



Council of  
**Alaska Producers**



November 15, 2019

Joseph Joyner  
State of Alaska Department of Natural Resources  
550 W 7th Avenue, Suite 1070  
Anchorage, AK 99501-3577  
*By email to [dnr.appeal.regulation@alaska.gov](mailto:dnr.appeal.regulation@alaska.gov)*

**Re: DNR Notice of Scoping for Appeal Regulations, 11 AAC 02**

Dear Mr. Joyner,

The Council of Alaska Producers (CAP) and the Alaska Miners Association appreciate the opportunity to provide comments on the Department of Natural Resources (DNR) Notice of Scoping for Possible Revisions to DNR Regulations under Administrative Order 266, 11 AAC 02 Appeal Regulations.

CAP is a non-profit trade association formed in 1992 to represent the interests of large metal mines and mine developmental projects in Alaska. CAP informs members on legislative and regulatory issues, supports and advances the mining industry, educates members, the media, and the general public on mining related issues, and promotes economic opportunity and environmentally sound mining practices.

AMA is a professional membership trade organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, suction dredge miners, small family mines, junior mining companies, major mining companies, Alaska Native Corporations, and the contracting sector that supports Alaska's mining industry.

CAP and AMA appreciate DNR's efforts to identify ways to make the regulatory process more efficient and provide greater clarity about the requirements and timelines for the process. Improving the appeal process is an important step and we offer the following suggestions to make the process more efficient, establish clear timelines, and implement reasonable fees to cover the administrative costs of responding to the appeal and to discourage frivolous appeals designed to delay issuance of permits.

### **1. Clear the Backlog of Current Appeals:**

- As we understand it, appeals are often given priority by the date they are submitted. With years of appeals currently backlogged, a permittee that needs a final decision can be significantly delayed from utilizing the permit. This is very open ended and leaves the permittee without many options if it needs the permit to continue business. We recommend DNR establish a means to accelerate appeals in certain situations, such as ones that have a material effect on active business operations.

### **2. Establish Clear Timelines:**

- Amend Sec. 5. AS 38.05.035(j) so that failure of the Commissioner to act on a request for reconsideration not later than 30 days after issuance of the final written finding is a denial of the request for reconsideration and a final administrative decision for purposes of appeal to the superior court.
- Amend Sec. 6. AS 38.05.035(l) to add that a person may appeal a final written finding to the superior court only if the person was eligible to request, and did request, an administrative appeal or reconsideration of that finding. The person shall initiate the appeal to the court no later than 30 days from the date that the decision on administrative appeal or reconsideration is mailed or otherwise distributed, or the date the request for reconsideration is considered denied by the Commissioner's failure to act on the request, whichever is earlier. The points on appeal to the court are limited to those presented to the commissioner in the person's administrative appeal or request for reconsideration.

### **3. Allow Partial Appeals:**

- Incorporate into the regulations the ability to appeal a condition or special stipulation in a permit without the whole permit being stayed. This may be at the request of the appellant or included by the Commissioner as part of their response to a request for reconsideration.

### **4. Post Appeal Requests and Decisions on DNR Website:**

- The number of appeals received and decisions rendered should be posted on DNR's website as public information. This will increase transparency and accountability.

### **5. Standing to Appeal Should Require Good Faith Effort to Communicate:**

- An appellant should have documented a good faith effort to alert the department of concerns before a decision they will be appealing is rendered. This can be documented

through written comment during a public notice period or other documented communication. In short, the appellant must have standing to file the appeal by being able to show they tried to work through the issue with the department prior to issuance of the permit or decision. This allows DNR to try to resolve these items before they turn into an appeal.

## 6. Implement Reasonable Fees

- As DNR manages significant budget cuts, cost recovery is vital to ensuring the department has sufficient resources to perform its statutory and regulatory oversight. Amend Sec. 4. AS 38.05.035(i) to require a fee to file an appeal of request for reconsideration.

Thank you for this opportunity to provide comments and for your thorough consideration of these recommendations.

Sincerely,



Karen Matthias  
Executive Director  
Council of Alaska Producers

Sincerely,



Deantha Crockett  
Executive Director  
Alaska Miners Association