with the division to notify the division of his most recent or permanent legal address.

(c) A notice is considered to be given and received on the date delivered to the current address of record.

(d) Whenever any notice is required to be given to a lessee, permittee or claimant, copies of the notice shall also be given, in the manner provided by (a) of this section, to any assignee whose assignment has been filed for approval.

(Eff. 9/5/74, Register 51)  
Authority - AS 38.05.020

**11 AAC 88.145 REFUNDS.**

(a) If an application on which rental has been submitted is rejected or withdrawn in whole or in part, the first year's rental will be refunded in whole or in pro rata part on an acreage basis.

(b) Notwithstanding any other provision of 11 AAC 82 - 11 AAC 88, no refund will be made for less than \$2.00.

(Eff. 9/5/74, Register 51)  
Authority - AS 38.05.020

**11 AAC 88.150 MAILING LIST.**

The division shall maintain a mailing list for the purpose of sending general notices, orders and other information, which the director determines to be of public interest regarding mineral activities of the division to persons who file a written request to be put on a list.

(Eff. 9/5/74, Register 51)  
Authority - AS 38.05.020

**11 AAC 88.151 NOTICE REQUIRED BY AS 38.05.945 (c).**

(a) A village corporation will be given notice under AS 38.05.945 (c)(3) if it owns or has selected land within six miles of the state land proposed for disposal.

(b) A community will be given notice under AS 38.05.945 (c)(4) if land within its boundaries is no more than six miles from the state land proposed for disposal. A community is an incorporated or unincorporated place

with 25 or more inhabitants, according to the most recent census of the U.S. Census Bureau. An incorporated community's boundaries will be those reported to the department by the Local Boundary Commission. An unincorporated community's boundaries will be those delineated by the U.S. Census Bureau in the most recent census.

(Eff. 6/28/81, Register 78; am 12/31/82, Register 84)  
Authority - AS 38.05.020 AS 38.05.945

### **11 AAC 88.155 APPEAL.**

An eligible person adversely affected by a decision issued under 11 AAC 82 - 11 AAC 86 may appeal that decision in accordance with 11 AAC 02.

(Eff. 9/5/74, Register 51; am 11/7/90, Register 116)  
Authority - AS 38.05.020

### **11 AAC 88.185 DEFINITIONS.**

As used in 11 AAC 82 - 11 AAC 88 and unless the context clearly requires a different meaning or unless otherwise defined in these chapters,

- (1) "adjacent" means touching or lying in close proximity, as opposed to "contiguous" which requires a common boundary;
- (2) "cash" means cashier's or certified checks drawn on any solvent bank in the United States, postal or telegraphic money orders or legal tender of the United States of America, or any combination of these;
- (3) "commissioner" means the Commissioner of the Department of Natural Resources;
- (4) "cooperative agreement" means an agreement or plan of development and operation for the recovery of oil and gas from any pool, field, or like area or any part thereof in which separate ownership units are independently operated pursuant to the agreement without allocation of production;
- (5) "director" means the Director of the Division of Lands;
- (6) "division" means the Division of Lands, Department of Natural Resources;
- (7) "filing office" means any place designated by the director as a filing office for applications, payments and filings under 11 AAC 82 - 11 AAC 88;
- (8) "gas" means all natural gas and all hydrocarbons produced at a well not defined herein as oil;
- (9) "gas well" means (A) a well which produces natural gas only; (B) that part of a well where the gas producing stratum has been successfully cased off from the oil, and the gas and oil being produced through separate casing or tubing; (C) any well classed as a gas well by the Alaska Oil and Gas Conservation Commission in the administration of the Alaska Oil and Gas Conservation Act;
- (10) "leasehold location" or "mining leasehold location" mean the interests in land subject to a location under AS 38.05.205 before a lease has been issued;

(11) "legal subdivision" means an aliquot part of a section of land according to the public land rectangular survey system, not smaller than one-quarter of one-quarter of one section of land, containing approximately 40 acres; where a section of land contains section lots, "legal subdivision" also means those section lots; "legal subdivision" also means a protracted legal subdivision according to any protracted public land rectangular survey prepared by the division or Bureau of Land Management of the Department of the Interior, and made available to prospective applicants for leases;

(12) "lessee or permittee of record" means the original lessee or permittee under any lease or permit or, if an assignment has been approved at any time, the latest assignee whose assignment has been approved;

(13) "locatable minerals" means those minerals which, on January 3, 1959, were subject to location under the United States mining laws (30 U.S.C.);

(14) "Mineral Leasing Act" means the Act of Congress of February 25, 1920 (41 Stat. 437, 30 U.S.C. 181 et seq.), as amended;

(15) "offshore" means tide and submerged lands, that is, those lands lying seaward from the line of mean high tide;

(16) "oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced and saved in liquid form at the well by ordinary production methods;

(17) "oil well" means any well operated for the primary purpose of producing oil and which by the nature of its production cannot be classed as a gas well as defined in paragraph (6) of this section;

(18) "operating agreement," means an agreement giving the operator the right to carry on operations authorized by a lease or leases and to share in production obtained from the leased lands;

(19) "option" means an option to obtain an assignment of or an operating agreement covering a lease or portion of one;

(20) "order" means a determination made by the director or the commissioner in accordance with authority lawfully vested in him, issued in writing, filed in the permanent files of the division, posted in a conspicuous place in the offices of the division and made continuously available for inspection by the public;

(21) "participating area," means that part of an oil and gas lease unit area to which production is allocated in the manner described in a unit agreement;

(22) "person" includes a corporation and an association of persons;

(23) "pool" means an underground reservoir containing or appearing to contain a common accumulation of oil or gas or both; each zone of a general structure which is completely separated from any other zone in the structure is a pool;

(24) "primary term" means the initial term of an oil and gas lease and any extension of it;

(25) "smallest legal subdivision" means one-quarter of one-quarter of one section of land, containing 40 acres or less, except where a section contains smaller section lots according to the public land rectangular survey and

protracted public land rectangular survey prepared by the division or by the Bureau of Land Management of the Department of the Interior, and made available to prospective applicants for leases, in which case "smallest legal subdivision" means those smaller section lots; as to un-surveyed land not covered by such a protracted survey, it means a square containing 40 acres, more or less;

(26) "status record" means the basic record maintained by the division to show the status of every tract of land and of leases and applications for leases on them;

(27) "unit agreement" means an agreement or plan of development and operation for the recovery of oil and gas from a pool, field or like area, or any part of one, as a single consolidated unit without regard to separate ownerships, and for the allocation of costs and benefits on a basis as defined in the agreement or plan; "unit agreement" also includes "cooperative agreement" unless the context clearly requires the more restricted meaning;

(28) "unit area" means the area described in a unit agreement as constituting the land logically subject to development under the agreement;

(29) "unit operator" means the person, corporation or association designated under a unit agreement to conduct operations on unitized lands as specified in the agreement;

(30) "unitized land," means the part of a unit area committed to a unit agreement;

(31) "unitized substance," means deposits of oil, gas and associated substances produced with them recoverable by operations pursuant to a unit agreement;

(32) "working interest" means the interest held in lands by virtue of a lease, operating agreement, fee title or otherwise, under which the owner of the interest is vested with the right to explore for, develop and produce minerals; the right delegated to a unit operator by a unit agreement is not a working interest;

(33) "qualified to do business in Alaska," means holding the state certificates necessary to lawfully conduct business within the state;

(34) "leasehold," "mining lease," or "upland mining lease" means the interests in land subject to a mining lease issued in accordance with AS 38.05.205;

(35) "location" or "mining location" means a location on state-selected land authorized under AS 38.06.275, a mining claim made under AS 38.05.195, a leasehold location made under AS 38.05.205 or a prospecting site location made under AS 38.05.245;

(36) "locator" means the initial person to stake or locate a mining location or the current owner of a mining location;

(37) "ADL number" means the serial number assigned by the department to a case file;

(38) "associated substances," means all substances produced in association with oil or gas and not defined herein as oil or gas;

(39) "mineral" means a naturally occurring substance with a characteristic chemical composition expressed by a chemical formula, including oil and gas.

(Eff. 9/5/74, Register 51; am 3/27/82, Register 81; am 5/30/85, Register 94; am 5/18/90, Register 114; am 5/22/93, Register 126; am 9/10/98, Register 147)