

# Chapter 97 **Mining Reclamation**

## Article 1 **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.

## Article 2 **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 revegetation, 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.

**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.

**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.

**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.

**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.

**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 waterbody. 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.

## **Article 3**

### **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.
- (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](#).

#### **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 casefile 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.

#### **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.

#### **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.

#### **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.

#### **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.

## **Article 4** **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.

#### **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.

#### **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.

#### **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.

#### **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.

#### **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 05.030](#), 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](#).

#### **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.

#### **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.

#### **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 disbursement balance of the bonding pool.

#### **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.

#### **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.

## Article 5 **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 casefile 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.

### **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.

## Article 6 **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.

### **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.

### **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.

### **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](#).

### **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.

## Article 7 **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.

## Article 8 **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](#).

### **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.

### **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.