

Questions and Answers Regarding DNR's May 3, 2018

Proposed Mining Rights Regulation Revisions

11 AAC 86

DNR encourages the public to submit written questions regarding the proposed regulations or the regulation adoption process. Please submit your questions by May 25 to ensure that DNR has adequate time to provide an answer. DNR will accept questions up until the end of the comment period and will endeavor to post the questions and answers before the close of the comment period at 5:00 p.m. June 4th, 2018.

As of May 16, 2018

QUESTION 1: Why did DNR propose revising these particular regulations?

ANSWER: Many in the mining community pointed out potential modifications to the current mining rights regulations to meet the goals of clarity, ease of administration, and overall better implementation of the mining statutes regarding mining rights.

In 2016 and late 2017 DNR oversaw public scoping efforts to identify and address issues in its mining regulations in 11 AAC 86, Mining rights. Through these efforts, DNR gathered comments and ideas for possible regulation changes that would be beneficial to the state and mining right holders.

In 2018, the Governor also introduced legislation that proposed changing state law to eliminate the requirement for annual labor, increase annual rent and make other revisions to implement removal of the requirement to record annual statements of labor (SB 166 and HB 317). As noted in a March 2, 2018 letter from DNR to Senator Giessel, the purpose of the bill was to solve the problem of "unintentional abandonments" that result from statements of annual labor that fail to accurately set out the essential facts.

While the legislature has recently adjourned without passage of the bills, DNR obtained further information and comments regarding mining issues and problems in Alaska as a result of the public scoping and legislative process. For example, DNR determined that there was little support for changing the mining year to begin and end on midnight August 31 annually, and that miners wanted the ability to satisfy annual labor requirements through a combination of labor, cash in lieu and labor carry forward credits if they chose.

On May 3, the department put forth a package of proposed regulation changes that would target key regulatory issues identified as creating potential challenges to miners' maintenance of their ownership, or tenure, of their mining claims, and to minimize as permitted under the existing statutory framework, abandonments for often unintentional errors or omissions on mining statements of annual labor. As noted in the "Dear Alaskan"

letter that accompanied proposed regulations public notice, the department recognizes the State would benefit from review and potential revision of other mining regulations, and DNR will certainly be looking at additional opportunities to do so in the near future.

QUESTION 2: Why did DNR propose revising these regulations at this time and with only 32 days for public comment?

ANSWER: The state's mining labor year runs from September 1st to September 1st of the following year. Statements of annual Labor are required to be recorded in the recording district in which the claim is located. These typically are recorded between September 1st and the legal deadline for recordation which is November 30th annually.

For Alaskan miners to benefit in the 2017-2018 mining year from any changes to the mining rights regulations, it would be best to have the regulation revisions in effect before September 1st of 2018.

There are only four months left in the 2017-2018 mining labor year. Therefore, in order to potentially implement any final regulation changes by September 1st, the department initiated the public review process when it did, with a public comment period of 32 days.

QUESTION 3: When will these proposed regulations go into effect? Will they be in effect for the 2017-2018 mining year or the 2018-2019 mining year?

ANSWER: After the public comment period ends, DNR will either adopt these provisions (in whole or in part) or other provisions of the regulations dealing with the same subject, without further notice; or DNR will decide to take no action on the proposed regulations. The language of any final regulations may be different from that of the proposed regulations.

If DNR decides to adopt these regulations, or similar regulations dealing with the same subject, DNR is hoping that the regulations will be in effect by September 1st, 2018. DNR anticipates that the majority of statements of annual labor for the 2017-2018 labor year will be recorded after this date.

This means that a statement of annual labor recorded on or before August 31, 2018 would be recorded while the existing regulations were in place. For example, if a miner records a statement of annual labor on August 2, 2018, the miner would be required to provide the essential facts as current regulations require. If new regulations go into effect with language similar to the proposed language noticed May 3, 2018, then a statement of annual labor recorded on or after September 1st, 2018 would require a smaller subset of the essential facts currently required by regulation. Therefore, if regulations are finalized with language similar to the proposed language noticed May 3, then any previously recorded statements of labor that met the current regulatory requirements would likely also meet the requirements of any new regulations. It would still be the case that any failure to accurately set out any essential facts on the new, smaller list of essential facts would still result in the statement of labor being void. However, as there are less essential facts required in the

proposed regulations, then presumably there should be less opportunity for failure to accurately set out all the facts. Any mining right holders have until November 30th, 2018 to record a valid statement of annual labor, and any statement recorded between September 1st, 2017 and August 31, 2018 may be replaced with another statement of annual labor recorded on or after September 1st, 2018.

As drafted, the proposed regulations have reduced the number of requirements on a statement of annual labor. Therefore, a statement of labor recorded pursuant to existing regulations would also meet the requirements of the proposed regulations, if after receipt of public comment it is determined that reduced requirements are an acceptable course of action for changes in the regulations.

QUESTION 4: Why did DNR propose revising 11 AAC 86.215(a)(7), Dealing with Certificate of location and first rent payment?

ANSWER: This proposed revision seeks to simplify the mapping requirements for new mining claim locations in two ways. First, for locations using the MTRSC system, (which is the Meridian, Township, Range, Section Claim System established under AS 38.05.195) locators would no longer have to map the boundaries of a new mining claim. DNR understands that maps are not as necessary for an MTRSC location as a traditional location, as one can graphically recreate MTRSC locations, along the section lines, based on an adequate legal description. For traditional claims though, also known as non-MTRSC claims, a map is still required, because the legal descriptions are typically much more complex. Feedback on this topic is welcomed.

Second, the proposed regulation revises the language such that the level of detail provided by non-MTRSC locators for the “dominant physical features of the land” is limited to being to the best of the locator’s knowledge. This proposed change is because the “dominant physical features of the land” may vary greatly and has been perceived as a subjective requirement.

If this provision is implemented, the department would expect a reduction in challenges to adequacy of claim sketches and challenges claim holders may face from competitors based on alleged inadequacies in sketches.

QUESTION 5: Why did DNR propose revising 11 AAC 86.215(b), Dealing with Certificate of location and first rent payment?

ANSWER: This proposed revision seeks to clarify that “file for record” means “record.” The proposed revision also includes a statutory reference that was omitted in the past. This revision clarifies the authority under which abandonment would occur.

QUESTION 6: Why did DNR propose adding a new regulation 11 AAC 86.216, Dealing with Overlapping or Conflicting locations?

ANSWER:

This proposed regulation attempts to provide more clarity in the future for mining claim locators in the event of situations of overlapping and conflicting mining locations. It also is

intended to provide clarity for locators regarding department obligations to inform locators of overlapping locations and regarding authorizations for operations on a claim that overlaps another claim. It also provides clarity regarding the effect of state mineral closures and leasing restrictions on locations.

QUESTION 7: Why did DNR propose revisions to 11 AAC 86.220, Dealing with Annual labor?

ANSWER: DNR has recognized that the existing regulations dealing with information, or “Essential Facts”, required to be included in a statement of annual labor have been problematic for some mining rights holders. Errors, omissions or inaccuracies in setting out these essential facts can trigger abandonment of mining rights. This is because state law under AS 38.05.256(a) states in relevant part: “A statement of annual labor that does not accurately set out the essential facts is void and of no effect.” Upon review of its regulations, DNR identified that much of the information currently being required under 11 AAC 86.220(c)(1)-(5) is information that DNR already has in its records. However, this information is needed by the state’s recorders’ office to record the statement of annual labor. Therefore, DNR has proposed to repeal and readopt this subsection of regulation to separate the purpose and effect of these two types of information. DNR welcomes comments on this proposal and any potential effects. “Essential Facts” under the proposed regulation are proposed to be limited to:

- (1) the name or the state-assigned file number (ADL) for the mining claim, leasehold location or lease;
- (2) the name of at least one owner; and
- (3) description of
 - (A) any labor performed or improvements made during the mining labor year,
 - (B) the amount of any cash payment made instead of annual labor,
 - (C) the monetary value of any past improvements being applied for the current labor year; or
 - (D) any combination of (A), (B) and (C).

Additional information needed to record a statement of annual labor still would be required to be included on the statement, but failure to put that information on a statement under the proposed regulations would not result in an abandonment of the mining right under AS 38.05.265, because it would no longer be an “Essential Fact.” Such information or requirements include:

- The combination of both the name and address of at least one owner,
- The combination both the name and the state assigned file number for the mining right, (at least one or the other of these (but not both) is required to meet essential fact requirements as well),
- The name and address of the person recording the statement of annual labor,
- The monetary value of annual labor or improvements to be applied for the future labor years.

Under the proposed regulations, a statement of labor must be recorded in the recording district in which the location is situated. Further, the regulation clarifies that a statement must meet the recording requirements of AS 40.17.040, and be recorded on a form approved by the department or on a substantially similar document. Reducing the number of “Essential Facts,” could reduce and prevent unintended mining right abandonments.

In other words, under this proposed regulation revision, the system would work this way:

DNR’s version of the Statement of annual labor regulations would require all the information listed in the proposed regulation, both essential information, and non-essential information including a legal description of the mining right.

Failure to accurately provide the name or the ADL number; to list the name of at least one owner; or to accurately describe the labor performed or improvements made during the mining labor year, the amount of any cash payment made instead of annual labor, or the monetary value of any past improvements being applied for the current labor year (collectively, the essential information) would still result in the annual labor statement being void and of no effect under the language of AS 38.05.265.

Failure to include any other information required in the proposed regulation that is not an essential fact would not result in voiding of the affidavit and abandonment of the claim under AS 38.04.265.

Additionally, DNR proposes to amend 11 AAC 86.220(d). This change would replace the phrase “an affidavit” with the phrase “a statement of annual labor.” This was proposed to make the regulation read consistently with the term as used in state law. Currently, both terms are used interchangeably.

DNR proposed to amend 11 AAC 86.220(g). This change again would replace the phrase “an affidavit” with the phrase “a statement of annual labor.” This change was also proposed to clarify when a statement of annual labor could and could not be amended as prescribed under state law.

Further, DNR also proposes under these proposed regulations to amend 11 AAC 86.220(h). This change would incorporate the decision and holdings of the Alaska Supreme Court in *Chalovich v. State, Dept. of Natural Resources*, 104 P.3d 125 (Alaska 2004). In this case the court ruled that “a miner who mails payment on or before September 1, and who can verify the date of such mailing through a postmark, has performed annual labor by the end of the mining year.” (See page 134 of decision).

The proposed regulations contain an end date of 90 days to provide ultimate closure on whether a miner had paid in lieu of performing annual labor. DNR assumes that 90 days is a sufficient window of time to expect delayed mail in rural Alaska to reach the department, but the department welcomes comments on what the public proposes is a reasonable window of time. This proposed regulation was also revised to replace the phrase “in lieu” with the phrase “instead”, to make the regulation read more consistently with the term as used in state statute.

DNR also proposes to add a new regulation 11 AAC 86.220(i). The department has been notified by miners that carry-forward labor can be confusing. At the same time, the department is not interested in discouraging a miner to do more on their claim than required in a single labor period. As a result, the department proposed this change with the intent of providing clear guidance on how excess annual labor may be applied to the next four years of annual labor requirements. This proposed regulation would also make it clear that if excess labor is to be applied to a future year's annual labor requirements, the amount of the excess labor must be set out in the statement of annual labor under 11 AAC 86.220(c), such that it can be determined whether there is any excess labor carried forward from past years. DNR also proposed to add a new regulation 11 AAC 86.220(j). This proposed change states that a mining right holder may satisfy the requirement for annual labor through a combination of actual labor, a cash payment instead of annual labor, or excess annual labor carried forward from previous years. The purpose of this is to allow a combination of whatever resources the miner applies to their claim and is intended to provide the greatest flexibility for a miner to satisfy labor requirements.

DNR also proposed to add a new regulation 11 AAC 86.220(k). This proposed new regulation would address what happens under the proposed regulations when a mining right holder indicates on their statement of annual labor a period of labor that exceeds the mining year for which they are recording the statement.

Further, it is not uncommon for a miner to include labor on a statement for labor performed during a time period after the close of the labor year for which the statement is being recorded. This proposed change sets out that if a mining right holder who otherwise properly records a statement of annual labor, to include setting out the essential facts, but cites labor that includes labor beyond the end of the labor year, the miner would be allowed an opportunity to clarify which portion of the labor performed was performed during the labor year being reported. For example; a mining right holder reports that they completed \$150 worth of annual labor on their 40-acre claim, but did so between June 1st and October 1st. The example performance period spans two separate labor years and it is unclear whether sufficient labor (\$100) was performed on the claim between June 1st and the end of the labor year on September 1st, or how much work was done between September 1st and October 1st.

This proposed regulation would afford the mining right holder with notification of the need for clarification and allow the mining right holder 90 days from notice by the department to clarify whether the statement reports sufficient labor for the labor year at issue. The proposed regulation also provides that if the mining right holder fails to clarify the statement within the 90 days, the statement would be deemed void.

QUESTION 8: Why did DNR propose adding a new regulation 11 AAC 86.224, Dealing with Penalty and eligibility to cure abandonment?

ANSWER: The proposed regulations provide an outline of implementation of the cure provision of AS 38.05.265(b). It would provide that only new valid locations established during the abandonment period, or a mineral closing order issued by the state can prevent an abandoned claim from being reinstated under the cure provision. In addition, subsection (b)

was proposed to clarify that a penalty payment is equal to one year's rent at the regular rental rate, not including any credit or reductions or any other rental amount. DNR anticipates that these regulations will assist state mining right holders to better understand when and how to exercise their right to cure an abandonment of a mining right.

QUESTION 9: Why did DNR propose revising 11 AAC 86.541(e), Dealing with offshore mining lease rental?

ANSWER: DNR has proposed this regulation to reflect that the automatic abandonment requirement for offshore mining leases was removed from state statute in 1997. This proposed change updates current regulations to remove automatic abandonment of offshore mining leases per the requirements of AS 38.05.265.

QUESTION 10: Why did DNR propose adding a new regulation 11 AAC 86.590, Dealing with Definitions?

ANSWER: DNR has come to recognize that certain terms used, or may be used, in state mining statute or the regulations are unclear to the public or may be clear to the public but not defined in statute or regulation. Accordingly, DNR is proposing to create a definitions section in 11 AAC 86, and define three critical terms to help ensure everyone is operating with the same understanding of word meanings.

The first term is "ADL Number". While some members of the public may know what this term means, DNR has dealt with individuals that were unaware what this stood for or thought it meant "Alaska Driver's License" number. The definition clarifies that for DNR in the mining context "ADL Number" means a state-assigned Alaska Division of Lands number. This is the unique file number assigned by DNR to each mining claim, leasehold location, lease or prospecting permit for record keeping purposes.

The second term is "State-selected Lands". In the context of certain laws and regulations, this term could be interpreted to mean several different types of state land interests, including state patented land, state selected land that has been tentatively approved for patent, state selected lands, or state top-filed lands (lands selected by others that the state has a second-in-line type interest). DNR sought to ensure that with regard to Chapter 11 AAC 86, the terms used have the same meaning as the terms defined in AS 38.05.275(b).

The third term is "a properly recorded". This term is used in both state mining law and department regulations, and it is the departments experience that this term has created the most confusion or uncertainty for members of the public. DNR is attempting to define this term in a way that makes clear what constitutes a "properly recorded" document.

DNR has identified three critical elements for the definition of "properly recorded" document:

First, that is timely recorded under any applicable requirements of AS 38.05.195(c), AS 38.05.210 and 11 AAC 86.220;

Second, that it is recorded in the appropriate recording district in which the mining location is located, and

Lastly, that it meets the standards of the Recorder's Office under 11 AAC 06.040.

DNR believes that this definition would clarify any misunderstandings regarding this term.

Ultimately, this new section of regulations could also provide a place that additional definitions of terms identified in the future and related to mining rights could be located.