

FEEDBACK REGARDING PROPOSED ORDINANCE 2021-41

ALASKA DEPARTMENT OF NATURAL RESOURCES (DNR)

See below the primary feedback from DNR Division of Mining, Land, and Water (DMLW), Southcentral Regional Land Office (SCRO).

21.29.060(B) – Reclamation plan requirements

- *“The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land within the time period approved with the reclamation plan so as to leave the land in a stable condition.”*
- While DNR does require sites to be returned to a safe and stable condition per AS 27.19, DNR would not require the revegetation of a designated material site until the site had been exhausted, at which point revegetation could be a consideration upon closure of the site.
- Under AS 38.04.065(a) and (h), the State has the authority to establish its own land use planning and classification to provide for the use and management of state land. As per AS 38.04.065(g), DNR DMLW is required only to assure consistency with municipal plans and zoning to the maximum extent determined consistent with the State’s interest.

Prior existing uses – Addition of language requiring proof of compliance with AS 27.19.030-050

- Proposed 21.29.120: *“The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning reclamation to the planning department no later than July 1, 2022. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.”*
- It is unclear if this requirement would be applicable to state-owned material sites. If applicable, DNR could not implement this practice at state-owned sites as the state holds this statutory standard to the operator, not the landowner. Therefore there are state-owned sites considered to be compliant with this statute by the State that do not actively have reclamation plans on file as there are no active operators in them at this time. If DNR’s current PEU status sites are rejected based on this requirement, the lack of PEU determination will become a hinderance to operators considering state-owned material sites.

Bonding practice – Effectively only applicable to operators in compliance with State statute AS 27.19

While this is not overly concerning, it is worth noting that the proposed ordinance language under 21.29.060(B) and 21.29.050(12)(b) creates some redundancy to the State reclamation bonding language. The State authority to require a bond in relation to a reclamation plan comes from AS 27.19 which “applies to state, federal, municipal, and private land and water subject to mining operations.” [AS 27.19.010(a)] Therefore all materials related mining should have a reclamation plan filed with the State. The only operators not subject to reclamation bonding from the State are those that qualify for a Letter of Intent (LOI) [AS 27.19.050]. Under KPB ordinance 21.29.050(12)(b), the borough would exempt those same operations who qualify for LOI from the KPB bonding as well. As such the only operations that would be required to get bonding through the proposed borough ordinance would be those already in violation of AS 27.19. State bonding requirements are \$750.00 per acre [AS 27.19.040(a)]. In contrast to the borough proposed \$2,000.00 per acre bonding amount, it is likely most operators will continue to pursue bonding under AS 27.19.

DNR Contact

For further information regarding DNR DMLW SCRO feedback, please contact Amber-Lynn Taber at amber.taber@alaska.gov or 907-269-8560.

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)

Below is some language from the DEC Drinking Water regulations, 18 AAC 80, that should be taken into consideration in the proposed ordinance revision. Additionally, please consider adhering to DEC’s “User’s Manual of BMPs for Gravel/Rock Extraction & Water Quality” (attached separately).

18 AAC 80.015. Well protection, source water protection, and well decommissioning.

(a) A person may not

(1) cause pollution or contamination to enter a public water system;

or

(2) create or maintain a condition that has a significant potential to cause or allow the pollution or contamination of a public water system.

The following language is intended to apply to the public water system, but should be a consideration when applying separation distances to the proposed material extraction ordinance. More specifically, a minimum of 200 feet for “other potential sources of contamination.”

18 AAC 80.020. Minimum separation distances.

(a) A person may not construct, install, maintain, or operate a public water system unless the minimum separation distances in Table A, in this subsection, are maintained between a potential source of contamination and a drinking water source for the public water system.

[See attached Table A]

(b) The department will require a greater separation distance than that required by Table A in (a) of this section if the department determines that additional distance is necessary to protect surface water, groundwater, or a drinking water source. The department will make this decision after considering soil classifications, groundwater conditions, surface topography, geology, past experience, or other factors relevant to protection of surface water, groundwater, or drinking water.

DEC Contact

For further information regarding DEC feedback, please contact Charley Palmer at charley.palmer@alaska.gov or 907-269-0292.

ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (DOT&PF)

While specific comments were not yet received from DOT&PF, it is my understanding they are still interested in providing feedback. As DOT&PF oversees projects for transportation maintenance and development, their feedback will be more focused from the operation perspective than the resources management perspective. I encourage coordination with DOT&PF for their unique agency outlook.

DOT&PF Contact

For further information regarding DOT&PF feedback, please contact Renée Goentzel at renee.goentzel@alaska.gov or 907-269-0714.

DEC - 18 AAC 80.020 - TABLE A

<p>TABLE A. Minimum Separation Distances^a Between Drinking Water Sources and Potential Sources of Contamination (Measured horizontally in feet)</p>	
Type of Drinking Water System	
Potential Sources of Contamination	Community Water Systems, Non-transient Non-Community Water Systems, and Transient Non-Community Water Systems
Wastewater treatment works, ^b wastewater disposal system, ^b pit privy, ^b sewer manhole, lift station, cleanout	200
Community sewer line, holding tank, ^b other potential sources of contamination ^c	200
Private sewer line, petroleum lines and storage tanks, ^d drinking water treatment waste ^e	100

Notes to Table A:

^a These minimum distances will be expanded, or additional monitoring will be required under 18 AAC 80.020(b) and (e)(2).

^b Distance to a drinking water source is measured from the nearest edge of the drinking water source to the nearest edge of the potential source of contamination.

^c Other potential sources of contamination include sanitary landfills, domestic animal and agricultural waste, and industrial discharge lines.

^d The minimum separation distances for petroleum storage tanks do not apply to tanks that contain propane, or to above-ground storage tanks or drums that, in the aggregate, have a storage capacity of less than 500 gallons of petroleum products, and that store only petroleum products necessary for the operation and maintenance of pumps, power generation systems, or heating systems associated with a potable water source.

^e Drinking water treatment wastes include the backwash water from filters and water softeners, and the reject water from reverse osmosis units.