



THE STATE
of **ALASKA**

GOVERNOR MICHAEL J. DUNLEAVY

Department of Natural Resources

COMMISSIONER'S OFFICE

550 W. 7th Avenue, Suite #1400

Anchorage, AK 99501

Main: 907.269.8431

Fax: 907.269.8918

February 4, 2022

**Re: Department Regulations on Surface Coal Mining
Opportunity to Comment on Proposed Regulation Changes**

Dear Alaskan:

The Department of Natural Resources (DNR) proposes to amend regulations regarding surface coal mining in Title 11 of the Alaska Administrative Code (AAC). These revisions will implement required program amendments from the Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE). Substantive amendments include changes to what information is required by a permittee for ownership/control of a mining operation, and updates to the process for determining valid existing rights to coal resources on certain state and federal land (e.g., National Forest and Park lands). Currently, regulations in this chapter, 11 AAC 90.002 – 11 AAC 90.911, are adopted by reference under 11 AAC 90.001(a), meaning that the regulations are not printed in full in the administrative code. Along with the substantive amendments, DNR is proposing to incorporate the regulations in their entirety into the code rather than citing to them by reference.

I am writing to explain proposed amendments and codification and invite you to review and comment on these proposed regulation changes.

Why Do We Need This Regulation Change Now?

Regulatory requirements for coal mines are different than those for other types of mines. In 1977, the U.S. Congress passed the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.) ("federal Act"). This Act completely restructured the way coal mining was regulated, and it established a nationwide program to regulate surface coal mining and reclamation. Previously, OSMRE had exclusive authority to regulate coal mining operations, but the federal Act allowed individual states to develop coal regulatory programs consistent with the federal legislation and to assume primacy over the federal program.

In 1983, the State of Alaska enacted the Alaska Surface Coal Mining Control and Reclamation Act ("ASCMCRA" or "state Act") under AS 27.21 to obtain primacy and assume jurisdiction over all coal mining activities occurring within the State. Pursuant to AS 27.21.030, the commissioner of DNR has exclusive jurisdiction over surface coal mining and reclamation operations in Alaska. The Alaska Division of Mining, Land and Water (DMLW) administers the state Act and its implementing regulations for coal mining on private, municipal, state, and federal land. Alaska's coal program, which must comply with federal standards, comprehensively regulates almost all aspects of coal mining activity, from exploration through final reclamation. Implementing regulations were adopted by reference in 11 AAC 90.001(a), with an effective date of May 2, 1983. The AAC publications only include 11 AAC 90.001; 11 AAC 90.002 – 11 AAC 90.911 are not included. These sections are currently only available to the public at the offices or on the website of DMLW. Once incorporated, the regulations will be more readily available to interested parties; the DMLW amendment process will also

be much simpler. Before adopting these regulations into code, DMLW is required to make technical changes to conform the regulations to the State of Alaska regulation drafting requirements. Technical amendments do not involve substantive changes or affect the meaning of regulations.

On October 28, 1994, December 7, 1999, December 19, 2000, and December 3, 2007, OSMRE amended federal regulations. The amendments addressed concerns with tracking the ownership of a coal mining operation, as well as agency review of the rights that a person might have to conduct mining operations that were in place before the land was protected under 30 U.S.C. 1201, et seq. or AS 27.21. Once adopted on the federal level, OSMRE requires that states make parallel changes to the state regulations implementing the coal program. These changes are required for the state to maintain primacy over this program.

First, to address ownership concerns, the proposed amendments change the information an applicant provides when requesting a permit to conduct surface coal mining, specifically concerning the information showing ownership and control of a mining operation. The amendments also update DNR's process to review ownership and control information. The amendments are designed to ensure that no one associated with an operation has outstanding violations or is barred from ownership of coal mining operations in other jurisdictions.

Second, the proposed amendments update DNR's method of determining whether a person has a valid existing right to conduct surface coal mining operations on certain state and federal land (e.g., National Forest and Park lands) and clarifies who has jurisdiction to make a determination on these rights. Finally, the proposed amendments clarify the requirements for re-mining of areas that have already been mined and update how DNR may take enforcement action for failure or refusal to follow the requirements of ASCMCRA/the state Act. Once completed, DMLW will be able to maintain primacy over the federal program because these changes will implement the required program amendments from the OSMRE.

Scope of Proposed Regulation Change

DNR proposes changes to ownership and control and valid existing rights regulations to conform to requirements established by OSMRE for rules that are no more stringent than the federal counterpart. Additionally, DNR is proposing to readopt the surface coal mining regulations into the administrative code under 11 AAC 90. The effect of this revision would be that 11 AAC 90.001(a) would be amended, and 11 AAC 90.002 – 11 AAC 90.911 would be incorporated into Title 11.

Opportunity for Comment

Interested parties are encouraged to review the proposed regulations and submit any comments to DNR. Enclosed is the official "Notice of Proposed Changes in Coal Mining Regulations of the Department of Natural Resources," which provides details regarding submitting public comments. You can view the proposed regulations on the Alaska Online Public Notice System and on DMLW's website at <https://dnr.alaska.gov/mlw/news/>.

You are invited to comment on these proposed regulation changes. For your comments to be considered, DNR must receive them no later than **5:00 p.m. on March 11, 2022**. Comments must be in writing, and may be mailed, faxed, or e-mailed using the contact information provided below. Please see the Notice of Proposed Changes for additional information.

Attn: Angie Fraker
Division of Mining, Land and Water
550 W 7th Ave., Suite 1070
Anchorage, Alaska 99501-3579
Fax: (907) 269-8904
E-Mail: dmlwprogramsupport@alaska.gov

You may also submit written questions relevant to the proposed regulations to the contact information provided above. Questions must be received at least 10 days before the end of the public comment period (**by March 1, 2022**). The Department of Natural Resources will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and on our website at: <https://dnr.alaska.gov/mlw/news/>.

For more information regarding the proposed regulations or a copy of the proposed regulation changes, go to <https://dnr.alaska.gov/mlw/news/>, or contact Angie Fraker at the contact information provided above.

If you are a person with a disability who needs a special accommodation to participate in this process, please contact Angie Fraker no later than **March 1, 2022**, to ensure that any necessary accommodations can be provided.

Thank you for your consideration of these proposed regulations. DNR looks forward to reading your comments and suggestions.

Sincerely,



Kristin A. Hess, Deputy Director for Martin W. Parsons

Martin Parsons
Director, Division of Mining, Land and Water
Department of Natural Resources